

Nordic Law in the Early 21st Century - Maritime Law

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1 General Background

The theme of this seminar is “Nordic law in the 21st century”.

I have chosen as subtopic the field of maritime law in a Nordic perspective and in particular the law of ocean carriage.

Of course the four of the Nordic countries (Denmark, Finland, Norway and Sweden) are geographically close. The fifth (Iceland) is geographically rather distant from the others. Languagewise Iceland represents an old version of a Scandinavian language, which is to-day not easily understood in the other Scandinavian countries, and Finnish is a language with completely different roots.¹

In some respects the Nordic countries have had a close common legal tradition. Add to this that during the latter part of the 19th century there was a general Nordic sentiment (not least on the cultural level), and after the second world war there was again some renaissance of “nordism” but now rather in order to give the Nordic states a stronger position in a world that was characterized by new political rifts (the cold war, decolonization, the North and South conflict etc.). In some legal spheres there has been a close cooperation among the Nordic countries in respect of new legislation. Also in international convention work there has been Nordic cooperation during negotiations but also in connection with the later preparatory work for national legislation.

We may say that there is a certain common Nordic legal approach,² but it has to be admitted that there are also several differences in the legal traditions of the Scandinavian countries. This is evident in the legal doctrine as well as in court practice. In a number of legal fields, such as public law, tax law, the law of procedure etc. the differences are fairly substantial. But also where there have been efforts to create common Nordic legislation the harmonization is by no means complete. Still, it is not unusual that a court decision in one Scandinavian country will take into consideration and refer to a court decision in another Scandinavian country.

Another development after Denmark’s joining the European Community is that EU has gradually become more important for the member states and has

1 In a historical perspective it is also important to point at certain features. For some decades there was during the 14th century even a Nordic Union where queen Margarete was the queen of all three Scandinavian countries. There has been a relative closeness between Denmark and Sweden, since they were for centuries fighting each other fiercely, but they have also been in rather close cooperation for a couple of 100 years. Norway has during the last 400 years had a particular position. Thus Norway was for a long time part of Denmark, which has also set its impression on that Norwegian language, which is called “bokmål”. Finland was gradually conquered by the Swedes beginning in the medieval times but it was largely the coastal areas that became influenced by Swedish. Sweden lost Finland to Russia during the 19th century. Norway broke away from Denmark in the early 19th century and in stead came in Union with Sweden, a union which lasted until 1905 when Norway broke away from Sweden without a war having been fought between the countries. Finland became independent after the First World War. There are thus various reasons for a common legal background, but also differences in legal traditions which have not been fully moulded together.

2 Nordic Law is often regarded as a particular group within the so-called Civil law family.

thus had an impact on Nordic law. There are nevertheless still several lines of cooperation, practical as well as doctrinal.

Against this background one may of course ask if, and then to what extent it is to-day possible to talk of a common Nordic or Scandinavian law project. There is undoubtedly a common ground, and there is also still much coordination and cooperation carried out in order to achieve common solutions. This is so in respect of the transformation of international conventions into national rules and also in respect of legislation on EU level. My object in this overview is to focus on maritime law and particularly the law on ocean carriage in a Nordic perspective. Apparently this is a legal field where the business is largely international thus affecting legal development which is driven to a large extent by international conventions. In this sense there is less scope to talk of a particular Nordic law in this area. Now, there is a difference between the carriage of general cargo (dealt with in Chapter 13 of the Maritime Code) and the chartering of vessels (dealt with in chapter 14). The former chapter is based on international conventions and several of the rules are mandatory, whereas the latter chapter is businesswise equally international, but there is no particular international convention on chartering³ and the SMC rules are mainly non-mandatory. In stead Chapter 14 has been drafted against the background of international practice and international standard documents. Whatever the situation there is a common Nordic approach in maritime law, in preparatory works, in legislation, in case law and also in the legal doctrine.

2 Some Observations on the Historical Background of the Maritime Code 1667

The Swedish maritime code of 1667 was regarded as a good piece of legislation for its time.⁴ This codification was by no means a genuine Swedish product but there was much influence from the Visby maritime law. Also Dutch, Lübeck and also Danish law played an important role. In Denmark a maritime code was introduced in 1561 (Fredrik II), and a new maritime code was enacted in the code book of Christian V in 1683. It is worth noting that the Danish as well as the Swedish maritime codes had different structures and different contents in comparison with the present maritime codes, although there are still certain items which remain covered. So for example there were few specific rules on cargo damage and charter parties. This may be due to the fact that the maritime venture at the time was based on a particular cooperation between the parties involved.

