

**Address by Mr Jean-Marie Woehrling,
former Secretary General of the CCNR**

on the occasion of the 50th anniversary of the Strasbourg Convention,
on Wednesday, 4 December 2013, at the Town Hall in Strasbourg

Madam President,
Commissioners,
Ladies and gentlemen,

As the day draws to a close, we have only a limited amount of time to consider the 50th anniversary of the revision of the Mannheim Act on 20 November 1963, which is commonly referred to as the “Strasbourg Convention”. It is true that the revision has gone down in history as a “minor revision”, so we may perhaps consider that a “minor address” is particularly appropriate in the circumstances.

It has to be said that, despite six years of negotiations (!), the Convention contains few major innovations, even though it amends more than twenty Articles in the Convention.

Most of the amendments correspond to a process of “tidying up” rather than to in-depth change. Before this reform in 1963, the Central Commission’s system was in fact somewhat “untidy”: when the Commission had seven member States at the time (including the United Kingdom and the United States, in addition to its present members), some of these States had ratified the Mannheim Act but not the Treaty of Versailles which had amended the Act, whereas some had ratified the Treaty of Versailles but not the Mannheim Act, others had ratified neither the Mannheim Act nor the Treaty of Versailles but had subscribed to the 1936 Modus Vivendi, while those in a final group had a seat at the Commission only by virtue of an exchange of memoranda dating back to 1945. Indeed this exchange of memoranda provided that the Central Commission would resume its work on a provisional, interim basis. It was in this context that it was agreed that certain provisions of the Treaty of Versailles would cease to be applied and that some of the practices of 1868 would be resumed instead. The patchwork of convention texts, specific protocols, successive amendments and habitual contra legem practices prevented tasks from being carried out in normally. The 1963 revision was therefore intended to clarify the legal framework and reaffirm the existing organisation. Thus the Strasbourg Convention is above all the reaffirmation of the principles and workings of the Central Commission, since it does not question them. That does not mean that it was of no importance: by “tidying up” the text of the Mannheim Act, the States parties put an end to a period of vagueness and uncertainty that began with the Treaty of Versailles and continued as a result of subsequent events. The revision also achieved the clarification that had been sought since the 1920s. In this way – indirectly, but not without force – the determination to maintain the existence of the institution and the attachment of the member States to the Rhine scheme were confirmed.

Despite some initial contestation on the part of the British, negotiations were held in accordance with the traditional interpretation of Article 45 of the Mannheim Act at the Central Commission, since this was the body with competence for debating requests to revise the Convention.

The “tidying-up” process was particularly noticeable in the Central Commission’s judicial system. The German delegation quite rightly pointed out that this no longer complied with the legal principles recognised both in national constitutions and in international conventions of the day, as its judgments were pronounced by a political body offering no guarantee of impartiality and independence, i.e. by the Central Commission meeting in plenary. A genuinely jurisdictional body was therefore created – the Chamber of Appeals.

A considerable amount of negotiation time had to be spent on the revision of Article 46 on how decisions were to be made – a paradoxical difficulty since the States were basically in agreement on validating the existing practice: most of the discussion focused on how the Article should be worded in order to reflect that practice. Similar difficulties were encountered forty years later when the Central Commission’s Rules of Procedure attempted in their turn to detail the implementation of this Article. A system for making decisions unanimously was therefore confirmed (except in the case of Recommendations and decisions of an internal nature; abstention does not prevent unanimity). The decisions were however made by the Central Commission itself, in its capacity as an international organisation exercising its specific powers, although each State could exercise a right to object within a one-month period.

A number of clarifications brought the Central Commission into the age of the modern international organisation. A particular example of this is Article 44 quarter, which provides that the Commission shall have four official languages (whereas, under the previous scheme, only French had this status).

The same applies to the abolition of the standing French presidency, replaced by a presidency filled by each member State in turn. This privilege of presidency granted to France under the Treaty of Versailles had ceased to be in keeping with the standards of a modern international organisation and indeed France renounced it with good grace. The French President Adrien Thierry thus had the “privilege” of heading the discussions which led to his duties ceasing to exist.

Another feature of the update lies not in the text of the actual revision but in the absence of the United States as a signatory, as it left the Central Commission at that time, not because it was opposed to the reform, but because the reform marked the end of the post-war period and it reached the conclusion that it no longer had a role to play as part of the CCNR.

If we consider the texts that were adopted, we see then that the 1963 revision was essentially a technical revision to tidy up the text. Negotiations are however significant not only by what is adopted, but just as much by what is *not* adopted. Although the German proposal which set the negotiation process in motion was limited to matters of internal organisation, the negotiations which took place between 1957 and 1963 covered perfectly fundamental issues. Once discussion began, it moved on to a much more fundamental level, involving the role and the position of the Central Commission in the new institutional system for transport in Europe, marked by the creation of the European Economic Community and the European Conference of Ministers of Transport.

