


TRACECA Project
Legal & Regulatory Framework
Completion Report
February 1998

Project Title	: TRACECA Project: Legal and Regulatory Framework		
Project Number	: TELREG 9306		
Countries	: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan		
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1. PROJECT SYNOPSIS

Project Title:	TRACECA Project: Legal and Regulatory Framework
Project Number:	TELREG 9306
Countries:	ARMENIA, AZERBAIJAN, GEORGIA, KAZAKHSTAN, KYRGYZSTAN, TAJIKISTAN, TURKMENISTAN, UZBEKISTAN

Project objective:

1. To provide technical assistance and documentary support in the field of transport legislation and to promote utilisation and harmonisation of existing transport systems in the TRACECA Transport corridor by taking account of international aspects.
2. Reductions in commercial risk and cross frontier delays and to help create a mixed economy transport system.
3. Advice on opportunities for training on International Transport issues to facilitate movement towards a more competitive transport system.
4. The joining of international institutions and agreements by counterpart states to facilitate trade.

Planned outputs:

1. Transfer of technical knowledge and awareness of issues between the consultants and the National Task Force (NTF) partners and other relevant specialists within the TRACECA region.
2. Harmonisation of transport laws to reduce barriers to domestic and international trade.
3. The creation of consultative institutions in all countries based on the NTF which are capable of implementing a recommended reform programme in the long term.
4. Reduction of existing barriers to develop domestic and international trade and transport.

Project activities:

1. The appointment of NTF personnel in each state to develop draft transport legislation and to maintain close links with other regional NTF and the Consultant.
2. To provide the NTF with model legislation and documentation to assist in the harmonisation of legislation and procedures.
3. To maintain a library of relevant transport legislation in each state including comparative legislation of the E.U. Russian Federation and International Conventions.
4. Management of regional training seminars and workshops for counterparts during visits by the Consultant.
5. Work with NTF partners on harmonisation of specific key areas of law where the limited inputs possible within the existing target budget can produce the most rapid results.
6. To co-ordinate with other relevant TRACECA projects to share information and demonstrate a joint approach to the solution of transport problems.
7. To advise the NTF partners on the obligations and advantages of joining and accepting international conventions.
8. To provide regional workshops and "on the job training" to counterparts during visits by the Consultant.

Project starting date: 6 December 1995

Project duration : 24 months

Author of Report: Mark Booker/Richard Levett

2. SUMMARY OF PROJECT PROGRESS SINCE THE START

During Phase 1 the broad project objectives were agreed with counterparts, the National Task Forces (NTF) and the regional offices were established. We should like to record our thanks to the local Takis and TRACECA offices for their assistance throughout the project. The assistance of the two TRACECA Co-ordinators, Marc Graille and Mike Sims was particularly useful during the second half of the project in helping to promote the objectives of the project at the highest levels in Government.

The Preliminary Appraisal Missions in 1996 enabled the Consultant to set provisional priorities for the legal reform activities in Phases Two and Three of the project. The priorities were discussed and agreed during the First Regional Conference held in Almaty between 13th-17th May 1996.

A management seminar on international trade and transport issues was presented in Tashkent from 11th-14th June 1996 for 20 senior officials and was repeated in Baku from 4th-7th November 1996, in Ashgabat from 11th-14th November 1996, in Yerevan from 19th-22nd May 1997 and in Bishkek from 30th June-3rd July 1997 (for Kyrgyz and Tajik delegates) (for details of content see Appendix 1). The workshops were well received, the majority of delegates evaluating the quality and usefulness of the material and presentations in the highest category and they allowed the International Task Force (ITF) team to establish a broader range of local contacts.

Following the Almaty conference the ITF team began detailed work on the legal models and agreements and the results were presented at the Second Regional Conference held in Tbilisi between 5th-8th October 1996.

The Second Regional Conference endorsed the models as suitable for further development and counterparts commenced the process of providing detailed comments on the proposed drafts. A set of project recommendations were produced following this extensive joint activity in March 1997 and were widely circulated in all 8 Republics and to other interested organisations. Further models were produced and a final set of recommendations accompanies this report in Appendix 2.

Work continued on the creation of associations and consultative institutions with some notable successes during the early summer months when Georgia, Azerbaijan and Kazakhstan created Freight Forwarding Associations.

Steady progress was made with the important process of ratification of the project's recommended international conventions and a decision was taken to add the COTIF/CIM convention to the list.

Russian language texts of the recommended conventions were made available through the NTF offices, after these were located or translated and form Appendix 3 of this report.

A major breakthrough took place in the early autumn in relation to the multilateral agreements developed by the project, the initiative being taken by some of the TRACECA states themselves, fully supported by the European Union, and with the project continuing to give technical advice to high level officials. It is hoped that multilateral agreements will be signed by a number of the TRACECA states during 1998 based on the drafts prepared by the project (see Appendix 4).

The project was formally closed in each country by a round-table discussion between local experts and officials and the Consultant's experts. This allowed the final status of the reform work to be assessed in each country and forms the basis for the individual country reports made later in this report.

The source material collected by the project, notably the compendium of international agreements and conventions, was given for safekeeping and future public access to the most appropriate institution in each state. Where there was a Ministry of Transport, this became the recipient and in other cases material was deposited with the UNDP library or the TRACECA office pending a final recipient.

Throughout the project the Consultant demonstrated flexibility in attempting to meet the requirements of the European Union task managers and local counterparts as expressed from time to time. This required frequent changes to be made to previously agreed plans with logistical and budgetary consequences which may be appreciated from tables 2.2 and 2.3. By way of illustration, the Team Leader alone made some 32 visits to individual country delegations and spent nearly an additional man-month of unscheduled time in Turkmenistan. The originally foreseen 2 management awareness seminars were increased to 5 at the request of counterparts. The number of flights taken was nearly double that originally proposed. The Consultant regards it as a considerable achievement that all this was accomplished within the original project budget through careful balancing between budget lines and finding the most economical travel options.

3. PROJECT PROGRESS IN THE FINAL REPORTING PERIOD

(a) Achievements in comparison with planned results

The principal planned outputs for the period were continued work on the model transit agreements and work towards implementation of the model transport Codes published in English and Russian in March 1997.

(i) Multilateral agreements

During the reporting period an unscheduled deliverable, a framework multilateral agreement, was developed as a modification of the 1996 Sarakhs basic agreement. The road and water transport agreements published in March 1997 were revised, also with a view to modification of the Sarakhs agreement, and a new agreement was devised on regional rail transport. At the close of the reporting period, a draft customs agreement was requested by Georgian counterparts as they felt that without it considerable delays and difficulties would remain at borders even if the other agreements were signed. The remaining project budget unfortunately did not allow this to be devised but it should be a key task of any follow up work in this area.

The development of the multilateral agreements moved to a political level during the reporting period and the project team became in effect advisers to high level counterparts and to the European Commission in their attempts to move towards signature and implementation of the agreements. Achievements in the reporting period exceeded the Consultant's expectations and the Commission can be very satisfied by the speed of progress which has been achieved in this strategic area. So that the momentum achieved is not subsequently lost, the Consultant makes recommendations elsewhere in this report for the continuation of technical assistance after the close of the project.

(ii) International Conventions and institutional development

Steady progress was made with institutional development issues.

Support grew at every level for creation of a Ministry of Transport in Azerbaijan, but a presidential decision was still awaited at the close of the project. In Turkmenistan and Uzbekistan, the remaining countries without a Ministry of Transport, the issue has not yet reached the highest level on the political agenda, but it is likely that difficulties which those countries may face in co-ordinating policy towards multilateral multimodal transport agreement implementation will concentrate minds on the need for change. It is pointed out later in this report that creation of a single ministry within

the existing governmental structures left over from the Soviet era does not in any case solve all problems of policy making and co-ordination.

Following the creation of Freight Forwarding Associations in Azerbaijan, Georgia and Kazakhstan in the summer, counterparts moved with commendable speed and energy to complete the formalities for national membership of FIATA and all three countries were formally admitted to FIATA at its autumn congress. Kyrgyzstan and Armenia are actively working to create Forwarding Associations and may be expected to join FIATA during 1998. Tajikistan has been held back by internal problems and an undeveloped forwarding sector but there is now a good appreciation of what needs to be done. In Turkmenistan the creation of a state freight forwarding company will allow that company to obtain associate membership of FIATA and, in time, an association allowing national membership of FIATA may result if this company and private forwarders are able to create an independent Association.

It had been hoped to complete the task of creation of an International Road Carriers' Association in each country in the region before the project closed. Unfortunately in Armenia, the funds still did not seem available to start up an association. This is most regrettable as without such an association Armenia cannot hope to implement the TIR system even though it ratified the TIR Convention a considerable time ago.

With regard to creation of associations the achievements exceeded the results anticipated by the Consultant and this reflects most positively on counterparts, particularly those in the private sector, who succeeded in implementing the ideas of the Consultant, sometimes against initial opposition from government. A table showing progress with creation of Trade Associations is to be found in Section 4 below.

Overall there was an awareness in all the countries of the region at the end of the project both as to the international conventions on transport which should be rapidly implemented and the methodology necessary to do so. The Consultant believes the achievements match planned results and that, when the full results become apparent as further conventions are ratified in 1998, the project will be found to have met its long term objective in relation to its published list of recommended conventions.

Some recommendations for streamlining and accelerating the final phase of ratifications are set out later in this report and during the reporting period the Consultant published an unscheduled deliverable, a Guide to the Recommended Conventions to explain why the conventions are recommended and the responsibilities of the various parties under the conventions. This has been

very well received and is to be found in Appendix 3. A table showing the progress made with ratification of Conventions is to be found in Section 4 below.

(iii) National organisation of the transport market

During the reporting period some minor changes were made to the model law on transport, road code and rail code and these are reissued with this report in Appendix 2, together with a brief summary of the principles contained in the models.

Because of the importance of multimodal transport and the complete absence of any precedents for a market economy legal structure for freight forwarding activity, the Consultant devised an unscheduled deliverable in the form of a draft forwarding law at the particular request of Turkmenistan. It should prove useful to the region as a whole. Work done with counterparts from the 4 maritime republics should assist in maintaining harmonisation as Azerbaijan, Kazakhstan and Turkmenistan finalise their new maritime legal structures following institutional reorganisations which are projected.

Achievements with the implementation of the principles contained in the model laws in the reporting period were below the Consultant's expectations and the reasons for and implications of this are discussed in detail later in the report. The Consultant draws particular attention to this discussion as it should influence the Commission in contemplating any future funding in this area and it advocates a greater degree of conditionality concerning any future projects.

The Consultant gave particular priority and time to this aspect of the work during the previous reporting period at the urgent request of counterparts. The recommended draft legislation was well received and the principles of European and World standards are apparently enthusiastically supported by counterparts. The Consultant was told that certain details needed to be modified to meet specific national requirements and in some countries local experts recommended to the Consultant carried out considerable work. The outcome of that work appears to be a dilution of the principles introduced in the models with a reversion back to familiar Soviet terminology and principles. The Consultant would like to point out that the counterparts themselves appear satisfied with the achievements and indeed generally state that work has proceeded steadily during the reporting period with good results.

The Consultant believes that the need for change is not yet fully appreciated by counterparts. A combination of counterparts learning by trial and error and receiving further assistance to develop

their awareness will be necessary before western principles will be accepted, implemented and properly enforced.

