

# The Scandinavians: Reluctant and Enthusiastic Club Members

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1. Wherever the idea of writing history occurs, it is accompanied by a strong temptation to provide the sequence of events described under that name with a heroic beginning, a foundation myth. And this deeply rooted craving for a tale of primordial grandeur, a *grand récit* as French historians call it, is not limited to those who write the history of nations and religions, ancient universities and famous learned societies, proud cities, omnipotent multinational companies. It cannot be completely eradicated even from the minds of those who are engaged in studying the past of such quiet and modest phenomena as law reviews and yearbooks. And it may well be that as time passes, the tendency to see origins and beginnings in a bright mythical morning light becomes stronger and stronger in the dimmer and dimmer eyes of old men looking back. This tendency inevitably increases in strength in those moments where jubilees are approaching. This is such a moment, and the present writer is such a man. That is why he allows himself to dwell for a short while, by way of introduction but also as a modest jubilee homage, on a topic which may be considered to fall outside the proper ambit of this article as indicated or at least intimated in its title but which nevertheless seems to deserve a brief retrospective sketch in this context, viz. that particular, and not very typical, form of Scandinavian cooperation which is represented by the foundation of the yearbook *Scandinavian Studies in Law*.

2. In the four first volumes of *Scandinavian Studies in Law*, in my library - thus the books for 1957 - 1960 - I find my name, written legibly and carefully, not without some solemnity, as it seems, followed by the mention "Stockholm Dec. 1960". I had received the four volumes from the founder and the *primus motor* of the yearbook, Professor Folke Schmidt; this was my first contact with him and with a publication with which I was to be involved from the early 60's until the 90's. In the years 1966 - 1979 I was one of the four or five members of the Editorial Board, to which I was called back in 1981, after Schmidt's demise,

to remain for more than a decade. In the years 1975 – 1993 I was also a member of the Advisory Committee, a body which deserves particular attention in the present context, since it constituted the link with the Scandinavian law faculties and had the function of drawing the editors' attention to such new books and articles as they found of possible interest for presentation in an international context.

The solemnity which the notes in my copies of the first volumes of the yearbook seem to express was not unjustified. For a young lawyer, who had passed his Uppsala LL.B. in 1957, spent a year as a research student in Cambridge, and was still serving as a court clerk in Uppsala, just about to begin his year of probation as a candidate for the judicial career in the Stockholm Court of Appeal, the meeting with Folke Schmidt, Jan Hellner, Kurt Grönfors and Ole Westerberg, the highly considered legal scholars who constituted the first Editorial Board of the *Scandinavian Studies*, was an occasion of considerable importance. It was undoubtedly the fact that I had finished a small dissertation at Cambridge University (it was to be published in Stockholm in 1961) that made Folke Schmidt believe I could be of some use for the yearbook. Once the probation year had been successfully completed and I had taken up research in Uppsala, the contact with Schmidt and the other editors became more intense, and I was informally engaged as a kind of secretary of the board (a similar function was also fulfilled, if my memory is correct, by a slightly older academic lawyer, the future Stockholm Professor Jacob W.F. Sundberg, whom I occasionally met in that context).

The meetings of the Editorial Board in Folke Schmidt's office in the building then occupied by the Stockholm Faculty of Law (Norrtullsgatan 2) were memorable in many respects. They had been prepared by intense proof reading; for many years, from 1963 until the mid-seventies, I hardly ever travelled - and these were years of frequent travelling - by train, by air or by ship without bringing a substantial bundle of manuscript pages or galley proofs. When the Editorial Board met *in pleno* for a last overhauling of the proof sheets - meetings which in fact come back to my memory in a bright morning light - there was a very special atmosphere characterized both by relief, by the satisfaction of bringing a heavy work to its completion and by a certain competitive spirit: discovering a misprint in these extremely carefully prepared texts was honoured with the term *cordon bleu*, a strictly intangible reward; we barely took the time for a mostly very frugal luncheon in a modest nearby restaurant.

