Council of Ministers

REPORT ON COMBATING CRIME IN TRANSPORT

This document is submitted to the Council of Ministers at its Session in Warsaw, for information and discussion.

It was drafted by Professor Maurice Bernadet of LET France, following the ECMT Seminar of 27 January and reflects also the comments of participants at the Seminar and the Committee of Deputies.
REPORT ON COMBATING CRIME IN TRANSPORT

The ECMT was asked to monitor implementation of the Resolution on Crime in International Transport and to report back to the Council of Ministers in Warsaw in May, 1999. On 3 November, 1998, the ECMT Secretariat wrote to participants in the 1996 discussions on this topic and to other bodies and people whose mission or expertise qualifies them to assess the situation. It asked them to give their views on the implementation of the Resolution and to indicate those areas in which measures had been implemented and progress had been made as well as areas in which there had been no change.

The ECMT Secretariat also held a seminar on 27 January, 1999 so that it could gather information from the bodies and people invited to attend and hear their views on how the situation was developing.

This report is based on written replies to the letter sent by the ECMT Secretariat, papers and discussions at the seminar on 27 January, 1999, and on information and studies on crime in international transport from various sources published since the adoption of the Resolution by the Council of Ministers of the ECMT in 1997.

The study on which the Resolution was based focused on two broad areas: first, the theft of goods and vehicles and assaults on drivers; and, second, fraud in transit systems. This report is structured along the same lines, as was the seminar on 27 January.

I. Theft of goods and vehicles and assaults on drivers

Taking the Resolution passed by the ECMT Council of Ministers point by point, we analysed the replies to the Secretariat’s letter and comments at the January 1999 seminar.

1. Quite a large response was received to the recommendations addressed to Ministers of Transport. This reflects the efforts made in various countries, particularly the countries of Central and Eastern Europe (Poland, Hungary, Russia, etc.), to improve co-ordination between enforcement and prevention authorities and the transport profession, tighten up checks on licensing procedures, etc. One development reported was the setting up of special police forces to combat crime in transport in Russia. However, the replies received were all quite patchy.

In contrast, with regard to progress on the recommendation on safe parking areas in this section of the Resolution, many replies referred to the joint publication by the ECMT and the IRU (International Road Transport Union) of the booklet showing HGV parking areas in Europe and the services available at them. The respondents considered this a very positive step. However, they would like the parking areas to be classified according to the level of security provided and to see the booklet circulated more widely.

Security problems at border crossing points were mentioned in several replies and at the January 1999 seminar.

2. Few replies were received (only two countries) regarding the recommendations for authorities responsible for vehicle regulation. Little progress seems to have been made on measures to improve
vehicle identification and component marking. This issue was discussed in depth at the Autumn 1996 seminar, and although it was not raised at the January 1999 seminar, it should not be neglected.

3. Very few replies were received with regard to the recommendations addressed to national and international organisations of road transport operators. However, it was clear that efforts had been made to make operators more aware of the risks and to encourage them to step up precautions. This has been the case particularly with regard to the driver check lists which are regularly published by the IRU and the other professional associations, as well as specific projects aimed at increasing security, such as the proposed TACIS project, submitted by the IRU, whose objective is to create a tracking system for lorries in Russia.

4. No information was supplied on measures taken in response to the recommendations for vehicle manufacturers and equipment suppliers. However, it was pointed out that, since substantial technical progress had been made on the development of more effective anti-theft systems for private cars, it was not unreasonable to expect industrial vehicle manufacturers to develop systems that are more effective. Satellite tracking systems and communication systems enabling vehicles to remain in constant contact with their base would undeniably help to raise the alarm quickly if vehicles were stolen and would make it easier to locate stolen vehicles. With reference to modern communications systems to improve vehicle tracking, it was pointed out that their use was being held up in some countries by equipment type approval requirements. It appears that European standards bodies are looking into this issue, but that it will not be possible to publish standards in the near future.