FORM 2.2: PROJECT PROGRESS REPORT

Project title: TRACECA: Legal & Regulatory Framework		Project number: TELREG 9306				Countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan				Page: 8					
Planning Period: 1/7/97 - 6/12/97		Prepared on: 6 December 1997				EC Consultant: Scott Wilson Kirkpatrick and N.E.A.									
Project objectives: To assist in the utilisation and harmonisation of existing transport systems in the TRACECA region by helping to establish a common legal framework for transport															
INPUTS															
No	ACTIVITIES IMPLEMENTED	TIME FRAME 1997 months						Personnel EC Consultant		Personnel Counterpart		EQUIPMENT AND MATERIALS		OTHER	
		July	Aug	Sept	Oct	Nov	Dec	Planned	Utilised	Planned	Utilised	Planned	Utilised	Planned	Utilised
1	Appraisal visits and establishing National Task Forces -Appoint National Task Force -Acquire and equip offices	xxxxxxx		xxxxxxx			0.0	0.0	0.0	0.0					
2	Legislative needs analysis -Assess local legislation -Collect and analyse -Identify needs & prioritise						0.0	0.0	0.0	0.0					
3	Prepare legal models and guidelines for a common legal framework	xxxxxxx		xxxxxxx			3.0	6.0	2.0	6.0				4 flights	5 flights 2 car journeys
4	Management seminars / workshops -Prepare conference material -Deliver seminars and workshops	xxxxxxx					2.0	3.0	8.0	10.0			Update training material	4 flights 2 car journeys	10 flights 3 car journeys
5	Develop a common legal framework for transport laws	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx	8.0	10.0	1.0	10.0					
6	Harmonisation of trade facilitation issues	xxxxxxx		xxxxxxx	xxxxxxx	xxxxxxx	4.0	6.0	2.37	6.0					
7	Harmonisation of transport operator legislation	xxxxxxx	xx	xxxxxxx	xxxxxxx	xxxxxxx	1.49	1.6	1.5	8.0					
8	Institutional strengthening	xxxxxxx					3.0	6.0	1.0	4.6					
	Final Report					xxxx	2.0	2.0	0.0	3.0					
				TOTAL man months		23.49		34.60		15.87		43.60		8 flights 2 car journeys	
				% of Contract Total		18.07%		26.62%		9.02%		24.77%		15 flights 5 car journeys	

FORM 2.3: RESOURCE UTILISATION REPORT

Project title: TRACECA: Legal & Regulatory Framework	Project number: TELREG 9306	Countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan	Page: 9		
Planning Period: 1/7/97 - 6/12/97	Prepared on: 6 December 1997	EC Consultant: Scott Wilson Kirkpatrick and N.E.A.			
Project objectives: To assist in the utilisation and harmonisation of existing transport systems in the TRACECA region by helping to establish a common legal framework for transport					
RESOURCES/INPUTS	TOTAL PLANNED	PERIOD PLANNED	PERIOD REALISED	TOTAL REALISED	AVAILABLE FOR REMAINDER
PERSONNEL					
Director	0.95	0	0.13	1.65	-0.7
Training Expert	2.3	0	0	8.0	-5.7
Regional Coordinator	20.0	5.23	7.38	22.15	-2.15
Team Leader	16.0	3.74	4.46	16.72	-0.72
Road Transport Lawyer	12.0	3.09	1.98	10.89	1.11
Rail Transport & Customs Lawyer	2.5	0	0.36	3.76	-1.26
Maritime & Transport Lawyer	2.5	0	0	2.75	-0.25
Banking & Finance Regional Legal Expert	0.5	0.1	0	0.4	0.1
Regional Transport Specialists	12.0	5.0	4.0	11.0	1.0
Regional Sub Unit Supporting Visiting Specialists	12.0	5.0	4.0	11.0	1.0
Pool of Specialists	44.0	3.05	12.0	52.95	-8.95
Local Experts	4.0	3.0	0.29	1.29	2.71
	1.7	1.7	0	0	1.7
	176.0	18.87	43.6	200.73	-24.73
Sub-total	306.45	48.78	78.20	343.29	-36.84
EQUIPMENT & MATERIAL					
Computer	9	0	0	9	0
Software	9	0	0	9	0
Printer	8	0	0	8	0
Fax / Tel	8	0	0	8	0
Photocopier	9	0	0	9	0
e-mail	8	0	0	8	0
TOTAL	51	0	0	51	0

FORM 2.4: OUTPUT PERFORMANCE REPORT

Project title: TRACECA: Legal & Regulatory Framework Planning Period: 1/7/97 - 6/12/97	Project number: TELREG 9306 Prepared on: 6 December 1997	Countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan EC Consultant: Scott Wilson Kirkpatrick and N.E.A.	Page: 10
Output results	Deviation original plan + or -	Reason for deviation	Comment on constraints & assumptions
1 Established National Task Forces	0%		
2 Legislative drafts established by N.T.F.	0%		
3 Model laws prepared	+15%	Additional model law produced for freight forwarding	Models prepared and being used by Republics.
4 Workshops delivered	+100%	Success of the workshops has lead to there being a total of 5 workshops being held in the region	
5 Preparation of a common legal framework for transport laws	0%		
6 Trade facilitation issues	+10%	Representatives from Trade Facilitation Project joined team for workshops	
7 Transport operator legislation	0%		
8 Institutional strengthening	+10%	Acceleration of work on creation and strengthening of Freight Forwarding Associations	

4. OVERALL REPORT ON PROJECT IMPLEMENTATION DURING THE WHOLE PROJECT PERIOD

At Inception Report stage the project was divided into three fairly distinct areas of activity to be regarded as priority objectives. This division remained valid until the end of the project.

Priority I, Regional Access to the Transport Market

(a) Deliverables

The activities in the field of regional access to the transport market were focused on the conclusion of multilateral transport agreements in the TRACECA region in respect of Road, Water and Rail transport for the facilitation of transit, domestic transport, third country transport and cabotage.

Drafts were developed in the initial phase of the project on road and water transport following extensive discussions with counterparts. The water transport draft was used by Azerbaijan and Georgia in framing a bilateral agreement between them. At approximately the same time the project provided some of the momentum which led to the signing of the Sarakhs agreements in May 1996 between Azerbaijan, Georgia, Turkmenistan and Uzbekistan.

In the later phase of the project the Consultant sought to improve the structure of the Sarakhs agreements rather than seeking the signature of wholly new accords. Modifications were made to the wordings in the framework agreement and modified technical annexes drafted for road, rail and water transport with a view to making the Sarakhs agreements more suitable for the new market environment and with more guarantees for implementation, including the creation of a Joint Commission.

(b) Country by country status report

Armenia

The desirability of pursuing multilateral agreements was fully recognised in spite of the present sub-regional practical difficulties. In fact NTF representatives requested that the proposed agreements should include all 8 Republics without any special transitional treatment.

Azerbaijan

There was equally strong support for the intention behind and the detail contained in the project proposals at all levels in the administration. An action programme was being established at the

highest level to ensure that the country promoted the rapid signature and implementation of the multilateral agreements. There was strong support for the creation of an effective regional secretariat to supervise the agreements and the functioning of the proposed Joint Commission.

Georgia

Georgia remained favourably disposed towards the development of multilateral agreements and counterparts actively supported the initiatives taken by the project. The need for a co-ordinating Joint Commission to make sure the agreements work is recognised. NTF representatives, however, considered that visible and much higher level support for the present proposals at a political level within Brussels would also be needed if it was intended to persuade all governments in the region to give more than token support for the European Union sponsored proposals, the visit of Commissioners being specifically mentioned.

Kazakhstan

There was considerable scepticism expressed by counterparts at the project closure meeting concerning the desirability of Kazakhstan signing multilateral agreements which would liberalise movement and reduce or eliminate transit taxes. The process was perceived as political not just economic. MOT representatives viewed with more favour the development of bilateral agreements. The present experience with CIS multilateral agreements in other fields was not good. Neighbouring states were trying to solve financial problems by barter and privileges in relation to transport and transit, depressing the development of the transport sector. There were fears that multilateral transport agreements would lead to further deterioration of the situation in Kazakhstan.

The MOT did not at present see Kazakhstan obtaining reciprocal benefit from transit by road through neighbours. If neighbours needed to transit Kazakhstan they should meet the heavy costs which such transit imposed on deteriorating Kazakh infrastructure. The state budget could not live without the contribution presently made by transit taxes. A similar situation obtained in relation to the railways where it was not in Kazakh interests to allow discounts.

The Ministry of Foreign Affairs has a more strategic view of the future prospects for multilateral agreements particularly to the extent such agreements might ease access to the Persian Gulf, the Mediterranean and Far East.

Kyrgyzstan

There was strong support for the development of the Sarakhs agreements along the lines proposed by the project. The further widening of the agreements in due course to include other neighbours such as China would be welcome although there was an appreciation that, in the short term, a

TRACECA regional agreement would protect the less developed transport industries of the TRACECA region from predation. There was support for the creation of a regional secretariat to oversee the functioning of the agreements.

Tajikistan

There was support for the signing of multilateral agreements as proposed by the project and development of an institutional structure to supervise implementation and resolve disputes.

Turkmenistan

The official position, as relayed via the Tacis co-ordinating unit, remained that Turkmenistan was sceptical concerning the desirability of signing the proposed multilateral agreements and that the way forward lay in effectively negotiating and applying bilateral transport agreements. It was premature to develop the proposed TRACECA agreements. Inexplicably in this context, Turkmenistan is party to the Sarakhs agreement, which is multilateral, and it seems, also interested in the UNCTAD proposed framework agreement, which is also multilateral in scope.

Uzbekistan

There was strong support at all levels for revising and strengthening the Sarakhs agreements as proposed by the project. The necessity of having adequate implementation strategies was raised and the proposed Joint Commission and Secretariat therefore supported. It was felt that there was a need for a high level delegation from the EU to visit the region to give support to local efforts. In the context of the proposed agreements, the urgent need to improve infrastructural access via Aktau to Uzbekistan was raised as a means of forestalling any tendency for certain parts of the TRACECA route to become quasi-monopolies serving the interests mainly of the infrastructure owner rather than of the whole route.

(c) Co-ordination with other projects

During the project there was a regular exchange of information with the UNCTAD/UNDP Silk Road project and the ECO transit initiative. However, as neither of these were concerned with the specific TRACECA corridor full integration of these initiatives with the TELREG work was not possible.

The TRACECA project increasingly worked with counterparts in the context of a concrete, partially realised agreement, Sarakhs, whereas UNCTAD/UNDP were seeking to create a wholly new framework agreement in a much larger region.

Latest discussions suggest that this work, which will continue beyond the life of the present TRACECA initiative, may well build on the achievements of the present project. If the present signatories to Sarakhs sign a revised agreement to which other TRACECA states become party this might set a fair context for their eventual entry into a wider agreement including all the powerful neighbours to north, south, east and west, which is the task of the UNCTAD/UNDP initiative. Within this wider UNCTAD/UNDP agreement the special interest of the TRACECA states might be recognised. The terms of the wider agreement might acknowledge the existence of the proposed TRACECA Joint Commission as a negotiating body and intra and extra-TRACECA trade might benefit from differential transit regimes. The Consultant believes that the transport industries of the TRACECA states are still very vulnerable to predation by larger neighbours and that to open up their markets beyond the borders of TRACECA could at this stage be ill-advised.

