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At the “4e Transnationale Rijnconferentie”  
21 - 23 March 2013, Rotterdam

**The Central Commission for the Navigation of the Rhine  
in the service of the Rhine economy**

The Rhine is the most important inland waterway in Europe, and indeed one of the most important in the world. Some 300 million tonnes are transported on the Rhine, by more than 7 000 vessels, representing about two-thirds of all river traffic in Europe. The Rhine is also the most modern waterway in Europe, where the most advanced technologies are in use.

The Rhine owes its success to a number of factors, some of which are external, such as the fact that it is located within the Blue Banana – the area of exceptional development that stretches from London to Milan, via Rotterdam and the Ruhr. But the Rhine also owes its achievement to a number of internal factors, including its organisation as a waterway, and that is where the Central Commission for the Navigation of the Rhine (CCNR) has played a major role.

Many observers believe that the existence of the CCNR has been a key factor in this remarkable development of the Rhine. But we have nevertheless to scrutinize this assertion. It is true that the international status of the Rhine, at the origin of its efficiency as a transport route, could have been achieved without instituting a joint body. But its international dimension would have been much more fragile if it had been limited merely to the existence of a treaty. The Rhine legal system is not only based on international rule, it also has an own international organisation which has responsibility for bringing and keeping this treaty to life. The existence of this organisation is in the core of the Rhine System. The Central Commission is quite rightly described as the first international organisation of the modern era. But this organisation did not come about overnight: the structure created by the Congress of Vienna in 1815 was merely intended to constitute a simple standing diplomatic conference, without own power. However, on the basis of the experience of the former organisation set up by the 1804 Treaty on the “Octroi” of the Rhine, which had more or less survived despite the legal upheavals, a true international administration has developed over time, within which it has been possible to carry out very substantial work.

This work has been of great importance in two areas: first, the CCNR developed the key principles of the Rhine legal regime; second, it constituted the centre of a system of relations between the public managers and the professional sectors of Rhine navigation. The adequacy of this organisation steeped in history to the present European context has been questioned, but its relevance seems henceforth to be confirmed.

**1. The historic contribution of the CCNR to the development of the Rhine legal system and as a meeting place of the actors of the Rhine transport economy**

A. Let us first consider the key principles that the CCNR has worked out gradually over the years.

- The first of these principles is the **freedom of navigation**. This very basis of the fundamental dynamic of Rhine law, affirmed as early as the Congress of Vienna, needed to be concretised and developed over time. To achieve the true establishment of this freedom, it was necessary to remove a number of obstacles, which were only dismantled by the patient and discreet work, carried out within the CCNR. For example the matter of free navigation between two Rhine ports in the same State, called “small cabotage” was still under discussion in the 1950s.

It was a lengthy, often obscure, work that has made it possible to gradually dismantle all the obstacles to the freedom of navigation: the so called “stappel rights”, the privileges of boatmen’s corporations, toll charges, tax regulations, Customs regulations, and so on. For example, we only dimly remember now the era before the suppression of Customs. Freedom of Customs transit and easy Customs formalities were some of the acquired advantages which were only obtained after long negotiations carried out at the CCNR. Today, freedom of movement seems so obvious to us that we forget that during the second half of the 19<sup>th</sup> century and the first half of the 20<sup>th</sup>, this freedom was for inland navigation and for transport in general, a privilege that only existed on the Rhine.

- For freedom of navigation to be effective, it was also necessary to remove a number of **physical obstacles**. Originally, the Rhine was a wild, difficult river. Free navigation required it to be developed, or “regulated”, to meet the needs of modern navigation. As the Dutch historian Coenrad Tamse has noted, the Rhine as we know it today was “manufactured” by the Border States. Of course, the CCNR certainly did not carry out this work itself, but it did provide a framework for coordinating the works. Its staff and the delegates of its member States travelled up and down the Rhine to note shortcomings in terms of maintenance and development, remonstrating with the States at fault. The CCNR’s approval is still required today for any major structural work on the Rhine that is likely to affect navigation. In this field, the existence of an organisation has proved to be particularly effective: whereas the stipulations of the treaty on the obligations incumbent on bordering States to develop the river are not particularly forceful, discussions at the CCNR have made it possible to obtain undertakings from all the States to carry out the work necessary for improving traffic.

- A corollary principle to the freedom of navigation consists of **equal treatment**. All operators must have the benefit of the same conditions for using the river. This principle is not contained explicitly in any treaty; it is the CCNR that has developed it gradually as a necessary consequence of the principle of freedom, more specifically through the mechanism of the right to bring a complaint before the CCNR and through the existence of a specific tribunal for Rhine navigation. Still recently, there was a case at the CCNR’s Chamber of Appeal concerning the implementation of equal treatment with regard to access to locks.

