

Comparative Law and The Swedish Model

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Prologue

The Swedish Government has for decades let be known that it is carrying out a policy of neutrality. In the bipolar world that was established after the Second World War, this meant not taking sides in the rivalry between our big neighbour to the East, the Soviet Union, and the other superpower in the distant West, the United States of America. It is better to have your neighbours for friends and your enemies far away, than the other way round. Therefore, for political and geographical reasons Sweden - just like Finland - became a borderline state to the Soviet Union and the proclaimed 'neutrality' of the borderline state in the post-war era found a new term. It was called 'finlandization'. The collapse of the Socialist Camp and the dissolution of the Soviet Union has allowed a late public analysis of what was in fact hiding under this term. The discussion has been more open in Finland than in Sweden. Consequently there are good reasons now to pierce the veil also in Sweden. This will be done below with a focus on Comparative Law. First however there is need for a flashback on Sweden's position between the two superpowers.

The Bolshevik Revolution in 1917 claimed to meet the aspirations of all Socialists in the world and told them that it was to be followed by a World Revolution. Socialists in Sweden were very open to this message. The Bolsheviks were seen as a break-away faction from the great Socialist fold, a faction of zealots carrying out the Great Socialist experiment in their own way, but who essentially were of the same kind as their brother Socialists in other countries. This was the vision particularly in the radical wings and their members were eager to learn from the Great Experiment, sometimes to the extent of sitting in on sessions of the Council of People's Commissars.¹ Travelers to the Wild East returned with enthusiastic accounts and published

¹ In December 1917, a group of leading representatives of Sweden's Social Democratic Left Party traveled to Russia and were allowed to sit in at a meeting of the Council of People's Commissars under the chairmanship of Lenin himself; see Marat Zubko, *Lenin i Sverige året 1917*, Moscow 1985, p 153.

books about their experiences.² Two future Ministers in Swedish Cabinets belonged to these radical wings, Ernst Wigforss and Östen Undén, eventually to become Minister of Finance and Minister of Foreign Affairs respectively. Thirty years later, after the second world war, they would still carry the imprint from their formative years.³ One result of this was the insistence of Mr Undén that the Soviet Union was a ‘rule-of-law state’ just like the other states in the international community.⁴ He could not bring himself to accept that the Soviet Union itself insisted that it was *not* such a state but rather something completely new in world history.⁵

² Carl Lindhagen, *I Revolutionsland*, Stockholm 1918; Ture Nerman, *I vilda östern. Rysk resedagbok 1918-1920-1927*, Stockholm 1930.

³ See C.F. Palmstierna, *Fjädern i min hand. Minnen 1945-1973*, Lund 1976, p 193.

⁴ When Mr Yngve Möller was working on the biography of Mr Östen Undén, he put the question to a number of Mr Undén’s former collaborators how they had experienced his attitude towards the Soviet Union and the United States. Ambassador Ingemar Häggglöf who was one of his briefing officers 1945-1953, reportedly said that Mr Undén’s view of the Soviet Union “was blue-eyed, rosy red, ignorant of the ways of the world”. The Foreign Minister displayed inability or unwillingness to deny to the Soviet Union the norms and the behaviour of a normal rule-of-law state, and he was more willing to listen to reports of things unsatisfactory in the United States than to stories about abuses and lawlessness in the Soviet sphere of interest. Mr Häggglöf was of the belief that this reflected an old enthusiasm that had been created among young radicals like Undén and Wigforss and which lasted long. See Yngve Möller, *Östen Undén. En biografi*, Norstedts, Stockholm 1986, p 540. - Mr Olof Rydbeck reports in his memoirs about his time in the United States where he was serving as the Press- and Information Attachee at the Swedish mission, and in particular a meeting he had with the Foreign Minister on 20 October 1947. Mr Rydbeck gives the following account: “The conversation came to concern mainly the United States and Mr Undén aired his anti-American attitude. He complained about the unreasonable aggressiveness that the Americans had displayed in the General Assembly by attacking on many issues simultaneously, and he missed American understanding of the Soviet Union. ... He repeated what he had said in New York to one of my friends, viz. that he could not understand why the Americans who controlled South America, could not understand that the Russians on their side wanted to control ‘the borderline countries’. The American anti-communism he found completely unfounded.” See Olof Rydbeck, *I maktens närhet. Diplomat, radiochef, FN-ämbetsman*, Bonniers, 1990, p 82.

⁵ Ambassador Sven Grafström’s diary notes from 7 October 1946 include the following comment: “Mr Undén’s weakness faced with the Soviet power is almost greater than (Foreign Minister) Günther’s faced with that of Germany - the only difference is that Mr Günther was fighting under the cloak of neutrality, while Mr Undén in all his submissiveness dresses himself in that of Law. I do not know which one is the most reprehensible. In favour of Mr Günther it can at least be said that he was working under more dangerous circumstances.” See Sven Grafström, *Anteckningar 1945-1954*, Stockholm 1989, p 780. - For an indepth-analysis of the difference between the old kind of states, called Nation States, and the new kind represented by the Soviet Union, called Party States, see Gray Dorsey, *Beyond the United Nations. Changing Discourse in International Politics & Law*, University Press of America 1986; and my book review of same in 78 *Archiv für Rechts- und Sozialphilosophie* 265-268. - Insisting contrariwise that they were of the same kind, Prime Minister Tage Erlander and Foreign Minister Östen Undén explained in the *riksdag* on 22 March 1950 that the Swedish example was supposed to show “countries under the ‘dictatorship of the proletariat’” that the transformation of the economic structure of society aimed at in these countries “could take place while keeping a genuine political democracy”; see the records of the First Chamber 1950 No 11, p 13, and of the Second Chamber 1950 No 11, p 11.

The United States on the other hand was not a great expert on the Soviet Union to start with.⁶ It learned from experience and the experience suggested that the Soviet claim had to be taken seriously and that International Law in the classical Western sense had no meaning to the Soviets. Some drew the conclusion that from then on there were two kinds of International Law, the Classical one, and the Socialist one.⁷ Rather than resting with this conclusion, Professor Myres McDougal of the Yale (or New Haven) school came up with an answer of his own to this challenge and developed his doctrine of the World Public Order. This was supposed to be an expression of *legal realism*. International law was not a static system but a permanent process in which norms were developed by putting forward national claims, having them effectuated, tolerated or rejected. In the interrelationship between the superpowers there were hardly any violations of international law, only new interpretations of same. Professor McDougal's school of thought became dominant in Washington for decades.

In leading Swedish circles the departing point thus came to be that the Soviet Union was a 'rule of law' state and had to be treated as such in all matters by everybody. The United States on the other hand could not be viewed as a 'rule of law' state, since the legal realism of Professor Myres McDougal could not be reconciled with the precepts of the classical International Law but rather seemed to be giving a very free hand to the leading actors on the international scene (Sweden not being one of them). The conclusion was that the Soviet Union was beyond reproach, while considerable fury was directed against the behaviour of the United States as the great violator of international norms such as the Cabinet in Stockholm and its following knew them.