(d) Sustainability

The Consultant recommends that the modified Sarakhs agreements, as developed with assistance from the project, should be signed at Presidential level. Only then will sufficient authority be attached to the agreements. However, to remain flexible and responsive in a rapidly changing market, the agreements should be implemented and amended at a slightly lower level (Cabinet of Ministers) by a Joint Commission. The Joint Commission would include representatives from each participating state and would have mode-related working groups. The establishment of these bodies will need funding until they have proved their usefulness. The transport sector itself could help finance the system through sums paid for transit permits but initially the Consultant believes that start-up finance and technical assistance will be required from an organisation such as the European Union.

As Customs issues are a major barrier to the facilitation of transit in the region, it is recommended that a Customs Agreement should be developed to complement the technical annexes already devised by the Consultant. This might be one of the first assignments for the Joint Commission.

The Joint Commission could also become an important consultative structure through which the TRACECA states could co-ordinate their legal reform work at National level so as to achieve more harmonisation of legal standards.

During the summer programme of visits the Consultant learned of a number of serious financial impediments to transit apparently introduced in at least one of the Republics which seriously contradict the objectives behind the project. There is little point in talking at National level about reducing or abolishing transit taxes and abolishing unnecessary Customs escorts etc. by means of

new agreements if local bodies such as Oblasts are apparently able to levy heavy and possibly unlawful charges on foreign vehicles without any action being taken to control them by the National authorities. Equally if these levies are considered expedient by a State for internal domestic reasons, the climate is clearly not right for binding agreements to be signed. The Consultant would strongly urge Central Governments urgently to review the levies being made by local organisations in advance of the coming negotiations on possible new transit agreements, so as to ensure that these agreements will actually be effective at all levels of the public administration.

Priority II, International Standards in Trade and Transport

(a) Deliverables

The Consultant focused on delivering advice and assistance in relation to the ratification of international conventions and obtaining of membership of international organisations notably IRU and FIATA.

Particular emphasis was given to ratifications recommended in the ESCAP Resolution 48/11 on road and rail transport modes in relation to facilitation measures, namely:

- The Convention on Road Traffic of 1968.
- The Convention on Road Signs and Signals of 1968.
- Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) of 1975.
- The Customs Convention on the Temporary Importation of Commercial Road Vehicles of 1956 (carnet de passage).
- Customs Convention on Containers of 1972.
- The International Convention on the Harmonisation of Frontier Controls of Goods of 1982.
- The Convention on the Contract for the International Carriage of Goods by Road (CMR) of 1956
- The Barcelona and New York Transit Conventions.

To this list were added the following additional Conventions and Agreements:

- COTIF/CIM Convention on international rail carriage 1980
- UN Convention on Carriage of Goods by Sea 1978 (Hamburg Rules)
- AETR agreement on hours of work 1970
- Convention on Safe Containers (CSC) 1972
- Agreement on main traffic Arteries (AGR) 1975
- Agreement on transport of perishable foodstuffs (ATP) 1970
- Agreement on carriage of dangerous goods (ADR) 1957
- Convention on the Liability of Operators of International Terminals 1991

The project published a guide to the conventions and methodology for accession setting out information not previously available from one source. Most of the conventions are not controversial and have limited budget implications, but where the states assume supervisory or certifying roles, a suitable method of cost recovery from transport providers will have to be devised to defray the administrative costs incurred by the state. It should be emphasised that there is no joining cost for the conventions themselves and no recurrent charge made by the UN for continued membership.

(b) Country by country status report

In relation to conventions and agreements recommended for ratification, analysis as at 1.12.95 showed the countries in the left hand column then having ratified. The situation in November 1997 is shown in the right hand column:

Table 1 Conventions Recommended for Ratification

Convention	Ratified at 1.12.95	Situation in November 1997
1. COTIF/CIM Railway Convention 1980 as amended	None	None
2. CMR Convention 1956	Kazakhstan Uzbekistan	Kazakhstan Uzbekistan Kyrgyzstan (applied) Tajikistan Turkmenistan
3. Convention on Road Traffic 1968	Georgia Kazakhstan Tajikistan Uzbekistan	Georgia Kazakhstan Tajikistan Uzbekistan Kyrgyzstan (1949) Turkmenistan
4. Convention on Road Signs & Signals	Kazakhstan Tajikistan Turkmenistan Uzbekistan	Kazakhstan Tajikistan Turkmenistan Uzbekistan Kyrgyzstan (1949)
5. Conventions on Temporary Import of Commercial Vehicles 1956	None	Azerbaijan (applied) Kyrgyzstan (applied)

Table 1 Continued Convention	Ratified at 1.12.95	Situation in November 1997
6. TIR Convention 1975	Armenia Georgia Kazakhstan Uzbekistan	Armenia Georgia Kazakhstan Uzbekistan Azerbaijan Kyrgyzstan (applied) Tajikistan Turkmenistan
7. AETR Agreement 1970	Kazakhstan	Kazakhstan Azerbaijan Turkmenistan
8. Vienna Convention on International Sale of Goods 1980	Georgia	Georgia Uzbekistan
9. Hamburg Rules 1978	Georgia	Georgia
10. Convention on Harmonisation of Frontier Controls 1982	Armenia	Armenia Uzbekistan Kyrgyzstan (applied)
11. Customs Convention on Containers 1972	None	Uzbekistan
12. Convention on Safe Containers	Kazakhstan	Azerbaijan Georgia Kazakhstan Uzbekistan
13. AGR Convention 1975	Georgia Kazakhstan	Georgia Kazakhstan Azerbaijan
14. ATP Agreement 1970	Kazakhstan	Kazakhstan
15. ADR Agreement 1957	None	Kazakhstan (in committee)
16. Barcelona Transit Convention 1921	None	None
17. New York Transit Convention 1965	None	None
18. Convention on Liability of International Terminal Operators 1991	Georgia	Georgia

The situation with regard to membership of IRU at 1.12.95 is shown in the left hand column with the latest situation in the right hand column:

Table 2 Membership of IRU

	Situation at 1.12.95	Situation in November 1997
Membership of IRU	Georgia Kazakhstan	Georgia Kazakhstan Azerbaijan Kyrgyzstan Tajikistan Turkmenistan Uzbekistan

The situation with regard to membership of FIATA at 1.12.95 is shown in the left hand column with the latest situation in the right hand column:

Table 3 Membership of FIATA

	Situation at 1.12.95	Situation in November 1997
Membership of FIATA	None	Azerbaijan Georgia Kazakhstan Uzbekistan

The project sought to leave behind a structure for international co-operation based on National Trade and Transport Facilitation Commissions and an international equivalent for the whole region. After consultation with the EU and counterparts it was decided to develop these structures within the context of the multilateral transit agreements referred to above. The importance of the proposed Multinational Joint Commission to be set up under the transit agreements cannot be overstated and it would be a suitable institution for transitional funding from the European Union.

The situation with regard to creation of a Commission or Joint Board meeting the objectives of trade facilitation as identified in the TOR at 1.12.95 is shown in the left hand column with the latest situation in the right hand column:-

Table 4 Trade Facilitation Commission

	Situation at 1.12.95	Situation in November 1997
Creation of a Commission meeting the objectives of Trade Facilitation as identified in the TOR	None	Azerbaijan Georgia Uzbekistan

(c) Co-ordination with other organisations

Throughout the project the Consultant worked with other organisations, notably the UN, International Union of Railways UIC, International Road Transport Union IRU and Federation of International Forwarding Agents FIATA to realise the project objectives. This was particularly effective in the case of IRU and FIATA where the project prepared the way for membership and training activities by these international organisations.

The 1995 pilot project in Kazakhstan persuaded the IRU to translate material concerning TIR into Russian and co-ordinated the ratification and implementation process for Kazakhstan. The experience gained led to replication in the other Republics during the life of the present TELREG project to very good effect. The Team Leader's long professional connections with the President of FIATA, Brian Kelleher persuaded the latter directly to work with the project in seeking rapid membership of FIATA for the newly forming Forwarders' Associations, again to very good effect.

(d) Financial Guarantees

The development of an effective TIR carnet system was delayed in most of the states by the lack of facilities for financial guarantees. Other sectors of the transport economy are similarly inhibited. For example it is not easy to obtain guarantees in relation to the purchase of European standard goods vehicles from foreign manufacturers.

The Consultant carried out a survey into guarantees and banking and this, together with an initial report, is to be found in Appendix 5. Whilst the Consultant felt that the subject merited further investigation, counterparts decided at the Second Regional Conference in Tblisi that the available project resources should be reserved for more core activities.

The Consultant believes that the issue of guarantees and banking practices remains of vital importance to the operation of the TIR system and other guarantee-backed international agreements and that future practical assistance to put in place western-style facilities would be fully justified.

(e) Sustainability

Based on experience with the pilot Kazakhstan project of 1995, it is anticipated that the results of the Consultant's work will continue to be felt for at least a year after the project closes as the full process of ratification and implementation of a convention can easily take more than one year.

One of the difficulties in moving the process forward at the outset was a lack of knowledge of the conventions themselves. The Consultant overcame this by publishing a list of recommended conventions and providing counterparts with copies of the texts. In the case of COTIF/CIM, the Convention on Temporary Import of Commercial Vehicles and the New York and Barcelona Conventions no texts could be found in the Russian language and so translations were carried out by the Consultant.

Another difficulty encountered was the obligation for counterparts in some instances to translate Russian texts into a National language for ratification. It is not considered practicable nor desirable by the Consultant to translate the full annexes of, for example, ADR running into hundreds of pages. The Consultant suggested a formula in the published guide to the recommended conventions which would help overcome this problem by producing National Language summaries of the convention provisions to accompany a Russian or English authentic text.

It seems to the Consultant that the rate of progress made by individual states with ratification of the recommended conventions can be correlated to the institutional structures which they use for the purpose. States which have a single ministry which takes charge of a convention are making better progress than those where the responsibility is spread through 3 or more ministries. Kazakhstan, which has made the most substantial progress, has both an effective legal department and a highly effective international department led by Aigul Idrasova within the Ministry of Transport which together sponsor convention ratifications in discussion with other ministries such as the Ministry of Foreign Affairs. It is an example which could usefully be followed elsewhere, as has already been done in Georgia and it is necessary for well-qualified and motivated individuals to occupy the relevant posts.

It is also necessary for agencies to exist to implement the supervisory and certifying roles for which governments are responsible under some of the conventions and again the creation of these agencies

will be much easier where the execution of transport policies is the responsibility of a single institution.

In some cases, a regional approach to ratification is advisable, for example in the case of the Hamburg Rules, the Convention on the Liability of International Terminal Operators and most particularly in the case of COTIF/CIM.

In relation to COTIF/CIM the situations in the Caucasus and in Central Asia must be distinguished. In the Caucasus both Western and Eastern Europe, Turkey and Iran operate under CIM and it is logical and straightforward to convert to CIM in the reasonably near future. It will be possible for the Caucasus states to continue to operate SMGS in parallel, in relation notably to Russian traffic, as has been the practice of certain East European states, so long as there remains a requirement to issue a CIM or SMGS note to validate the application of either convention.

In the case of Central Asia the situation is more difficult. The Consultant still supports the introduction of CIM for the whole TRACECA route but much will depend on the attitude of the larger Central Asian Railways, the attitude of Russia and what emerges from the present review of the CIM Convention being carried out by the treaty organisation OCTI. Clearly the ultimate key lies in conversion of Russian Railways to the CIM system through a fusion of SMGS and COTIF but the Consultant was unable to influence developments in this area especially as the World Bank project working in Russia on transport legislative reform was suspended during two thirds of the life of the TRACECA project because of fundamental policy disagreements.

