

The Luxembourg Rail Protocol: Africa needs more investment in its railways

Wednesday 13th November 2019
Africa Union, Addis Ababa, Ethiopia

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Introduction

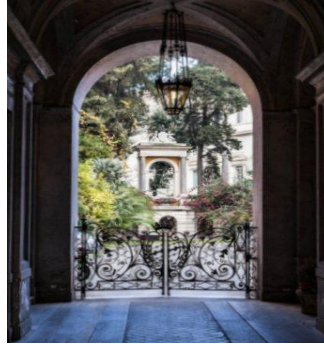
- First Module – Africa needs more investment in railways
 - The Protocol in context
 - Attracting Private Finance, problems and opportunities
 - The Cape Town Convention and the Luxembourg Rail Protocol in detail
- Second Module - What the Luxembourg Rail Protocol means for African States and for Africa
 - Advantages and obligations for countries
 - Case studies
 - Supporting the AfCFTA, the AIHSRN and interoperability and the way forward

RAIL WORKING GROUP

- Formed in 1996 at the request of UNIDROIT
- Not-for-profit global industry group based in Switzerland
- All officers and members work for free
- Over 70 direct members and hundreds via industry associations
- Linking up various industry stakeholders
- Dedicated to the adoption of the Luxembourg Rail Protocol to the Cape Town Convention
- In Africa we work closely with the UN Economic Commission for Africa and the AU



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE



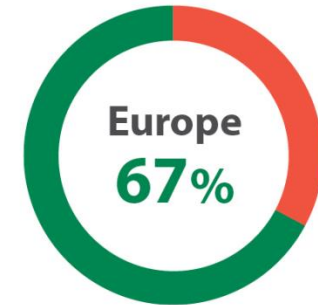
- An independent intergovernmental organisation with its seat in Rome. Set up in 1926 it currently has 63 member states, including 4 African states.
- Its purpose is to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.

Africa Needs More Railways

Africa has a low level of intra-regional trade ...

