NORDIC AND INTERNATIONAL LAWMAKING

BY

STURE PETRÉN

Judge of the International Court of Justice
Former President of the Svea Court of Appeals (Stockholm)

The purpose of the present paper is to present some general remarks on the relationship between, on the one hand, the Nordic cooperation in the field of legislation and, on the other, the international lawmaking that is taking place within a wider frame. Given this purpose, there is obviously no space here for discussion of practical details, which would require a separate study.

The basis of any comparison between municipal law, regional law and universal law is that each state has its own municipal law, the content of which the state itself decides. In many instances, and notably in the Nordic countries, this municipal law is the result of a process of unification that took place in a more or less remote past through legislation encompassing the whole state territory and supplanting older laws of different provinces. The last remnant of such provincial laws in the actual territory of the Nordic countries disappeared as late as 1900, when the Law of Jutland—the most important Danish Provincial Code, dating from 1240—ceased to apply in Sleswick (Schleswig), where it had continued to be in force after the conquest by Prussia of that part of Denmark in 1864 but where it was supplanted at the turn of the century by the German *Bürgerliches Gesetzbuch*.

Nowadays, unification of the law inside the states having thus already been achieved, an evolution of the same nature is taking place in various parts of the world on a regional level, as states which are close to each other owing to geographical proximity, a common civilization and a similarity of political and social structure aim at harmonizing their legislation to a greater or smaller extent. Thus, the legal cooperation between the Nordic states, for which the first conferences of the Nordic jurists in the latter half of the 19th century proved to be such a powerful source of inspiration and which has proceeded unceasingly ever

Address given at the inaugural meeting of the 24th Conference of Nordic Jurists in Stockholm on August 31, 1966.

since, has mainly been directed towards the adoption by the different states of identical or largely identical statutes in various fields of law brought up for consideration one after another.

The establishment of such a uniformity or similarity of the legal systems of states belonging to a particular region—in our case the North of Europe—may appear desirable for more than one reason. The need for concordance between the laws of the various states is manifest above all in the field of private international law. When legal situations presenting an international aspect arise, e.g. because of contracts concluded between parties belonging to different states or marriages between persons of different nationalities, it is obviously highly desirable that the answer to the question which national law applies should be the same independently of whether the question is put to the law courts of one state or the other. Private international law has therefore been a primary object for unification, e.g. in the Benelux states. The Nordic states, too, have adopted common legislation in certain fields of private international law, particularly family law.

The practical importance of the rules of private international law applied by a group of states is, however, bound to diminish as and when other laws of these states are brought into harmony with one another. The need for such harmonization of the legal systems grows with the increasing intercourse between the states belonging to the group. The more trade and travel within the region develop, the more desirable it becomes that the states within the region apply the same rules for determining which state's law shall govern legal questions with an international aspect. It is even more desirable that a national of one state, whose conduct or affairs have to be assessed according to the laws of another, should find that the relevant provisions of those laws are not different or, at any rate, are not essentially different from those of his own municipal law. There is no need to point out that such a state of things will greatly encourage the trade within the region. Furthermore, it can be expected to make nationals of one state feel at home in the other states in question, an objective that the Nordic states find well worth aiming at, in so far as it has not already been achieved.

How the individual—and also, in some degree, the public opinion in his home country—reacts when contact with the law of a foreign state exposes him to disagreeable surprises, has recently been brought home to the Swedish public in certain cases where Swedes abroad have been prosecuted and sentenced to severe

punishment for actions which under their national penal law would have been dealt with more leniently.

In such situations the Swedish Ministry for Foreign Affairs has often been asked to intervene in order to obtain from the authorities of the foreign state a mitigation of the penalty on the ground that the same action, if committed in Sweden, would not have been punished so severely or would even, perhaps, not have entailed any penal sanction at all. Such interventions have sometimes, but not always, been received in a spirit of understanding by the foreign authorities concerned.

These examples would seem sufficient to justify the conclusions, first, that, to an individual who finds himself abroad, some of the laws of the host country are of more immediate importance than others and, second, that some fields of legislation may offer greater resistance to unification than some others. Furthermore, the laws which, if they were harmonized, would mean most to help the nationals of two states to feel at home in both countries are not always those which it would be easiest to bring closer to each other. The progressive selection of subjects for unification must therefore be determined with both these aspects in mind.