Priority III, National Organisation of the Transport Market

(a) Deliverables

The ITF concentrated on assistance in the drafting and implementation of five laws in the field of goods transport:

- General Law on Transport
- Rail Transport Code
- Road Transport Code
- Maritime Code
- Freight Forwarding Law

The Consultant published a model law on transport, a model road and model rail code in March 1997 following 9 months of development after the concepts were outlined at the Almaty Regional Conference. The Consultant would like to recognise the substantial contribution made by Professor

Tuligaliev to the development of the Law on Transport and Rail Code. These models then became the subject of modification to suit the individual circumstances of the Republics. The Consultant worked closely with counterparts during an accelerated programme of regional visits in the spring and summer of 1997 to answer questions on the models and advise on changes proposed by counterparts. An effective methodology was devised whereby counterparts received the models on diskette in the Russian language and were able to develop them themselves in consultation with the Consultant.

Following the successful work on a Maritime Code for Georgia it was decided to publish this work for the guidance of experts in the remaining three maritime states in the last phase of the project.

Given the importance that a modern system of freight forwarding will have on the development of international transport links in the region, it was decided to produce a Model Law on Freight Forwarding and this too was published in the last phase of the project. A sound forwarding sector will be indispensable for the development of multimodal transport and the enhancement of the position of the multimodal transport operator. The model law deals with the regulation of freight forwarders and the responsibilities of forwarders and multimodal transport operators towards their customers.

In some cases the Russian text of models had to be translated into the National Language before presentation to the Legislature. It was not possible to verify such texts nor was it possible, within available resources, to verify all the Russian language texts which were developed.

In some cases counterparts wished to incorporate provisions on passenger transport into the codes. The EU having made it clear that it would not fund such work in the present project, the quality of the provisions on passenger matters remained largely unknown as the work took place only in Russian and there was no available budget for verification. The Consultant nevertheless gave peripheral assistance in this area, particularly on the issues of carriers' liability and licensing.

In addition to concentration on the main tasks set out in the TOR the Consultant tried to keep under scrutiny developments in related areas, such as the new Civil Codes of the Republics. In discussions with counterparts in each of the Republics, the Consultant continually emphasised the importance of allowing transport to benefit from exceptions to the normal provisions of the Civil Codes, and in particular to be allowed freedom to operate regimes of limited liability in freight transport. It is not apparent that the Consultant's advice has been followed and further revisions of the draft or newly introduced Civil Codes will probably be necessary within a short timescale.

The texts of all the model laws developed by the project are to be found in Appendix 2.

(b) Country by country status report

Armenia

There was a promising start in Armenia as a Ministry of Transport had been created and the institutional structure therefore appeared less fragmented than in some other states. The models were particularly strongly welcomed and the Consultant was informed that these would be adopted virtually in their totality.

The Law on Transport has now reached the National Assembly but parliamentary time is at a premium and no date has been set for its passage through Parliament. Furthermore it was indicated to the Consultant that it would be advantageous to appoint additional local Consultants to ease the passage of the law but this would only be possible in the context of a new project.

The Rail Code is still in the Ministry of Justice and has then to be passed by the Government to the National Assembly, which already had the text on diskette and where the same comments apply concerning the availability of time and the perceived need for additional local Consultants to be involved.

The Road Code is also still in the Ministry of Justice and the same comments apply. However a law on licensing in road transport has been adopted based on the model as to 70-80% according to counterparts.

At the project conclusion meeting held on 30th September it emerged that there had not yet been effective co-ordination between those working on transport law reform and those working on the proposed new Civil Code but a bridge was established through the representative of the Ministry of Justice and the Consultant explained how important it was for the new Civil Code to allow for the special requirements of transport contracts.

A draft forwarding law is under development and is currently in the Ministry of Justice. The Consultant urged counterparts to consider including features from the newly developed project model law on forwarding.

The overall conclusion of the Consultant concerning the state of development of new transport laws in Armenia is that there is no guarantee that international or European standards will prevail because no local specialists have been encountered who have both a clear understanding of such

standards and the political influence to ensure their adoption. There remains a favourable orientation on the part of the MOT but this will not be enough to see the project models translated into practice. There needs to be a much greater degree of co-ordination between the different institutions charged with legal reform. There needs to be a clear direction from the top that standards appropriate to a market economy will be introduced even if these require institutional change and training.

Azerbaijan

There was a difficult and slow start owing to the fragmented institutional structure and the model road and rail codes and law on transport went out to lengthy consultation with a large number of potentially affected ministries and departments. The project team was instrumental in gaining local acceptance for the desirability of the creation of a Ministry of Transport. If this is approved by the Presidential Apparatus it will ease the development notably of a new Maritime Code.

By the end of the project Azerbaijan was one of the countries which appeared to have the best prospects of completing the process of transport law reform in the direction advocated by the Consultant. This is because there seemed to be an appreciation at the top that a changing economy requires appropriate legal structures and there exist in Azerbaijan, perhaps because of its maritime tradition, government specialists at a high level who have an understanding of the issues raised by transport legislation based on international standards.

The Law on Transport has now been passed to the Presidential Apparatus and should be implemented by the end of 1997.

The Road Code is in the Cabinet of Ministers for approval but some of the principles set out in the model have already been incorporated in a law on licensing.

The Rail Code is still under discussion and it is not intended to finalise it in advance of the major restructuring project due to commence in 1998. As Azerbaijan is a member of the International Union of Railways, UIC, and supports the use of COTIF/CIM for the transcaucasus, the main principles in the model Rail Code should be incorporated in the final draft.

The Maritime Code is stalled because there is no institution to take it forward. The creation of a marine department to be based in the Cabinet of Ministers as an interim solution should facilitate further discussion of the comments made by the project on the draft Azeri Maritime Code and the work developed in Georgia should offer further guidance.

The overall conclusion of the Consultant concerning the state of development of new transport laws in Azerbaijan is that the climate is now favourable for implementation of international standards. The project conclusion meeting held on the 23rd September was the highest level achieved in the whole region with senior representatives from the President's Apparatus and Cabinet of Ministers attending as well as representatives from all transport sectors, creating further momentum for future co-ordination. However the Consultant believes that follow up work will be required to ensure that best advantage is taken of the present situation and this particularly applies in the development of maritime legislation.

Georgia

A good start was made in Georgia and early on in the project a Ministry of Transport was created which greatly assisted co-ordination of the project activities. There is an open climate for debate in Georgia and a general enthusiasm for adoption of specifically European standards. This has not, however, been translated into action because the reality of European standards is still very hard to grasp and accept and, with the exception of the maritime sector, there seems to be an absence of local legal specialists capable of seeing through new ideas.

One of the most positive developments in this part of the project was the acceptance by Parliament of the new Maritime Code drafted with assistance from the project. Particular mention should be made of Captain Imnaishvili without whose expertise and spirited determination it is unlikely that such rapid progress could have been made.

The Law on Transport is now with the Council of Ministers and has then to go through the Presidential Apparatus and the Parliament.

The Rail Code is in the Council of Ministers and the railway department has accepted the model provisions as the main framework for the new code, but with the conservative options close to the old Soviet provisions with regard to liability and claims, rather than those preferred by the Consultant. The draft Code should reach the Parliament by the end of 1997

The Road Code has been abandoned because it was felt expedient to change the existing Law on Road Transport before the 25th November 1997 deadline for old laws to be put in conformity with the Constitution.

The project conclusion meeting held on 26th September was illustrative of the difficulty of co-ordinating legal reform activities in Georgia as with the exception of the Ministry of Economy, agencies other than those from the Ministry of Transport were not represented. The project contact

in the Presidential Apparatus was unavailable to meet the Consultant throughout the last country visit by the ITF and it seems that there is at present little high level involvement in the process of transport law reform.

The overall conclusion of the Consultant concerning development of new transport laws in Georgia is that the creation of a Ministry of Transport has not been sufficient to guarantee success. With the exception of the maritime sector, there seem to be insufficient specialists in land transport law able to take the reform process forward against the inevitable trend of inertia back to Soviet legislation. However given the general enthusiasm for continuing debate, it may be expected that there will be piecemeal improvements which will gradually become systematic.

Kazakhstan

As a pilot project had run in Kazakhstan in 1995 under the same Consultant the project opened smoothly and Kazakhstan was also home to the regional sub-unit whose specialists worked on the early drafts of the model laws. The existence of a Ministry of Transport also helped.

As the project developed it became clear that these factors alone were not sufficient to guarantee adoption of the project recommendations. Progress was further slowed when the decision to move the MOT to Akmola was taken as a number of changes of personnel occurred at all levels. Another impediment has been the diversion of energy into repeal of all former soviet laws after a decree ordered this work to be done during 1997. In the field of road transport alone some 500 rules, regulations, decrees etc. had to be analysed and dealt with by counterparts.

There is a chronic lack of Parliamentary time in Kazakhstan which has delayed many other laws as well as the transport laws on which the project worked. Further revisions of the Civil Code need to be made before transport laws are placed before Parliament. It is hoped the new Civil Code will be approved by 10th December 1997. Thereafter a new Parliamentary Committee will take responsibility for transport law drafting, with input from the Ministry of Justice as well as from the MOT.

There is already a Law on Transport and this will be adjusted in due course using the project model Law on Transport.

The top priority is railway law where it is still intended to use substantial parts of the project model Rail Code but retaining the more traditional options from the model for claims handling procedures. The parliamentary process might start in September or October 1998.

The project model for a Road Transport Code is also still accepted in principle but is undergoing further development. No target date is at present available for a draft road transport law to be considered by Parliament.

After being stalled for many months there is a new momentum to develop a draft Maritime Code as there is an intention to create a joint venture Russo-Kazakh merchant fleet.

The project model on freight forwarding was welcomed as extremely timely.

The overall conclusion of the Consultant concerning the state of development of new transport laws in Kazakhstan is that there is no guarantee that the project recommendations will be fully implemented as the parliamentary processes will only commence at the earliest towards the end of 1998. The team of counterparts which was most ably advised by Mr Kairat Karibjanov in the MOT for over 2 years is now partly dispersed. The early successes in Kazakhstan might have been consolidated had Mr Karibjanov been able to keep in being a well-motivated legal department but he has been called to different duties himself and there have been other losses from the legal department. With the added disruption of the move to Akmola it is difficult to see how any effective follow-up to the project could be given on national legal questions in the short term.

Kyrgyzstan

A good start was made in Kyrgyzstan due to the existence of a Ministry of Transport, the active support of the Presidential Apparatus (our NTF chairman being based there) and of the Tacis Co-ordinating unit (particular thanks being due to Ludmilla Zatsepina).

In spite of the many practical problems facing the Republic the Consultant found throughout the life of the project a determination by counterparts to attempt to co-ordinate reform work effectively. There was continuity of counterparts, an important factor in making progress. This is important not just in dealings between counterparts and Consultant but also in sustaining inter-ministerial work by counterparts themselves.

The Law on Transport is under final development and will go forward soon to Parliament.

The Law on Rail Transport is already in Parliament. It takes account of the project recommendations (both the model law and other European material provided for counterparts) and also of the most recent legislation from the Russian Federation.