5. On the recommendations for police authorities, only a few replies (from three countries) reported that progress had been made on co-operation with transport and other ministries and on exchanging information. Again, replies were very patchy.

6. Among the few responses received by the ECMT on the recommendations for insurance companies, one, from the Ingosstrakh insurance company, provided an overall assessment of trends in crime in Russia. It was pessimistic, stating that it was difficult to see “any progress in the overall situation as regards crime”.

This assessment, for one country, echoes the overall impression given by the replies and by the discussions at the January 1999 seminar: despite the efforts made, progress has been minor or patchy and it seems that the situation overall has not improved or has even deteriorated, particularly in terms of assaults on drivers. However, it is difficult to gauge the scale of crime, particularly as it can take different forms and migrate from road mode, which has attracted all the attention to date, to other modes where it is less obvious, principally the rail mode.

From the analysis of the replies received and discussions at the January 1999 seminar, some major points have emerged that have received little consideration to date. These could form the basis for additional recommendations.

**Rail transport**

In the context of the UIC (International Union of Railways), an ad hoc Working Group is focussing on the problems of crime in railways across Europe. This Group currently has representatives from eight countries (Germany, the Netherlands, Italy, France, Spain, Switzerland, the United Kingdom and Poland). The Group is concentrating on strategies to be used to combat and reduce crime rates in railways. There is also a further group, COLPORFER, within UIC bringing together over 20 European countries, with the task of exchanging information, and collaborating with and helping countries to increase security in railways. This is an operational group.
Improving information

One recommendation relates to both of the areas covered in the April 1997 Resolution. This was the recommendation to improve information on crime, since existing information had proved insufficient to gauge the scale of the problem. The information on theft and assaults on drivers provided in the background report, CEMT/CM(97)7, was incomplete, uncoordinated and insufficient to confirm the very widely held opinion among transport professionals and the authorities responsible for combating crime that the problem was on the increase.

In this regard, it must be said that the situation has not really improved and it is still not possible to assess the scale of criminal activities. However, we should point out that efforts have been made and several initiatives have been taken.

The first of these was the signature in December 1998 of a treaty aimed at setting up a vehicle registration and licensing information system known as EUCARIS. The signatories were Belgium, the Federal Republic of Germany, the Grand Duchy of Luxembourg, the Netherlands and the United Kingdom. Rather than creating a new database, the aim is to co-ordinate existing national databases.

Another initiative, focussing on vehicle theft in Europe, was launched in the United Kingdom, under the European Vehicle Theft Research Programme and its initial findings shed new light on the problem of vehicle theft. A survey of available statistical sources has been carried out: these include Interpol’s Automatic Search Facility System (the ASF database) and the Schengen Information System database. A comparison of Europol and Home Office Research Development Statistics data on vehicle theft in nine countries showed major discrepancies between sources. On analysing the discrepancies, it was found that definitions and counting methods differed from one country to another with the result that it was difficult to draw any conclusion as to the number of thefts occurring.

In contrast, and as far as concepts and methods can be assumed not to differ, the Europol data has been used to estimate trends. The data on which this work was based relate to six countries in Western Europe for which figures are available for a five-year period. “HGVs” are defined as a vehicle of over 3.5 tonnes total laden weight. While the statistics show a 2% decline in “vehicle” thefts overall, HGV thefts are increasing by an average rate of 3.5% per year.

The European Vehicle Theft Research Programme (EVTRP) also demonstrates the advantages of having a detailed database. A relatively detailed analysis was conducted on the statistics on freight vehicle thefts collated by the Essex Police ‘Lorry Load Desk’ in England. It covered 571 cases and was able to calculate the percentage of thefts by category of goods stolen, establish a relationship between the type of theft and the value of the theft, and show that theft involving assault, though low (4% of thefts), accounted for 22% of the value of goods stolen, while the theft of goods from vehicles (38% of cases) accounted for only 12% of the value of the goods stolen. The average value of goods stolen is therefore substantially higher when assault is involved, lower in the case of goods stolen with vehicles, and much lower still in the case of theft from vehicles.