Creating the yearbook and keeping it alive for so many years – the last volume edited by Folke Schmidt was that of 1980 – was indeed a pioneer achievement, no mean subject for such heroic myth-building as may be admitted in the world of scholarship, and it is only fair to appoint Schmidt the hero. It should be added, however, that he received valuable help from his colleagues and also from his highly competent and efficient secretary, Mrs. Ulla Rathsmann, whose contribution was formally recognized when, in 1981, she was admitted to the Board of Editors, where she remained until 1991. Another important collaborator was the English translator Richard Cox, who developed a deep comprehension of Swedish legal language and a great talent in finding the proper English terms. We – in this context, the present writer allows himself to use that word – often found ourselves in a situation where we had, literally, to

invent substantial elements of a new language. Volume by volume, a vocabulary was created on the basis of the articles so far translated, and considerable efforts were made to use it consistently in the texts that followed.

By virtue of this strenuous and time-consuming building of what may be called a conceptual and linguistic infra-structure, the first ten volumes of the *Scandinavian Studies in Law* contributed to the internationalization of Nordic legal science and, more generally, of the Nordic legal tradition in a manner that went far beyond the effects normally to be expected from a learned yearbook which, for practical and financial reasons, had to be strictly selective. The first issues did not contain more than some six or seven articles. The number increased in the course of the years, but never exceeded a dozen.

Those who justified the use of the word “Scandinavian” for what was in the first place and in its actual operation a Swedish initiative and a Swedish activity were the members of the Advisory Committee, already referred to above. The first panel was rightly considered impressive; the names of the members should be mentioned here although most of them are likely to mean nothing to readers from outside the Nordic countries, and probably also to many younger Scandinavian readers: Carl Jacob Arnholm from Oslo, Alf Ross from Copenhagen and Thøger Nielsen from Århus, Matti Ylöstalo from Helsingfors, Armann Snaevarr from Reykjavik, Åke Malmström from Uppsala and Karl Olivecrona from Lund. Although the Committee never met in person but worked by correspondence, organizing this common work towards a common objective was undoubtedly a contribution of no small importance to that intellectual openness and mutual comprehension which is often said to characterize Nordic legal cooperation. The *Scandinavian Studies* certainly also rendered services to that cooperation by drawing the attention of lawyers in the five participating countries to a selection of particularly beautiful flowers from the neighbours’ gardens.

A few words from Folke Schmidt’s preface to the first volume should be quoted. “In the Scandinavian countries”, he writes, “this need for contact is partly met by intensive cooperation in the field of law between these countries themselves. Many of the Scandinavian statutes are identical or similar, having been drafted by joint committees of experts. The courts of each country pay regard to the decisions of the courts of the others, and in many respects legal writers treat Scandinavian law as a whole.” The learned writer then goes on to speak about the influence of the great Western legal systems on Scandinavian law, and continues: “Hitherto (- - -) the communication of Scandinavian lawyers with other legal systems has too often been of a one-way character, for very little Scandinavian legal writing has been published in any language but that of the author. - - - In an attempt to improve this situation, this yearbook will present in English a limited number of studies which have already been published in the Scandinavian countries. - - - This yearbook does not attempt to supply the student of comparative law with a detailed knowledge of Scandinavian statutes or Scandinavian law, a task which would call for a publication of quite a different kind.”<sup>1</sup>

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1 1 *Sc.St.L.*, p.5 f. (1957).

One of the contributions in the first volume may well be called its flagship; it is Alf Ross' famous article "Tû-tû", which, as Folke Schmidt mentions in the preface, had already been published in the *Harvard Law Review* the same year. "Its publication there", Schmidt adds, "was thought to be a suitable way of introducing this yearbook to the American public."<sup>2</sup>

3. This being said about the publication to which homage should be paid on this occasion, it is time to pass to the two inter-Scandinavian activities where the present writer has had the opportunity to gain the experience on which the following remarks are founded. One is a legislative initiative which was entrusted to one-man-commissions in Denmark, Finland, Norway and Sweden (Iceland did not participate actively but followed the work) and in which I participated as the secretary of the Swedish commissioner. The other activity is that of the Scandinavian lawyers' meetings, which take place every third year in the capitals of the five countries involved. They are planned and led by a national board in each country; the Swedish board, which disposes of an endowment for the purpose, has certain coordinating functions in the preparations. In the years 1981 – 1999, I was chairman of the Swedish board.

