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**ECONOMIC COMMISSION FOR EUROPE**

**INLAND TRANSPORT COMMITTEE**

Working Party on Customs Questions affecting Transport

Ad hoc Expert Group on Phase III of the TIR Revision Process

**REPORT OF THE THIRD SESSION**

(19 and 20 May 2005)

**ATTENDANCE**

1. The Ad hoc Expert Group held its third session on 19 and 20 May 2005 in Geneva.
2. The session was attended by experts from the following Contracting Parties: Finland; Germany; Greece; Jordan; Netherlands; Russian Federation; Sweden; Turkey and the European Community (EC). Representatives of the International Road Transport Union (IRU) also participated.

**ADOPTION OF THE AGENDA**

Documentation: TRANS/WP.30/2005/23.

3. The Ad hoc Expert Group adopted the provisional agenda, prepared by the secretariat, in line with the mandate provided by the Working Party at its one-hundred-and-ninth session (TRANS/WP.30/218, paras. 46-55).

## **ELECTION OF A CHAIRPERSON**

4. Mr. G. Jacobs (Netherlands) was elected Chairman of the Ad hoc Expert Group for the year 2005.

## **BACKGROUND AND MANDATE**

5. The Ad hoc Expert Group took note of the mandate provided by the Working Party.

6. The Ad hoc Expert Group took note of information provided by the Mrs. N. Rybkina, Chairperson of the TIRExB, concerning the status of discussions of issues of a technical nature, which had been referred to the TIRExB for elaboration. The TIRExB had started its considerations of the issues at its twenty-sixth session (17-18 May 2005) and aimed at finalizing its deliberations at its next session with a view to reporting back to WP.30 the full package of its findings concerning the amendment proposals of a technical nature.

## **CONSIDERATION OF AMENDMENT PROPOSALS OF A STRATEGIC NATURE**

7. The Ad hoc Expert Group, before entering into considerations of the specific amendment proposals according to the mandate of the Working Party, discussed the general approach to amending the Convention. The Group agreed that the amendment process had been initiated to solve existing problems identified in the Convention with a view to creating a robust and sustainable TIR system for the future. The Group also agreed that the basis for the future system should continue to be the five pillars of the TIR system, as they are known today. In this context, the Group agreed that further definitions and clarification were needed in relation to a number of the actors and procedures described in the Convention and that further clarification was needed in relation to the description of the functioning of the guarantee provisions of the Convention, in particular the responsibilities of the various actors described in the Convention.

8. The Ad hoc Expert Group felt that, since, as a result of the IRU presentation on the management of the guarantee system, it had been identified that the practice concerning the guarantee system is different to that described in the Convention, amendments to the Convention should clarify this issue thereby bringing practice in line with the text of the Convention.

9. The Ad hoc Expert Group agreed to have a preliminary discussion of the proposal for amendment of Article 11 of the Convention transmitted by the Russian Federation as contained in document TRANS/WP.30/2005/19, which will be considered by the Working Party in June 2005 and which seemed to propose bringing the Convention in line with present practice concerning the handling of claims. Some delegations considered that the proposal, if accepted, would introduce formally the international organization into the claims handling procedure, which today is based on the triangular relationship that exists according to the TIR Convention between the national competent authorities, the national guaranteeing association and the TIR Carnet Holder. Furthermore, some delegations expressed reservations concerning the introduction of an appeal mechanism for the national guaranteeing association in the text of the Convention, as such a mechanism was considered to be of national competence. However, it was recognized that the proposal of the Russian Federation contained in document TRANS/WP.30/2005/19 was, so far, the only proposal that concretely dealt with the issue of the claims handling process, which seemed to be an issue where the Convention text would benefit from some clarification.

10. Concluding its considerations, the Ad hoc Expert Group, in general felt that the existing triangular approach described in the Convention should continue as the basic concept to be included in the Convention but that the relations between these actors should be clarified, in particular in view of the fact that in many situations one angle of the triangle (TIR Carnet holder) is established outside the territory of the national competent authorities and the national guaranteeing association.

11. The Ad hoc Expert Group went on to consider Article 8 of the Convention, in particular a number of the terms related to the definition of the liability and guarantee provisions of the Convention, which had been highlighted in document TRANS/WP.30/2005/6, transmitted by the IRU, document TRANS/WP.30/2005/15 containing the views of the UNCITRAL and Informal document No. 1 (2005) transmitted by the European Commission. In this context, the following terms relating to the guarantor were discussed: dependent or independent guarantee, primary or subsidiary character of the guarantee, joint and several liability as well as the use of the terms “surety” and/or “guarantee”.

12. A majority of delegations of the Ad hoc Expert Group seemed to be of the opinion that the guarantee in the TIR system is of a (a) dependent nature meaning that a liability of the guarantor only exists if the debt of the person(s) directly liable has been established, that the debt cannot go beyond the secured debt, that the guarantor can oppose in the same manner as the main debtor, that the end of debt of the main debtor also means the end debt for the guarantor and (b) subsidiary nature meaning that the guarantor cannot be called upon before efforts have been taken to obtain payment from the person(s) directly liable. Bearing the

above in mind, it was the view of these delegations that the Convention should be amended to define exactly how the terms should be understood in the context of the TIR Convention, i.e. which steps must be taken by national competent authorities with a view to clarifying their obligations in order to unequivocally establish the debt of the guarantor.

13. A minority seemed to be of a differing view and could not concur with the above-mentioned conclusions because, in their national legislation, the joint and several nature of the liability coincided with the primary character of the guarantee

14. In relation to the use of the terms “jointly and severally” as well as the terms “surety”/“guarantee” a majority of the Ad hoc Expert Group seemed to be of the view that, at least, the English text of the Convention could benefit from a revision and an alignment of the terms used.

15. Finally, in relation to the question of the placement and formulation of Article 8.7, the Netherlands offered for the next session of the Ad hoc Expert Group to prepare a proposal for incorporation of Article 8.7 in Article 11.

16. In line with the provisional agenda for the meeting, the Ad hoc Expert Group then went on to consider a number of terms and concepts used in the context of the Convention:

Definition of the term “association” (Article 1 (q) of the TIR Convention). The Ad hoc Expert Group, after in-depth discussions, considered the following two draft proposals:

Alternative I: “the term “association” shall mean a national association, authorized by the Customs [competent] authorities of a Contracting Party to issue TIR Carnets, [either directly or through corresponding associations,] and, having undertaken in writing to pay jointly and severally with the person(s) directly liable the import or export duties and taxes due, as laid down in this Convention, to act as guarantor [surety] for persons using the TIR procedure.”

Alternative II: “the term “guaranteeing association” shall mean an association, authorized by the Customs [competent] authorities of a Contracting Party to issue TIR Carnets, and to act as guarantor [surety] for persons using the TIR procedure, having undertaken in writing to pay jointly and severally with the person(s) directly liable the sums due, as laid down in this Convention.”

Definition of the term “international organization” (New Article 1(r) of the TIR Convention.  
The Ad hoc Expert Group, considered the following proposal:

“the term shall mean an organization authorized by the TIR Administrative Committee to take on the responsibility for the [effective] organization and functioning of the international guarantee system and to centrally print and distribute TIR Carnets”.

16. The meeting accepted an offer by the Dutch delegation to draft a proposal for the introduction of a new Annex 9, Part III, containing minimum conditions and requirements for authorized international organizations.

#### **OTHER MATTERS**

17. Pending approval of the Working Party, the secretariat has tentatively scheduled the fourth session of the Ad hoc Expert Group to take place on 3 October 2005 at the Palais des Nations in Geneva.

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