

THE 2001 CAPE TOWN CONVENTION  
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT



## INSIDE TRACK



“Inside Track” keeps RWG members and colleagues up to date on the progress of the Luxembourg Protocol. You can be added onto the mailing list by clicking on “subscribe” at the bottom of the newsletter.

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### **UN ECA ministers support spreading of the word**

There was detailed consideration of the Luxembourg Rail Protocol at the 52nd UN Economic Commission for Africa (UN ECA) annual meeting of African Finance, Planning and Economic Development Ministers which took place between 20th and 26th March in Marrakech, Morocco. UN ECA director Stephen Karingi made a detailed presentation on the Luxembourg Rail Protocol during meeting of government experts. Previously the UN ECA had already published an issues paper ([English](#) / [French](#)). At the following ministerial meeting, ministers adopted a [detailed resolution](#) mandating UN ECA to advocate to and inform both the public and private sector of the benefits presented by the Luxembourg Rail Protocol and in their ministerial statement, ministers acknowledged the Protocol “is an important financing facilitating instrument that enables member States to conclude agreements with public and private lenders and lessors of railway rolling stock.” Looking forward the RWG will work closely with the UN ECA on spreading the word on the Protocol, through seminars and publications, to ministers and government officials as well as private stakeholders.

### **UN ECA seminar on the Luxembourg Protocol**

On 23rd March, UNIDROIT Deputy Secretary General Professor Anna Veneziano, Soteri Gatera, from the UN ECA, Mesela Nhlapo, CEO of the RailRoad Association of South Africa and Howard Rosen from the RWG participated in a special side event “Railway Rolling Stock Financing: A new solution for Africa” arranged by UN ECA as part of the programme of the 52nd Session of the Economic Commission for Africa, the Conference of African Ministers of Finance, Planning and Economic Development, which took place March 20 – 26 in Marrakech, Morocco [introductory note [English](#) / [French](#)]. Following an introduction by UN ECA Director, Stephen Karingi, Professor Veneziano introduced the subject by placing the Luxembourg Protocol in the context of ongoing co-operation between UNIDROIT and various UN agencies. During the seminar, Mr Gatera made a presentation on the proposed high speed rail network across Africa, Mr Rosen pointed out that the Luxembourg Rail Protocol was entirely complementary to the UN 2030 Agenda (Sustainable Development Goals) and the forthcoming African Continental Free Trade Agreement and gave a [detailed slide presentation](#) on the advantages which the Protocol could bring for both the public and private sector and Ms Nhlapo elaborated on what this will mean for African states. [UN ECA report](#).

### **New RWG publications**

To coincide with the UN ECA meeting of African Finance, Planning and Economic Development Ministers in Marrakech, Morocco this month, the RWG has issued a new brochure in English and French [“The Luxembourg Rail Protocol: Moving Africa Forward”](#) [“Le Protocole ferroviaire du Luxembourg: Faisons avancer l’Afrique”](#). It has also published some practical [hard questions and detailed answers](#) about the Luxembourg Protocol in the African context.

### **Metrorail in Vietnam**

On 28th March in Ho Chi Minh City, Vietnam, Sean Prior, Member of the RWG South East Asia Contact Group and Counsel at Mayer Brown (Singapore) Pte. Ltd, Singapore spoke at Vietnam’s Hanoi, HCMC & Danang Metro Rail System Projects Conference 2019, His topic was “What is the Luxembourg Rail Protocol and what are the economic benefits that may arise from its implementation for metro rail projects in Vietnam” and in his presentation he drew attention to the way the Protocol could push down financing costs for rolling stock being acquired for the Vietnam metro systems.

### **The Protocol in Budapest**

RWG Chairman Howard Rosen and Dr. József Vági, chair of the RWG Hungary Contact Group have been invited to give a presentation on the Luxembourg Rail Protocol at the Hungrail Railway Academy Conference 2019 on 8th May in Budapest.

### **Topic of the month: Where will the international registry be located?**

Resolution 3 of the Final Act of the diplomatic conference in 2007 in Luxembourg resolved that, in gratitude for the full support of the Luxembourg government up to and at the diplomatic conference, the international registry will be located in Luxembourg. There is, therefore, no option for the international registry to be located elsewhere. Moreover, the Luxembourg government continues to provide important practical support for the international registry. So, for example the offices for the registrar are provided by the Luxembourg government free of charge.