In February, 1960, the Swedish Minister of Justice appointed Professor Henrik Hessler, of the Faculty of Law at Uppsala University, to undertake an inquiry – i.e. to act as a one-man legislative Royal Commission – concerning the rules applicable to controversies between the owner of movables and a person who has the goods in his possession and who claims to have acquired it in good faith in situations where the property has been stolen from the owner or disposed of without his permission by someone having it in his possession on his behalf.<sup>3</sup> The purpose of the inquiry, the Minister stated, was to achieve Nordic harmony in the field, and the task of the Commission was to "map out" the relevant rules and to propose, at least in terms of general principles, appropriate amendments of the law.<sup>4</sup>

The background of this initiative was to be found in discussions in the Nordic Council.<sup>5</sup> The committee for legal affairs of the Council had drawn the attention of the board of that body to the fact that the rules applied in controversies of the kind just described were different in the Nordic countries. The situation had been submitted for advice to a group of delegates for legislative cooperation which had stated, in an opinion given in September, 1958, that the question seemed an appropriate subject for coordinated inquiries,

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2 Ibid. (p. 6).

3 For a detailed discussion of the applicable Swedish rules at the time when the inquiry started, v. S. Strömholm in 12, no. 1, *American Journal of Comparative Law*, pp. 41 – 60 (1963).

4 *Godtrosvärv av lösöre. Betänkande avgivet av särskild utredningsman*. Statens offentliga utredningar 1965:14. Ministry of Justice (Stockholm 1965), p.3.

5 The Nordic Council is a body set up in 1952, with an assembly composed of 87 members elected by the Parliaments of the participating countries, with a president, a board of eleven members and a number of specialized committees, among them a committee for legal affairs.

which ought to focus on such cases as were important from a practical point of view. A harmonization of the rules in this field would be a purposeful continuation of the harmonization work already realized in the Nordic statutes on similar conflicts concerning negotiable instruments. In June, 1959, the Nordic Ministers of Justice agreed to appoint, each in his country, a one-man commission with the task referred to above in respect of the Swedish Commission. The commissions should work in consultation with each other, and their reports should be structured according to the same principles.<sup>6</sup>

The most important difference between the rules applicable in the Nordic countries was that in the two countries where the Swedish Code of 1734 applied, i. e. Sweden and Finland, a *bona fide* transferee acquired a valid title to such movables as had been in an unauthorized transferor's possession but passed into his hands; he was consequently entitled to compensation for returning such movables to the original owner. In Denmark and Norway, the Danish and Norwegian Codes of Christian V (1683 and 1687 respectively) had adopted another main rule: on principle, and with few exceptions, the owner had a right to recover his property from the *bona fide* transferee without compensation. Whereas Swedish law – on the strength of a controversial Supreme Court decision from the middle of the 19<sup>th</sup> century – recognized the title of a *bona fide* transferee even where the property had been stolen from the original owner, Finnish law (which had developed independently of the Swedish legal system after 1809, when Finland became an autonomous grand-duchy under the Russian Empire) had retained the original principle from 1734, which did not allow *bona fide* acquisition of a title in stolen goods.

