

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 Rail Protocol. You can be added onto the mailing list by clicking on “subscribe” at the bottom of the newsletter.

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### **MAC Diplomatic Conference in Pretoria**

The draft Mining, Agricultural and Construction Equipment Protocol to the Cape Town Convention became a reality on 22nd November when it was adopted at a diplomatic conference in Pretoria, South Africa. The MAC Protocol becomes the fourth Protocol to the Cape Town Convention. Over 150 delegates from 43 States, 1 regional economic integration organisation, 3 intergovernmental organisations, 4 international non-governmental organisations, and 1 technical adviser participated in the negotiations. [Final version of the MAC Protocol](#).

During the diplomatic conference, a special high-level seminar was run for delegates and guests on the Luxembourg Rail Protocol. Chaired by DIRCO Chief State Law Adviser Adv. Sandea de Wet, speakers included UNIDROIT Secretary General and Deputy Secretary General, respectively Professor Ignacio Tirado and Professor Anna Veneziano, UNECA Head of Energy, Infrastructure and Services, Robert Lisinge, OTIF Head of Administration and Finance, Lunesterline Andriamahatahitry, RWG Chair Howard Rosen and RWG Director Africa, Mesela Nhlapo.

### **Workshop at the Africa Union**

Soteri Gatera, Chief of Industrialisation and Infrastructure at the UN Economic Commission for Africa gave the opening address on 13<sup>th</sup> November at the African Union (AU) Workshop in Addis Ababa on the Agenda 2063 African Integrated High-Speed Rail Network. The workshop, focused on advancing the Programme for Infrastructure Development in Africa (PIDA) was attended by government transport officials from around Africa, the PIDA National Coordinator, representatives of Regional Economic Communities and the director of the African Union Development Agency (AUDA-NEPAD). African countries, he said, should be interconnected by rail to realise the practical benefits of the AU Agenda 2063 flagship projects, the African Continental Free Trade Area (AfCFTA), and the Free Movement of People and Goods.

Cheikh Bedda, the Director for Infrastructure and Energy of the AU emphasised the importance of the future high-speed rail network for Africa and the need to put this into place urgently. RWG chairman Howard Rosen then took a two-hour session on the Luxembourg Rail Protocol. He pointed out to delegates that there is a synergistic relationship between rail infrastructure and rolling stock and the planning for a high-speed rail network must include facilitating financing of locomotives and wagons to run on the planned infrastructure.

### **RWG at the OECD**

The RWG attended the annual meeting between Civil Society Organisations and Export Credit Agencies in Paris on 19th November. The ECAs are looking closely at reforming their rules on ECA support for home manufacturers. RWG chairman, Howard Rosen, emphasised to the meeting that ECA premium rates must go down for debtors in contracting states, once the Luxembourg Rail Protocol came into force, and that the Protocol should also be taken into account in relaxing the country risk rules on supporting rail transactions. This is particularly important now bearing in mind the strong environmental credentials of the rail sector, he added. The Rail Sector Understanding, which sets out common rules on ECA support for railway infrastructure and rolling stock, is up for renewal during 2020.

### **Mauritius prepares for implementation**

Following final consultations, the Law Reform Commission of Mauritius has now released its final report regarding the domestication of the Cape Town Convention and its first three Protocols. It reviews the Cape Town Convention and its protocols in extensive detail and underlines that Mauritius adopting the CTC system will "strengthen Mauritius as an International Financial Centre". The report sets out the declarations and detailed legislation required to implement all four instruments and it is expected that Mauritius will move forward with the ratification process in the new year. [Detailed report](#)

### **Presentation to the UN ECE**

A strong RWG delegation attended the Working Party on Rail Transport of the Inland Transport Committee of the United Nations Economic Commission for Europe (UNECE) on 26 November. RWG chair Howard Rosen gave a presentation on the Luxembourg Rail Protocol. The delegation also included Marianna Levtova from Nexxiot, Jürgen Maier from BLS, Christoph Gyr from Prose and José Gollentz from TPM3L. There was also a discussion on, and agreement to, the proposal from the Luxembourg government to establish a group of experts to examine introducing standard protocols for the permanent marking of rolling stock with the unique vehicle identifiers which will be issued by the International Registry under the Protocol.

### **SARA Board meeting**

The Luxembourg Rail Protocol was on the agenda for board members of the Southern African Railways Association, which took place in Windhoek, Namibia on 28 November. Both RWG Chairman Howard Rosen and RWG Director Africa, Mesela Nhlapo attended and Howard Rosen gave a detailed presentation on how the Protocol would provide a new tool for Southern African regional rail integration.

### **PIDA Conference urges AU Member States to adopt the Protocol**

The fifth PIDA (Programme for Infrastructure Development in Africa) Week took place in Cairo from 24<sup>th</sup> to 29<sup>th</sup> November and was attended by over 500 delegates including ministers and delegates from African Union Member States as well as representatives from key African organisations including the African Union Commission (AUC), the African Union Development Agency-NEPAD (AUDA-NEPAD), Regional Economic Communities, the African Development Bank (AfDB), the Development Bank of Southern Africa (DBSA), the United Nations Economic Commission for Africa (UNECA) and other invitees from the public and private sector. In its final communiqué, the conference encouraged AU Member States to ratify the Luxembourg Rail Protocol.

### **The Luxembourg Rail Protocol and the Single European Railway Area (SERA)**

The RWG has just issued a new paper on how the Luxembourg Rail Protocol will make a vital contribution to the development of the SERA. The paper highlights four specific areas where the Protocol will make a contribution, namely cheaper financing, underwriting operating leasing, introducing a common legal system securing lenders, lessors and operators moving rolling stock around the SERA and the various advantages arising through the unique vehicle identification system which will be provided by the international registry.