3 In 1974 United Nations published a study on Charter Parties in a report by UNCTAD (United Nations Conference on Trade and Development) secretariat.

4 The background of this maritime code was discussed at a symposium in Gothenburg in 1981 and published in "1667 års sjölag ett 300-årigt perspektiv", Lund 1984 (ed. Kjell-Åke Modéer).

3 The Legislative Development during the 20th Century

3.1 *Some Remarks on the Legislation in the Late 19th/Early 20th Century*

Now, looking at the situation in the end of the 19th and the beginning of the 20th century we thus find common Nordic legislation in a number of areas. The Swedish Maritime code from 1891 (SMC 1891), which had replaced the code of 1864, had its counterpart in the Danish Maritime Code of 1892 and the Norwegian Code of 1893. Iceland introduced a Maritime Code in 1914 (modelled on the Danish legislation). Finland had a Maritime Code from 1873 but introduced a new one in 1939 which was based on the other Nordic Maritime Codes.

At the time of the start of the 20th century the number of international conventions was limited. For several reasons English law had an international impact in commercial law⁵, but the Swedish and Danish legislators as well as the legal doctrine had at the time more focus on German law and the German legal doctrine than on English law and English doctrine. It could be added that there has never been in the Nordic countries a common (or for that matter individual) *civil code*, but efforts carried out during the 19th century ended with a more or less common purchase act introduced in Sweden in 1905. The common purchase act from 1905 was never enacted in Finland, but in stead Finland (after its independence from Russia) came to use indirectly the Swedish purchase act.⁶ This may to some extent explain why “general principles”⁷ came to be more discussed and used in Finland than in e.g. Swedish law. Somewhat later a common contract act with almost identical wording was enacted (Sweden 1916, Denmark 1917, Norway 1918 and Finland 1929).⁸ There was also a more or less common act on commercial agents (and commission agents). Also other areas of private law nature mirror a close cooperation between the various Nordic countries until at least the 1930’s, when the act on promissory notes was enacted in 1936. During the second world war such cooperation naturally was put on hold for a long period. Following the end of the second world war common Nordic legislative efforts again increased until the joining by Denmark of the common market.

5 It is, of course, well known that England was at that time a powerful trading nation, and this had also an impact on English law playing a particular role in international business, and not the least in respect of charter parties, *cf* also below in 5.

6 It should also be mentioned that the International Sales Convention (CISG) from 1980 has had impacts in two respects in the Nordic countries. New national legislation for sales within one country or between the Nordic countries (strongly influenced by CISG) has been enacted in Finland, Norway and Sweden whereas Denmark maintained the old purchase act. There are certain differences between these new legislations. All the countries have enacted legislation for international sales based on the CISG. So again there are differences in approach among the Nordic countries.

7 In the Finnish legal doctrine often referred to as “*de allmänna lärorna*”.

8 During the 1960’s and 1970’s consumer protection legislation increased and as one (of many) consequence an amendment was made in the Contract act in 1976 (Sweden) and later amended through the so-called “general clause” aimed at giving the courts a rather wide right to disregard from “unfair” contract terms and even to rewrite contracts particularly in respect of consumer relations.

3.2 *The Legislative Development During the 20th Century*

Now, looking at some various legal frameworks in respect of maritime law we shall find that there was to a large extent a common legal framework from the end of the 19th century among the Nordic countries. In SMC (1891) the ocean carrier's liability for damage to or loss of cargo was based on non-mandatory strict liability. The ocean carrier thus had a right to restrict and limit its liability at least up to a certain level.

In the preparatory work for the Brussels convention on the ocean carrier's liability, which came to be known as the Hague rules, the Nordic countries had cooperated in the preparatory work within Comité Maritime International (CMI). The Hague Rules were adopted at a diplomatic conference in Brussels 1924. There was continued cooperation during the transformation of the convention. This cooperation also continued during the transformation of the convention into national legislation about a decade later. These particular enactments entered into force in Sweden in 1938, in Denmark in 1937, in Norway in 1938 and in Finland in 1939.