This is not the place to discuss the question whether this initiative was taken under the pressure of urgent practical needs which had made themselves felt with particular strength in the years immediately preceding the discussion in the Nordic Council, or whether it should be considered as a piece of luxury, an expression of legislative perfectionism. The early 1960's were in fact a period in which Nordic cooperation in legal matters was carried on in a broad range of fields and when the ambition of Governments and lawyers was still to achieve full harmony between the enactments resulting from that cooperation. In the course of the work of the one-man-commissions, extensive inquiries were undertaken in the four participating countries, in the form of circular letters, in order to obtain information about the views of the relevant sectors of the business community and of the police in some important urban areas. The answers would seem to indicate that the application of the traditional rules were not considered to cause serious problems either in those countries which had adopted the principle allowing the owner to reclaim his property even from *bona fide* transferees or in those where the opposite rule prevailed. The general tendency in the answers was in fact that there was not much interest in law reform in the field concerned. The area where problems of some importance seemed to exist concerned the trade with second-hand motor vehicles, in particular where such vehicles had been sold under a hire-purchase contract.

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6 Op.cit. in note 4 above, p. 14.

The inquiry had been entrusted to four distinguished legal scholars: Professor W.E. von Eyben, of Copenhagen University, Professor Simo Zitting from Helsingfors, Professor Knut Robberstad from Oslo, and Professor Henrik Hessler from Uppsala, The Danish, Finnish and Swedish commissions each had a secretary. It was in that function that the present writer took part in the work; I was appointed on 10 October 1960 and spent the period from that day till the middle of January in the University Library of Uppsala, preparing a first version of a description of the fairly voluminous Swedish case law from the early 19<sup>th</sup> century onwards and of a survey of legal writing in the field. The plan was that the Swedish representatives should be in a position to present a draft of that part of the future report at the first common deliberation of the four, which took place in Copenhagen on 17 – 19 January, 1961. Copenhagen was to be the venue of the last meeting, that took place in December, 1963. Between these two dates, the commissions had met in Stockholm in November, 1961, in Oslo in August, 1962 and in Helsingfors in December, 1962. The Danish report was published in December, 1964, the Swedish commission's report in January, 1965, the Finnish text somewhat later, whereas the Norwegian inquiry did not result in a complete report at this time.

It turned out to be a considerable advantage to have spent some time in Denmark in young days and to have studied Scandinavian languages at the university, which was my case. It is part of the ideology underlying Scandinavian legislative cooperation – and an important part, since similarity, if not identity, of culture is one of the foundations of all work in common - that Nordic lawyers understand each other when they speak each his or her own language. It obviously admitted that this means a considerable effort for Finnish delegates who do not belong to the Swedish-speaking minority in Finland, since they have to use a language with which they are familiar theoretically and ideally, under the language legislation of their country, but which is not their native tongue. Finnish cannot be spoken in these contexts, since it would exclude all the other delegates. A similar problem exists in those situations where Iceland is represented, but it is somewhat less acute, since Icelandic is a Nordic language, in fact the most original and well-preserved of them all, although today no longer comprehensible to those speaking the other, more decadent, Scandinavian languages. It is undoubtedly part of the underlying ideology that all members of a group such as the one coming together for the first time in Copenhagen in January, 1961, can speak each his own language and be understood by the others, but it must be admitted that the facts do not always comply with that ideology. In this particular case, the linguistic difficulties were somewhat more pronounced than is normally the case; the Norwegian delegate was a firm adherent and speaker of the language called “New Norwegian”, a variant composed, in the latter half of the 19<sup>th</sup> century, on the basis of West Norwegian dialects, and intended to give the country a language truly its own, distinct from the co-called “book language”, which had developed in the course of the four centuries when Norway was ruled by the Danish kings from Copenhagen and was intellectually and culturally strongly dependent on Denmark. Whereas traditional Norwegian is easy to understand for Danes and Swedes, they have considerable difficulty with “New Norwegian”, which has developed into a language of its own, with a very large proportion of archaic

elements, - in fact so distant from the “book” language that there are, e.g., translations of the plays of Ibsen into this artificial language. My studies of Nordic languages in Uppsala and what I learnt about spoken Danish when staying in Denmark for a long vacation in the late 1940’s sometimes proved quite helpful at this first meeting.