Source: UN Economic Commission for Africa

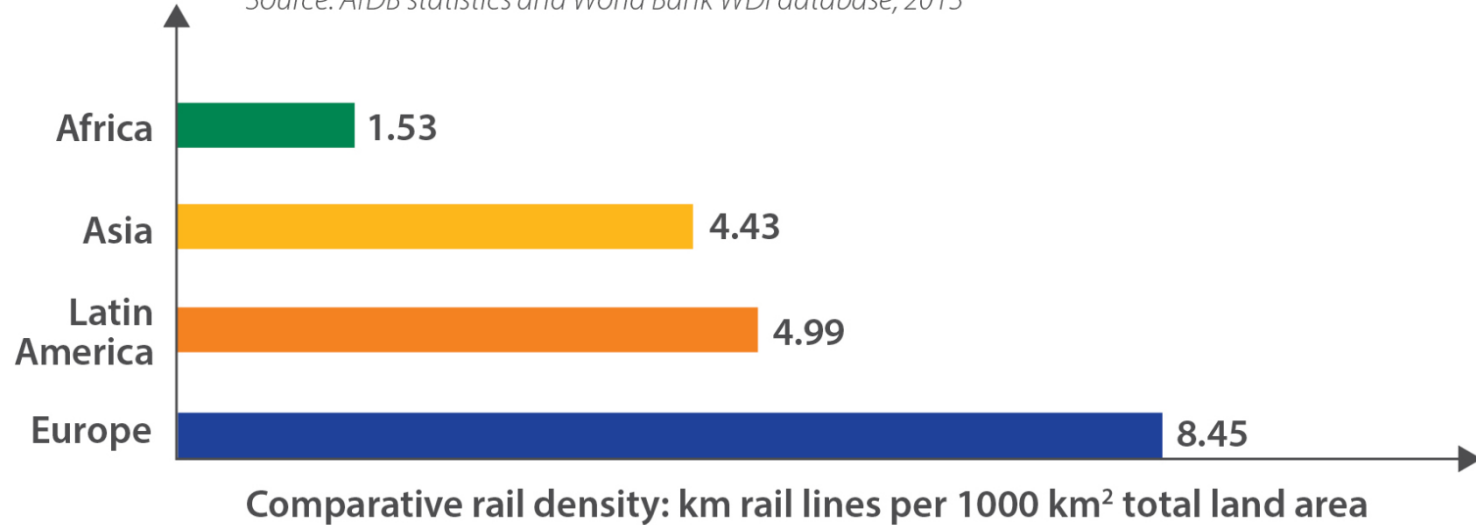
Percentage of
intra-regional
trade →



Africa Needs More Railways

... and too little rail infrastructure

Source: AfDB statistics and World Bank WDI database, 2013



Africa Needs More Railways

SUSTAINABLE
DEVELOPMENT GOALS



Sustainable transport

“The provision of services and infrastructure for the mobility of people and goods - advancing economic and social development to benefit today’s and future generations - in a manner that is safe, affordable, accessible, efficient, and resilient, while minimizing carbon and other emissions and environmental impacts.”

Mobilizing Sustainable Transport for Development, Analysis and Policy Recommendations from the United Nations Secretary-General’s High-Level Advisory Group on Sustainable Transport, 2016

Africa Needs More Railways

- Railways are essential for sustainable development and a key part of the fight against climate change
- The lack of integrated African rail networks is holding back growth and intra-continental trade – including the AfCFTA
- Roads cannot take the strain from increased trucking
- Cities are strangled by congestion and pollution
- Communities are paying a heavy price
- Moving passengers and freight onto rail is vital for environmental, social and economic reasons (1 train can **at least** transport the freight carried by 40 trucks)

Africa Needs More Railways



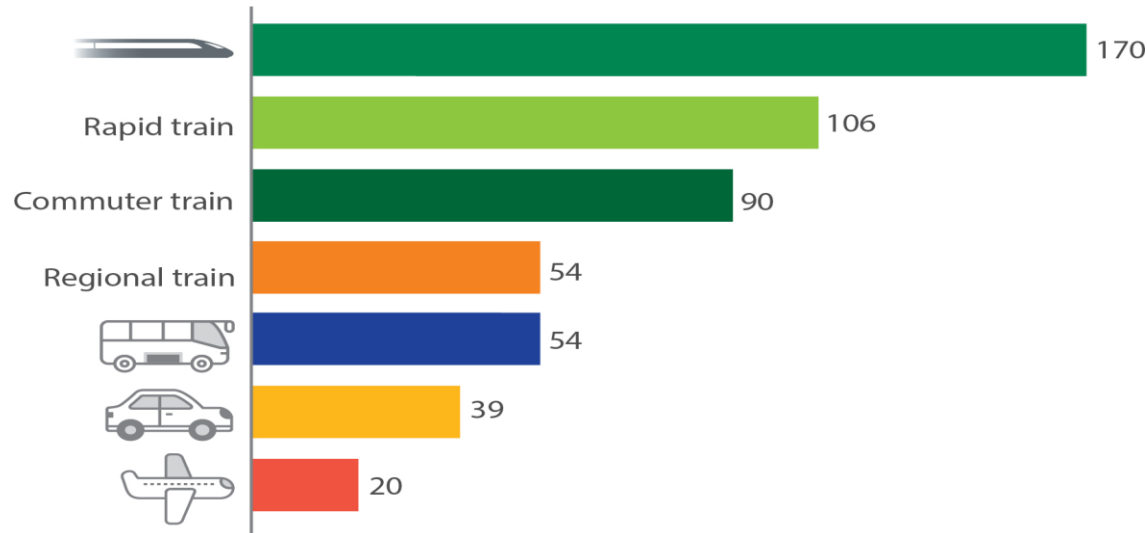
Transnet sets new record with 375-wagon train

Africa Needs More Railways

Energy Efficiency

Passenger-kilometres carried per unit of energy (1kwh = 0.086kep)

Source: EEA (2018)