Of course it was above all relations with the EEC which raised the most questions, as the new institution very quickly launched a number of initiatives involving transport (“anti-discrimination” regulations and a plan for “bracket tariffs”) which caused some tension in Rhine circles.

France in particular made a number of bold proposals: its suggestions included proposing that the executive organs of the new European organisations should participate in the Central Commission in the person of a plenipotentiary commissioner placed on the same footing as those of the States.

France also proposed that, as part of the revision, the attributions of the Central Commission on economic issues should be set out in detail with a view to “harmonisation” with the competences of the European Economic Community. Indeed it should be borne in mind that the third of the economic conferences on Rhine navigation initiated by the Central Commission was being held at the same time as the discussions on the revision.

France also proposed studying extending the Rhine scheme and the competence of the Central Commission to other waterways in western Europe and, in order to do so, encouraging other European States interested in inland navigation, including Austria and the Grand-Duchy of Luxembourg, to join the organisation.

These proposals were based on the idea that Europe needed an institution specific to inland navigation, and they were visionary ideas. If they had been implemented, they would have created a “Central Commission for the Navigation of European Rivers” closely bound up with the European Community, which would perhaps have avoided a lot of subsequent problems.

However, these proposals did not manage to convince either the body of the other member States of the Central Commission, or indeed the EEC. The UK delegation declared phlegmatically that it did not see any need to do anything different from what had been done previously. Other States expressed fears that the Central Commission would be reduced to an administrative and technical role, subservient to European Economic Community policy, although the States in question were not in favour of reinforcing the competences of the Rhine Commission.

Germany in particular did not want to follow France’s proposal to reinforce the economic competences of the Central Commission, affirming that the Mannheim Act was not an instrument for the implementation of an economic policy on Rhine transport, which other States contested vociferously.

In other words, the question was whether the Central Commission merely had the task of ensuring good conditions for traffic on the Rhine, or if it ought to assume a more global responsibility in matters of policy on inland navigation, including how this particular mode of transport ought to be incorporated in the general system of transport so that its specific constraints could be taken into account, and how a common scheme should be organised for transport on the Rhine when some CCNR States were members of the European Economic Community and others were not.

For the Secretary General of the Central Commission at the time, the right solution seemed to be to discuss these matters at the European Conference of Ministers of Transport, in order to overcome the difference between countries which were members of the European Community and those that were not. Was it not, as the American delegate affirmed, for the Ministers themselves to decide on matters of principle?

In the end, although a number of delegations acknowledged that the new conditions in Europe called for an in-depth revision of the Mannheim Act, the discussions went round in circles, without any specific project being considered in depth. It was noted that it was necessary to state the missions of the Central Commission before embarking on discussions with the EEC but, since it proved impossible to reach agreement on the missions to be devolved to the Central Commission, it was agreed with regret that any decision should be postponed until a later date.

What we may remember of this era is that it was the issue of relations with the European Economic Community which raised the most questions, debate, and lack of decision. In 1960, the UK representative commented that the two institutions – the Central Commission and the Common Market – were like two boxers circling each other in the ring, each observing the other, and neither moving in to attack, adding that if the Central Commission were to maintain that attitude, it would be the loser.

The Swiss Commissioner noted regretfully that as long as the Central Commission did not know what it wanted, it would not have any policy and would not be able to influence transport policy.

Other issues had an indirect effect on the climate of the negotiations. Thus, although they were not discussed in connection with the revision of the Mannheim Act, matters such as German cabotage and navigation on the Moselle added to the unfruitful atmosphere of the discussions.

It was in this context that, because of the failure to reach a truly decision-making stage in redefining the mission to entrust to the Central Commission in the new Europe, the revision of the Mannheim Act was limited to technical points. At the end of the day, the 1963 revision is a gauge more of the remarkable stability of the Central Commission's legal framework than of its aptitude for transformation.

It is true that since then there have nevertheless been major changes at the Central Commission, and in the Rhine scheme, even if this has not necessarily meant amending the wording of the Mannheim Act.

We are perhaps now experiencing an important change of this kind, without a formal revision, in respect of relations with the European Union. The present discussions will perhaps manage to make up for some of the opportunities missed in 1963 when the close relationships for collaboration with the European Union and the Central Commission were being organised while leaving the Mannheim Act unchanged, so that the two institutions can cease to be boxers watching each other, or even threatening each other, and turn into relay racers, or perhaps even a couple dancing close together on the dance-floor of inland transport in Europe.