The linguistic differences were not the only ones to make mutual understanding problematic. Each of the delegates - now all dead - may be said to have represented a specific intellectual tradition and perhaps even more to have been characterized by a specific and to a great extent untranslatable societal environment. The phenomenon was highly interesting to observe, and an observer with a bent for drawing caricatures could derive considerable profit and pleasure from the discussions. One respect in which these differences became most obvious was the choice of concrete examples which the delegates adduced in support of their arguments for a given solution, as lawyers engaged in legislative discussions often and rightly do. The most obvious contrast was that between the cases put forward for discussion by the Danish representative, who was familiar with international and large-scale business in the Copenhagen commercial *milieu*, and those to which the Norwegian delegate drew the attention of his colleagues; the latter were mostly taken from rural surroundings, and from forestry, agriculture and fishing, often on a small scale. The Swedish Delegate, later to be appointed a Justice of the Supreme Court of his country, was renowned for his intellectual acumen and brilliance, but also for realism in his judgments of men and ideas; he was of a quiet disposition and tended to contribute most effectively by analyzing, without haste and with ruthless logic, the possible consequences of proposed solutions in various situations of practical importance. The Finnish Professor, who was the author of highly considered monographs in property law but whose Swedish caused him obvious difficulties, was also a quiet man, who mostly tended to give laconic support to his Swedish colleague.

It is a task of great difficulty, and also one of considerable delicacy, to try to convey a true and impartial idea of the atmosphere which prevailed at the meetings of the four Nordic one-man commissions on *bona fide* acquisition of movables, the characteristic attitudes of the delegates, the tensions, if any. Yet it is a task which a faithful chronicler should not shirk, since a realistic appreciation of the conditions in which Scandinavian cooperation takes place, or took place at the time, cannot be realized without case studies of this kind. It is obvious that in a group of four, the personality of the participating individuals is of decisive importance in many respects, the more so, in this particular case, since all four were scholars; the life and work of university professors, even law professors, who are seldom completely aloof from the world, allowed, in those days, a great freedom to develop their personal originalities and idiosyncrasies. But were there, in addition to this unavoidable and unpredictable fact, other elements which were not clearly due to societal particularities connected with the subject of the discussion but could be attributed to internal national traditions or to the traditional relations between the participating countries? I have already referred to the language question and to what might be called the differences between the sociological and economic contexts from which the delegates

tended to choose the concrete examples which mostly served as points of departure, from which discussions of general principles and rules could start.

Generally speaking, Sweden was, in a vague and implicit way, felt to be the quiet big brother in a number of respects. Professor Hessler was the last man who would ever put forward any claim of that kind. He was unassuming on the verge of diffidence. Fifteen years after the Second World War, the opulence which had for a long time made Sweden an exception in relation to the war-stricken neighbours, was no longer a reason for either envy or respect. Rather - apart from the obvious and trivial fact that Sweden is with a fairly broad margin the largest of the Nordic countries - this position had to do with the language situation, and this is an observation which I have made many times in the numerous contexts where I have had the opportunity to participate in Nordic legal cooperation. Swedish is used as a kind of bridge between the outmost points of the language spectrum, and this gives the Swedish representatives an intermediary position which can be felt to imply a certain strength. Danes, who often realize that their language constitutes one of the extreme points of the language spectrum, but also Swedes, and to a lesser extent Norwegians, sometimes feel a need, in order to make themselves clearly understood, to speak a Dano-Swedish *lingua franca*, called "Scandinavian" by those who use it. This is an exercise which calls for much tact, however, since all Scandinavians know, or believe that they know, what the others think and say about them and their language, and too advanced attempts in "Scandinavian" may be taken for caricatures and thus have undesired effects on the atmosphere of a deliberation. It is my experience that unless you really speak one of the other languages, and speak it well - which is very rare - the most effective solution is to use your own language and speak it slowly and with pedantic clearness.