In such an atmosphere, scholarly activity was sailing uncharted waters. Too much interest in the Soviet Union and its philosophy was not welcome unless it was Marxist and 'progressive'. If it tended to be 'anti-soviet' it was unwelcome and indeed seen as dangerous for the 'neutrality policy'. International law scholars were massively uninterested in the McDougal school. Not a single scholarly piece was ever devoted to it in a Swedish legal periodical. No Foreign Office careers could be advanced by reporting on it. The first time I found it mentioned in a Foreign Office memo was in 1990. Such is the background.

⁶ It should be recalled that the United States had no representation in the Soviet Union until the recognition in 1933. All coverage had to be administered by the mission in Berlin. - The opening up in 1992 of the once-closed Soviet archives to Western historians have allowed an insight into how much the Soviet forces via the Communist movements had infiltrated American society. An underground party (CPUSA) was established in the 1930s and succeeded to place "concealed Communists in selected government agencies in order to gain information or to influence policy" and secret Communist caucuses operated in a number of chief US government agencies. See further John E. Haynes, *Red Scare or Red Menace. American Communism and Anticommunism in the Cold War Era*, Ivan R. Dee, Chicago 1996, p 14-16.

⁷ See e.g. A.M. Stuyt, *Gespleten Volkenrecht* (Reprint).

1 Air Charter and Block vs Air France

During the 1950s, I was intensively involved in aviation law research. Finally, the studies produced my doctoral dissertation, a 600-page book in English titled “Air Charter - A Study in Legal Development”.⁸ Essentially, it was a comparative law book focusing on a new phenomenon in international air law that since has mushroomed⁹, and by looking at the legal world from this keyhole I covered territory. Professor Bin Cheng reviewing the book observed that it might have its greatest appeal “to those interested in European law and legal institutions or in comparative law as such”.¹⁰ Professor A. Beatty Rosevear remarked in his review that

students of comparative law will find a comparison of the civil-law and the common-law approaches to the legal construction and interpretation of contracts. The civilian lawyer will be puzzled by what Judge Sundberg refers to as the ‘Anglo-Saxon Dilemma’. The common lawyer in turn will be puzzled by the civilian lawyers doctrinaire approach, for example contract types, inductive and deductive construction and the term ‘contract *sui generis*’.¹¹

The book was not without impact. In the case *Block vs Air France*¹², the treaty interpretation principle advocated in my book was adopted and it was followed in U.S. case law for about a decade.¹³ I took a few more steps in the field by the article “Civil Law, Common Law, and the Scandinavians” which was published in 1969.¹⁴ And then, in 1970, I succeeded to win the Chair of Jurisprudence at the University of Stockholm.

2 The Program Made Manifest

This was the challenge of a lifetime, at least in academic life. The young Chairholder was supposed to have a program for his time as Professor of Jurisprudence. So I developed a program, and in my inaugural lecture in 1970, it was made manifest. I said that:

⁸ Reviewed by Werner Guldman in 13 *American Journal of Comparative Law* 121-122 (1964).

⁹ See Jacob W.F. Sundberg, *Chartering of aircraft*, General Report to the Xth International Congress of the International Academy of Comparative Law - Budapest 1978, Section III.D; later republished in revised form under same title in 6 *Arkiv for Luftrett* 79-152 (1979). See also idem, *Air Chartering - The Scandinavian Contribution*, 4 *Annals of Air and Space Law* 323-347 (1979).

¹⁰ Bin Cheng, Book Review, 2 *Solicitor* 284-285 (1963).

¹¹ A. Beatty Rosevear, Book Review, 41 *Canadian Bar Review* 154-159, at 156.

¹² *Block vs Air France*, 386 F 2d 323, at 330.

¹³ See Jacob Sundberg, *Folkrätt och folkvett* (i.e. International Law and Common Sense), *Svensk Juristtidning* 1988 p 425-428.

¹⁴ Jacob W.F. Sundberg, *Civil Law, Common Law, and the Scandinavians*, 13 *Scandinavian Studies in Law* 179-205 (1969).

He who once was trained as a sailor, as I once was, is prone to localize himself by taking bearings and working the reckonings. This method will do fine also for how the law advances from year to year. Here - as elsewhere - it is the comparison with other places that provides the insight into where you stand and where you are off to. Let us work our reckoning in the best sailorlike way.

It was long believed that determining the character and place of the Swedish legal system was best done by taking bearings to the South and to the West, through the fix between Civil Law and Common Law, using the best-known terminology. In today's Swedish society, however, these "places" are too close to each other and too far away from us to allow a fix that is certain. Let us lay them out instead to Southeast and East.¹⁵

And from then on my studies in Comparative Law have been devoted to Civil and Common Law no more, but to *the system of the Socialist Camp* which used to lie to the East and the Southeast of Sweden.

3 The Program Implemented

It was natural to do so, because the Swedish political rhetoric of the day was permeated by various Socialist doctrines that had been implemented already in the various countries belonging to what was known as the Socialist Camp¹⁶ and which countries were being engulfed by the Brezhnev Doctrine.¹⁷ But nobody had done this before, so it was virgin territory and uphill work.

I took a kind of overview in my inaugural lecture and came to focus on some features of high tax society. But it was *the family law* of the day that seemed to give the biggest yield with this new comparative law method, and family law I knew well having taught the subject 7 years during the 1960s. The new family law that was being prepared for Sweden seemed to have much to do with the one that had been prepared in the Socialist Camp during the 1920s.¹⁸ So I published my first article drafted along these lines in the American Journal of Comparative

¹⁵ Jacob Sundberg, *Teleologisk metod och fair play* (i.e. Teleological Method and Fair Play), Inaugural lecture in Jurisprudence on 11 September 1970. IOIR (The Stockholm Institute of Public and International Law) No 34. p 1.

¹⁶ The most remarkable event in this development occurred when Poland and Czechoslovakia attempted to arrive at a uniform Family Law, based on the Marxist view of society and evolution, presumably of universal application. In January 1949 the two countries established a joint committee with the task to prepare draft uniform family laws for both countries. The result in Poland was the Family Law of 1950 (D.U. 27 June 1950 No 34) (replaced by a new one in 1964, see D.U. 25 Feb. 1964 No 9). A few months after the Communist take-over, the new Government in Czechoslovakia, on 17 June 1948, charged the Minister of Justice with having within two years drafted the most important laws pertinent to the law as a superstructure on a Marxist society. The result was i.a. the Family Law of 7 December 1949 (replaced by a new one on 14 December 1963).

¹⁷ The Brezhnev doctrine was announced by Leonid Brezhnev at the Polish Communist Party Congress on 12 November 1968, see Keesing's Contemporary Archives 1968 col. 23 027.