This type of analysis clearly demonstrates that assaults on drivers are highly “targeted” and are planned by organised criminals who have detailed information on the type of goods carried, routes, etc., and therefore have accomplices in the distribution and transport chain. The experts confirm the increasingly “intelligent” and international nature of organised crime.

As might have been expected, the January 1999 seminar pointed out the benefits of developing information systems. It stressed that there was a difference between “operating” databases, which were aimed at facilitating investigations, and “information” databases, which were designed to gauge the extent
of theft, identify its characteristics and, through detailed analyses of those characteristics (if necessary on limited samples for a more in-depth analysis), to improve our insight into factors in crime and its mechanisms. It was important to standardise concepts and definitions for both types of databases, but particularly for the latter.

Some regretted that a few countries did not seem keen to join the Eucaris system linking national registration and driving licence databases. The more countries joined it, the more valuable this resource would be.

**Targeted surveillance measures**

As we have already mentioned, the parking area booklet published by the ECMT and the IRU was welcomed. There are risks while a HGV is parked, but there are also risks at other times, particularly when waiting at border crossing points where queuing vehicles are particularly vulnerable. Protection for HGVs should therefore be stepped up. From a more general standpoint, replies to the letter sent by the ECMT Secretariat and discussions at the January 1999 seminar both stressed the fact that theft and assaults on drivers were more likely at certain times and places and that surveillance measures should be more effectively targeted. The transport profession is calling for tighter checks on incident prone routes and in parking areas.

**Escalation of illegal immigration and attitude of authorities towards drivers and hauliers**

The transport profession’s call for tighter checks should be seen in the light of the escalating problem of illegal immigrants hiding on board HGVs to travel across frontiers. When the authorities carrying out checks detect this type of offence, they frequently suspect drivers and can sometimes treat them very harshly.

The transport profession (employers’ and union organisations) complains that the police authorities systematically suspect drivers of aiding and abetting the crimes of which they are often the victims. It maintains that drivers cannot know (or may not know) that illegal immigrants have hidden in their vehicles. In the case of theft, there may sometimes be an accomplice somewhere along the distribution or transport chain but there is nothing to prove that this is the transport operator. It is therefore unwarranted to always treat drivers as if they were the culprits, to impound their vehicles for several days or, as in some countries, to intimidate them into an admission of guilt, when they are in no position to defend themselves.

Given the increase in the number of incidents involving illegal immigrants hiding on HGVs, the general assembly of the IRU passed a resolution, on 20 November, 1998, urging police, port authorities, and captains of ferries to redouble their efforts to tighten checks, and asking road-haulage firms and their drivers to be more vigilant.

The resolution also raises the issue of the police authorities’ attitude to drivers, a problem that is not confined to the area of illegal immigration.

In answer to the case made by transport professionals, it could be argued that while not all operators and drivers are guilty, they are not all innocent either, that they have a duty to take precautions, should be more vigilant, etc.

Faced with such conflicting views, it is difficult to strike a balance. While it is certainly justifiable not to clear drivers of all responsibility before the facts are known; there can be no doubt that
pressurising them into admitting collusion and holding them longer than is strictly necessary to conduct the investigation is unacceptable.

Creation of an ECMT follow-up group?

Generally, to step up the fight against crime, the co-ordination of the actions of all players concerned needs to be improved at international level, but also at national level in every country. The many dimensions (technical, legal, organisational) raised by the problem make the exchange of information and co-operation imperative. With this in mind, it has been proposed that the ECMT set up a group that would head discussions and, on an on-going basis, encourage the organisations concerned to continue their efforts to step up the fight against theft and assaults on drivers.

A group that would review all aspects of crime, and that would necessarily be quite large, would not necessarily be an efficient structure. On the other hand, streamlined working methods and structures could be used to tackle the problem in particular fields and with the relevant actors. The role would be to collate and disseminate information on an issue, formulate concrete proposals and, on an on-going basis, motivate the actors concerned (administrations, transport professionals, vehicle manufacturers, insurance companies, etc.) to actively concern themselves with the issue.