Your Finance Minister earlier today





Identifying the trends in the rail sector

- Governments cannot afford the massive investment needed in the railways
- More passenger and freight traffic must be moved to the rails
- Urban rail transport is a strategic necessity
- Rail sector gradually liberalised
 - = Public *and* Private operators
 - = Open access
 - = More competition – and a more competitive industry
 - = More private finance
- Public and business demanding a higher quality of service

The current funding models

- Governments cannot shoulder the financial burden alone
- Public finance
 - Equity, state loans and grants, aid
- Public Export Finance
 - ECA, state or para-statal loans or guarantees
- Private investment
 - Equity and debt for private companies
 - Secured debt
 - Leasing
 - BOT/PPP

The Problems for private investors

- No common rules on debtor insolvency
- No national title or security registries
- Identifiers unstable (from a creditor's perspective) and inconsistent across the sector
- Limited legal infrastructure domestically and internationally
- Repossession issues for creditors on debtor default/insolvency
- Public Policy and Public Interest
- Banks' capital requirements and Basel II and III
- Limited commercial tracking of location and status of assets
- Additional security issues and conflict of laws when financed assets cross borders

Cape Town Convention on International Interests in Mobile Equipment (2001)

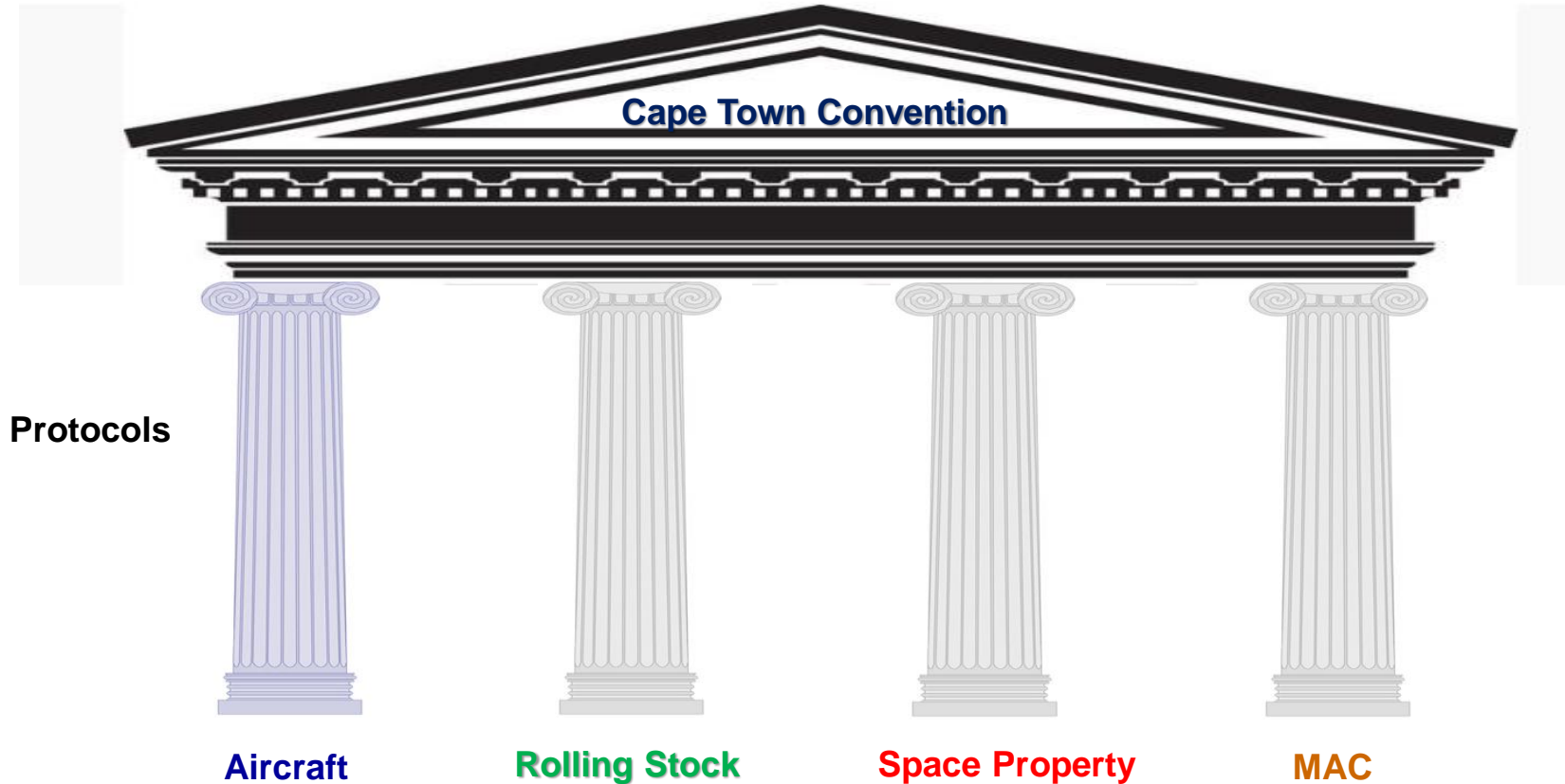
- New global system of international legal rights and priorities for secured creditors
- Common system for enforcing creditor rights upon debtor default or insolvency
- Public registry of security interests, accessible 24/7 online
- Already adopted by 79 States



