



**ADMINISTRATIVE COMMITTEE
FOR THE TIR CONVENTION, 1975**

TIR Executive Board (TIRExB)

(Twenty-fifth session, 27-28 January 2005,
agenda item 4)

BY-ELECTIONS IN CASE OF RESIGNATION OF A TIRExB MEMBER

Submitted by the secretariat

A. INTRODUCTION

1. At its twenty-fourth session, the TIRExB discussed at length the proposal to amend its existing Rules of Procedure on representation, as contained in Informal document No. 16 (2004), submitted by the secretariat. Although the TIRExB basically agreed with the proposed procedure, it felt that some further issues needed to be taken into account. In view of the opinion received from the UN Office of Legal Affairs (OLA) with regard to the possible repercussions of the to be adopted amended Rules of Procedure, the TIRExB felt that the proposal needed further discussion and, therefore, decided to revert to the issue at its forthcoming session (TIRExB/REP/2004/24 draft, paras. 7 and 8).

2. In underlying document the secretariat reproduces the opinion of the OLA for further consideration by the Board.


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1. This is with reference to your memorandum to Mr. Rashkow of 19 August 2004 which we received on 8 October 2004 concerning the draft amendments to the Rules of Procedure of the TIR Executive Board (TIRExB). In particular, you seek our advice on the proposal to amend the rules of procedure of the TIRExB to introduce the election of replacement members in order to fill vacancies arising out of the resignation of members, their removal by their respective Governments and/or their lack of regular participation in the work of the TIRExB. In the event that the Rules of Procedure can be amended as proposed, you also seek our advice whether such amendments would necessitate amendments to Annex 8, Article 9 of the Customs Convention on the Transport of International Goods (the Convention). Our comments are as follows.

2. At the outset, we wish to point out that the election of replacement members may raise financial and other implications that need to be addressed and clearly understood prior to the adoption of any such amendments. For instance, if such replacement members were expected or invited to attend TIRExB meetings prior to assuming actual membership, their travel and per diem costs would need to be approved and allocated. If that is not the intention of the proponents of the amendment, it should be clearly specified that such replacement members would have no official functions, duties or rights unless and until they become actual members.

3. The concept of replacement members is relatively unheard of in the UN system. The only possibly related precedent could be the election of *ad litem* judges of the International Criminal Tribunals for the former Yugoslavia and for Rwanda. The latter judges are elected as a pool from which the two Tribunals could draw in the event that the proceedings require replacement or additional judges. Such judges as indicated in paragraph 2 above have no functions, duties or rights unless and until they are called upon to serve. It should be noted that the introduction of *ad litem* judges was effectuated by Security Council resolution amending the Statutes of the two Tribunals respectively. The introduction of replacement members onto the TIRExB would similarly require amendment of the Convention.

4. In the event of the death or resignation of any of the nine members of the TIRExB, the usual procedure would be to convene the TIR Administrative Committee (TIRAC) to fill the casual vacancy arising from such death or resignation. The application of such procedure would be automatic and would not require the amendment of the Convention or the rules of procedure.

5. As for the replacement of those members whose Government or organization inform the TIRExB that they no longer hold office, we wish to confirm that the members of the TIRExB are elected by the TIR Administrative Committee in their personal capacity and not as representatives of their respective Governments or organizations. If that is indeed the case, a member of TIRExB, once elected by the TIR Administrative Committee, could not be removed by his or her Government or organization.

6. The proposal to remove a member for lack of regular participation is unprecedented in the practice of the UN system and, as such, raises serious concern. If accepted, the proposal would empower the TIRExB to remove an existing member and replace him or her with an elected-replacement leaving the TIR Administrative Committee merely with the right, indeed the obligation, to endorse that replacement. As the members are elected by the TIR Administrative Committee, it should be for the TIR Administrative Committee not TIRExB to remove any such members from office. In any event, the exercise of such power by the TIRExB was clearly not envisaged under the Convention and would clearly require amendment of Annex 8, Article 9 thereof. While we understand the concerns and frustrations expressed in respect of those who do not fully perform their obligations as members of TIRExB, given the relatively short term of office, it is preferable to deny such members re-election than to amend the Convention and rules of procedure in such an unprecedented manner. Moreover, given that, according to the TIRExB Rules of Procedure, only five members constitute the required quorum for decision-making, the absence of up to four members would not impede the TIRExB from conducting its business.

7. Based on the foregoing, and as indicated in paragraph 4 above, we would recommend that the TIRExB rely on existing rules and practices of the UN system to fill vacancies if and when they arise. If despite the foregoing comments, the TIR Administrative Committee or TIRExB decide to proceed with the proposed amendments to the rules of procedure, it would be equally necessary to amend the Convention in which case reference should be made to the applicable amendment procedures and entry into force provisions of Articles 59 and 60 of the Convention.