¹⁸ See generally *Familiengesetze sozialistischer Länder. Textsammlung der Familiengesetz-bücher sozialistischen Staaten in deutscher Sprache*, Staatsverlag der DDR, Berlin 1971.

Law, adding the formula “Experiment Repeated” to the title.¹⁹ It was followed by a mimeographed paper titled “Family Law in Turmoil. The Norsemen on the Move”, which in a revised version subsequently was given French form and published in Belgium in 1978.²⁰ Very much later, in 1995 when the Socialist Camp had collapsed, a final analysis of what it had contributed to the Swedish Model was provided in the booklet “The Trip to Nowhere”.²¹

But two fields that were vaguely interrelated took most of my time during the 1970s. One was the *International Law of War* that I was teaching at the Military Academy in Stockholm (1969-1979), and the other was the mushrooming field of *hijackings*. Since the Soviet Union was the most likely military adversary, it was natural to pay particular attention to how this field was addressed in the Soviet Union.²² And hijackings, after the Tricontinental Congress in Havana in 1967, took on a Marxist colouring in its Latin American manifestations, later spreading to the Middle East and to Europe.²³ It was natural, there too, to study the links between that phenomenon and the ideas cultivated in the Socialist Camp.²⁴ After a while, the focus of interest shifted. The 1970s came to be dominated by *terrorism* in various forms, and they all seemed to rely upon some

¹⁹ Jacob W.F. Sundberg, *Recent Changes in Swedish Family Law - Experiment Repeated*, 23 Am. J. Comp. L. 34-49 (1975). Some earlier attempts were published in less visible periodicals, e.g. *Socialism and Family*, 2 Contributions to Soviet and East European Research (part) 1, pp 25-40 (1974), publ. by Research Center for Soviet and East European Studies, University of Uppsala. As to my first confrontation, internationally, with the new principles announced for Sweden, see Mary Ann Glendon, *Comparative Law as Shock Treatment. A Tribute to Jacob W.F. Sundberg*, in (Erik Nerep & Wiweka Warnling-Nerep, eds.) *Festskrift till Jacob W.F. Sundberg*, Juristförlaget, Stockholm 1993, pp 69-84, at 69 f.

²⁰ Jacob Sundberg, *Facteurs et tendances dans l'évolution moderne du droit de la famille des pays nordiques. Rêves et réalités*, in *Famille, Droit et Changement Social dans les sociétés contemporaines. Travaux des VIIIes Journées d'études Jean Dabin, 1978*, pp 49-85. - The English version has been published in my contribution *The New Laws of Marriage and Divorce in Sweden*, in Kojiro Miyazaki, gen. ed., *A Comparison of Laws Relating to Marriage and Divorce*, vol. 9, Keso-Shobo, Tokyo 1978, pp 347-425.

²¹ Jacob W.F. Sundberg, 'The Trip to Nowhere'. *Family Policy in the Swedish Welfare State Analyzed by Means of the Comparative Law Method Immanent in the European Convention on Human Rights*, IOIR No 106, see p 8 f.

²² Jacob W.F. Sundberg, *En handbok i folkrätt för krigsmakten?*, (i.e. A Manual in International Law for the Armed Forces?) IOIR No 36 (1972); 'Den ryska klockan' - *Om krigsfångar och deras straffrättsliga ansvar i ljuset av de finska räfsterna och de sovjetiska dissenserna i Nürnberg*, ('Russian Time' - About prisoners of war and their responsibility under Criminal Law, as seen in the light of the Finnish trials and the Soviet dissenting opinions in Nuremberg), IOIR No 37 (1973); *Belligerent Occupation and the Geneva Protocol, 1977*, 42 Law and Contemporary Problems 67-85 (1978); *Humanitarian Laws of Armed Conflict in Sweden: Oglng the Socialist Camp*, 16 Akron L. Rev. 605-618 (1983).

²³ See Jacob W.F. Sundberg, *European Terrorism*, in (Ely Tavin & Yonah Alexander, eds.), *Terrorists or Freedom Fighters*, Hero Books, Fairfax, Virginia 1986; and idem, *Introduction to International Terrorism - The Tactics and Strategy of International Terrorism*, in (Magnus D. Sandbu & Peter Nordbeck, eds.) *International Terrorism. Report from a Seminar Arranged by the European Law Students' Association 1987*, Skrifter utgivna av Juridiska Föreningen i Lund No 104, pp 21-38.

²⁴ A showcase in kind is described in Jacob W.F. Sundberg, *Operation Leo: Description and Analysis of a European Terrorist Operation*, in Brian M. Jenkins, ed., *Terrorism and Beyond*, Rand, 1982, pp 174-202; also in 5 *Terrorism: An International Journal* 197-232 (1981).

sort of Marxist message. Today we know that many if not most of these terrorist groups were trained and supported by the governments in the Socialist Camp. In these days, we did not know for sure but it was generally believed so among experts whom I happened to know. So here too, my comparative law method brought me into contact with the thinking and the practice in the Socialist Camp.²⁵

I also came back to the *high tax society* that I had started to ponder in my inaugural lecture. At first, the Socialist Camp philosophy seemed far away from the Swedish system since essentially the Camp was a low tax society. Eventually I discovered however that historically there were links, and that high tax society was being used as one of the instruments available to impose the Socialist Society that was the ultimate goal of all Socialist theories although with certain variations. This research was published in 1989, but hidden under a generalizing title that would attract less flak from the high tax bureaucracy than something more directly indicative.²⁶

With these achievements behind me, I knew a lot about the structure of thinking in the Socialist Camp and how it affected drafting and running a legal system. In 1980 I found the opportunity to rewrite the chapter on *Marxist law* that had a time-honoured place in the little standard textbook on the history of Jurisprudence²⁷. It was done in a small 24-page booklet called “Om marxistisk juridik” that was adopted as obligatory reading material at the Faculty of Law.²⁸

Then the occasion arose to delve into *Private Law* where I had my position before moving to Jurisprudence. I wrote a piece on the so-called ‘general clauses’. Such clauses had a place both in Socialist Camp law and in Sweden

²⁵ Jacob W.F. Sundberg, *Abu Thalaat - la guerre contre l'aviation civile internationale*, 52 *Revue de droit pénal et de criminologie* 419-442 (1971); *Political Hijackings*, in Freda Adler & Gerhard Mueller, eds., *Politics, Crime and the International Scene: An Inter-American Focus*, San Juan, Puerto Rico 1972, pp 108-140.

²⁶ Jacob W.F. Sundberg, *Europakonventionens betydelse för svensk juridik*, in Öppna föreläsningar i juridik höstterminen 1988-1989, No 22 in the series of writings published by the Faculty of Law in Stockholm, pp 65-88. It was republished in 1990 as chapter 8 in the book (Jacob) Sundberg & (Fredrik) Sundberg, *Lagen och Europakonventionen*, Juristförlaget 1990, IOIR No 95.