The registrar will be based in Luxembourg, but otherwise the physical location of the offices is not so important since the whole concept of the international registry is that it is a virtual registry operating, paperless, through the Internet. There will be relatively few areas of work performed manually in Luxembourg. However the location of the registry is significant in as far as Article 44 of the Convention gives the courts in the state where the registrar has its

centre of administration exclusive jurisdiction over the registrar. This is entirely logical and the system has operated very successfully in relation to the aircraft protocol where, there, the Irish courts exercise that jurisdiction robustly. As it happens, in each case one could consider the registry as being in a neutral jurisdiction which also each has a superb infrastructure to ensure that the registry can operate in practice with very low fault tolerances.

Under Article XIII of the Luxembourg Protocol, there is a possibility of registrations of international interests (but not other registrations) being made through designated entry points where a contracting state requests this through a declaration at the time or subsequent to ratification. Moreover it would be perfectly possible for a group of contracting states to resolve on one designated entry point, so in theory one could create an African entry point. However, searches would still have to be at the international registry since there can only be one registry, not just because of the resolution of the diplomatic conference but also because there cannot be any risk of inconsistency. But this is not recommended. Firstly, this provision is essentially a legacy from the aircraft protocol where there are national title registries and where it can make sense to route registrations through the national aircraft registry to avoid any risk that the ownership claims on the aircraft are accurately and consistently reflected in the national registry as well as in the international registry in Dublin. These considerations do not exist in the rail sector as there are generally no national public title registries for rolling stock. Secondly introducing an intermediary, between the contracting parties making registrations of international interests and the international registry, increases the complexity of the registration, creates a new layer of cost and potentially creates liability for the operator of the designated entry point since of course it will have to guarantee the accuracy of all registrations coming through to the international registry which may in turn also create additional cost through the need to insure this risk. A more detailed analysis of Article XIII may be found in [Inside Track issue of July 2017](#).

### **Save the date – Breakfast Seminar in Prague**

On Monday, 13th May 2019, the RWG will be running a rail stakeholders' breakfast seminar on the Luxembourg Protocol (08.30 – 10.00am) at the offices of PricewaterhouseCoppers Česká republika s.r.o., in Prague. To receive an invitation, please contact us at [info@railworkinggroup.org](mailto:info@railworkinggroup.org)

### Save the date – AfricaRail 2019

Africa's largest rail exhibition & conference will be taking place at the Sandton Convention Centre in Johannesburg, South Africa on 19th/20th June 2019. *The RWG is an official media partner and RWG Chairman Howard Rosen will chair, and present a paper at, one of the streams at the conference. The RWG has negotiated a 15% discount for its members and RWG members should mention their membership when applying for tickets.* For more information click [here](#).



### Save the date – Cape Town Convention Academic Project Conference 2019

This year's conference will be held in Oxford on 10th/11th September 2019. As will be seen from the [draft programme](#), there will be a major discussion of the Oceanair litigation in Brazil. Fundamental Cape Town Conventions issues are present in that case, including the interpretation and application of its substantive and cross border insolvency provisions. Oceanair is the first large scale insolvency in which the treaty plays a central role. With the Diplomatic Conference coming up in November this year, there will be two sessions on the MAC protocol: one looking critically at provisions in that protocol that are based on those in the other protocols, and the other looking at the relationship between the MAC protocol and domestic secured transactions law. There will also be a session on the interpretation of the Cape Town Convention in the various language versions, and a discussion of the CTC Compliance Index.



### Subscription discount for the South African publication “Railways Africa”

Rail Working Group members are entitled to purchase the South African online publication [“Railways Africa”](#) at 25% discount off R6500 - place promo code railworkinggroup2019 when checking out. The code expires at the end of 2019.

### **“The Railway Market in Africa and the Middle East” – special offer for members**

SCI Verkehr, has just published a new study on the market for railway technology products and services in Africa and the Middle East. Rail Working Group members are entitled to purchase the study at a 10% discount if you announce your membership during the order process. To place an order click [here](#).

### **Official Commentary – consultation**

The next edition of Professor Goode's official commentary on the Luxembourg Protocol is already being prepared. The RWG has been invited to submit comments. If you would like to suggest changes or additions to the commentary or, as an RWG member, would like to be part of our team evaluating the commentary, please contact [Professor Benjamin von Bodungen](#).

### **Official Commentary - special deal for RWG members**

Rail Working Group members are entitled to purchase Professor Goode's official commentary on the Luxembourg Protocol at a 15% discount. If you wish to use this facility, please use the official form which you can find [here](#).

For copies of past newsletters click [here](#).

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Our next issue will be published towards the end of April.

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