THE 2001 CAPE TOWN CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

RAIL WORKING GROUP

www.railworkinggroup.org

Baarerstrasse 96, PO Box 7262, 6302 Zug, Switzerland
Tel: +41 (0)41 760 28 88; email: info@railworkinggroup.org

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CONSTRUCTIVE AND FOCUSED AID TO DEVELOPING COUNTRIES

The Luxembourg Rail Protocol to the Cape Town Convention as part of an Aid Strategy

Billions of dollars are spent each year by governments and international agencies providing support to lesser developed countries. Some of that money is wasted, ending up in the pockets of intermediaries rather than helping the needy. And it is never enough. Wouldn't it be better if aid could be targeted and the private sector encouraged to play its part in financing capital investment, thereby reducing the strain on aid budgets and allowing them to be more focused?

The rail system in many developing countries is an essential part of the infrastructure. The future prosperity of a country depends on the logistical infrastructure, i.e. being able to move agricultural and manufactured goods to market, as well as to import products where required. An efficient method of doing this is through the rail system, which also has added environmental and social benefits. People's very survival may also depend on the distribution of food. Again, the rail system can very often be an efficient mechanism for distributing such vital commodities.

The first rail system in Africa was built in 1852 and in Ghana the Sekondi – Kumasi railway opened in 1903. Many developing countries have inherited from past colonial administrations a railway system which is workable but usually in urgent need of modernisation. Normally both passenger as well as freight rolling stock is hopelessly out of date. Whereas investment in the railway infrastructure itself can only be financed realistically through government or international agency support, the private financial markets should be able to finance the needs for upgrading or replacing rolling stock, with operators paying for the equipment from operational income. But the problem is security. How can any bank or lessor be sure that it will have its asset returned at the end of the financing period or if the operator defaults? Moreover, what should be a major benefit of a rail network -international operation - becomes a liability, since it places the funder at risk that even if the legal system in the jurisdiction where the operator is located is reliable, it has no guarantee that if the asset moves out of that jurisdiction, the security interest held by the funder will be respected. Funders also need a common and easily understandable security system, applicable in various countries where they, or their assets, operate.

On 23rd February 2007, a Diplomatic Conference, sponsored jointly by UNIDROIT and OTIF and attended by 42 states and 12 international organisations, took a historic step by adopting the Luxembourg Rail Protocol to the Cape Town Treaty on International Interests in Mobile Equipment. There was a strong representation from countries which are recipients of aid as well as of agencies, such as the World Bank and SADC, directly involved in development policies. The Protocol, which is now going through the signature and ratification process, offers a new solution to this problem and should open a way to significant private sector funded investment in the railways in developing countries. By defining and recognising as international security interests in rolling stock a lender's and lessor's rights under respectively security agreements and leases as well as a Vendor's retention of title under a conditional sale, and having these interests registered in an international registry accessible worldwide through the internet, the Protocol will provide this security to private sector funders. A country accepting the Protocol will require its courts to acknowledge the basic security concepts as well as to enforce them by permitting speedy repossession of assets on default. Even for domestic transactions, the availability for the first time of a registry system, clearly defining parties' rights, will be a huge step forward. The effect will be to encourage capital investment in rolling stock from the private sector, and this will also mean that:

- local rail manufacturing and maintenance industry will be stimulated;
- international aid can be focused, at most, on paying lease rentals, resulting in lower immediate cash commitments with the monies paid directly to the lessor but otherwise aid budgets can be focused on infrastructure costs;
- a market for operating leases for second user rolling stock (for example, coming from more prosperous countries) is opened up;
- it creates a mechanism whereby the private sector can monitor the efficient usage of certain capital investment, taking a load off government and intergovernmental agencies;
- it encourages more prosperous countries, even within a developing area, to lend or permit the use of their rolling stock in other less prosperous, less developed parts of the region.

Further, by creating the conditions for operators to lease rolling stock from the private sector, the barriers to entry for private sector operators will be significantly reduced. For the first time this will open up the possibility in many countries for private entrepreneurs to run and develop parts of the rail system. In turn this should significantly stimulate the whole industry.

There are specific examples. In Southern Africa, rolling stock can easily move between South Africa, Angola, Mozambique, Zimbabwe, Namibia, Malawi and Zambia. For countries such as land-locked Zimbabwe, rail links to Durban in South Africa and Beira in Mozambique are essential life-lines to the outside world. Rolling stock can even be sent north into Tanzania and the East African Rail Network. But these networks urgently need investment if they are efficiently to assist local economies. Moreover recently there has been renewed interest in revitalising the railways in Africa as a key strategy for economic development, driven in part by the Brazzaville Conference in April 2006. Studies are under way concerning new Rwanda-Burundi-Tanzania rail links and the Mbalam Cameroon project. Other proposals, such as AfricaRail, linking Togo, Benin, Burkino Faso and Niger have already been finalised but they cannot proceed for lack of funding. The Chinese government is committing significant sums supporting new rail infrastructure projects such as a new Angola-DRC railway as well as a new Lagos-Kano line in Nigeria. But rolling stock will be needed to operate on these routes. In each case the Luxembourg Protocol will assist.

The AfricaRail Project- a visionary idea urgently needing funding

In addition, in the future, modern wagons and locomotives could be essential for facilitating delivery of food aid into parts of Africa, certainly the most efficient and environmentally benign method of transporting large consignments of such aid. Here, the Luxembourg Rail Protocol will also facilitate the short-term secure loan or lease of rolling stock to aid agencies where necessary.

In summary, the Luxembourg Rail Protocol to The Cape Town Treaty will be a significant and highly effective mechanism for delivering targeted aid to developing countries. It can play a key role in the growth of these economies and in allowing them to bring products to market, through underwriting a legal framework securing private sector investment in rolling stock in developing countries. It will also encourage more mobility of existing rolling stock across trans-national rail systems in developing countries, where otherwise the owners of the rolling stock would fear that it could be irrecoverable.

By creating the conditions for operators in developing countries to lease rolling stock, even if some of the lease payments are covered by governments in the developed world or international agencies, this will be a much more efficient use of resources: the benefits generated from the use of resources can go towards paying for them and aid budgets can be preserved for infrastructure finance. It will also encourage more local entrepreneurial involvement in the rail sector itself. By using the private sector to finance rolling stock, it will stimulate capital investment and local manufacturing industry as well as support the development of an efficient and environmentally beneficial system of transportation. Moreover, the role of monitoring the effective use of the assets will fall to the private rather than to the public sector.

Western governments recognise that they have a responsibility to support developing countries. At the same time, there is a desire to do this in an efficient and targeted way. The Luxembourg Rail Protocol creates the conditions for the private sector to join the programme by funding key capital investment in rolling stock, thereby not only relieving some of the financial and administrative burdens from governments, but also helping to create conditions for economic development in a environmentally friendly manner.

For information on the Luxembourg Rail Protocol see www.railworkinggroup.org or contact howard.rosen@railworkinggroup.org