²⁷ Ivar Strahl, *Makt och rätt*, (i.e. Power and Law). The first edition appeared in 1957, and it was reluctantly modernized a bit by the author in each successive edition. The 6th edition which appeared in 1973 made attempts to explain Chinese *maoism* which was *en vogue* as an effect of the Cultural Revolution. Finally, some chapters became so outmoded that they had to be replaced. In 1980, I published a little booklet of some 24 pages called *Om marxistisk juridik* (IOIR No 46). An English version of same eventually appeared under the title *On Marxism As a Legal Practice*, 65 *Washington University Law Quarterly* 823-838 (1987).

²⁸ The adoption was probably simply a mistake. The Socialist zealots must have slept. Later, in the course of the *ius docendi* operation, this little booklet was singled out as the one piece of reading material that must be suppressed, whatever happened to the rest of the action to have me removed from the teaching position, belonging to the Chair of Jurisprudence. As to the operation, see generally E(duard) S(hils), *Academic Freedom at the University of Stockholm*. 29 *Minerva. A Review of Science, Learning and Policy* 321-330 (1991).

and it seemed that lessons could be learned by studying their use in the Socialist Camp.²⁹ The article was published in 1984.

The very extensive insights into the particularities of Socialist thinking which I developed in this way, of course, sensitized me progressively when looking at various fields of law. The International Law of treaty negotiations may provide a good illustration of how Socialist thinking differs from Western legal thinking. The following is a quote, reflecting upon the negotiations of Western diplomats with people from the Socialist Camp and its client movements.

Central to any proper understanding of Soviet negotiating theory and its mutations in the Third World, is the concept of history as dialectic, an ever-changing progression toward the ultimate socialist utopia of a classless society. This state of mind sees politics (and warfare) as a continuum, a blend with no particular demarcation points, rather as opportunities to be won, lost or sometimes compromised - thus the Leninesque "one step forward, two steps back".

In such an environment class morality obtains. What aids the revolution is desirable; what hinders it is not. Compromise is the last option; cynicism, deceit, disinformation, propaganda, lies, and lack of integrity are standard props. The tenacious rule of law such as has been slowly formulated over centuries, is an object of misuse, of contempt. Trust and treaties so sacred to the 'imperialists' are there to be publicized, broken and abrogated. There is no moral ethic or legal ethic in Marxian revolutionary negotiating tactics. ---

Psychologically, the West, representing by and large the *status quo*, the establishment and at least the semblance of the rule of law, fervently seeks stability, order, consistency of action and controlled, manageable change on the margins of society. Radical change, whether revolutionary or not, is not a prime goal of social and political institutions.

By the same token revolutionists and extremists represent the opposite pole of societal life. The values and moral tenor of the established state and its underlying social mores are targets for rejection and destruction. This follows necessarily from the notions of Marxist analysis. To build classlessness one must first destroy what precedes it.

Western delegates ... emphasize the legal, the establishment, the technical personnel. Compromise, legal crossings of the T's and a flawless and liveable end product is the goal.

Revolutionary negotiations seek political advantage, seek loopholes in the process, and seek to build situations to prevent the enemy from obtaining force or advantage. Such negotiations will seek extra channels of communications (the world press, for example, or back channel efforts to undermine a situation or an effective opposition negotiator).

Tactically, Communist negotiating techniques include promotion of their strategic interests over conclusion of an agreement. Threat of force, agitation, bribery, and compromise of personnel are standard devices. Their negotiators prepare very well; they carefully study their counterparts down to the most intimate details of personal life.

²⁹ Jacob W.F. Sundberg, *Om generalklausuler* (i.e. On General Clauses - Generalklauseln), in *Festschrift till Jan Hellner*, Norstedts, Stockholm 1984, pp 659-680.

Negotiating positions are most often extreme, many impossible and without merit. It is important to remember that revolutionary and communist negotiators do not want agreement at any price; they seek public and political advantage, a quite different end in itself.³⁰

Evidently, if you keep this kind of philosophy in mind, few of the truths developed in classical law in the non-Socialist West can be sacred. Consequently, when I focused my interest upon the *human rights* movement that had emerged after the second world war and which attempted to codify the society under the rule of law in a number of treaty instruments, a great many problems came to light. The one instrument on which I concentrated my scholarly efforts was the *European Convention on Human Rights*. I started to look at how the Swedish development fitted into this context. It was a research not without drama. As was mentioned in the Prologue, this had to do with the history of the Socialist parties in Sweden and their close connections, originally, with their counterparts in what became the Soviet Union. Some people, at Cabinet level, were known for their admiration of the great Socialist experiment to the east.³¹ The dramatical part of the research is, I think, well brought out in my paper "Human Rights in Sweden. The Breakthrough of an Idea" that was published in 1987.³²

4 The Negative Reception: Why?

Strange though it may seem, none of these my contributions has ever resulted in any discussion in Swedish legal life, often not even a mention. The inaugural lecture was for a long time seen on the desk of the Minister of Justice, but it never gave rise to any scholarly discussion whatsoever. My valedictory lecture which dealt with legal scholarship as such and which was published in 1993, was never mentioned anywhere, much less did it give rise to any scholarly discussion.³³

³⁰ The quotes are taken from R. F. Delaney, *Negotiations in revolutionary situations*, ISSUP Bulletin 1/88 (29 Feb. 1988). The Bulletin is published by the Institute for Strategic Studies at the Universiteit van Pretoria, thus a few years before the collapse of the Socialist Camp and the dissolution of the Soviet Union, two events that suddenly removed the all-pervasive threat that froze all advance towards more harmonious relations in South Africa. It is a fair guess if not that collapse contributed more to the peaceful transition of powers in the Republic than all the agitation and boycotts organized during the last decades.

³¹ See the memoirs of C.F. Palmstierna, *Fjädern i min hand. Minnen 1945-1973*, Lund 1976, p 193.

³² Jacob W.F. Sundberg, *Human Rights in Sweden. The Breakthrough of an Idea*, 47 *Ohio State Law Journal* 951-983 (1986).

³³ Jacob W.F. Sundberg, *Om doktrinen. Avskedsföreläsning 29.9.1993*, IOIR No 98. - It is a twist of irony in the fact that a vitriolic debate has emerged recently, covering exactly this subject but never mentioning with a word the contributions found in that valedictory lecture. See Claes G. Peterson's review of Jan Hellner, *Rättssteori*, 2nd ed., published in *Förvaltningsrättslig tidskrift* 1996 pp 175-181, and Professor Hellner's reply thereto, *Rättsteori och rättsvetenskap* (i.e. Legal theory and legal science), 8 *Juridisk Tidskrift* 535-540 (1996-97). Professor Peterson's theories about legal science were extensively discussed in the *ius docendi* affair, see e.g. Jacob W.F. Sundberg, *En liten bok om allmän rättslära* (i.e.