The existing 1994 Law on Road Transport is to be substantially amended using the concepts from the model Road Transport Code.

There was considerable interest in the model forwarding law recently issued by the Consultant as this is an area in urgent need of regulation.

The overall conclusion of the Consultant concerning the state of development of new transport laws in Kyrgyzstan is that there is no guarantee that European standards will prevail as the country must take account of developments to the north in Russia and Kazakhstan. Given the high level interest taken in development of new transport laws and the good internal co-ordination some follow-up work would seem justified as there are few legal specialists, apart from within the railways, able to implement the proposed reforms.

Tajikistan

In spite of the major internal difficulties facing the country the Tajik NTF worked in a sustained way to try to achieve implementation of the project recommendations, having made very pertinent comments during the development of the models. The legal specialist of the railways, Mrs Alexandrovna, had particular abilities as a transport lawyer which should continue to prove of great value to the country.

The Law on Transport closely following the project model was approved by the Cabinet of Ministers in September 1997 and is currently in the Majlis Committee for review and presentation to the 12th December session of Parliament.

A package of laws based on the project models on road and rail transport has been developed by the MOT and the legal department of the Cabinet of Ministers and were to be discussed at the end of November with a view to commencing the parliamentary process early in 1998.

The project model on freight forwarding would be very useful in shaping proposed legislation in this area.

The overall conclusion of the Consultant concerning the state of development of new transport laws in Tajikistan is that good progress has been made under very difficult conditions and in this particular case the new legal structures may be put in place in advance of a renewal of economic activity. The existing economic structures however remain very Soviet in form and there will be a need for institutional reform to accompany any changes in the laws.

Turkmenistan

It is difficult to gauge the present status of legal reform in Turkmenistan. The project devoted a disproportionate amount of in-country time to Turkmenistan during the first half of 1997 at the special request of the authorities and seemed to be having a positive impact. It is, however not certain that the authorities actually wish to adopt European type standards in their national legislation at present and a considerable degree of institutional change would no doubt be required before such standards could be implemented. The country is faced with a number of competing external influences and it is very hard for counterparts to make informed choices.

It was not thought necessary to proceed with a Law on Transport as matters will be dealt with in the Civil Code.

The Rail Code reached the Majlis in June 1997 where it is being considered.

The Road Code model was felt to be too advanced for present Turkmen conditions as there are few private carriers.

Work on a Maritime Code is being impeded by the unresolved issue of the status of the Caspian Sea.

The overall conclusion of the Consultant concerning the development of new transport laws in Turkmenistan is that the pace of change will depend on many outside factors beyond the control of Consultants and their direct counterparts. There are however, in the person of Mr Grishin from the Majlis and Mr Pavlichenko from the Customs Department, two extremely capable lawyers who have a sound grasp of all the issues and the capability to take forward reform work to the implementation stage if directed to do so. In this respect the conclusions concerning Turkmenistan must be seen as positive.

Uzbekistan

Uzbekistan continues to be institutionally very hierarchical and order-driven but the very characteristics which made it a difficult country to work in, both practically and intellectually, can have a positive side when it comes to implementation once ideas are accepted. The work of the project was made more difficult by the absence of a Ministry of Transport, but as can be seen from other country reports, such a ministry does not guarantee adoption of new standards. Once the project had been understood at government level, orders were given most effectively for comments to be prepared on all the project proposals by local counterparts. The comprehensive character of

these exceeded the replies received from other Republics. It was particularly fruitful that the Consultant was able to give a direct written and verbal appreciation of the proposed new road and rail legislation for Uzbekistan to the Majlis and the Transport and Communications Department of the Cabinet of Ministers.

Under the influence of the project and based on empirical experience the President's Apparatus was giving serious consideration to creating a single state organ to regulate the entire transport sector at a sufficiently influential level in government.

It was originally intended to proceed with a Law on Transport but a decision was then taken to implement the new laws for each mode first. Later a comprehensive general law drawing on the project model may be passed.

The draft Law on Road Transport using components from the project model is in the Cabinet of Ministers and should go to Parliament before the end of 1997.

The draft Law on Rail Transport, also using the project model has been held back as it needs to be checked for compatibility with the proposed management restructuring of Uzbek railways but is expected to go forward to Parliament in the first half of 1998.

The transport committee of the Majlis and Cabinet of Ministers welcomed the project proposals on freight forwarding.

The overall conclusion of the Consultant concerning the state of development of new transport laws in Uzbekistan is that progress on a pragmatic basis is likely to be maintained following the close of the project. The drive exists internally to ensure implementation. There will be a continuing need to make institutional reforms as the present mixture of legislating/trading/supervisory "ministries" appears very strange to a European eye. In this context the apparent desire to create an overall supervisory state organ for transport should be strongly encouraged. It should be able to assume the responsibilities currently exercised by some of the "ministries" which may naturally then evolve into pure trading entities suitable for privatisation.

(c) Dangerous goods legislation

Within the framework of the project a study concerning the transport of dangerous goods by rail, road and sea was conducted in the Caucasus. The report resulting from the study can be found in Appendix 6.

As in other areas of law, the current legal and regulatory framework for the transport of dangerous goods in the Caucasus proved not to be comprehensive in scope and it was not in line with international standards. If dangerous goods laws follow the same pattern as found in other areas, the Consultant believes that the experience in the Caucasus is representative of the situation in the whole region and probably relevant to the transport of other categories of goods requiring a special legal framework, such as perishable goods.

Knowledge by counterparts of international safety regulations was very limited. National regulations were scattered and no state organisation seemed to have a good overview of the situation. Supervision and enforcement of standards seemed insufficient.

The Consultant recommends accession to relevant international treaties and agreements such as the ADR agreement, the Convention on Safety of Life at Sea (SOLAS) and the International Maritime Dangerous Goods Code (IMDG). For the implementation and enforcement of international standards, a “Law on the transport of Dangerous Goods” has to be developed in each TRACECA state, reflecting the priorities of National Policies on the transport of dangerous goods. The gradual introduction of these standards should preferably start in the field of transport of fluid and gas fuels and derived products.

Although an active chemical industry in the region is at present limited, the imminent increase in oil and gas production and related industries will render visible the absence of legal framework for safety and environmental protection.

The establishment and training of independent control and enforcement bodies, backed by a firm legal framework should precede the growth of transport of dangerous goods.

(d) Co-ordination with other projects

The Consultant kept in close touch with other relevant TRACECA projects during the life of the project, furnishing them with copies of the model laws and discussing points of common interest. The Consultant widened the scope of attempted co-ordination to include the World Bank, EBRD, UNDP and US AID. Local counterparts were most interested to learn about parallel reform in the Russian Federation and the Consultant kept in regular contact with the World Bank project in Moscow having similar terms of reference to the present project. Unfortunately the contract of the Consultant working on that project did not permit disclosure of written information and the project itself was suspended in 1996 because of fundamental differences of opinion among counterparts

and is still suspended. It remains the view of the Consultant that a number of TRACECA states will closely monitor legal reform in Russia and adopt laws not incompatible with those of Russia. It is thus perhaps regrettable that the process of transport law reform has not so far been able to take place concurrently across the whole former Soviet Union.

(e) Sustainability

As is apparent from the country status reports above, the process of implementation of new legislation is not complete in all the States. This was inevitable given the impossibility of guaranteeing sufficient time availability by the Parliaments or other legislative bodies concerned during the project life.

Furthermore the Consultant is concerned that the principles set out in the model laws seem to be being diluted in their application within some states to a point where it is difficult to claim that "western" standards are being effectively introduced. Various reasons have been given for the watering down of concepts. They are "too advanced", they have to be "adapted to local conditions", "we cannot just use a model" etc. When examined against the actual situations the Consultant considers that these comments are essentially justifications to revert to the more comfortable, familiar structures of the past, which may still be comfortable for counterparts but are nonetheless not adequate for the type of future that the states concerned wish to build.

The Consultant's models already represented a significant compromise as they were worked out with counterparts to a considerable degree. The models were designed as complete laws apart from any special opening or closing paragraphs necessary in a particular state. The "adjustment" they required was in relation to ensuring no conflict with other national laws such as the Civil Code or law on administrative procedures and not in relation to the substantive provisions.

The TRACECA states are in slow transition to a market economy irrespective of what appears in laws, which in any case are at present not always effectively enforced. The laws will eventually tend to follow the market or be totally disregarded, so the process of reform may be regarded as irreversible so long as the economic changes continue.

Nonetheless the Consultant would prefer to see orderly change taking place within a suitable legal structure. In the Consultant's view this is unlikely to happen in the majority of states in which the project worked unless a firm direction is given from the highest level in government. Further conditional technical assistance will also need to be given over a prolonged period of upwards of 3 years to ensure that primary legislation (Codes and Laws) are effectively implemented through

appropriate regulations (normative acts). This will entail not just making the regulations but also supervising the creation or reform of the ministerial departments and institutions which will apply and enforce the legislation.

Form 3.2: PROJECT COMPLETION REPORT

Project title : TRACECA: Legal & Regulatory Framework Planning period :	Project number : TELREG 9306 Prepared on : 6 December 1997	Countries : Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan EC Consultant : Scott Wilson Kirkpatrick and N.E.A.	Page : 34				
Project objectives : To assist in the utilisation and harmonisation of existing transport systems in the TRACECA region by helping to establish a common legal framework for transport							
REPORTING PERIOD	MAIN ACTIVITIES UNDERTAKEN	EC CONSULTANT	INPUTS UTILISED				
April 1996 - June 1996 December 1995 - March 1996 July 1996 - December 1996 January 1997 - June 1997 July 1997 - December 1997	<ol style="list-style-type: none"> 1. Appraisal visits and establishing National Task Forces 2. Legislative needs analysis 3. Prepare legal models and guidelines for a common legal framework 4. Management seminars 5. Develop a common legal framework for transport laws 6. Harmonisation of trade facilitation issues 7. Harmonisation of transport operator legislation 8. Institutional strengthening Final Report	16.0 16.5 30.5 27.8 22.0 11.0 7.67 11.0 2.0	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">MATERIALS & EQUIPMENT</th> <th style="text-align: center;">OTHER</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> Office equipment: fax, phone, e-mail computer, copier Training Materials: overhead projector, flip chart, marker pens, manuals </td> <td style="vertical-align: top;"> 160 Flights 21 car journeys </td> </tr> </tbody> </table>	MATERIALS & EQUIPMENT	OTHER	Office equipment: fax, phone, e-mail computer, copier Training Materials: overhead projector, flip chart, marker pens, manuals	160 Flights 21 car journeys
MATERIALS & EQUIPMENT	OTHER						
Office equipment: fax, phone, e-mail computer, copier Training Materials: overhead projector, flip chart, marker pens, manuals	160 Flights 21 car journeys						
TOTAL		144.47	160 flights 21 car journeys				

FORM 3.3: OUTPUT PERFORMANCE SUMMARY

Project title: TRACECA: Legal & Regulatory Framework	Project number: TELREG 9306	Countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan	Page: 35
Planning Period:		EC Consultant: Scott Wilson Kirkpatrick and N.E.A.	
Prepared on: 6 December 1997			
Output results	Deviation original plan + or -	Reason for deviation	Comment on constraints & assumptions
1. Appraisal visits and establishing National Task Forces	0%		
2. Legislative needs analysis	0%		
3. Prepare legal models and guidelines for a common legal framework	0%		
4. Management seminars	+150%		
5. Develop a common legal framework for transport laws	-20%	Success of the workshops has lead to there being a total of 5 workshops being held in the region Commitment to common legal framework not consistent within the 8 Republics	Models prepared and being used by Republics.
6. Harmonisation of trade facilitation issues	+10%	Representatives from Trade Facilitation Project joined team for workshops	
7. Harmonisation of transport operator legislation	0%		
8. Institutional strengthening	+20%	Visit by Chairman of FIATA	Creation of Freight Forwarding Associations

5. LESSONS LEARNT AND RECOMMENDATIONS

(a) Specific recommendations

Set out below are the Consultant's recommendations in relation to the three main aspects of the project described in Section 4 above.