It was, however, not only in respect of ocean carriage that there was cooperation among the Nordic countries, but it took place generally within CMI for all other maritime law projects (such as conventions on the arrest of vessels, limitation of liability, oil pollution, mortgages and maritime liens, liability for passengers etc).

Similarly Nordic delegations have been cooperating on the international level in various bodies concerning various conventions, such as UNCITRAL and IMO.⁹ To some extent CMI maintained its role as a platform for the development of international maritime law, but gradually the final stage of such legislative projects came to be handled within UNCITRAL and IMO. It is probably true to say that CMI had the initiative when it came to the modernization of the Hague Rules and the meeting of the requirements of new methods of carriage, such as containers, and in 1968 a new convention was agreed (the Hague-Visby Rules). This convention came to lead to amendments in the national maritime legislation in several countries. New requirements were, however, pushed for a new, more modern convention, work that came to be carried out mainly within UNCITRAL where the Nordic delegations took active part.¹⁰

Thus new requirements were, however, pushed for a new, modern convention, work that came to be carried out mainly in UNCITRAL where the Nordic delegations took active part.¹¹ The end product, the so-called Hamburg Rules, agreed in 1978 have, however gained only limited recognition.¹² During

9 United Nations Conference on International Trade Law and International Maritime Organization respectively.

10 Grönfors has accounted for this development in *Sjötransportörens ansvar. Från 1667 års sjölag till Hamburgreglerna*. In 1667 års sjölag i ett 300-årigt perspektiv, p. 33 ff.

11 There was also a development in the other parts of transportation law and also in respect of so-called intermodal carriage.

12 The Hamburg Rules have been discussed by i.a. Lüddeke & Johnson, *The Hamburg Rules. From Hague to Hamburg via Visby*, 2 ed, London 1995.

the end of the 1990's and the beginning of the 2000's a new project has been started for an international convention on oceans carriers and ancillary carriage.¹³

Thus in the late 1980's there were common efforts to create a new common maritime code¹⁴, and although it took longer time than contemplated such common maritime enactments entered into force during the first years of the 1990's, in Sweden through Sjölagen (1994:1009). These new codes take into consideration the international conventions which have been adhered to by the Nordic States.¹⁵ In large parts there were no significant amendments made in the new Nordic maritime codes, but chapters 13 (general cargo) and 14 (chartering) were substantially rewritten.

4 Nordic Cooperation in other Ways: Standard Terms, Dispute Settlement and Education

4.1 Nordic Cooperation in the Field of Maritime Law- Generally

Apart from the legislative work and some practical harmonization in court work the Nordic cooperation in maritime law has taken place through various organizations and bodies. There are a number of formal bodies and informal groups which have been established over time in order to improve the possibilities for Nordic cooperation in different legal areas. In respect of maritime law various networks have come into being over time, among legislators, judges, practising lawyers and on the teaching and research level. The Nordic Council has also contributed to facilitate such cooperation.

The cooperation takes place on different levels and in different forms, and on these various levels common efforts seem to lead to more understanding for "Nordic views" in the international maritime community.

13 This is now run within UNCITRAL but it started as a CMI project concerning a new so-called ocean plus (plus meaning ancillary land carriage) convention. Whether this work will lead to a new convention that could replace the three others is an open question. A new era had thus started, and CMI again took the lead to start the work on a new convention to replace all the previous conventions on ocean carriage. Already during the CMI work it became clear that there was no clear unanimity between the different countries, and there were differences in attitude between on the one hand the Danish interests and on the other hand the Danish, Finnish and Swedish interests. So when CMI delivered a draft instrument to UNCITRAL a new awkward work started within the frames of UNCITRAL, which purported to continue and finish the work. There still seems to be some differences in attitude between the different Nordic countries with Denmark (with one of the world's largest container operators) seems to be somewhat more positive to a new instrument than the other Nordic delegations. As far as I can understand this mirror various interest both from a business interest point of view and from a legislative point of view. Now, of course it remains to be seen whether there will at all be a finalized instrument which will be presented for adoption.

14 The Nordic countries had, however, already disengaged from the old Hague Rules from 1924.

15 Chapter 13 of the Maritime Code (on general cargo) has been based on the Hague-Visby Rules but has also introduced some elements of the Hamburg Rules a method which has been criticized at least in Sweden. See also Honka, *New Carriage of Goods by Sea – The Nordic Approach Including comparisons with other Jurisdictions*, Åbo 1997.