The fact that so much of my scholarly contributions have been published in other languages than Swedish is not an explanation because of the give-away system that exists in Sweden and other places. Few of my colleagues at the Swedish law faculties have not received reprints of the contributions. And the reluctance to discuss works is the same in relation to my Swedish language contributions. In fact, after 1981 none of my books has received a book review in the Swedish legal periodicals. Being a well-established scholar in the field of international aviation³⁴ has not remedied this, rather made the phenomenon only more evident.³⁵

It may be equally a matter of surprise that the dynamics of the European Convention on human rights eventually experienced the same treatment. Teaching the law and procedure of the European Convention started at the Stockholm Institute of Public and International Law in 1978 as a private course for advocates. In 1980, it was turned over to the University of Stockholm and has continued there ever since, in fact the size of the course was doubled in 1983. I have been teaching the course from the beginning, and this is the only course existing in Sweden especially devoted to the European Convention. The importance of the Convention in Sweden has been on the rise ever since the early 1980s when the Institute succeeded to distribute some 10.000 copies of the Convention text among the general public. In proportion to population, Sweden had long most complaints over human rights violations of all the member states of the Council of Europe. In 1994, the Convention was declared to have the force of statute law in Sweden (SFS 1994:1219). The country has been flooded with conferences and seminars and public lectures about the Convention and its machinery. Nevertheless, not a single time has an invitation to teach or lecture reached the only place where the Convention law has been taught professionally. The resistance has been massive. One cannot avoid admiring the organizational hand behind such a resistance.

Consequently, the negative reception may be taken as an established fact. The paramount question must then be: Why this?

5 Dr Strömholm and Academic Rivalry

What now has been described is part of what has sometimes been described as the Swedish silence. Public debate in Sweden is muted. What is surprising is

A little book about Jurisprudence), and Professor Hellner's book was written to prevent the discussion of the matter at the Chair of Jurisprudence from reaching the first-year students, in particular the discussion of the autonomous legal notions arising in the wake of the European Convention on Human Rights.

³⁴ See lately Jacob W.F. Sundberg, *Airline deregulation. Legal and administrative problems*, General Report to the XIVth International Congress of the International Academy of Comparative Law - Athens 1994, published by Hellenic Institute of International and Foreign Law (Sakkoulas / Kluwer) 1996, pp 533-575. (Also reprinted in this volume of Sc.St.L.)

³⁵ I was sad to discover that my article *Rights in Aircraft. A Nordic Lawyer Looks at Security in Aircraft*, 8 *Annals of Air and Space Law* 233-262 (1983), had been censured from mention in Lars Gorton, *Second Hand Sale of Ships and Aircraft - Some Comparisons, a contribution to Essays in Honour of Hugo Tiberg, Professor of Maritime Law*, Juristförlaget, Stockholm 1996, pp 296-322.

perhaps the extent of it - in scholarly circles. Some of it may perhaps be explained as less of a system than as a result of rivalry. At least it is easy to give some examples of it being so. Comparative law provides one example.

In the late 1960s there were two Chairs of Jurisprudence vacant. As it happened, the two candidates for these chairs were rather similar. Their merits were both in Comparative Law, less in legal philosophy. In my own case the big book was “Air Charter”. In the case of Dr Stig Strömholm he had distinguished himself with two big books on “Le Droit Moral de l’Auteur”, altogether some 900 pages in the French language. The experts asked to comment on the relative merits were not satisfied. The production was insufficient on the side of Legal Philosophy, they thought. This was not our view. We wrote together a joint brief in which we pointed out the relevant merits of our respective works in such a convincing way that in the end we both secured the Chair, I in Stockholm and Dr Strömholm in Uppsala.

Shortly thereafter, Dr Strömholm published a couple of articles on Comparative Law. One dealt with the use of foreign materials in legal dissertations, the other asked “Does Comparative Law have a Method?”.³⁶ Strangely enough, none of them even mentioned the new program advanced in Stockholm, although Dr Strömholm indeed had been sitting in the audience and spoken at the subsequent banquet.

What was also remarkable about both was the total absence of any reference to my book “Air Charter”, the method used in it, or the success of that method in the United States, things familiar to the author because of the joint brief. What was suppressed was thus comparative law as a dialogue between legal systems - what had been discussed in Air Charter as “a comparison of the civil-law and the common-law approaches to the legal construction and interpretation of contracts”, to quote Rosevear. Evidently, under the circumstances, this was a deliberate omission. But it lingered on and came to dominate, ever since, writings on comparative law in Sweden. Moreover, in Dr Strömholm’s discussion, he categorically denied what was central to my own view of comparative law:

The idea that a solution that lacks the national hall-mark could be invoked as authoritative in the administration of justice is in essence completely unknown.³⁷

Strömholm explains this by telling a story about the 19th century:

Nationalism, historicism and in certain places major national codifications did create a sources-of-law discipline that rigorously excluded rules and solutions without the hallmark of the national legislature or the national court system.³⁸

³⁶ Stig Strömholm, *Användning av utländskt material i juridiska monografier. Några anteckningar och förslag.*, Svensk Juristtidning 1971 pp 251-263; and idem, *Har den komparativa rätten en metod?*, Svensk Juristtidning 1972 pp 456-465.

³⁷ Stig Strömholm, Svensk Juristtidning 1972 p 459 f.

³⁸ Strömholm, *ibidem*.

His final conclusion is that legal scholars dealing with comparative law will have to

suffer such restrictions of principle on the use of sources of law that make the solutions suggested acceptable to those governmental authorities that have to resolve the problems of law-application that they discuss.³⁹

This is hardly a rendering of the discussion in *Air Charter*, and much less a description of what effect it had in the United States. Nor is it easily reconcilable with the explanation of the transborder use of precedents that you find in the Anglo-American system⁴⁰ and which was explained in terms of authoritative and persuasive (or historical) precedents by Glanville Williams when he revised the 11th edition of *Salmond on Jurisprudence* (1957).⁴¹

Dr Strömholm has however later in life, in an outspoken moment, explained his position in relation to colleagues. ‘Either they think as I do and in such a case there is no reason to mention it. Or they don’t think as I do, and in such a case it is most merciful not to mention it’.⁴² This is an extreme position in my view, but I do not think that my colleague Dr Strömholm is alone in this. At least the overview of the Swedish scene now given suggests so.

Of course, the position may help in academic rivalries. But the real culprit is, I think, the haegerstroemian Uppsala School which killed the relevance of legal scholarship as such and relegated the lawyers to the position of experts to the political decision-makers. In such an environment, legal scholars had little in common and there was no reason to account for what other legal scholars thought. Law as such is not true or false but meaningless and the same goes for opinions about law. So why bother?

But, of course, under such circumstances few people in Sweden will be familiar with the function of comparative law as a dialogue. And Dr Strömholm’s papers have clouded the fact that there was a new comparative law program in operation at the metropolitan university in the capital of Sweden.