Concerning the degree to which an individual's feeling of being at home in a foreign country is dependent upon the conformity of its laws with those of his home country, there inevitably exists a wide range of variations. It also seems permissible to suppose that in some instances the individual may actually feel happier if the law of the foreign country differs from that of his home country—and here I am not thinking only of such things as the liquor laws. However, on the whole, it can perhaps be assumed that what would first be likely to complicate things for an individual crossing the frontier into a foreign state would be traffic regulations differing from those of his home country, for instance prescribing right-hand driving instead of the left-hand driving to which he is accustomed at home. In sudden emergencies such differences may result in the jeopardizing of human lives. Then one might imagine that the foreigner could commit expensive mistakes in his dealings with, for instance, hotel managers, travel agencies and shopkeepers, if the local law differs from his national law as regards such matters as the conclusion of contracts or the cancelling of purchases. If his interest in the foreign country and its inhabitants is concentrated upon a particular individual to such a degree that the idea of engagement is in the air, he may run into difficulties if the rules concern-

ing the form and the legal consequences of an engagement are of a kind unknown in his home country. Thus, more than one young Swede, while staying in a southern country, has courted one of its daughters in circumstances which, in his home country, would not have been considered as anything more than a non-compromising stage in the butterfly's fluttering from flower to flower, but which are argued by the courted one and her numerous family, invoking local customs and legal conceptions, to mean an engagement entailing far-reaching legal consequences. In the same way, northerners who have contracted marriage in foreign countries have often been disagreeably surprised by the ease (for the husband) to obtain a divorce or, in some cases, by the obstacles opposing the dissolution of the marriage under local law.

Experience has also shown that questions concerning the guardianship of children may give rise to many difficulties owing to divergences in this respect between the laws of various states.

Moving from family law to real-property law, one might be right in thinking that the rules concerning the acquisition and possession of real property are not of great interest to most foreigners who are visiting or staying in a country, but that these rules might be of the greatest importance for those who intend to establish themselves there for good and who could consequently be expected to acquire a working knowledge of the municipal law. From this point of view, the acquisition of real estate might prove to be a more complicated operation than an engagement to marry.

If the need for a unified Nordic legislation may thus be felt more strongly in some fields of law than in others, the chances of achieving such unification would seem to vary, as stated above, in the different parts of the legal system, depending upon the strength of the national traditions and conceptions in which laws are rooted. In this respect, it might, for instance, prove much more difficult to amend real-property legislation, which normally belongs to the most deeply home-grown parts of a country's legal system, than to adopt changes in copyright law. The organization of the law courts and the law of procedure can also present such strongly national features that a revision of the rules of procedure could, from certain aspects, give rise to greater complications than a changeover from left-hand to right-hand driving would involve.

On the other hand, the amendment of a certain element of a given national legal system may also meet with difficulties, not

because it is so ancient and rooted in national habits and inveterate conceptions but, on the contrary, because it is so new and has been so difficult to draft and to get adopted. One is then up against a great unwillingness to undo the result of so much indigenous pondering and discussion; it would also be humanly understandable if those who themselves drafted the existing statute and perhaps spent years of their life on the preparatory work found it difficult to imagine that anything better could come out of new deliberations with other people.

Situations might also arise where the limited capacity of the legislative machinery would not permit the taking up again of an earlier matter, since this could not be done without postponing some other legislation considered as urgent.

On the whole, therefore, it could be argued that in the Nordic countries every new legislative measure of any importance should be made the subject of inter-Nordic consultations, even if at first sight the measure would not appear to concern the intercourse between the Scandinavian countries as regards either persons or goods. It should also be borne in mind that when it is a matter of working out legislative solutions to new problems created by the evolution of modern communities, it is much to the advantage of a group of small states with a common cultural heritage if they can join forces to tackle the task. In that way, the limited personnel resources can be coordinated; the bringing into the discussion of experiences from all countries belonging to the group is also likely to have a beneficial influence on the result.

The Nordic states have long used fixed forms for a legislative cooperation which is continuously being enlarged to cover new fields. In general, this cooperation has not, as in most parts of the world, been directed towards the adoption of conventions whereby the states mutually engage to maintain or to introduce in their municipal law rules of a certain content laid down in the convention. Instead, the Nordic states have, on the basis of common deliberations, adopted identical laws, the contents of which have been agreed to without any underlying convention.