4.2 *Legal Education and Legal Doctrine in the Maritime Law Field*

One of the institutes created for Nordic cooperation is the Scandinavian Institute of Maritime Law (Nordisk Institutt for Sjørett - NIFS). It was established in Oslo in 1963, connected to the Oslo law faculty. Its first leader was prof. Sjur Braekhus. The institute now forms part of the university of Oslo as a separate institute and it still receives some funds from the Nordic Council.

Maritime law thus came to be regarded as one of those legal areas where a Nordic perspective was promoted. Later NIFS also managed to tie in new legal areas within its domain, such as EU law, and oil and gas law. Due to the particularities of the Norwegian offshore industry it was logical to establish this as a new branch within NIFS. There appeared to be a number of similarities between parts of the maritime law and parts of oil and gas law, such as the shipbuilding contracts and contracts concerning the construction of platforms, charter parties and the chartering of platforms etc. There is one fundamental difference, namely that the maritime law developed in an international environment whereas the offshore industry in Norway partly came to be based on Norwegian legislation although with international influence. To-day this part of the activities of NIFS is geared at energy law in general.

NIFS has arranged over the years maritime law seminars on different levels, on the one hand evening seminars every semester for both practising lawyers and lawyers working within the university. These seminars cover various matters related to maritime law and other parts of law. Every two years a Nordic seminar is arranged over 2-3 days covering various topics, and also particular seminars for judges in the Nordic countries covering maritime law matters have been carried out on regular basis. These various activities have been of great importance to create a meeting place for people with interest in the maritime law field and have promoted legal research in maritime law but also education in maritime law, on Nordic but also on international basis. NIFS has also established important contacts with other centers in the field.

A large number of volumes (well above 300 so far) have over the years been published in Marius.¹⁶ Marius replaced Arkiv for Sjørett (AfS) which was the first series published by NIFS from the start of the institute. Several volumes were published of AfS over the years.

It should be emphasized that there are also other institutes in the Nordic countries dealing with maritime and other transportation law matters. Thus in Gothenburg a transport law centre was created under the leadership of prof. Kurt Grönfors and in cooperation with the Swedish Maritime Law Association there was also a series of publications published. There is education and research as well as seminars in the maritime law field within the frame of this centre. Through the co-called Lighthouse project Gothenburg again has regained some of its previous position as a maritime centre.

Similarly in Stockholm the Axel Ax:son Johnson institute of maritime and transport law arranges seminars and also publishes a series of articles and books. Maritime law is taught at the law faculty. Åbo in Finland has created a Finnish center of maritime law, and also in Copenhagen the interest for maritime law in the legal education and research is regaining ground.

¹⁶ Marius is a series of publications within the maritime law but also within energy law.

4.3 *Standard Documents – Common Nordic Approaches*

There is in the maritime field an extensive use of standard documents of different types used for various maritime businesses. Such documents are related to chartering, shipbuilding, second hand sale of vessels, ship management etc.

Certain documents used in relation to maritime transportation or ancillary activities have a common Nordic background but even more so an international background. Like in other businesses standard documents are used in order to simplify the contractual procedure. It is important to keep in mind that maritime activities are often carried out worldwide, something that affects the design of the documentation. Apart from liner traffic and the use of bills of lading (and seawaybills) as transportation documents there is no particular mandatory legislation but in stead standard contracts predominate as practical instruments in the legal development.

First of all the *charter parties* and *bills of lading* should be mentioned. Negotiations and contracting regarding charter parties are often based on a printed standard form, of which there are several.¹⁷ BIMCO alone has drafted probably about 100 various forms in respect of voyage charter and some few related to time charter, to bareboat charter as well as to so-called volume contracts. Apart from BIMCO there are also numerous other standard documents in use, whether recommended, agreed or adopted, but also several so-called private forms are in use.

One of the few standard charter parties which have been drafted particularly for the Nordic markets and also for the use without amendments was the so-called Scancon CP. This came into use in the 1950's but it never gained very much use. Otherwise charter party forms are generally intended for international business and often the printed text sets out alternatives for the law to be applied and the jurisdiction. It merits to be mentioned that charter party forms are seldom used as standard documents of take-it-or-leave-it character, but they are intended to be used by the parties in the negotiations and the printed form will then be amended in various ways.¹⁸ In this sense they are rather a kind of model agreements.