- A fourth principle is closely connected to the two previous principles, and supplements them: **a single legal regime** covering the navigation activity on the entire length of the Rhine. To achieve this unity of regulation, the CCNR drew up common rules on exercising navigation: uniform regulations on the technical requirements of vessels, the professional requirements demanded of crew members, police and safety regulations, measures to prevent accidents and pollution, arrangements for sanctions, and so on. The CCNR gradually developed a highly detailed legal structure, which it updates constantly in line with technological developments. These uniform regulations ensure equal conditions in terms of competition, a high level of safety, with a constant obligation to adapt to technological progress while observing acquired rights and sufficient flexibility thanks to waiver mechanisms that are supervised by the CCNR.

- The fifth principle safeguards a particular form of freedom and unity; this is the **rule which forbids charges for using the Rhine for navigation** Article 3 of the 1868 Mannheim Convention prohibits States levying any toll on navigation. Yet, lengthy work on the part of the CCNR was necessary to gradually break down the tolls before the adoption of such a liberal principle by the member states. The absence of navigation tolls marked the start of a new era of development of navigation after a period of regress from competition from the railways.

- The last principle upheld by the CCNR is that of the **coordination of member States' river policies with a view to guaranteeing the "prosperity" of navigation on the Rhine**. Thus, the CCNR has been the place where all the measures adopted on river policy have been examined, regardless of whether the measures were to be implemented by the States or by the CCNR itself. Examples of this include the economic conferences the CCNR organised in the 1950s, the congresses it organised from the late 1990s onwards, and the market observation mechanism that currently constitutes the main tool for the economic analysis of inland navigation.

These various principles constitute an excellent illustration of the "ordoliberalism", sometimes called "Rhine capitalism", characterised by the combination of a free market with a strong regulatory framework. It was only possible to set up such a combination of freedom and regulation with the assistance of a responsible and organised sector, within a context of close, trusting collaboration between the profession and the public authorities.

B. It is the CCNR's second major contribution, alongside the development of major principles, that it has provided an appropriate framework for such concertation. This aspect must be underlined: over the decades, the CCNR has indeed been much more a vital place for concertation and the development of a common spirit than a place of authoritarian control or unilateral ruling. As early as the 19<sup>th</sup> century, it was a feature of the CCNR that it constituted an effective and appreciated framework for discussion among State plenipotentiaries, experts from public administrations, representatives of transport operators, loaders, insurers, and port managers. The CCNR has always been attentive especially to the development of the ports, to ensure the inclusion of inland navigation as a link in the transport chain.

The Central Commission has also provided the best conditions for negotiating specialised conventions on labour law applicable to boatmen, their social security scheme, the contract for the carriage of goods by inland waterway (CMNI), and the limitation of liability in inland navigation (CLNI). The CCNR has managed to create a climate of mutual trust and respect that has helped those involved to overcome their misgivings in the common interest of navigation on the Rhine.

It was still the CCNR, at the end of the 19<sup>th</sup> century, which brought about the creation of the IVR, an association of professionals in Rhine navigation, created to manage the register of vessels on the Rhine, but which gradually evolved into a "club" for entrepreneurs in Rhine transport.

Particular emphasis needs to be placed on the link between the CCNR and the economic sector of Rhine transport. If the decision-making process within the CCNR has often been slow, that is because its decisions have frequently been in the form of achieving consensus among the representatives of various interests, both public and private. Since decisions are adopted by consensus, the CCNR has often played a role similar to that of a notary recording an agreement reached by the stakeholders. Negotiations feature a sense of common interest, the long-term perspective, and respect for partners. Another important aspect is its competence and its specialisation: among experts in inland navigation, a common vision always emerges in the end.

Thus the CCNR is quite rightly regarded as the prototype of the modern technical international organisation. It is a feature of such organisations that they have specialists to manage their problems, produce specific regulations, far from political wrangling, in close collaboration with the professional sectors concerned, and achieve a convergence of opinions through joint work on specific points. The CCNR has not seen any grand political negotiations, or high State diplomacy: all the major political decisions have been made outside its structure, as part of direct negotiations between States. Indeed, the areas of friction between the major Border States (especially between Prussia and The Netherlands during the major part of the 19<sup>th</sup> century) were settled outside the organisation. The CCNR has therefore not been a place where political power has been exercised. It has however been the structure within which the foundations of such political agreements have been prepared and where the principles embodied in these agreements have subsequently been translated into specific measures.