(i) Regional access to the transport market

- The draft modified Sarakhs transit agreements jointly devised by the project team, and in particular Arthur Gleijm, and counterparts comprising a framework agreement, and technical annexes on road, rail and maritime transport should be signed at Presidential level.
- It may assist the process of acceptance and signature if a signing ceremony is preceded by diplomatic activity at Commissioner level by the European Union. The activity of Consultants is not enough in itself.
- It will not be understood by counterparts why parallel transit agreements additional to Sarakhs are being proposed by other international agencies, and parallel agreements cannot be effectively implemented unless they are entirely complementary and not contradictory to Sarakhs. It is therefore essential that the EU should ensure that other initiatives are either integrated into the revised Sarakhs proposals or are discontinued or redirected to specific areas not covered by the Sarakhs agreements.
- The revised Sarakhs agreements should be implemented by a Joint Commission. Proposals for terms of reference to establish and operate such a Commission are set out in Section 6.
- The creation of a Joint Commission should be conditional on the signing of the revised agreement by sufficient states to give it realistic chances of success.
- The Joint Commission would require financial and technical support for a number of years. The establishment and development of the Commission would be a project deserving the strong support of the Tacis and TRACECA programmes of the European Union.
- It should be an early task of the proposed Commission to devise an additional technical annexe to the framework agreement regulating relations between participating states concerning Customs matters.
- The Customs annex should include a list of the revised Customs and trade documents devised by the TRACECA Trade Facilitation Project TNREG 9308, which were agreed at the conclusion of that project and should set out a date from which those documents would be introduced in substitution for existing documents throughout the TRACECA region.
- The Customs annex should encourage, or require the use of, UN aligned commercial documentation, such as CMR Consignment Notes, which could be sold by the relevant Trade Associations.
- Another early task of the Joint Commission could be to develop and introduce a community transit type system for traffic movements which only cross borders within

the region. Such a system would be cheaper and simpler to operate than TIR and was strongly recommended by the TRACECA Trade Facilitation project.

- The Joint Commission could also perform a role in promotion and implementation at a regional level of the UN ASYCUDA system, the adoption of which was strongly recommended by the TRACECA Trade Facilitation project.
- The Joint Commission should be developed as a regional consultative body fulfilling at a regional level the functions of the National Facilitation Commissions which the project recommends should be developed at a National level as explained in Section 6.
- The Consultant is not convinced that it will be useful for the TRACECA states to enter into geographically wide transit agreements under which large neighbouring states would immediately have unlimited access rights for their carriers. The Consultant believes that the transport industries of the TRACECA states are still very vulnerable to predation by larger neighbours and that to open up their markets beyond the borders of TRACECA could at this stage be ill-advised. However, a wide agreement which recognised the special circumstances of the TRACECA states might merit their participation in due course. The terms of the wider agreement might acknowledge the existence of the proposed TRACECA Joint Commission as a negotiating body and intra and extra-TRACECA trade might benefit from differential transit regimes.
- Central governments should immediately catalogue the existing levies of all types being made by different state agencies against transit vehicles as referred to in Section 4 of the report. This would establish the scale of the problem facing road carriers and allow concrete measures to be taken, by means of one legal instrument, to implement the improvements which will be binding on individual states under the multilateral agreements. It is otherwise likely that the present confused situation will continue even if agreements are signed.

(ii) International standards in Trade and Transport

- Based on the experience of Kazakhstan and Georgia, the process of ratification of international conventions and agreements will be more effectively performed in all the TRACECA states if one government agency, having direct knowledge of the convention provisions, takes overall responsibility for the process. The creation of a legal department and an international department within such a state organ (irrespective of whether it is a ministry or department of the Cabinet of Ministers) is also recommended. This state transport organ nonetheless needs to maintain a close working relationship with the Ministry of Foreign Affairs, which is normally responsible for the actual deposit of instruments of ratification or accession with the treaty organisation abroad.
- Further technical assistance will be required to devise programmes for implementing international conventions and agreements at a national level. These programmes should comprise:
 - development of regulations (normative acts) to give effect to the provisions of international conventions
 - establishment of governmental and non-governmental institutions to implement and enforce the regulations on such issues as certification
 - establishment of training centres to familiarise those transport personnel, managers, drivers, forwarders etc. involved with the regulations on a day-to-day basis, with their duties

- establishment of effective systems for recovering the costs incurred by states in enforcing provisions in conventions from the transport sector itself through fees for issue of certificates etc.
 - establishment of permanent links between the participating states and the treaty organisations so that states can be effectively consulted over proposed changes to the international conventions and agreements. This role could be performed very effectively by the proposed Joint Commission.
- It is desirable that the process of ratification of the conventions and agreements on the Consultant's recommended list, to be found in Section 4 above, should be carried out in parallel by the TRACECA states. In one or two cases this is imperative. For example with the COTIF/CIM convention, which presently applies to defined routes, it could not operate successfully in the Caucasus unless at least Georgia and Azerbaijan bring it into operation simultaneously, or in Central Asia unless at least Turkmenistan and Uzbekistan implement it simultaneously. The proposed Joint Commission could play a constructive role in this process.
- The implementation of some conventions will require substantial capital expenditure by the participating states. A case in point is the Vienna Convention on Road Signs and Signals of 1968, which most of the TRACECA states have already ratified. This requires that roads be signed to a particular standard with signs of a defined type. It is clear from the road journeys undertaken by members of the project team throughout the region that none of the states are anywhere near achieving full compliance with the Convention. The Convention provides that states may take a transitional period of up to 15 years to ensure full compliance. The Consultant would recommend that upgrading of road signs should always figure in the investment programmes devised for particular stretches of road by the international lending institutions such as the EBRD and World Bank and that such programmes might be extended to cover signs on roads which are not themselves to be the subject of major upgrading.
- Arising from the study into financial guarantees, to be found in Appendix 5, it is recommended that further technical assistance be given to the banking and insurance sectors in the TRACECA states to help them to devise reliable and cost effective schemes for offering financial guarantees to the transport sector. Without such guarantees it will be difficult or impossible for road carriers to comply with the requirement of the TIR system or to finance the purchase of vehicles able to operate in western markets.
- Arising from the study into dangerous goods, to be found in Appendix 6, it is recommended that the Convention on Safety of Life at Sea (SOLAS) and International Maritime Dangerous Goods Code (IMDG) should be added to the list of agreements and Conventions which the maritime states of TRACECA should be encouraged to ratify or adopt. Also arising from this study it is recommended that states should implement the RID dangerous goods annexe to the COTIF/CIM Convention if and when they adopt that convention.
- Arising from the creation of international carrier and forwarder Trade Associations in the region it is recommended that these should be given technical assistance to foster their further development. They will particularly need help to establish:
 - effective consultative links with government organs
 - effective self-financing strategies involving provision of training services, business services and publications to members

- effective management of their obligations in relation to international systems such as TIR.
- With regard to carrier liabilities abroad it is recommended that the "green card" scheme of civil liability insurance against motor accident claims should be extended to the Caucasus as soon as reasonably practicable, which may be in a 2-5 year time scale. The scheme is not capable of extension beyond the Urals and so is not suitable for use in Central Asia, which might, however, consider developing its own regional scheme based on elements of the "Green Card" and former Soviet Bloc "Blue Card" schemes of motor insurance.

(iii) National organisation of the transport market

- Further conditional technical assistance will need to be given over a prolonged period of upwards of 3 years to ensure that primary legislation (Codes and Laws) is effectively implemented through appropriate regulations (normative acts). This will entail not just making the regulations but also supervising the creation or reform of the ministerial departments and institutions which will apply and enforce the legislation.
- There should be no dilution of the principles contained in the project models as these already represent a compromise between western and local ideas and should be regarded as minimum requirements for transition to a market economy.
- While it is not appropriate for the Consultant to determine whether primary legislation should take the form of Laws or Codes, the Consultant does recommend that primary legislation relating to one mode should be made in one statute if at all possible as was done with the model Rail Code. This will make it easier for lawyers and officials to find the relevant law and will also reduce the scope for conflicting provisions appearing in different laws as is sometimes the case at the moment.
- The treatment of transport and forwarding issues in existing and draft Civil Codes in the region does not seem satisfactory to the Consultant. Some of the Civil Codes contain provisions which would lead to different treatment for a particular mode of transport according to whether National or International transport was involved in a way which would prove confusing. There are also some Civil Codes which still appear to create barriers to the introduction of limited liability regimes for freight transport as recommended by the Consultant. The Civil Codes seem to be under a process of continual revision and the Consultant believes that it will be necessary to follow up the present project with targeted assistance to ensure that the final versions of individual Civil Codes are compatible with the specialist legal drafting taking place for transport at the level of Codes, Laws and regulations.
- It is virtually impossible to establish the full nature and extent of existing legislation in the region as so many normative acts have been made and amended by ministries without proper publication or registration. Many of these are also unconstitutional and/or incomprehensible.

The Consultant therefore strongly supports the moves being made in several TRACECA states to control this situation by requiring that all legislation be registered and approved by the Ministry of Justice, where adequately trained constitutional lawyers are employed. It would be helpful if those units in the Ministry of Justice could include a legal specialist competent in transport law. Supervision of the drafting of transport law could also figure on

the agenda of the National Facilitation Commissions which the Consultant recommends in Section 6 below.

While there may be a temporary sense of frustration that even more delays are being imposed on the reform process registration and supervision is the only long term solution which will reassure foreign investors who are presently worried about rule of law issues in the region. The process should be extended throughout the region.

- With regard to carriers' and forwarders' liability much needs to be done to develop provision of reliable insurance arrangements. This is an area where the commercial sector should be able to undertake most of the activity but the Consultant recommends that some training programmes should be offered so that private sector brokers and insurers can rapidly develop their technical expertise.
- With regard to dangerous goods legislation it is clear that substantial future technical assistance will be required to establish effective rules. The Consultant recommends that:
 - one state organ, such as a Ministry of Transport should be made responsible for the development of policies and legislation
 - a "Law on the Transport of Dangerous Goods" should be developed in each state adequately linking implementation of International rules such as ADR and IMDG and National rules for the transport of dangerous goods with adequate enforcement through guaranteed independent enforcement bodies
 - there should be phased implementation of international standards starting with the transport of fluid and gas fuels and derived products
 - there should be new consultative structures between the responsible state organ, control and enforcement bodies and businesses involved in the manufacture and transport of dangerous goods
 - a programme of training for personnel involved in policy and law making and enforcement should be established in each state.