Bills of lading and seaway bills are documents used to express the acknowledgment of the carrier that good have been received for shipment or taken on board a vessel, also expressing that the goods shall be carried with due care to the point of destination and there be delivered to the appropriate receiver.¹⁹ Neither the bill of lading nor the waybill is intended for amendments but are used as they stand. Also here BIMCO is the draftsman of a number of documents, such as the Conlinebill and the Combiconbill. These documents are not particularly Nordic but basically used internationally. Often the large carriers use their own forms signifying the particular needs of the particular trade and the particular carrier.

¹⁷ Cf. Gram, *Fraktavtal og deres tolking*, Oslo 4th ed. 1977 and Gram om chartering documents, 2nd ed. Edited by S. Bonnick, London 1988. See also Gorton Hillenius, Ihre & Sandevärn, *Shipbroking and chartering practice*, 6th ed. London 2004 p. 103 ff.

¹⁸ I here disregard from the growing use of "electronic" negotiations.

¹⁹ See i.a. Grönfors, *Allmän transporträtt*, 4 ed., Stockholm 1975 p. 62 ff.

Shipbuilding contracts are another category where the legal development to a large extent is influenced by the documents. With the relative disappearance of the Swedish shipbuilding industry the impact of Sweden in this industry is nowadays very small, but there is still a not insignificant shipbuilding industry left in Denmark, Finland and Norway. The so-called AWES contract²⁰ used to have an important practical impact for the West European shipyards, although different shipyards also used their own standard forms (nevertheless bearing many resemblances with the AWES contract). There is now a Norwegian Shipbuilding contract from 1999, which is a form agreed between the Norwegian Shipowner's association and the Norwegian Shipbuilders' Association (thus an agreed document). Similarly Danish shipbuilders have often used their standards like the Finnish shipbuilders have used theirs, but it could be generally stated that the contents of shipbuilding contracts are fairly similar, although the structure of the documents can vary. The large shipbuilders in Japan, Korea, China and Brazil often use their own forms, not seldom drafted by English or American lawyers, and again the contractual parameters covered may not differ all that much between them, although the structure differs.

BIMCO is now working on a new international standard form for shipbuilding which is expected to be launched during 2007.

A particular form of standard contracts with a particular Norwegian background is the so-called Norwegian sale's form (MOA), one of the few standard contracts used in connection with *second hand* sale of vessels. This standard form has evolved over time and has been amended and updated gradually.²¹ The latest version is MOA 1999. It is a predominant form used in this particular trade, although one often finds that when English and American lawyers draft a contract for the sale of second hand vessels the printed form is not always used but the contents are there. This contract again is used as a basis for negotiations and individual parties make those amendments which they negotiate individually. It is thus not a standard form of "take it or leave it" character, but rather reminds of standard charter party forms in their practical use.

Particular standard forms have been developed with respect to *freight forwarder* business, namely the so-called General Conditions of the Nordic Associations of freight forwarders (Nordiska Speditionsvillkoren 2000). This is an agreed document between the forwarders and their customers designed to be used in the Nordic markets, and they are based on the FIATA Model agreement.²² These have been drafted based on their international counterpart but the Nordic forwarding agents (freight forwarders) have drafted jointly the Nordic forms in use for the Nordic market. The relevant contract may then refer to any of the laws of the Nordic countries. It merits to be mentioned that as

20 Association of West European Shipbuilders.

21 There are to my knowledge not very many standard documents in use for this particular trade, one exception being Nipponsale, why the Norwegian MOA could be seen as a kind of document monopoly.

22 NSAB explicitly spells out that the "Conditions give the customers in all respects at least the protection stipulated by the FIATA Model Rules for Freight Forwarding Services (1996 version),

contrasted to maritime law, where the legislation is quite substantial, there are no particular legislative rules in respect of freight forwarders, but if a freight forwarder is in the individual case actually functioning as a carrier then those rules applicable to a particular carrier will apply, but where the freight forwarder is acting on intermediary basis then the rules applicable to such business will apply.²³

4.4 *Dispute Settlement and Court Practice*

In pure Swedish traffic (both parties are Swedish) Swedish law may be made applicable to the contract, but even here English law may be made to apply to a charter party or a second hand sale.