6 The Government Shows its Hand: Ingvar Carlsson’s Manifesto

My inaugural lecture, back in 1970, got a remarkably hostile reception in the media. Mr Daniel Tarschys, writing an editorial in the daily *Dagens Nyheter*, referred to it as “astounding” (*håpnadsväckande*).⁴³ But the columnist in *Sydsvenska Dagbladet*, did more than so. He expressed the hope that “extravagant exaggerations and hallucinations of the Sundberg kind shall result

³⁹ Strömholm, *ibidem*.

⁴⁰ Looking at 7 volumes case reports from the New York Court of Appeals, covering 1917-1922, it was found that some 240 precedents from Massachusetts and some 210 precedents from England had been relied upon, see Report of the Committee on the Establishment etc. in *The American Law Institute - 50th Anniversary*, (The American Law Institute) Philadelphia, Penn. 1973, p 67.

⁴¹ See p 165.

⁴² This was done in a letter of September 24, 1990, that has been published in full in the book *Det är för UHÄ väl känt*, IOIR No 92, pp 162-165.

⁴³ *Dagens Nyheter*, 13 September 1970: *Professorn*.

in a most justified counter-reaction”.⁴⁴ It was never explained what counter-reactions he had in mind. It was to last 20 years until the matter again was lifted to publicity level.

In a letter to Washington Post, published on 25 June 1990, the Prime Minister of Sweden, Mr Ingvar Carlsson, announced that “The Swedish Model Doesn’t Need Fixing” and he wrote:

I do not understand how anyone who has visited Sweden - and no less how anyone living here - can compare us with countries like the Soviet Union or Poland or Czechoslovakia.

Some are trying to discredit the social welfare systems of Sweden and other states by comparisons with the out-dated systems of the Eastern European countries. They point to all the failures of the Communists systems of Eastern Europe, and they claim that social democratic parties in our nations are on the same course.

Certainly, this was a maximum-publicity warning against making the kind of comparisons that has been my program in the Chair of Jurisprudence during the 23 years I held the Chair. But the warning did not stop there. The Prime Minister went before the Swedish *Riksdag* on June 12, 1990 in order to announce the same in a more threatening way:

There are those who have said on account of recent occurrences in Europe: It is indeed in Sweden as it is in Eastern Europe. We should also have our revolution. They say that in Sweden we have a lack of freedom just as in Eastern Europe and an economic situation like the one in Eastern Europe.

Mrs Speaker. He who compares the system of Swedish Social Democrats with the Communism of the Eastern states I will refute in every conceivable connection. That right I reserve to myself.⁴⁵

Mr Ingvar Carlsson was on his way out. A new Social Democratic Cabinet was eventually formed in 1994, this time with 3 former Communists among the Ministers. But the new Prime Minister, Mr Göran Persson, thinks no different than Mr Carlsson on this point. On 14 June 1995 he, too, announced to the *Riksdag*:

I will, like the Cabinet to which I belong, in all connections, forcefully, brand those that are speaking badly about Sweden abroad

Comparative law is thus a high-risk speciality in Sweden. But making comparisons with Civil Law and Common Law is not risky. It is making comparisons with what was the Socialist Camp that brings and brought ill-will. And the Swedish silence is most likely explained by reference to this. Legal scholars felt it no less than other Swedes. It was ‘in the wind’ during all these years.

⁴⁴ *Sydsvenska Dagbladet*, 13 September 1970: *Strunt är strunt*.

⁴⁵ *Riksdagens snabbprotokoll 1989/90:139*, pp 29, 33.

7 The Powers of Government: SAPO

The ill-will in the wind was more than theory. The way the Swedish system was constructed, there were new ways in which a Socialist Government could make its wishes felt and respected. One of the more important among them was the mysterious organization SAPO - which acronym stands for the Socialist Work Place Organization.⁴⁶ The existence of this organization was long denied. It originated as an instrument against the Communist infiltration of Swedish workplaces after the second world war. But it also could be used against other enemies. Some Swedish political parties felt that it was. Eventually the organization was exposed, however, when Communist sympathizers began to exploit the free hand which they had been given under the Palme Government running his anti-American crusade during the days of the Vietnam War. A complete book was published on it in 1990, titled "The Hunters of Communists".⁴⁷

The system was simple. Card-holding members of the Social Democratic party at the one and same workplace formed a more or less secret organization looking for enemies and what they were doing, and reporting back to a central Party authority. There was e.g. one such association for the two blocks that included the National Police Authority and the District Court of Stockholm.⁴⁸ When decisions were to be taken within an authority, SAPO knew and could organize a majority beforehand for the desirable decision.

In 1976, Social Democratic lawyers at the University of Stockholm formed such an association. Its task was to establish a closer cooperation between the association and the organizations of the labour movement outside the university. As put in the Program, "this was seen as a precondition for the legal system in the long run being placed in the service of the major groups of employees". Second in command in the set up was Dr Anders Victorin who happened to play a major role in the *ius docendi* affair.⁴⁹

8 What SAPO can do in a University Setting

It was therefore possible for a ruling party like the Social Democrats in Sweden to pull the strings also in university life, most prominently of course when vacancies were to be filled. Aspiring young legal scholars were anxious to see to it that their files with the Party would not contain entries ensuring that their promotions would be retarded. Established law professors perhaps need not think that way. But they were soon made aware when they were out of sympathy

⁴⁶ Socialdemokratiska Arbetsplatsorganisationen.

⁴⁷ Thomas Kanger & Jonas Gummesson, *Kommunistjägarna. Socialdemokraternas politiska spioneri mot svenska folket*, Ordfront, Stockholm 1990.

⁴⁸ Socialdemokratiska föreningen Kronoberg. Kronoberg is the name of the block where the authorities were localized.

⁴⁹ The manifesto, propagating for the creation of this SAPO association, is published in *Affären fr. Eddan t. Ekelöf, En vitbok. Dokumentsamling utgiven av Institutet för offentlig och internationell rätt*, IOIR No 61, at p 154.

for one reason or another, e.g. due to their teaching. Party zealots among the students could any time start protests or make more or less fanciful complaints. Since it was assumed that the Party was behind such manifestations, they were treated accordingly by the authorities. One specific instance stands out as a monument over this phenomenon.

I was working on the setting up of the exercise that eventually became the Sporröng Lönnroth Moot Court Competition (a complete novelty in Swedish university life). The set up was not ready but it was believed that the inauguration would soon take place. Some students complained about the reading materials in my course, in particular a book that few of them had read. The youngest complainant was only half a year old at the university, and my course was at the end of a 4-year curriculum. I told them that they were incompetent to judge a book that they had not read and would not read for another three years. And then I added that nevertheless their interest in the course was a positive sign and that I would keep it in mind when they arrived at the course; I hoped then to be able to come up with some offers. - The students turned to the Chancellor of Justice and asked for my punishment: I had been threatening them with reprisals because of their opposition to the book which I had written. The Chancellor discussed extensively if there was some ill-will behind my remarks and was extremely understanding of the enormous fear and discomfort that had been experienced by the students due to my remarks. In the end, however, I was reprimanded⁵⁰ but not prosecuted or dismissed. No doubt, such an experienced civil servant as the Chancellor of Justice immediately sensed a SAPO operation that had to be treated most cautiously.