(b) Lessons learnt and general recommendations

As may be seen from the project synopsis and the main body of the report in Section 4, this was a project which was set enormous ambitions across a wide range of legislative and institutional issues affecting 3 modes of transport and freight forwarding in 8 countries. The project was required to establish, equip and staff 8 offices and to maintain effective communication between them all and Europe. This presented major logistical problems which were all overcome by trial and error in a relatively short period of time, in some cases leaving behind working offices and individuals trained in computer and office management skills which will benefit future TRACECA projects.

National Task Forces were established within the counterpart institutions, which were Ministries of Transport or equivalent level organisations, and technical proposals were successfully developed with them as detailed in Section 4 above thanks to the excellent relations which were developed between counterparts and the project team during country visits and in the course of the two Regional Conferences which were held in Almaty and Tbilisi in 1996.

The project succeeded in massively improving awareness of western transport legislation among a wide and representative range of counterparts. It then worked with local experts, to the best of their abilities and in a sustained way, to develop a model framework for new transport laws and transit agreements, to provide the background material and catalyst for creation of carrier and forwarder Associations and support in the process of ratifying international conventions. This was as far as the project team could go. Finally it is always the responsibility of the states concerned to carry out implementation. As can be seen from Section 4 the project outcomes vary from state to state but the overall outcome comfortably exceeds what the Consultant realistically expected at the outset.

Specific topic-based recommendations have already been set out in Section 5(a) above. This was a learning experience for both counterparts and the project team and the Consultant would like to set out below some of the most important lessons learnt, which are of general significance for future institutional development projects.

(i) Appropriate level needed for implementation

Based on experience in Western Europe it was assumed at the outset of the project, both by the European Union and by the Consultant, that Ministries of Transport or the nearest equivalent structure were the appropriate Recipient. Counterparts were selected accordingly and they did work very constructively with the Consultant during the early part of the project. The Consultant, however, became aware that ministries in all the TRACECA states are essentially executing agencies and do not have the policy making powers associated with such structures in Europe. In the TRACECA states, decision makers are generally to be found within the Cabinet of Ministers (an institution which is not found in Europe as a separate entity) and the President's Apparatus. The degree of success achieved by the project initiatives during the later phases of the project depended directly on the extent to which they found support at this higher level in government. It was easier to reach these levels in the smaller states than in those maintaining very large administrations.

The Consultant accepts that there are many practical projects, such as road and bridge building, where the appropriate counterpart would be an executing agency such as a ministry. However, the Consultant strongly recommends that projects which require conceptual change, particularly changes to institutional structures, should in future be established at least within an appropriate department of the Cabinet of Ministers, which has better means of promoting project objectives within the entire government apparatus. These projects should also have possibilities of direct access to the Presidential Apparatus whenever endorsement is needed for any important proposed initiative and Consultants should brief the Presidential Apparatus in person on a regular basis.

Without such support for institutional projects within the recipient states full benefit will not be obtained from the presence of foreign consultants.

The Consultant is aware of the dangers of overloading the higher levels of government with too many consultants. It should be the joint task of the prospective donor or lender agency and the Recipient Government to identify which projects are of such strategic importance that they should be managed by the decision making institutions of state such as the Cabinet of Ministers and Presidential Apparatus. There are at present too many parallel projects running in different institutions financed by different agencies. A proper evaluation process managed by the highest levels in government, as presently done in Kyrgyzstan, would allow much better integration of such parallel projects to serve a clear objective. The amount of work required to achieve overall development objectives is vast and the resources allocated to individual projects is usually inadequate. A proper harnessing of international efforts by the recipients could dramatically improve the detailed implementation work which could be achieved.

(ii) The role of lawyers and need for training programmes

There is an urgent need to train lawyers in western transport law and insurance practice. In the maritime states of the Caucasus there are competent maritime lawyers who also have a general knowledge of transport law and could play a role in any regional training initiative. There are also in the region a few air transport lawyers who have general knowledge and at least one specialist was encountered who had good knowledge of trade and Customs law. The seriousness of the situation may be judged from the fact that throughout the region, and over 2 years, the project team encountered fewer than a dozen lawyers in official positions who were able to respond constructively in the process of consultation set up by the Consultant from an adequate knowledge base. Even fewer had effective drafting skills. Such lawyers are only exceptionally to be found below the level of the President's Apparatus or Cabinet of Ministers.

The Consultant recommends that steps should be taken in TRACECA states to increase the number of trained transport lawyers within the government service. While familiarisation courses such as those run by the Consultant during the project are a first step in this process, they need to be followed up by long term practical training. This might be achieved by a combination of modular courses run in Europe and long term placements of able young lawyers for 3-12 months with a variety of European legal agencies such as private law firms, European Union, government and local government legal departments and legal departments of major transport and forwarding groups and transport Trade Associations. Such training would be very costly but without it is likely to take 5-10 years for individuals to emerge with the right combination of practical and intellectual skills.

Great care would be needed in the selection process of prospective trainees who should be firstly able lawyers and secondly proficient in a European language. Future legal projects could assist in the training process by working closely with the emerging group of local transport law experts.

It would be very important to be able to retain such trained lawyers within government service for at least 3-5 years following their training. There seems to be a mistaken view in some circles in the region that it is politically and economically impossible to pay senior ministry officials a salary which would allow a lifestyle akin to that enjoyed even by quite modest individuals in the private sector. This approach will inevitably lead to a massive brain drain of the best talent from the civil service in the medium term. Alternatively officials will be placed under pressures which will make corruption in the public service difficult to avoid. In both cases states will be the loser.

This is a very serious problem, particularly for the recruitment and retention of competent lawyers who are increasingly in demand in the private sector. The Consultant believes it must be tackled now if there is to be success in implementing revised legal frameworks. This question should be addressed at the highest level and any future overall assistance programmes to governments should be made conditional on governments putting in place a civil service adequately rewarded on the basis of merit and endeavour and capable of implementing the urgent institutional reforms which are required. Projects such as this one place additional demands on officials and it is not reasonable to expect them to rise to the challenges presented unless they are adequately motivated.

(iii) Approach to the reform process

In Europe, laws would normally be developed by policy makers with clearly defined objectives. Legal specialists would merely translate those concrete and agreed policies into suitable legal language. However, the Terms of Reference for this project were that the European Union legal specialists would help to introduce European/World standards, of which counterparts were largely unaware, as a basis for new national laws. Counterparts therefore agreed to policies before they had fully evaluated them.

Because of the urgency of making rapid progress with transition, the project had to attempt to act as both a policy making and law making project. While both counterparts and the European Union are anxious to streamline normal processes of institutional reform it is logical that policy be first agreed before the painstaking activity of legal drafting takes place, because this latter activity can be an expensive and vain exercise if decision makers change their minds with regard to intended policy objectives after legal drafts have been produced. The Consultant does not believe this occurred on

this project, as there was a constant process of testing counterpart understanding and the project produced model and not mandatory provisions.

Nonetheless, it is recommended that commissioning agencies such as the European Union should in future agree a detailed policy framework at the appropriate level (which may in some cases be Presidential) before setting Terms of Reference for legal drafting. Alternatively projects should be divided into 2 phases, for policy development and legal drafting, with the possibility that phase 2 would not be financed if the Donor or Lender and Recipient cannot agree on which policy should be implemented.

(iv) Information sources on legislation

At present legislation in the states is not available from one source and this is a major problem for local and foreign lawyers and their clients as well as for projects such as this one. Some legislation seems to be published by the President's apparatus, some is published by Parliaments, and some by private publishers, while some appears not to be officially published at all e.g. some ministerial normative acts. In order to improve the present situation the Consultant would recommend that:

- A single publisher should be given the task of publishing all legislation without exception. This publisher could be called the National Legislation Office and would be best established as an autonomous unit financed from the state budget. It would have binding authority to require that all legislation be given to it for publication.

All laws in a given year should be given a sequential identifying number e.g. 1/97 for the first law to have been made by Parliament in 1997. All normative acts should also be given a distinctive identifier e.g. NA 786/97 for the seven hundred and eighty sixth normative act made in 1997.

In addition it is recommended that each law or normative act should receive an ISBN international publishing identifying number so that it would be entered into the world system of information identification.

- The National Legislation Office (NLO) could take over the staff of existing state publishers of legislation so that their talents and knowledge would not be lost. It is also possible to envisage the involvement of private capital in the publication process.
- The NLO would sell copies of all laws and would retain copyright in them. It is essential that legislation should be available to the general public at reasonable cost so that they can be properly informed of National Laws. Consequently the Consultant recommends that the price of legislation should not be set above its total production cost. It may be appropriate to maintain an element of cross subsidy so that large documents are proportionately less expensive to buy than small documents and so remain accessible.
- The NLO should publish at least weekly a list of all new legislation it has published, identifying such legislation by a descriptive paragraph, its internal number, its ISBN number, its price and how to order it. The list would be available to all interested persons by yearly

subscription. A department of the NLO should be established on a self-financing basis to process orders for legislation.

- Each ministry should receive a free copy of every piece of legislation which directly or indirectly concerns its work, on request to the NLO.
- Ministries of Transport, or equivalent state organs, should immediately establish a reference library which would collect and catalogue relevant information. Among the most urgent requirements would be to collect copies of all transport legislation which is in force in a state and copies of international transport conventions to which a state is, or may become, a party.
- States should create a Central Law Library to receive all laws, reports of legal decisions, legal textbooks and journals and this should be open to the general public without charge, the cost being met by the state budget.

(v) Administrative problems faced by projects

The project team faced continual personal administrative problems of visa application and renewal, registration requirements, airport formalities etc. in some parts of the region which absorbed time and energy which could have more usefully been spent on the project itself. The recognition by the Authorities of Tacis consultants as government advisers rather than as "businessmen", as has to some extent already been done in two of the Republics already, would simplify life considerably for future projects. Counterparts should make it possible for accredited Consultants to be given visas to last the life of their contracts and to be officially exempted from the burden of bureaucracy concerning arrival, departure, residence etc. which seemed to be increasing steadily in some states during the project.

(vi) Translation

Accuracy of translation is important in all work undertaken by Tacis projects but its importance in relation to legal reform work is primordial as every word in legal documents has a precise meaning which can very easily be distorted beyond recognition by mis-translation. The Consultant constantly tried to achieve the highest possible standard by getting work checked and cross-checked and trying to use the same translator to work on amendments as had worked on the original versions of project material.

The quantity of translation required by this project was vast and had to be contained within the allocated budgets. To a considerable degree, translation capacity determined the speed and extent to which the project team could respond to Counterparts and vice versa.

It was very difficult to find translators who were familiar with legal terminology and even more difficult to find translators who were also familiar with transport concepts and terminology. When

using interpreters it sometimes became obvious that they did not remotely understand the concepts under discussion in their own language and consequently could not effectively render them into French or English. It was more difficult to determine the extent to which concepts were not effectively rendered in written translation.

There is an urgent need to find a method of improving the effective level of communication on projects of this type and importance. With regard to verbal and written communication it would help if at least one bilingual legal specialist were engaged as part of the project team. This project was greatly assisted when it managed to recruit such a specialist, Ketty Makharashvili, in Georgia.

With regard to written translation there is a need for specialist legal translators to be trained and retained within the TRACECA states. The present ad hoc arrangements are sometimes extremely inefficient and can be inefficient and expensive. It is convenient but dangerous for the commissioning agencies, such as the European Union, to delegate this task to every passing consultant. By so doing there is no safeguard of quality and no assurance of career continuity for translators who seek to develop their skills.