There are, however, a few exceptions; a convention would seem the natural means of implementing common rules that are concerned not with the relations of individuals with one another but with the benefits granted to them, for instance under social security schemes. To this category belongs, above all, the Convention of 1955 between the Nordic states on social security. In this age, when movements across national frontiers have so greatly

increased, it is obvious that questions about people's right to enjoy social benefits of various kinds when abroad will be of considerable practical importance.

After this very summary characterization of Nordic legislative cooperation, I now turn to the corresponding cooperation that is going on or might be expected to take place at the international level.

What repercussions should such international lawmaking reasonably be allowed to have on the planning of Nordic legislative cooperation? It may be that the work on an international convention does not touch upon any matter that has been or is expected to be taken up at the Nordic level. Then no problems will seem to arise. In some cases, however, international work may be directed towards the regulation of matters with which Nordic legislative cooperation is already concerned; the question then arises whether the Nordic endeavours should continue, either independently of or in coordination with the international work, or should instead be discontinued pending the outcome of the international efforts. In some circumstances one must also face the question whether the Nordic states ought, while taking part in the work on an international convention, to try to obtain a special regulation of their mutal relations within the framework of the convention.

Until now, international lawmaking has largely been concerned with public international law, while Nordic legislative cooperation has only to a limited extent been directed towards this field; this would, indeed, seem to be natural in view of the universal character of this branch of law. Thus, all the major codifications of public international law which have taken place since the second world war are the result of universal conferences, without any collisions having occurred with any specific Nordic projects. As examples may be mentioned the Red Cross Conventions of 1949, the Conventions of 1958 on the law of the sea, and the Convention of 1961 on diplomatic privileges and immunities.

There are, however, also subjects pertaining to the field of public international law which, in the first place, are more suited for bilateral than for multilateral regulation, inasmuch as they concern questions whose solution mainly depends upon the contents of the municipal law of the various states. Concerning, for instance, extradition for crimes, it is natural that the extent to which a state is willing to extradite accused or convicted persons to another state largely depends upon the standards of the penal

law and the law of procedure of that state as compared with its own legislation in these matters. To choose an example from quite another field, the determining of the competence of consuls in matters such as the administration of estates of deceased nationals of the sending state might depend upon the contents of the local law and the provisions of consular conventions in this respect and therefore cannot be standardized.

Over the years, a great many bilateral extradition treaties and consular conventions have been concluded, but lately some multilateral conventions in these two fields have also come into existence. Thus, on the one hand, the Council of Europe has adopted an extradition convention open to all member states of that organization and, on the other, a diplomatic conference held in Vienna in 1963 under the auspices of the United Nations established a convention on consular relations. As, however, this latter convention does not cover all consular activities, the Council of Europe is working on another consular convention intended to complement it in regard to the relations between the member states of the Council.

As regards such topics of public international law as are primarily suited for bilateral regulation, the Nordic states can obviously be expected to make arrangements taking account of their special requirements. Thus extradition is regulated through essentially identical legislation adopted in 1959, by each Nordic state separately, without any underlying convention. On two important points this legislation differs from most extradition treaties: first, even the state's own nationals may be extradited to another Nordic state and, second, extradition to such a state is allowed for political crimes also, even though the state's own nationals cannot be extradited for such crimes. Towards non-Nordic states this legislation maintains the principles that a state's own nationals cannot be extradited and that extradition for political crimes is not granted. Under the European extradition convention mentioned above the contracting states may refuse extradition of their own nationals, while extradition for political crimes is prohibited. On this latter point the European convention supersedes earlier bilateral conventions and does not permit its signatories to adhere to new treaties with provisions derogating from its rules. However, a special provision of the European convention authorizes those contracting states between whom extradition takes place on the basis of a uniform law to regulate their mutual relations in respect of extradition exclusively in accordance with

such a system, notwithstanding the provisions of the convention.