[Read more](#)

### **Topic of the month: The Role of the Depositary under the Luxembourg Rail Protocol**

While more and more States are contemplating becoming Contracting States to the Luxembourg Rail Protocol, the Depositary is moving into the limelight. Under both Article 62(1) of the Cape Town Convention and Article XXXIV(1) of the Rail Protocol, the Institute for the Unification of Private Law (UNIDROIT) is entrusted with the function as Depositary. It should be recalled in this context that a State may not become a Party to the Rail Protocol unless it is or becomes also a Party to the Cape Town Convention (Article XXI(5) of the Rail Protocol).

Both Article 62(2) of the Convention and Article XXXIV(2) of the Rail Protocol then go on to specify the duties of the Depositary almost identically. As is customary for depositaries, UNIDROIT must first and foremost determine the acceptability of instruments of ratification, acceptance, approval or accession (for reasons of simplification these international acts whereby a State establishes its consent to be bound by a treaty are hereinafter referred to as “ratification(s)”). In this context, UNIDROIT has issued a guide to the comprehensive declarations system established by the Cape Town Convention and the Rail Protocol, which is available at <https://unidroit.org/english/documents/2009/depositary/dc10-dep-01-e.pdf> .

Future Contracting States to the Cape Town Convention and the Rail Protocol should closely consider this document when moving towards ratification as it intends to ensure that their declarations fully comply with the terms of the Convention and the Rail Protocol. Ratification is then affected by the deposit of a formal instrument to that effect with the Depositary (Article 47(4) of the Cape Town Convention, Article XXI(4) of the Rail Protocol).

UNIDROIT as the Depositary is also tasked with furnishing information to all Contracting States, the Supervisory Authority and the Registrar with respect to the deposit of instruments of ratification and declarations, as well as any amendments and withdrawals thereof. Very importantly, UNIDROIT must also inform the Contracting States of the deposit by the Secretariat (i.e., the Intergovernmental Organisation for International Carriage by Rail) with the Depositary of a certificate confirming that the International Registry is fully operational as well as the date of entry into force of the Rail Protocol. As things stand at present, entry into force of the Rail Protocol is likely to occur towards the end of 2020.

Finally, Article 61 of the Cape Town Convention and Article XXXIII of the Rail Protocol place the Depositary under an obligation to prepare yearly reports as to the manner in which the international regime established in the Convention as amended by the Rail Protocol has operated in practice. Furthermore, UNIDROIT must convene Review Conferences at the request of not less than 25% of the States Parties.

In a nutshell, these are extremely important tasks in the overall structure of the Cape Town Convention as applied to railway rolling stock by the Luxembourg Rail Protocol. At the same time, they are also rather burdensome for UNIDROIT, particularly in view of the number and diversity of the declarations that can be made by Contracting States both under the Cape Town Convention and the Rail Protocol. Against this background, the latest Protocol under the umbrella of the Cape Town Convention, which relates to mining, agricultural and construction equipment and was adopted in Pretoria on November 22, 2019, provides that

the reasonable costs of the Depositary associated with the performance of certain of its functions may be factored into the fees collected from users of the International Registry for its services. However, no such mechanism is provided for under the earlier Luxembourg Rail Protocol.

#### **Save the date – Middle East Rail Conference, Dubai, 25<sup>th</sup> – 26<sup>th</sup> February 2020**

The largest Rail Conference and Exhibition across the Middle East, North Africa, South Asia & Central Asia is taking place on 25<sup>th</sup> - 26<sup>th</sup> February 2020 at the Dubai International Convention & Exhibition Centre, UAE. For more information click [here](#).



#### **Save the date - The Rise of IoT & Big Data in Rail, Munich, 15<sup>th</sup> - 16<sup>th</sup> April 2020**

The Rise of IoT & Big Data in Rail 2020 two-day conference will explore the huge breadth of both the predictive maintenance as well as the asset optimisation applications of big data, allowing Infrastructure Managers and Train Operating Companies to understand fully how they can benefit from setting in place the tools to harvest data from across the whole of their railway operations. RWG members have a 15% discount on the registration fee. To register please contact [ben.holliday@rotaiamedia.com](mailto:ben.holliday@rotaiamedia.com)



#### **Save the date – Africa Rail, Johannesburg, 30<sup>th</sup> June – 1<sup>st</sup> July 2020**

Africa's largest rail exhibition & conference will be taking place at the Sandton Convention Centre in Johannesburg, South Africa on 30<sup>th</sup> June – 1<sup>st</sup> July 2020. 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 – Scandinavian Rail Optimisation, Stockholm 10<sup>th</sup> November 2020**

Rotaia Media is organising a high-level business event, Scandinavian Rail Optimisation, on 10th November 2020 in Stockholm at the Brewery Conference Centre. RWG members receive a 15% discount on the registration fee. To register please contact [ben.holliday@rotaiamedia.com](mailto:ben.holliday@rotaiamedia.com)

### **Subscription discount for RWG members for “Railways Africa”**

Rail Working Group members are entitled to purchase the South African online publication “[Railways Africa](#)” at 25% discount of 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 published a 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 state your membership during the order process. To place an order click [here](#).

### **Fourth Edition of the Official Commentary on the Cape Town Convention and the Aircraft Protocol**

The 4<sup>th</sup> Edition of Professor Sir Roy Goode’s commentary on the Cape Town Convention and the Aircraft Protocol has now been published. Of course, many of the comments there apply equally to the Luxembourg Rail Protocol. RWG members are entitled to a 15% discount and you will see the application form [here](#).

### **Official Commentary on the Luxembourg Rail Protocol - special deal for RWG members**

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



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