

United Nations  Nations Unies
INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: Mr. J. Capel Ferrer, Director
Transport Division, UNECE

DATE: 24 September 2003

FROM: Bruce Rashkow, Director, 
General Legal Division, OLA

SUBJECT: Role of the TIR Administrative Committee on the appointment of the TIR Secretary

1. This refers to your memoranda of 16 and 19 September 2003, seeking our advice concerning the appointment of the TIR Secretary. You have also forwarded exchanges of e-mail correspondence among you, Mr. Poul Hansen of your Office and Mr. Ulrich von Blumenthal, UNOG on this matter.

Background

2. As we understand it, the facts of the case are as follows: In 1999, the Chief of the Border Crossing Facilitation Section in the Transport Division, ECE, was appointed the TIR Secretary and the Administrative Committee of the TIR Convention was informed of the appointment. However, the report of the Administrative Committee on this matter contains a sentence indicating that: "the Administrative Committee endorsed this decision of the ECE secretariat as well as the appointment of Mr. Magold as TIR Secretary". In April 2003, the ECE Executive Secretary decided to assign the duties of the TIR Secretary to another staff member. That decision was questioned by certain Contracting Parties to the TIR Convention and the TIR Executive Board (TIRExB), which expressed the view that the decision should have been taken in consultation with the Contracting Parties since the decision of his appointment was a "co-decision" of ECE and the Contracting Parties. The ECE secretariat has indicated that decisions on appointment of staff are the exclusive competence of the ECE Executive Secretary and, therefore, an "endorsement" or a "co-decision" by the Administrative Committee was not necessary. The TIRExB has requested the ECE secretariat to submit to it an OLA opinion on this matter.

Analysis

3. Articles 58 *bis* and *ter* of the TIR Convention provide, respectively, as follows:

"Administrative Committee

"An Administrative Committee composed of all the Contracting Parties shall be established. Its composition, functions and rules of procedure are set out in Annex 8.

“TIR Executive Board

“The Administrative Committee shall establish a TIR Executive Board as a subsidiary body which will, on its behalf, fulfil the tasks entrusted to it by the Convention and by the Committee. Its composition, functions and rules of procedure are set out in Annex 8.”

4. Annex 8 to the Convention on the “Composition and rules of procedure of the Administrative Committee and the TIR Executive Board” provides in Articles 2 and 12, respectively, that:

“The Secretary-General of the United Nations shall provide the Committee with secretariat services.

“The TIR Secretary shall be a member of the secretariat of the United Nations Economic Commission for Europe and shall execute the decisions of the TIR Executive Board within the Terms of Reference of the Board. The TIR Secretary will be assisted by a TIR secretariat, the size of which shall be determined by the Administrative Committee.”

5. We note that none of the above-referenced provisions requires that the appointment of the TIR Secretary be endorsed by or agreed upon with the Administrative Committee.

6. Further, under Articles 100 and 101 of the UN Charter, and UN Staff Regulations 1.2 (c), 4.1 and 4.2, the authority to appoint and assign staff members rests exclusively with the Secretary-General. That authority includes assigning staff members to provide secretariat and other services to treaty bodies, as called for in the relevant treaties. We consider that the requirement to obtain the endorsement or agreement of such bodies on the assignment of staff to service those bodies would limit the authority of the Secretary-General, as provided under the Charter and the Staff Regulations and Rules. We consider that unless there are exceptional circumstances or unique requirements, to be agreed by the United Nations and expressly provided in the legislative or constitutive documents of the treaty bodies, the requirement to obtain their endorsement or agreement concerning the appointment or assignment of UN staff to service those bodies would infringe on the Secretary-General's authority on staff appointment and assignment. In light of the foregoing, it is our view that the endorsement or agreement of the Administrative Committee on the selection of the TIR Secretary is not required. However, this would not prevent ECE from consulting with the Administrative Committee on the selection of the TIR Secretary, provided that the final decision is made by the United Nations. ECE would then inform the Administrative Committee of such decision.

cc: Mr. von Blumenthal