Through *Nordisk domme i sjöfartsanliggender* (ND) there is a common publication of court decisions and of arbitration awards rendered in the different Nordic countries with respect to maritime law cases and also to some cases from the general transport law. In this way court practice from the different Nordic countries is easily available to practising lawyers but also to those involved in legal research in the field. It is also not uncommon to find that a court in one Nordic country will refer to a decision in another Nordic country in order to illustrate the legal reasoning.

5 Charter Party Law – Some Particular Points

In order to illustrate a certain relation between Nordic charter party law and Anglo-American law I have picked a couple of cases. My point here is that there is a Nordic cooperation within this particular area of the law. There are common Nordic Maritime Codes covering *inter alia* charter parties. In respect of charter parties the law is of non-mandatory nature, and the parties are thus free to negotiate and contract as they please within the general legal frames. There are no international conventions within this area of law, but national law has evolved in accordance with international customs. UK (like for that matter the US) has no particular legislation in respect of charter parties but charter party law has developed as a part of the common law of contract. Charter party has developed in an international surrounding but some legal systems seem to have played a particular role in this development. As a matter of fact charter party law, particularly in English law, has played an important role in the development of general contract law, and a great number of charter party disputes have served to develop the common law of contract. These cases are also referred to in contract law treaties.²⁴

23 The split of functions is made clear in NSAB 2000 where § 15 ff covers the freight forwarder's liability as carrier and § 24 ff covers the freight forwarder's liability as an intermediary. The development of the forwarding business and the rather complex structure of the business has been dealt with by particularly Ramberg in *Spedition och fraktavtal*, Stockholm 1983 and id, *The law of transport operators in international trade*, Stockholm 2005.

24 In Swedish law, on the other hand, charter party law has normally been regarded as a particularity which is rather left with persons with an interest in maritime law. One reason is obviously that there are comparatively few cases involving charter party disputes in Swedish

The law related to charter parties in particular during the 19th and 20th centuries developed especially in English common law and very often the various contract forms were being “tested” by English courts and arbitration panels. Thus often following the outcome of English court cases the charter party forms underwent gradual amendments.

It is common ground that English law is made applicable to charter parties even though none of the contracting parties is English. Thus, where a Swedish company is a party to a voyage charter between two different countries or covering a period during which the vessel may be operated world wide it often agrees to accept English law and arbitration in London for the settling of disputes under the contract.²⁵ There seems to be an understanding among maritime lawyers in the Nordic countries that London and New York are acceptable places for settling charter disputes and that English/New York law works reasonably well.²⁶ It should be kept in mind that also English courts may under certain circumstances consider reasonings made in and decisions rendered by foreign courts in particular where legislation based on an international convention is involved.²⁷

Charter party law is also an area of law where influences from other countries and the international surrounding may be found. In at least two cases the Swedish Supreme Court has had to consider related questions, NJA 1954 s. 574 and NJA 1971 s. 474. Both cases involved the understanding of certain clauses in charter parties, the latter mainly focusing on the question of the payment of brokerage commission.

In the first case the Supreme Court when determining the understanding of a clause found that even if English law did not apply to the charter party involved, the construing of the relevant clause had to take into consideration the understanding of such clauses in English law, since English law was of particular importance in respect of charter party law.

In the second case involving the understanding of a particular clause in a charter party the Supreme Court expressed that when determining the meaning of such clause the understanding thereof in the international shipping community was of importance when determining its meaning and applicability. The Supreme Court also took into consideration several aspects concerning the usage in the trade but eventually decided that there was no particular usage and not any unequivocal understanding in the particular case. Thus English law might have

law. See e.g. Gorton, *Sjöhävning – hur särskild är den särskilda kontraktsrätten?* I Ånd og rett: Festskrift til Birger Stuevold Lassen, Oslo 1997 p. 369 ff.

25 This may be so where two Swedish parties are involved, where two Scandinavian parties are involved but, of course even more so where one party is Scandinavian and the other is non-Scandinavian. One of the few players in the Nordic chartering business, which has sufficient strength to demand that Norwegian law apply to a charter party is Statoil.

26 For reasons of heavy legal fees and the lack of sufficient experienced arbitrators in London there seems to be some inclination by shipping companies to choose other jurisdictions than London or to choose other solutions than arbitration.