The Convention Creates

- A new type of global security interest (the “International Interest”) for designated movable equipment
- Internationally recognised with established priorities
- Secures the
 - ☐ Lessor under a lease
 - ☐ Creditor under a secured loan
 - ☐ Vendor’s rights under a conditional sale (where title is retained)
- Applies based on seat or domicile of debtor/lessee

How the Convention works



How the Convention works

- Convention is applied to an asset class by a protocol
- Declarations may be made in relation to both the Convention itself and adopted protocols
- All declarations are voluntary (except for a mandatory declaration under Article 54 (2) of the Convention)

Aircraft Protocol

- Adopted at the 2001 Cape Town diplomatic conference
- Applies the Convention to airframes, engines and helicopters subject to some *de minimis* rules
- Applies the Convention also when the Airframe is registered in a contracting state at the time the security interest is created
- Extends the Convention to aircraft sales
- Operating since 2006 – now in force in 76 states plus 1 REIO (European Union)

Aircraft Protocol

The Convention and the Aircraft Protocol is in force in 24 African States

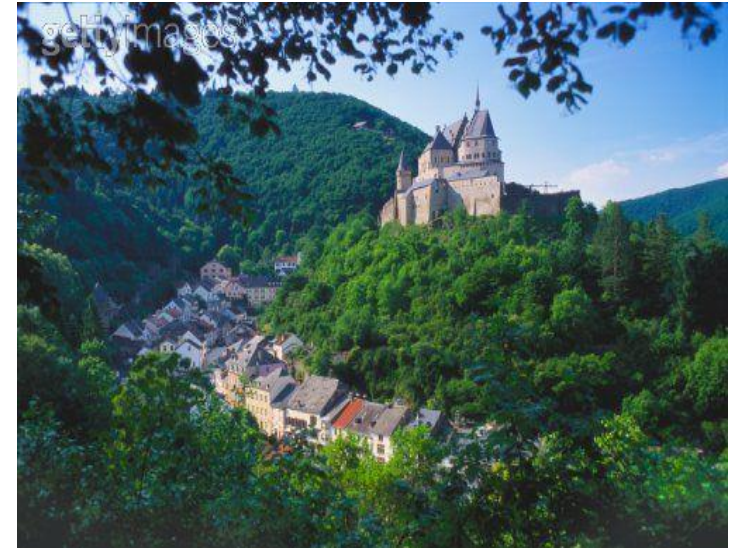
- Angola • Burkina Faso • Cameroon • Cape Verde • Congo
- Côte d'Ivoire • Democratic Republic of the Congo • Egypt
- Eswatini • Ethiopia • Gabon • Ghana • Kenya • Malawi
- Madagascar • Mozambique • Namibia • Nigeria • Rwanda
- Senegal • Sierra Leone • South Africa • Togo
- United Republic of Tanzania