Naturally, such a treatment of one the most senior Professors of the Faculty of Law (only Professor Jan Hellner had more seniority) attracted much attention, and the Socialist-leaning press made as much as possible out of it.⁵¹ The effect was, of course, a further marginalization. A few years later it carried over into the *ius docendi* action. That action, again, was initiated by some leftist students with strange complaints that immediately were taken care of by the Board of Line and turned into a general investigation of the contents of the course in Jurisprudence.⁵²

⁵⁰ In his Resolution of 17 September 1984, the Chancellor of Justice focused on i.a. the fact that I had read the decision suppressing the book in class and identified the body having taken the decision. The Chancellor said:

Like the Board of the University I find that what Sundberg has done in these two matters has been such that it was apt to be considered by those affected as ironic and derogatory.

The Chancellor's briefing officer was thereupon promoted to sit on the Bench of the Supreme Administrative Court.

⁵¹ Svenska Dagbladet in its issue 20 September 1984 ran the headline: *Condescending Professor Censured by the Chancellor of Justice*.

⁵² I must here again refer to the documentation in 29 *Minerva. A Review of Science, Learning and Policy* 321-385 (1991). The reader will note what Professor Victorin says at p 381 about my discussing the 'reception of Marxist law in Sweden':

when it comes to his grand theory that Sweden is "receiving" Marxist law and slowly being transformed into a socialist state, which forms an important part of the course in jurisprudence, I disagree. I tend to find the arguments of Sundberg based on misconceptions, misinterpretations, misunderstandings and on lack of common sense.

While the *ius docendi* operation eventually flickered and died, it was accompanied by putting my professorial salary at rock bottom level, and my salary supplements at the level of the low-wage guaranty.⁵³ On the top of this, the travel grant that I had asked for in order to be able to participate in the deliberations preparing for the setting up of the War Crimes Tribunal in The Hague⁵⁴ was cancelled because my travel report was considered unsatisfactory: it only set out how I had traveled. This was the poisoned farewell that I received from the Faculty before retiring as *emeritus*.

This is the kind of treatment that in refugee law is known as chicanery.

With SAPO in control of the university, and the Government issuing vague threats of general application, there did not seem to be much future for Comparative Law in the Swedish Model.

9 The European Convention and the Comparative Law Method Immanent Therein

When the 1970s were coming to a close, however, a new actor had appeared on the scene. Ostensibly, it had nothing to do with the Swedish Model, nor had it anything to do with Comparative Law. In the end it turned out that it affected both areas. This was the European Convention on Human Rights, signed in 1950, in force as from 1953, and in full swing after the change of generations in the Commission and the Court that had taken place during the 1970s.

It was a strange Convention because it took seriously the idea of a society under the rule of law and turned it into a treaty undertaking. What was more, was that this treaty undertaking was handed over for policing to some institutions at the European level, most important the European Court of Human Rights and the European Commission on Human Rights. Suddenly, here was an instrument of the utmost importance for all societies in all states which hailed the idea of the rule of law and were determined to implement it.

The Convention did not mean much during the first two decades. But during the 1980s, the European human rights system spread to new states and sensing the general acceptance the Commission and the Court became very active. By 1989, the system included 24 states with a total population of some 400 million people. The right of individual complaint now is accepted by all states, and so is the obligatory jurisdiction of the European Court. In brief, the system is a total success. (By 1999, the system included 41 states.)

I have no difficulty in seeing the affinity between this and the warnings of the Prime Ministers against those doing comparative law research focusing on Sweden and the Socialist Camp (*supra*).

⁵³ The salary policy in my case was fought in many ways, unsuccessfully. Eventually, I brought the matter before the Ombudsman who finally, in a decision 15 January 1996, decided to do nothing. The documentation is published in the booklet *Om fackordförändens lönesättning* (i.e. concerning salaries being set by the Union Boss), IOIR No 108 (1996). Labour unions in Sweden are part of the Social Democratic support and control apparatus.

⁵⁴ To be precise: The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, was the name ultimately adopted for this Court.

Defining what is meant by a democratic society under the rule of law is the task of the Convention organs, and while they have to find their departing points in the text of the Convention, the fine points have to be hammered out in an autonomous interpretation of the Convention which often ends in comparing the legal systems of the various states that have accepted the Convention. This is a comparative-law exercise of the most profound kind. On the basis of a body of some 30.000 cases before the Commission and some 500 judgments rendered by the Court, a great many conceptual issues have been faced and resolved, such as what is meant by *law, criminal charge, civil rights and obligations, courts and tribunals, access to court, property, deprivation of freedom, inhuman treatment*, etc. This was comparative law at its best, a living dialogue between lawyers coming from different legal systems and different legal traditions but intent on finding the common ground that could be derived from the idea of the rule of law. And the position of the *Court* as an abstract concept in this system was paramount.

10 The European Convention as a Teaching Tool: Moot Court Competitions

In the late 1970s, when I sensed what my comparative law program was up against (although I was not able to prove it) and I had begun to understand what the European Convention system meant, I started to cultivate this new field. This did not ensure my popularity with leading circles, neither at the university level nor among top politicians. Rather they took energetic action to try to stop me from proceeding further. But this was mostly because Swedish politicians - and in their wake the university people - came to realize that the European system meant *judicial review* of not only bad decisions by Swedish authorities but also of bad laws made by the Swedish *riksdag*. Judicial review was anatema to the Social Democratic Party, perhaps even worse than comparisons between the Swedish law and the system of the Socialist Camp. But that the European system meant a comparative law dialogue was hardly understood, certainly not at that time. And this allowed me an opening.

Ever since my days in the United States I had been interested in Moot Court Competitions. They seemed to contribute something to Jurisprudence inasmuch as they focused on and glorified legal talent (being something else than being right) and legal talent was central to the very notion of a legal system. But it was not until I started to study the European Convention that I understood what a magnificent instrument for setting up Moot Court Competitions in Europe that was at hand. Again, it was uphill work. Faculty people warned me from studying in Strasbourg, no travel money was to be expected for such purposes. Having landed the mandate of the National Correspondent for Sweden on Human Rights, the university people preferred to see the mandate move to Lund rather than letting me do the job. Asking for travel money to organize the competition on the Nordic level, I was recommended first to provide the university people with written documentation showing that I was welcome before they were willing to consider my application for the grant; they seemed to be unaware of the existence of the telephone.