II. Fraud in transit regimes

As above, we take the Resolution passed by the ECMT Council of Ministers point by point and review the information and views expressed in reply to the Secretariat’s letter and at the January 1999 seminar before going on to address major outstanding problems.

1. Only a few replies were received on the recommendations for Ministers of Transport, which were very general in nature, but they did confirm that Member countries were committed to strengthening co-operation between national transport operators organisations and the IRU and to backing the reform of transit regimes.

2. Replies were received on most of the general recommendations for customs authorities. Most of them mentioned changes that had been made but also said that they did not go far enough. Some respondents thought that the regulatory measures had largely been implemented, but did not think that this was the case in all countries. Efforts have clearly been made to streamline procedures and step up checks as well as to develop information and training for customs staff. However, in some countries, the frequent changes in procedures and inconsistency between the different customs offices has created uncertainties that are adversely affecting hauliers.

The general view at the January 1999 seminar was that a new awareness of the severity of the problems and the Resolution adopted by the Council of Ministers of the ECMT had resulted in greater attentiveness or vigilance by all of the actors concerned and that the situation had at least stabilised or, for some, had even improved slightly. The impact of the introduction of SAFETIR was also a step in the right direction and regarded as very positive, even if the practical implementation of the procedures that the system entailed still posed many difficulties. The system would only be really effective if the discharge confirmation rate was high enough to show up any disputed cases quickly. The procedures exist but for them to work, the customs authorities must oblige their officials to keep the data base up to date.

Now that it is not possible to use the TIR transit system for “sensitive” goods such as alcohol and tobacco, there seemed to be no cases of fraud involving these goods. However, the general view is that
fraud of this type has not really ceased, it has just taken other guises (misrepresentation of the nature of the goods) or other channels (use of other modes of transport).

Despite the progress made, it seems that little has changed as regards the last two recommendations in this section: recourse to guarantees and deadlines for the notification of non-discharged operations, almost certainly due to two major problems, which we will come back to below.

3. The recommendations specifically relating to the TIR Convention were aimed at implementing Resolution 49, adopted by the UN/ECE Working Party on Customs Questions Affecting Transport, and revising the Convention. While implementation does seem to have improved, the revision of the Convention has received a mixed response and assessments of the situation differ.

The first stage of revision entered into force on 17 February, 1999. It will concentrate primarily on provisions that involve customs authorities in determining the criteria for approving guaranteeing associations and haulier eligibility for the TIR system. The UN/ECE and customs authorities see this as a significant step forward; the IRU takes the view that the new provisions will not make any great difference, unlike the changes to be incorporated in the second stage of revision.

This second stage should introduce concrete technical measures that will be more effective, but they are still under discussion and are unlikely to be adopted in the near future, since the provisional timeframe sets the deadline for 2002.

4. Recommendations on the reform of the Community/Common transit regimes and the setting up of the new computerised transit system (NCTS).

Work on revising the Community Customs Code is under way and amendments may be adopted in the first six months of 1999. Three communications from the Commission have been published since 1996:

− Action of the Commission in relation to fraud in the transit system (3 April, 1996)
− The future of transit: interim report (9 October, 1996)
− Action Plan for Transit in Europe: a new customs policy (30 April, 1997)

While transport professionals concede that the amendment concerning the operation of guarantees is a step forward, they do not find it totally satisfactory because it does not explicitly state that guarantees provided by the principal are to be taken up only as a last resort. The revision of the implementing provisions of the Common Transit Convention and its appendices is scheduled for the end of 1999. A number of procedural measures aimed primarily at improving co-ordination between customs administrations are in hand. This is an ambitious undertaking, but the Commission points out that much remains to be done and that only the commitment and support of all the actors can guarantee the success of the reforms. To this end, it has invited customs administrations to commit the human and financial resources necessary to guarantee the effective implementation of the reforms.