## **2. Adequacy of the CCNR to the context of the present European inland navigation**

A. The CCNR has been in existence for a very long time (200 years!), but in fact it has had a number of lives: from 1816 to 1868 it was dominated by Prussia, which used it to discipline the other German States. From 1868 to 1918, it became a sort of German-Dutch body, marked by the Netherlands' need to protect itself from German control. After 1919, it became a true international organisation in the new framework created by the Treaty of Versailles, which brought in States not bordering on the Rhine. After the Second World War, the strategic dimension of the organisation was reduced in favour of an economic and social function and an important role as a place for drawing up social conventions and economic policies. Policies for creating pools, the temporary immobilisation of part of the fleet, and scrapping funded by tolls levied on new constructions were just some of the matters discussed within the CCNR and at the economic conferences it organised.

Thus the CCNR has achieved its present importance gently and discreetly, without ever making a giant leap forward. The need for a permanent institution with responsibility for regulatory functions has only come about gradually. Without the intervention of Wilhelm von Humboldt, the international administration of the Rhine created in 1804 by the Treaty on the "octroi du Rhin" would not have been maintained by the Congress of Vienna. Again in 1868, France's representative proposed abolishing its permanent headquarters. The regulatory power it has unquestionably exercised is not set out explicitly in the treaties, which remain ambiguous on its true nature: was it intended merely as a framework for international negotiation, or a true autonomous supranational authority? Discussion on the subject went on for a long time, and it was only in 1978 that a headquarters agreement clearly recognised the international legal personality of the CCNR.

Whatever the case, this model of technical international organisation is still just as topical today. Paradoxically, the CCNR now appears to be less technocratic than the new technical international organisations that have sprung up in Europe. The CCNR presents the paradox of being the first of the modern international organisations and perhaps also as we embark on the 21<sup>st</sup> century the last of the "traditional" international organisations. Two centuries of tradition have indeed left their mark on its working method, which is based on courteous, respectful behaviour and personal relations that feature mutual attention and concern for achieving consensus. These "good manners" remain an important advantage in a world where all too frequently emphasis is placed on the balance of power and superficial demonstrations of rationality.

B. If the CCNR has played an essential role in the setting up of the Rhine scheme, which from the 19<sup>th</sup> century onwards had all the characteristics of a "common market" for navigation on the Rhine. how relevant is it today, in the European Union and the integrated networks for inland navigation throughout Europe?

From 1980 onwards, the European dimension became preponderant and the CCNR embarked on a complex process of incorporating the Rhine in Europe's transport policy. As soon as the ECSC was created, tension arose between the old Rhine organisation and the new European institutions. It has been a long journey, marked by both problematic differences and bold joint plans, to reach the present situation of peaceful complementarity and mutual respect. Today, the CCNR is above all recognised as a European forum for discussing all the action necessary for promoting inland navigation.

The integrated market for inland navigation in Europe has in fact been modelled on the Rhine legal system and has, in material terms, adopted its essential features: the key principles of freedom, equality, and unity. The regulations developed in respect of the Rhine, like technical regulations for vessels, regulations on the transport of dangerous goods by river, regulations on crew members, have one after the other become European regulations. In this context, what does the future hold for the CCNR? Is it still needed? If it were to restrict its action to the Rhine, it would neglect the new European dimension and would limit itself to a marginal role. But can it claim to take action throughout Europe in its current set-up, which is limited to five Member States?

This is the challenge that the CCNR is currently seeking to meet. Once again – as in 1816 and 1868 – it needs to demonstrate that, despite the changed context, it is still the most appropriate framework for discussing matters involving inland navigation in Europe. To do so, it must draw on what constitutes its heritage: its technical expertise, its specialisation in the problems facing inland navigation, its close links with the sector and the industry, attention to detail and its achievement of consensus. But it must to day extend this model to a much larger number of players and consequently develop new working practices extended to all the stakeholders in Europe, without overturning its former institutional framework, which remains anchored on the Rhine. This implies that the States bordering the Rhine will agree to expand their scope and give up the traditional Rhine consensus in order to work on a larger scale. Once again, the existence of the Rhine institution is proving to be more important than the Rhine regime system itself, and more dynamic. The Rhine legal system has been absorbed into European law, but the Rhine institution, the CCNR has conserved its relevance and retained its autonomy: it has become one of the European Union's partners, but remains an original and specialised centre for action. Indeed this serves the interests of European policy on inland navigation as a whole.

The future will decide whether the CCNR has managed this mutation successfully, without losing its soul, remaining within the context of the Rhine economy, but also acting in the interests of a broader European framework of which the Rhine economy is henceforth an integral part.

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