It seemed to me that there was a silent and also vague general assumption - for reasons far from clear to me even today - that Swedish law was in some way considered the most "modern", and "progressive", set of rules of the four. Part of an explanation may be that in those days Sweden played an independent part on the international stage. In the climate of the cold war, "Sweden : The Middle Way" (the title of a well-known book published already in 1936 by the American journalist and writer Marquis W. Childs) was an impressive formula, indicating a wise deliberate choice between socialism and capitalism, which still enjoyed wide-spread belief. Since the end of the war, Sweden lived under energetic, self-confident, and in some respects successful Social Democratic Governments, who had a tendency to appear with prophetic airs. At the same time, the country was still economically highly successful.

In short, there were a number of reasons, rational or not, which seem to have made the Swedish main rule in the field of law under discussion - the rule recognizing the title of *bona fide* transferees of movables - appear more "modern", more open to the legitimate claims of what was usually called in Swedish *omsättningen*, i.e. that unimpeded flow of goods and money which is sometimes fêted as the systemic blood circulation that keeps the body politic alive. However that may be, the Danish representative, with his contacts with the Copenhagen business community and his experience of international trade, listened very attentively to the arguments put forward - quietly, without any fanaticism, let alone nationalistic overtones - by Professor Hessler. In the end he



was in fact to accept a solution very much along the lines proposed from Sweden, and so did the Finnish one-man commission. They arrived at a compromise which meant that the Swedish rule was to prevail, except in cases where the original owner had been deprived of the controversial property by larceny, robbery or blackmailing; in these cases, the transferee claiming *bona fides* would have to prove that he had investigated carefully the title of the transferor. The Norwegian representative was not prepared to accept an amendment along these lines. It seems to have been of considerable importance for his position that although he was a distinguished private law scholar, he was in the first place a historian of law, and that he held a highly critical opinion of such changes in ancient Norwegian law as had taken place in the 400 years when the Kingdom of Norway was subject to the Danish Crown (1450 – 1814); the century of personal union with Sweden, imposed upon Norway in 1814 as a result of war (and dissolved in 1905), was of less interest to him, since no attempts had been made from the Swedish monarchy to interfere with Norwegian private law. Thus the fact that the Danish representative was prepared to follow the Swedish example at least half-way seems to have acted as a counter-argument rather than as an argument for Norway accepting the compromise. Professor Robberstad's position was certainly also strongly influenced by the fact that, as already stated above, the concrete examples upon which he founded his conclusions were mostly taken from other sectors of industry and business than those which occupied the Danish and Swedish representatives and in all likelihood also the delegate from Finland.

Nothing came out of the legislative initiative. Professor Hessler's final report (proudly countersigned by the present author as secretary) was published in 1965.<sup>7</sup> It is a volume of 240 densely printed pages, with a very full description of the decisions in which the actual state of the law could be found, a draft with lengthy comments on its interpretation, an account of the results of the inquiries with business organizations and police authorities. As a piece of legal and legislative workmanship the report was received with great respect and approval, but it did not lead to legislation. It would take another twenty years before a statute on *bona fide* acquisition of movable property was enacted. It was the result of the work of another one-man commission, whose report was published in 1984. This time, the Ministries of Justice in Denmark, Finland, and Norway were *informed* about the ongoing legislative activity; no formal cooperation took place.<sup>8</sup>

4. The Nordic Lawyers' Meetings are a subject which could easily be developed in more than one well-filled volume; they have taken place every third year since 1872, with interruptions caused by the two World Wars. An excellent historical description of the first hundred years was published in 1972.<sup>9</sup>

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7 Op.cit. in note 4 above.

8 *Lag om godtrosvärv av lösöre* ("An Act on *bona fide* acquisition of movable property"), Statute no. 796, 13 November, 1986. V. 111, *Nytt Juridiskt Arkiv*, avd. II, pp. 369 - 390 (1986).