The Consultant therefore recommends that the commissioning agencies, in conjunction with the states, should try to establish teams of legal translators in the region. The cost of their services should be defrayed by specific projects who could be required to choose from an approved list. The European Union attaches the greatest importance to the work of lawyer-linguists within its own organisation, even though member states share a broadly similar outlook and officials commonly have developed linguistic skills. It should have no difficulty appreciating how much more important it is to get the formula right when trying to bridge the large cultural and linguistic divide which inevitably exists when its consultants communicate with Counterparts in the region.

(vii) Follow up work

The Consultant was able to follow up recommendations from the Trade Facilitation project when Dave Green, Customs and Documentary expert, accompanied the Team Leader, Mark Booker on visits to the Caucasus and Central Asia during the summer of 1997. These visits came some three to four months after the conclusion of the Trade Facilitation project. They were particularly well received by Counterparts and helped give new impetus to their attempts to implement the project recommendations. It is not realistic to expect that controversial and far reaching recommendations from institutional projects will all be implemented within the lifetime of those projects. Equally once the recommendations have been developed and agreed, it is not necessary for a succession of projects to come in and repeat the same recommendations as can sometimes be observed.

The Consultant believes that focused follow up by Consultants could be very effective over a period of 1-3 years in monitoring and encouraging full implementation, for example by being present and giving advice during discussion of proposed legislation in Parliaments.

Another aspect of the project which the Consultant believes would be worth following up arose out of joint meetings between the Kyrgyz and Tajik delegations arranged by the Consultant. With the additional catalyst of visiting European experts it was possible for the two delegations to make substantial progress in their discussion of bilateral issues and this gives a foretaste of what may be achieved by the establishment of a properly funded regional Joint Commission.

SECTION 6: ESTABLISHING A JOINT COMMISSION

Introduction

The draft multilateral framework agreement, devised by the project team and counterparts to strengthen the Sarakhs agreement, calls for the establishment of a Joint Commission to administer and promote the agreement and its technical annexes. The creation of such a Joint Commission should be conditional on the signing of the agreement by sufficient states to give it realistic chances of success.

While the principal role of the Joint Commission will be to administer the agreement it should also serve as a regional consultative body for trade and transport issues. The opportunity should be taken to create parallel National Facilitation Commissions (referred to below as "National Commissions") in each of the participating states to reinforce the work of the Joint Commission at a local level and to facilitate local consultation.

The Joint Commission will require an administrative secretariat with representation in each participating state at a high level in government. The Joint Commission will comprise the Main Committee and specialised Working Groups for the technical annexes on road, rail, maritime and customs issues.

Functions of the Joint Commission

In accordance with the draft multilateral agreement the Joint Commission will:

- regulate all questions concerning implementation and application of the framework agreement and its technical annexes;
- regulate the conditions of access to the transport market for each mode of transport except air transport with particular emphasis on user charges;
- regulate conditions for carrying out specific categories of traffic such as dangerous goods and perishable goods movement;
- develop a data bank of information on national and international transport legislation and transport policy and management and make this information available to participating states;
- develop effective links with other international organisations such as the UN, ECE, European Union, IRU, FIATA etc.;
- promote the development of multimodal transport infrastructure links and services in the region;
- promote the development of modern freight forwarding and transport insurance services in the region;
- attempt to implement common Customs and documentation procedures in the region;
- attempt to co-ordinate the development of transport policy in the region;
- attempt to develop a common transport policy towards third countries not participating in the agreement;
- attempt to develop a common legislative framework for trade, Customs and transport in the region;
- attempt to co-ordinate the enforcement of laws in the region;

- attempt to co-ordinate the ratification of international trade, Customs and transport conventions and agreements in the region;
- provide a focus for regional consultation between government officials and Trade Association representatives of carriers, forwarders, transport insurers, banks and other relevant representatives

Composition of the Joint Commission

The Joint Commission will draw its authority directly from the Presidents of the participating states but they will not normally be involved in the running of the Commission. The Consultant suggests that the normal composition of National Delegations to the formal meetings of the Joint Commission could be as follows:

Officials

Transport Representative from the President's Apparatus

Transport Representative from the Cabinet of Ministers

Minister of Transport

Deputy Foreign Minister

National Secretary of the National Commission (normally the National Chairman will be one of the officials already mentioned above)

Observers (by invitation of the official delegates or the Chairman of the Join Commission)

Secretaries of relevant Trade Associations

Representatives of international organisations

In addition the Secretary-General of the Joint Commission will attend all meetings which will be chaired in rotation by the head of each National Delegation.

Meetings

The Joint Commission will meet at least once a year, each participating state taking it in turns to act as host for the annual meeting.

The Joint Commission will have to devise rules of procedure for the conduct of meetings. Such rules should also set out the circumstances in which additional meetings could be called between the normal annual meetings if there is a special issue in need of urgent discussion, maybe at the request of 25% or more of the participating states.

The Consultant suggests that the Commission could operate annual meetings on the following basis:

- Opening Plenary Session
- Working Group meetings for:
 - road transport
 - rail transport
 - maritime transport

- Customs affairs
- Closing Plenary Session

Officials from the National Delegations would have an automatic right to attend all meetings. Observers invited by National Delegations should be able to attend Working Group meetings and Plenary meetings unless the Chairman of the meeting, after consulting assembled Official Delegates, objects.

Regional Secretariat

The day to day running of the Joint Commission will need to be delegated to a full time Secretary-General, supported by such other staff as the Joint Commission may from time to time agree to employ.

It is not appropriate for the Consultant to recommend where the Regional Secretariat should be based except that it goes without saying that it must be in a state which publicly and wholeheartedly supports the development of multilateral agreements in principle and in practice. It may be useful to draw inspiration from the way in which the United Nations itself operates with one state being the depository for conventions and agreements, another hosting the regional secretariat, and others hosting specialist institutions concerned with a particular transport mode.

The precise functions of the Secretary-General will be defined by the Joint Commission, but should include:

- preparation of the agenda, conference room facilities, invitations and minutes for the annual meetings and any exceptional meetings;
- collection of views from National Commissions and preparation of discussion papers and commentaries for submission to the Joint Commission, or to other organisations, on behalf of the Joint Commission;
- day to day responsibility for the running of the Joint Commission office.

The Secretary-General of the Joint Commission should be a senior figure, able to command respect at the highest level throughout the region and able to motivate and engender enthusiasm for practical outcomes. The person should previously have worked in a position of responsibility in an international organisation, should preferably have spent time working in a western country, and should be fluent in at least English or French as well as Russian. It will be helpful if the person is familiar with the national and international law making process without necessarily having any qualification as a lawyer. The salary fixed for this position will need to be high enough to guarantee that it will be attractive to exceptional candidates on a potentially long term basis. This full time position will have to be the only occupation of the successful applicant as it will be constantly demanding, involving travel inside and outside the region.

The Secretary-General will be a key appointment and the requirement for other staff and the exact nature of equipment and office space needed by the secretariat should be discussed and agreed with this person once appointed.

Finance

It will be necessary to establish a quasi-business plan for the first two years of operation of the Commission. It is quite clear from the discussions held by the Consultant throughout the region that while most of the states which participated in the project would welcome the creation of a Joint Commission as outlined above, they are not presently in a position to finance it. The Consultant strongly urges the European Union to consider sponsoring the establishment of the Joint Commission and the greater part of its running costs over 2 years, in the context of the continuing TRACECA programme.

The participants should, however, from the beginning seek ways to make the Joint Commission self-financing in the medium term by a mixture of grants from state budgets and revenue derived from regional permits issued to transport operators under the multilateral agreements.

The potential benefits flowing from trade facilitation justify the subsidising of the Joint Commission during its first 2 years of operation. For example, the co-ordination by the Commission of introduction of UN aligned documentation systems could lead to reductions of up to 70% of the cost of producing export documentation, which itself can account for up to 10% of the value of goods being exported.

Organisation at National level

The Joint Commission is unlikely to succeed if it operates in a vacuum without organised local support. The Consultant therefore suggests that preparation of material for presentation by National Delegations at the annual meetings of the Joint Commission should be entrusted to locally established National Commissions having similar terms of reference to those of the Joint Commission. These National Commissions would have the particular task of:

- disseminating information received from the Joint Commission as widely as possible outside Ministry circles;
- assisting the Joint Commission to implement its decisions and recommendations at a local level;
- preparing the lobbying efforts of National Delegations, both within the Joint Commission and at meetings of other international governmental and non-governmental organisations, to achieve changes which would reduce barriers to the efficient movement of goods;
- consulting a representative range of relevant local opinion on legal and regulatory issues of local and international concern in relation to trade, transport and Customs matters.

In establishing National Commissions the individual states should take account of Recommendation No 4 adopted by the UN working party on the facilitation of international trade procedures, which met at Geneva in September 1974, on creation of such consultative institutions.

The National Commissions, consisting of up to 24 persons, should meet every 3-4 months and take important policy decisions. The day to day work of preparing and considering discussion papers and comments on draft proposals of the Joint Commission and on local draft laws and regulations

(normative acts) would be delegated to a much smaller Permanent Committee of experts meeting every 4 weeks who might occasionally seek the assistance of outside consultants.

The Commissions would not require any formal legal structure and could exist as ad hoc advisory groups set up by government, making recommendations to and being consulted on an informal basis by relevant government departments. However, it may be felt that Commissions would enjoy more prestige and authority if they were constituted on a formal legal basis by Presidential Decree with clear Terms of Reference and authority.

Membership of the Commissions in the early years could be by invitation of the Presidents, ensuring representation from each of the following interest groups:

- Ministries e.g. Trade, Economy, Foreign Affairs, Justice, Transport, Finance
- Customs Authorities
- Banks
- Insurance companies
- Trade Association and direct Representatives of manufacturing companies
- Trade Association and direct Representatives of the freight forwarding and transport industries

It will be important that only dynamic individuals with specialist experience and motivated by the ambition to serve their country should be nominated for membership of these offices for which only travelling and subsistence expenses should be paid.

It is also important that the first Chairmen of Commissions should be persons who are energetic, widely respected and with proven experience in motivating and implementing reforms within their states. It will probably be appropriate for the person who attends the Joint Commission as representative of the Presidential Apparatus or Cabinet of Ministers to be appointed Chairman of the National Commission. By reason of this person's office as National Chairman this person will also normally be the head of country delegation at meetings of the Joint Commission.

In order for the work of the National Commission to be carried out efficiently it will be necessary for the Commission to have a full time National Secretary with permanent offices in the Presidential Apparatus or Cabinet of Ministers, equipped with computer, E-mail, photocopier etc. and a full time typist/secretary.

The National Secretary should have adequate seniority and experience to command respect among members of the Commission and officials and trade representatives generally and could be found by secondment of a suitably qualified Deputy-Minister or ex-Minister to the position on renewable 1 year appointments. The National Secretary will be crucial to the success or failure of the National Commission, and therefore indirectly to the success or failure of the Joint Commission, as the writing of discussion papers and commentaries and assembling of the views of participants at meetings will primarily be carried out by this person.

In Azerbaijan, Georgia and Uzbekistan the nucleus already exists for creation of a National Commission as outlined above. During the initial period of operation of the National Commissions external funding assistance would be required and this would seem an appropriate area for sponsorship by either or both of the Tacis and TRACECA programmes. From the beginning,

consideration should, however, be given to developing a system of permanent self-financing. This could consist of a percentage levy on each institution having permanent representation on the Commissions and a 50% contribution from the state budget.