Consequently, the reception was not much different from the one I had experienced in relation to my comparative law research. But the ill will was rather a gut reaction than an understanding of the potential of the Moot Court exercise. And furthermore, it was concentrated to the University of Stockholm. The good thing about my Moot Court Competition plan was that it enclosed all the five Nordic countries. And in the other countries, the idea got a very sympathetic welcome. In the end that made the difference. From a small start with 4 advocate clubs in 1984, the competition started to grow, and when a spoke was put in its wheel in 1987 when the President of the Supreme Court refused to let us continue using its prestigious Palace for the Moot Court sessions, and we survived by the generosity of the President of the Court of Appeals who had a better Palace, the Competition became itinerating between the Supreme Courts of the other Nordic countries. In Reykjavik, in 1994, the Competition could celebrate its ten-year jubilee.⁵⁵

What this Competition achieved on the Comparative Law side was to familiarize the participants with *the legal systems of the five Nordic countries*. The dispute to be found in the ‘fact sheet’ was always a present-day dispute, localized in one of the five countries. In order to put all participants on an equal footing, whatever country they came from, each fact sheet was supplemented by a great many annexes with the relevant statutes and court cases and press clippings showing the actual living setting in which the dispute took place. Of course, it was a question of European judicial review of the legislation in force and its local application. But this simply added to the attraction because the students were forced to bring in also European precedents and European doctrines about the rule of law. So, for once, the Nordic students were confronted with not only the other Nordic countries but also with Europe at large - and that in a living dialogue.

It is a chilling reminder however of the power of the ‘Swedish Model’ to scare into submissiveness that my Swedish students, later in life, are very reluctant to remember what they learnt in the Moot Court Competition. Some of them are now, after ten years, at Faculty level, having completed their doctoral studies. But although the task of the National Correspondent was to list the Swedish cases in which the European Convention *was invoked*, and such cases are reported in my five volumes of “Human Rights in Sweden. The Annual Reports”, a Swedish author finds no difficulty in stating that before the European Convention Act, 1994, the Convention *could not be invoked* in Swedish cases.⁵⁶ And although the title of the dissertation is ‘Constitutional Protection of Rights. Swedish Law in a Comparative Perspective’, the author does not dare to mention the Akron Symposium, 1986, on “Human Rights as Comparative Constitutional

⁵⁵ The occasion was chosen to publish an anthology of papers discussing the experiences gained from the Competition. Altogether it made a volume of some 200 pages, published as *Jubileumsantologin Sporrang Lönnroth*, IOIR No 100 (1994). The Preface is authored by Dr Niels Eilschou Holm, Private Secretary to the Queen of Denmark.

⁵⁶ Joacim Nergelius, *Konstitutionellt rättighetsskydd. Svensk rätt i ett komparativt perspektiv*, Fritzes, Stockholm 1996, p 609 f.

Law” which I organized.⁵⁷ He prefers to look the other way and discuss an American literature that is of little relevance to the Swedish subject chosen. It is a fair guess that the author preferred this road simply because the Akron Symposium included a major contribution by Walter Tarnopolsky who made comparisons with how the members from the Socialist Camp had argued when sitting on the Human Rights Committee in Geneva, facing individual complaints under the Optional Protocol, and country reports introduced under Art. 40 of the Covenant on Civil and Political Rights.⁵⁸

11 A Setback to the Swedish Model: The Sporrong Lönnroth Competition Picks up Speed

The Sporrong Lönnroth Competition has now (1999) completed its fifteenth session. It joins 9 universities from the 5 Nordic countries. Every year it assembles some 200 students and a panel of judges recruited from the European Court of Human Rights and the supreme courts of the Nordic countries. Every year a new ‘fact sheet’ is drawn up in order to familiarize the participants with new legislation in a new Nordic country, new case law in same country, and recent judgments of the European Court. Every year the Competition has been welcomed at the supreme court of the host country, and the capital city of that country has opened up its town hall and given the participants a handsome reception. In short, it has been a success.

12 Surviving Academically by the Support of the Judges

In the Swedish environment described above it was not to be expected however that a teaching experiment like Sporrong Lönnroth, that was furthermore American-inspired, should be encouraged or helped. On the contrary, it moved from crisis to crisis. It survived because it was a matter of concern to a number of Nordic universities, besides the one in Stockholm, and because it was centered at the Stockholm Institute of Public and International Law which was independent from the University of Stockholm.

All crises, just like the *ius docendi* operation, were overcome due to the interventions from the outside. The high judges sitting in the Moot Court Panels intervened by letting their concern be known to the Rector of the University, and so did Advocates presiding over the advocate clubs, and so did the students who were participating or had participated in the Competitions. SAPO could not counter this and so the opposition to the Competition gave in. New contracts were signed ensuring the continued cooperation between the university and the Stockholm Institute.

⁵⁷ *Human Rights as Comparative Constitutional Law. Proceedings at the Colloquy November 13, 1986. The University of Akron School of Law*, 20 Akron Law Review 593-713 (1987).

⁵⁸ Walter S. Tarnopolsky, *The Canadian Experience with the International Covenant on Civil and Political Rights Seen from the Perspective of a Former Member of the Human Rights Committee*, 20 Akron Law Review 611-628 (1987).

13 The Future: The Great Leap Eastwards

Sweden could long keep a distance from the Socialist Camp, geographically speaking, since the Baltic Sea separated us from those countries. The collapse of the Camp in 1989 was received with great relief but in many quarters also with sorrow, since after all the Camp was part of the great experiment with Socialist ideas and had tried to implement many of them, not the least in the field of family law. The collapse of DDR was a shock, and the mourning thereof has never stopped in many and important places in Sweden. Accommodating old Communists in the Cabinet is more than a gesture.

But *annus mirabilis* as the year 1989 has come to be known, gave the impetus to 'The Great Leap Eastwards'. Within a few years, the European Convention system had moved its borders far to the east and increased from 24 states to some 40, and its population with another 100 million. And ultimately, in 1996, Russia too was admitted to the Council of Europe and had to make a number of undertakings in order to be allowed to sign the European Convention. It was the Swedish President of the Parliamentary Assembly of the Council of Europe, Mr Anders Björck, who engineered the first leap, and it was another Swede named Daniel Tarschys who was mostly responsible for letting Russia in. None of these two was a lawyer and it is reasonable to believe that they had vague ideas of what they were doing when they wanted to impose upon these new countries, ruled by the *nomenklatura*, the rule of law system immanent in the European Convention.

This means that once again we will be faced with a Marxist-trained bureaucracy trying to come to grips with a rule of law system which they have learnt to despise and circumvent, while in essence remaining irreplaceable because it takes a lot of time to train a competent judge or civil servant. It would be optimistic to suggest that the *nomenklatura* today is in a better mood or better position than the Swedish bureaucracy was in the mid-70s when asked to apply the European Convention.

In this setting, the comparative law approach focusing on the system of the former Socialist Camp and comparing it with the system of the European Convention will come to the forefront. The Swedish Government believes that it will have a predominant role when integrating the old Camp with the new Europe. Anyway, I think it may find the old comparative law research done at the Chair of Jurisprudence in Stockholm useful when trying to solve the new tasks.