9 V. Henrik Tamm, *De nordiske juristmøder 1872 - 1972. Nordisk Retssamvirke gennem 100 År*. Copenhagen 1972, 213 pp.

The structure of these meetings is simple. In each of the participating countries, there exists an association for the purpose; the boards of these associations constitute the common board of the meetings which are held under statutes adopted by that common board. Each meeting is organized by the country which hosts that meeting according to a fixed rotation scheme. The Swedish board has a special function; it is responsible for the management of a fairly important donation to the national associations in common, and it is therefore its task to organize and host, usually towards the middle of the three-years period between the general meetings, a joint board session in Stockholm where the subjects to be discussed at the next plenary meeting are determined, where the date and programme in general for that meeting are decided upon and the speakers and chairpersons to be approached for the various items on the programme are chosen. A Nordic Lawyers' Meeting is an event of considerable magnitude; at the meeting in Helsingfors in 2002, there were 1067 participants with 167 accompanying spouses. No less than twenty-eight sessions were held in the three days of the meeting, each dealing with a well-defined subject which had in most cases been presented in a written report available to the participants before the session took place. It is a traditional feature that the meeting is inaugurated in the presence of the Head of State of the host country, and a solemn banquet also belongs to the traditional programme.<sup>10</sup>

It is a matter of course that the importance of the Nordic Lawyers' Meetings and the attitudes of the different branches of the legal profession in respect of these meetings have varied considerably in the course of the one hundred and thirty-five years they have now existed. They were initiated in 1872 as a realistic and practical substitute for the dreams of Scandinavian political unity or union which had filled Nordic university students with an enthusiasm that found brilliant poetic and rhetorical expressions but was utterly shipwrecked when, in 1864, Denmark was left alone to fight Prussia and Austria. The founders of the Lawyers' Meetings wanted to find an area where the good will and the strong feeling of having a common societal heritage which existed in the Nordic countries could produce concrete results in the form of common legislation, and for a long time, the meetings were in fact the principal source of inspiration to legislative initiatives, many of which led to important statutes, in particular in private and commercial law. With the creation of the Nordic Council in 1952, that body – composed of politicians, not lawyers – was formally given the function of proposing common legislative initiatives; by this measure, the responsible political leaders made clear the purely advisory status of the Lawyers' Meetings, which had never held an official position in respect of legislative action and which had been consistently cautious in formulating resolutions (art. 6 of the statutes provides for the possibility of such statements of opinion). Their practical importance was further reduced by the fact that after the Second Great War, informal contacts between the Scandinavian Ministers and Ministries became more and more matters of routine.

As a consequence of these developments, the question was raised on several occasions whether the Nordic Lawyers' Meetings still had a useful function, and

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<sup>10</sup> V. *Förhandlingarna vid det 36 nordiska juristmötet i Helsingfors 15 – 17 augusti 2002*, del I, Jyväskylä 2002, del II, Jyväskylä 2003, 651, 626 pp.

this question obviously became even more acute when the general problem whether Scandinavian cooperation as such was justified came under debate after three of the Nordic countries had joined the European Union. Experienced observers, like Professor W.E. von Eyben of Copenhagen, referred to above, spoke already in 1960 about a crisis for Nordic cooperation, and in the 1970's, particularly at the Lawyers' Meeting in Helsingfors in 1972, statements by representatives of the Swedish Social Democratic Government indicated that the cooperation was considered an obstacle to radical reform and, generally, a retarding factor. Although such aggressive negativism is seldom found today, there are undoubtedly problems which may threaten this traditional form of meeting and discussing common legal problems. One, which should not be underrated, is the language question. Proposals that the meetings be held in English have been put forward many times - although not yet formally - and it would seem to be a fact that young Nordic lawyers find it more difficult than earlier generations to understand spoken presentations in other languages than their own. The linguistic distance, in particular between Danes and Finns, has already been mentioned above.