Aircraft Protocol

- International registry based in Dublin, Ireland: registrar Aviareto, a special purpose company established by SITA,
- Supervisory Authority: ICAO in Montreal
- Under the Aircraft Sector understanding ECAs reduce their risk premiums by 10% as long as the Protocol is adopted with the recommended declarations
- Over 1 million registrations to date – on aircraft with an estimated value of over \$ 650 Billion
- Aviation Working Group: the Aircraft Protocol will save the air transport industry **\$161 bn** 2009 - 2030

Luxembourg Rail Protocol

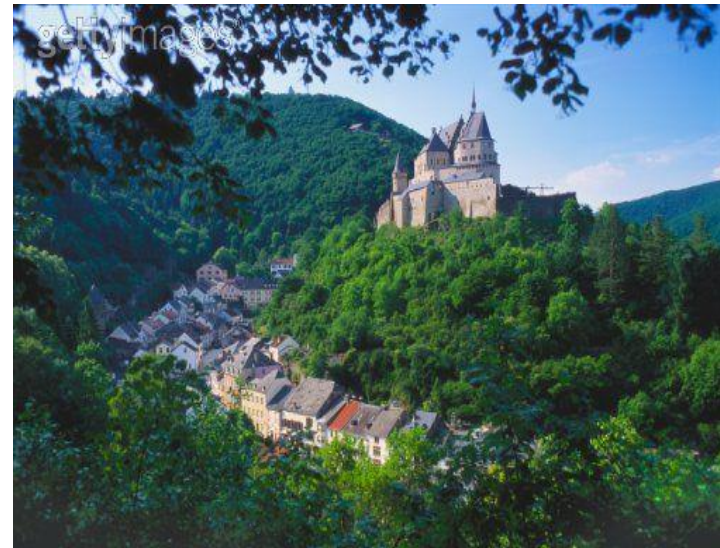
- Diplomatic Conference in Luxembourg in 2007:
- Attended by 42 states and 11 international organisations including 7 African States and SADC
- Sponsoring intergovernmental organisations UNIDROIT and OTIF – both with African members





Luxembourg Rail Protocol

- Applies the Cape Town Convention to rolling stock **when debtor is located in a contracting state**
- International registry in Luxembourg
- Registrar responsible to contracting states
- Will introduce global unique identification system for railway equipment



The Rail Protocol Applies to ALL Rolling Stock

- Wherever manufactured, whatever gauge and operability standards
- Broadly defined: “..vehicles movable on a fixed railway track or directly on, above or below a guideway.” This covers:
 - Inter-urban and urban rolling stock
 - Specialist boring and other rail mounted equipment
 - Metro and light rail trains and trams
 - Monorail trains and cable cars
 - People movers/shuttles at airports, hyperloop pods
 - Cranes and gantries at ports

Unique Vehicle Identification

- Rolling stock must be uniquely identifiable to register interest
- Unique Vehicle Rail Identification System (URVIS) will be established by registry regulations
- First global unique and permanent identification system for rolling stock
- 16-digit number allocated by the Registrar in Luxembourg that will never be re-used
- Affixed **permanently** to each item of rolling stock by the manufacturer, maintainer or keeper

The Protocol's Status

- Adopted in 2007 (4 ratifications and active registry required to enter into force – expected during 2020)
- Appointment of Regulis SA (SITA subsidiary) as Registrar in December 2014
- Ratified by Gabon, Luxembourg and Sweden (and the EU) and Kenya (hopefully) about to ratify
- Signed by Italy, Germany, France, Mozambique, Switzerland and UK - all moving towards ratification
- Also under review in Africa by the states of South Africa, Burkina Faso, Ghana, Mauritius, Morocco, Nigeria, Uganda, Senegal, Egypt and Ethiopia.

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