The Committee of Inquiry set up by the European Parliament severely criticised delays in the initial planning stage of the NCTS project, which should have been operational by the end of 1998. A pilot project involving five countries will now not go ahead until the end of 1999 and it will be 2003 before projects are introduced on a wider basis.

As a result, for both the TIR system and the Community/common transit systems, the stages that should be decisive in reducing fraud are still some way off. The overall situation may no longer be
deteriorating, but there are two key issues on which major differences of opinion subsist: reducing the notification period and outstanding debts.

**Reducing non-discharge notification times**

The ECMT Council of Ministers recommended that the one-year time limit for notification be reviewed, with a view to reducing it significantly. Transport professionals and customs administrations agree that a shorter effective notification deadline would be a positive move, since non-discharged operations would then be identified much more quickly and transport operators would be able to avoid accepting similar operations. However, the statistics produced by the Committee of Inquiry set up by the European Parliament show that forms take much too long to be returned and that customs authorities are unable to process documents within a reasonable period. Nevertheless, it must be said that over 95% of forms are returned within three months.

The issue of reducing the regulatory time limits is one on which the transport profession and customs administrations disagree. According to transport professionals, allowing customs a year to provide notification gives them no incentive to expedite procedures. In order to ensure shorter effective time limits, they say that regulatory time limits would also have to be reduced. Customs authorities hold that reducing the time limits would just mean higher numbers of notifications about operations that would later prove to have been discharged in the normal fashion. It should be noted that consultation via Internet by the customs authorities of the IRU database -- maintained by SAFETIR -- containing information on the discharge of carnets would help to avoid the unnecessary notification of non-discharged carnets. The information is consulted using an application developed by the IRU; access to this application can be easily obtained through a written request from the customs authority to the IRU.

Moreover, the argument of the customs authorities is not very convincing since the inconvenience cited does not seem to be very significant -- especially if they intervene after three months -- whereas the advantages of a situation where the customs are induced to be more efficient are undeniable.

**The outstanding debt problem**

Customs authorities are entitled to claim outstanding sums from guaranteeing associations under the TIR system and from the principal under the Community/common transit system. The exact total they could claim is not known but is thought by the IRU and the Committee of Inquiry of the European Parliament to be substantial (several hundred million ECU under each system). If customs authorities were actually to claim such sums, the operators, guaranteeing associations and insurance companies providing cover would find themselves in a very difficult situation. Therefore, in practice, customs authorities frequently defer their claims.

However, that is not the end of the issue. Customs authorities and the finance ministries to which they are accountable have refused to make the moratorium official or indeed to waive their claims to these monies.

On the grounds that customs authorities are partly responsible for the explosion in fraud in the transit systems, transport operators and their professional associations refuse to bear sole responsibility. They are not seeking full relief from the sums due, but will not be satisfied with the piecemeal settlements that case-by-case negotiation could result in. They are calling for an overall legal framework, applicable to all countries, that formally recognises the principle of relief on sums owed when customs authorities have been partly responsible for enabling fraud.
The attitude taken by insurance companies is to refuse liability as a last resort. They will only honour claims where the parties (transport operators and customs) have properly fulfilled their obligations.

We can therefore expect to see cases come up before the courts.

**Maintaining and questioning customs authorities’ privileges**

Customs authorities and representative bodies of transport operators and international commercial operators interpret the issues of non-discharge notification and outstanding debt very differently. A brief outline of these conflicting points of view may help to clarify the issues and bring a compromise solution acceptable to both parties a step closer.

For customs authorities, the situation is quite straightforward: transit systems are facilities that they grant to international commercial operators. These facilities are granted under terms that the customs authorities have defined in order to safeguard their own interests, which, moreover, are the same as their countries’ interests. This explains why the notification time limit was set at one year and why operators wishing to take advantage of this facility are required to give a formal undertaking that they will pay duties when, for whatever reason, they have not been paid by the party that incurred them. Operators are free not to use transit systems and not to give such undertakings. Once they have done so, however, they must honour them.