27 See for instance the case *CMA CGM v. Classica Shipping* /2004/ EWCA Civ 114; 12 Feb. 2004.

particular importance in this legal area even if it is not directly applicable to the contract.

There are also some Norwegian cases illustrating related questions.²⁸ In ND 1974.103 the Supreme Court had decided that English law could be used as background law also when Norwegian law was applicable to a contract. In a later case, ND 1983.309, the defendant argued that against the background of the 1974 case it was well settled that where Norwegian law applied to a charter party some consideration also had to be given to the Anglo-American background law. The arbitrators (three arbitrators) in this case found that when deciding the case consideration could be given to English background law, but in the particular case the arbitrators decided that Norwegian law was the actual background law, and therefore there was no reason to consider another law.

In a later case, ND 2002 p. 80, the parties were in agreement that Norwegian law applied to the charter party dispute. The defendant, however, among other things expressed as his opinion that Norwegian law had to be supplemented by English law, since the particular charter party form used had been drafted against the background of Anglo-American legal tradition. The arbitration court came to the conclusion that English law could not be used as background law in the case. The matter was discussed from various points of view and the conclusion was that as a matter of principle English background could be used in particular instances, but it was found that in the individual case it would be to go too far to apply English law to the legal effect of consequences of the vessel not meeting the description requirements in the contract, and it was not very clear that English law would have any importance. Reference should also be made to a rather recent Norwegian court decision concerning a dispute in relation to a bareboat charter party.²⁹ Here there was a dispute on specific performance or alternately damages. In the case reference was made to both English and American case law, and the court discussed in some detail to what extent regard should be had to the legal development in other legal systems, and it states explicitly that ocean carriage is international and that maritime law is correspondingly a part of law that has developed in an international surrounding. There is an exchange of rules and an extensive cooperation with respect to the making of rules. "Presumably Norwegian rules to a large extent should be regarded to be in accordance with international principles in maritime law."

I believe that Scandinavian law might generally be said to accept that the particular background law of a certain document may be relevant for the understanding of a certain contract even if Norwegian or Swedish law would basically apply to the contract. That means that there are situations where English or an American state law within certain frames may be used to supplement the relevant legal system. There are certainly restrictions to such interpretation but it is far from easy to state in some general terms which cases will allow for such interpretation and in which cases the considerations will be

²⁸ See Selvig, *Tolkning etter skandinavisk rett av certepartier og andre standardvilkår utformet på engelsk*, Tidsskrift for Rettsvitenskap 1986 p. 1 ff.

²⁹ City court of Bergen , 2004-08-31.

more narrow. Only an in depth study may give a more clear framework of how such legal applications have developed and how they are being made.

6 Some Concluding Remarks

Apparently ocean carriage is a business which is worldwide in character, although it may be performed by small vessels in domestic or regional trade or by large entities for deep sea transportation. The law in relation to ocean carriage follows this pattern and is characterized by its international surrounding. This may also lead up to the conclusion that there is nothing specifically Nordic about the law on ocean carriage. I think, however, that what has been discussed above shows that maritime law mirrors some kind of practical “nordism”.

There is a split between on the one hand certain rules which are of mandatory nature (general cargo, chapter 13) and on the other hand those rules which are non-mandatory (chartering, chapter 14, SMC). The law in the former part is based on international conventions but for charter questions there is no particular convention, but in stead international practice and international standard forms have set the frames.

Even if the solutions adopted in the SMC is not very Nordic per se there are several levels where the Nordic perspective is quite important. The Nordic countries still cooperate on legislative matters: in the international convention work, in the national legislation, among various state bodies and private organizations. On the academic level the cooperation is extensive.

Without any doubt the Nordic Maritime Codes of present days can be seen as common Nordic legislation. The legislation is thus more or less common for all the Nordic states. Denmark and Norway have adopted running articles whereas Finland and Sweden decided for running articles within each chapter. This creates certain practical difficulties in discussions between persons from different countries. The material content of the law is, however, more or less identical. There may be minor differences in the application of the rules in particular cases but on the whole the common Nordic Maritime Codes have contributed to a common Nordic approach in this area of the law. This taken together leads up to the conclusion that there is to large extent a common Nordic approach in this area of the law. By reference to Johan Schelin’s article in *Juridisk Tidskrift* 2007 p. 140 it may, however be asked whether the European hydra will defeat the Nordic dinosaur.