These general aspects of the actual situation are well known and will not be developed here. Instead, some observations from the present writer's experience as a member of the Swedish National Board for the meetings and as chairman of that board for eighteen years (1981 - 1999) will be presented very briefly, in a sketchy survey with the sole purpose of conveying some characteristic features of this form of cooperation in the last twenty years. As when trying, above, to draw conclusions from a case of legislative cooperation, the main question is whether my observations can contribute to reveal national characteristics which have - in addition to the ever-present consequences of the personal idiosyncrasies of the participants in collective work - an impact upon the activities at the board meetings and upon the outcome of these meetings.

First, it seems clear that the *bases* of the national boards and their work are different in the Nordic countries. With the exception of Iceland, where the size of the eligible legal elite - in a country with some 300.000 inhabitants - inevitably calls for contributions from all relevant groups, the national centres of activity involved in the Nordic lawyers' meetings seem to vary. In Sweden it is undoubtedly the Ministry of Justice. More concretely: whereas the chair may be held by judges or academics, with a clear preponderance for the former, the spadework is performed by the young to middle-aged members of the judiciary who have reached that stage in their careers when they hold posts, mostly with legislative functions, in the Ministry or in one of the numerous commissions attached to it. The bar plays a far less conspicuous part, and academic lawyers are frequently asked to act as speakers and chairmen at the meetings but do not often take an active part in the preparatory work. The obvious opposite is Denmark, where the chambers of a leading Copenhagen law firm have for a long time been the headquarters of the national board. This does not mean, obviously, that the Ministry of Justice is not involved, and in the last twenty-five years, senior ministry officials have held the chair of the Danish board. Nevertheless, this is very far from the massive preponderance of the Ministry-attached judiciary which is characteristic of the Swedish situation. Norway and Finland

present less clear-cut profiles, but as a general proposition, the bar element, and - but this is a highly uncertain observation - possibly also the academic element would seem to be stronger than in Sweden. In both countries, the leading law faculty - until rather recently the only one in the country - is situated in the capital, which may be a fact of some importance.

What are the *consequences* of these differences in the location of "home ports", if that expression is permitted? Looking through the subjects adopted for the plenary meetings - after lengthy and sometimes rather intense discussions at the preparatory sessions of the national boards in the three-years intervals - it is easy to see that there is everywhere a strong ambition to find subjects of current interest and covering important societal questions of a general nature. Some subjects constitute attempts - not always successful - to find compromises between two or more proposals (mostly originating in two different national boards) which seem to be connected, but which may turn out, when discussed at the plenary meeting, to have very different background and inspiration. Upon the whole, it seems fair to say, on the strength of my experience from chairing six meetings with the national boards, that many, perhaps most, proposals of an original or radical character, subjects expressing a distinctly forward-looking attitude, came from Norway. This does not mean, obviously, that *all* Norwegian suggestions were of that kind. It also seems fair to say that the Danish proposals more often dealt with questions connected with commercial and industrial activities, and that the Swedish suggestions tended to reflect current legislative discussion, in the Ministry of Justice or in quarters close to it. It is more difficult to formulate a general description of the Finnish and Icelandic proposals; they mostly seemed to deal with problems of actual societal importance. Whereas criminal law issues - and also, but less regularly, procedural reform questions - were usually suggested for discussion from all participating countries, it is natural that topics concerning public law were seldom proposed; this is an area where the historical differences between the Scandinavian countries are too great, with few exceptions, to make comparative discussions meaningful.

In trying to catch, hopefully without national bias - or at least without too much of it - some national characteristics which sometimes may come to the fore in that Nordic cooperation which is still going on in the original form that the Nordic Lawyers' Meetings represent, it has not been the present writer's intention to criticize, let alone to ridicule, these meetings. On the contrary: my experience has convinced me of the value of profoundly similar yet strikingly different legal cultures coming together under the aegis of free associations to compare and to reflect. "Without a 'you', no 'I'", " is a well-known word of the Swedish 19<sup>th</sup> century thinker Erik Gustaf Geijer. It is when the "you" is at the same time very near and similar, yet very distant and different, that the meeting is not just an exotic event but provides the most nourishing food for thought.