

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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[Academics discuss the Luxembourg Rail Protocol in Nijmegen](#)

The 9th Transnational Commercial Law Teachers’ meeting took place in Nijmegen at Radboud University on 2nd/3rd November. The focus of the conference was sustainability. RWG Treasurer Benjamin von Bodungen and RWG Chairman Howard Rosen gave a joint presentation on both the Luxembourg Rail Protocol and the proposed MAC (Mining, Agricultural and Construction Equipment) Protocol. Howard Rosen spoke particularly about

the environmental benefits of shifting both freight and passengers onto the rails and that a key to doing this was to find cost effective financing – which was where the Luxembourg Rail Protocol came in.

At the end of the first day, the doyen of the Cape Town Convention, Professor Sir Roy Goode spoke, as the guest of honour, at a dinner for meeting participants at the University.

Luxembourg comes to East Africa

At the East Africa Rail Conference, which took place in Nairobi on 21st/22nd November, RWG Chairman Howard Rosen introduced the Luxembourg Rail Protocol to the East African rail community. The railways, thanks to considerable investment from the Chinese government and its agencies, are on course for major expansion in East Africa. With the new standard gauge railways already operating between Mombasa and Nairobi in Kenya and between Djibouti and Addis Ababa in Ethiopia, the initial ground work has already been laid for the standard gauge rail network across East Africa and this will, inevitably, lead to demand for more rolling stock. Mr. Rosen alerted the audience, which included the managing directors of both the Ugandan and Kenyan railway companies, to the benefits of the Luxembourg Rail Protocol and urged governments in the region to move forward quickly to adopt this instrument.

RWG urges ECAs to be more flexible

On 14th November the Rail Working Group was invited to make a presentation at the annual Civil Society Organisations' meeting with Export Credit Agencies under the auspices of the OECD in Paris. In its submission, the RWG urged Export Credit Agencies to be more robust in the way that they applied the current terms of the Rail Sector Understanding once the Luxembourg Rail Protocol is in place and has also urged ECAs to publicise this position so that borrowers in debtor states know that they need to start working on adopting the Protocol in their country to obtain the extra benefits.

The detailed RWG submission may be found [here](#). RWG chairman Howard Rosen's slide presentation may be found [here](#).

Topic of the month: Registration of non-consensual rights and interests in the International Registry

As has been discussed in previous issues of Inside Track, the Cape Town Convention and the Rail Protocol provide that international interests in railway rolling stock as well as notices of sale can be registered in the soon-to-be operational International Registry for railway rolling stock in Luxembourg.

In addition, Article 40 of the Convention provides that a Contracting State may make a declaration listing categories of non-consensual rights or interests that are registrable as regards any category of object as if the right or interest were an international interest. As a consequence, judgments, orders for the attachment of the debtor's equipment or state liens for unpaid taxes could be listed as a category of non-consensual right or interest. Interests that fall within such registrable category of interest and have been registered in the International Registry are to be treated as international interest in all respects. Therefore they enjoy priority over subsequently registered international interests or an unregistered interests. Similarly, they must be afforded protection in the debtor's insolvency.

Article 40 of the Convention implies that different declarations can be made for different categories of equipment falling under the Cape Town Convention umbrella. As a consequence, Contracting State may apply listed categories of non-consensual rights or interests to assets covered by a particular protocol but not to the assets covered in a second protocol. In particular, it remains to be seen how Contracting States will use the declaration possibility under Article 40 of the Convention in relation to railway rolling stock. The most obvious application case concerns track charges where many jurisdictions have already implemented independent charging regimes for all operators gaining access to a specific rail system. However, Contracting States could adopt an even more diversified approach. In view of the mixture of assets on the rail side, they could make a declaration under Article 40 that is confined to conventional railway rolling stock and therefore does not pertain to trams. However, such declarations should be well considered in advance, particularly as it is quite possible that trams or suburban rail vehicles will be operating on standard gauge tracks in state ownership.

When Contracting States consider their declarations under Article 40 of the Convention, the experience of the Aircraft Protocol will provide important guidance. In addition, the Rail Working Group strongly has issued recommendations in this context. In particular, the RWG's Declarations Matrix (available at the RWG website) strongly prefers the use of a declaration under Article 40 over a declaration under Article 39 of the Convention, which allows there to be overriding non-consensual rights or interest without registration. The obvious advantage of Article 40 is that it allows to bring all categories of rail interests within the first-to-file registry system under the Cape Town Convention and alerts the creditor to possible challenges to its property claims.

Special deal on Caspian & Central Asia Rail Conference

The Caspian & Central Asia Rail conference will be taking place on 6th/7th December 2017 in Azerbaijan. With an estimated \$200bn worth of projects currently in pipeline in the rail sector in the Caucasus region, Iran and Central Asia, this will be a critical growth area for the rail industry. Speakers and attendees at the conference will include key people from all of the major rail operators in the region. More about the conference [here](#).

The Rail Working Group has negotiated a special deal for its members for the conference. For more information contact us at: info@railworkinggroup.org



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](#).

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