This inflexible position contrasts with the viewpoint of commercial and international transport operators, who argue that transit systems are not so much in the interests of the operators as in the interests of international trade. They argue that the constraints imposed on operators in no way relieve customs authorities from the responsibilities and duties incumbent upon them: they still have an obligation to carry out careful checks and expedite formalities. Where they fail to do so, they bear some of the responsibility for the escalation of fraud.

While it is not our place to take sides, we would point out that the Commission of the European Communities, in its Communication of 29 March, 1995, stressed that the customs authorities of the Member States bore some responsibility for the deterioration of the situation: the quality of controls had declined progressively over the preceding few years; investigations into outstanding operations were not conducted early enough or energetically enough and were not given sufficient priority. The application of the regulations and existing administrative provisions by Member States had not always been such as to ensure good management. The Committee of Inquiry was equally severe in its criticism.

Furthermore, the customs authorities’ argument would carry more weight if there were any real alternative to the use of the transit systems. As things stand it is difficult to see how transport would be possible without using these systems, since customs authorities would be quite unable to carry out the additional duties that would devolve to them. All of the experts, and the Commission of the European Communities, stress that the maintenance and satisfactory operation of the transit systems is one of the pillars of a common trade policy and a prerequisite for the gradual integration of the economies of Europe. The Commission Communication of 29 March, 1995 stated that there was no other viable solution for transit; no other choice but to modify it rapidly and effectively. Under these circumstances, reaching a compromise on the two major issues in dispute is in the general interest.

**III. Suggestions for a new stance by ECMT Council of Ministers of Transport**

Many aspects of the Resolution adopted by the Council of Ministers of Transport of the ECMT in April 1997 are still relevant. Any new Resolution (except where it repeats the wording of the April 1997
Resolution), should expand on it, rather than replace it, and emphasise points that, in the light of developments over the past 2 years, have assumed more importance than in 1997.

Regarding the section on theft of vehicles and goods, consideration might be given to including recommendations:

- To produce a guide to lorry parks and other HGV parking areas classified by level of security, and a new edition of the European parking area booklet showing the level of security offered.

- To speed up work on the standards for vehicle anti-theft devices and communications systems enabling the tracing and real-time monitoring of vehicles.

- To expand the EUCARIS system to countries other than the original signatories to the Treaty.

- To initiate discussions on harmonising the concepts and definitions used for gathering information on the theft of goods and vehicles and the development of an international “operations” or “information” database, the latter to serve as a basis for in-depth analysis to improve intelligence on the type of offence and mechanisms involved in order to combat them more efficiently.

- To develop studies in each Member country to identify the highest-risk locations, so that surveillance and checks can be targeted more effectively.

In addition, Member countries’ attention should be drawn to the use made of HGVs in illegal immigration and carriers’ attention should be drawn to their duty to be vigilant in this respect. The Council could recommend that Member countries draft regulations on the conduct of investigations, which would allow for the need for investigation, but avoid the presumption of guilt and undue pressure on the driver.

Lastly, follow-up activities on various very specific subjects, could be carried out on the initiative and under the guidance of the ECMT.

Regarding the section on fraud in transit systems, consideration might be given to including the following recommendations:

- To continue of efforts to streamline procedures and step up checks.

- To intensify and extend efforts already undertaken to improve the operation and, in particular, the maintenance of SAFETIR.

- To pay greater attention to new forms of fraud that are likely to be seen – or have already been seen – as “classic” forms gradually become more difficult.

- To increase support for the reform of transit systems such that the deadlines for adopting the different measures envisaged under the TIR Convention and the Community and common transit systems at least be met, if not shortened.

- To maintain efforts to set up the NCTS so that no further delays will occur.

A new recommendation should certainly take a stance on the two major problems highlighted in this report.
– It seems advisable that the Council of Ministers of Transport restate that a substantial reduction in the time limits for non-discharge notifications would be a step forward.

– The Council of Ministers would not be exceeding its brief to state that commercial and international transport operators’ call for harmonised solutions to the problem of the outstanding sums payable by them was legitimate.