Thus in adhering to the European convention the Nordic states, while engaging themselves not to grant extradition to non-Nordic states for political crimes, maintain their right to extradite political offenders to one another according to the special Nordic legislation. This is an example of how it may be possible to secure the maintenance of a special Nordic arrangement within the framework of an international convention. Full consideration of specific Nordic interests would also have required that the Nordic states should not be obliged to extradite any Nordic nationals to any non-Nordic state. This was, however, not found possible, as the European convention authorizes the contracting states only to refuse extradition of their own nationals, though under the convention each contracting state may define as far as it is concerned the term "nationals" within the meaning of the convention.

Another provision of the European extradition convention wherein a Nordic influence can be traced is one prescribing that, if the offence for which extradition is requested is punishable by death under the law of the requesting state and if in respect of such offence the death penalty is either not provided for by the law of the requested state or is not normally carried out, extradition may be refused unless the requesting state gives such assurance as the requested state considers sufficient that the death penalty will not be carried out. This regulation of the matter is in accordance with the opinion that has been voiced in the Nordic countries in respect of the question of extraditing a person for a crime punishable by death in the requesting state.

This example shows how, at the drafting of a multilateral convention in the field of public international law, the Nordic states in cooperation have succeeded in securing consideration of points of view to which they attach particular weight. In the same way, the fishery convention adopted in London in 1964 between a number of European states authorizes the Nordic signatories to regulate among themselves the right to fish in their coastal waters independently of the general rules laid down in the convention concerning the extent to which fishermen from one contracting state are allowed to fish in the coastal waters of other contracting states.

Bilateral treaties between Nordic and non-Nordic states sometimes concern matters of public international law in respect of which all of the Nordic states have the same interest. It would

therefore seem desirable to coordinate negotiations about such treaties so as to make it possible for the Nordic states to present their common points of view in concert. To give an example, this would enable the Nordic states, when negotiating treaties with a non-Nordic state concerning consular relations, to point out with greater cogency the convenience of authorizing the consuls of one Nordic state to take care also of the interests of nationals of other Nordic states. As is well known, this is a question that has recently been brought to the fore.

As, however, the Nordic cooperation in legislation has not to any great extent been concerned with matters of international public law, I now turn to other fields of law, in the first place private law, where the work on international conventions could raise problems in relation to the Nordic cooperation. For reasons of space I shall have to leave out penal law and social welfare legislation, although some of the more general lines of thought in what follows could also be applied to such matters.

The initiative leading to proposals for international conventions in the field of private law may spring from two different motives. First, there are matters which by their very nature call for a uniform regulation covering as large parts of the world as possible and where the object of a convention is a universal codification in the interest, for instance, of world trade. On the other hand, states which are close to one another geographically and also in political, cultural and economic respects, may wish to create between themselves a regional legal system inside which their respective national laws would be brought into conformity with one another to the greatest possible extent. Here the aim is not universal codification but regional legislation in as many fields as possible. Regional legislation may, of course, also cover matters concerning the intercourse and trade between the countries, but even in this respect the regulation is not intended to include states outside the region.

The Nordic states appear as a region where large fields of law have already been the subject of uniform legislation, as the result of cooperation, and where such legislation in various new fields is being prepared or may be envisaged in the near future. In this context, the general agreement concluded in 1962 on cooperation between the Nordic states certainly deserves to be mentioned. It is, of course, possible that matters in respect of which Nordic legislation is planned are also taken up for codification on the universal level or inside some other region.

If, in the latter case, the Nordic states are entirely outside the region in question, no problems arise. If, on the other hand, the coincidence is one between Nordic legislation and universal codification or one between Nordic legislation and some other regional legislation that is of interest to the Nordic states or some of them, the situation may be different.

Codification on a truly universal level concerning matters other than public international law has not been very frequent; this is particularly true of private law. It should, however, be pointed out that the League of Nations, in its day, took up the law of bills of exchange and of cheques for codification; the initiative resulted in the Geneva Conventions of 1930 and 1931 on these matters.

On the other hand, various other organizations created for the purpose of international lawmaking in various fields of private law have been at work for many years. Thus private international law has been taken care of by The Hague Conference of Private International Law, while in Rome there is the International Institute for the Unification of Private Law. Intellectual property rights fall within the competence of the Berne Union and of the Paris Union. As far as maritime law is concerned, the Belgian Government from time to time convokes diplomatic conferences, which work on the basis of draft conventions elaborated by the *Comité Maritime International;* unlike the other organizations just mentioned, the latter is not a public body but a private international organization with national committees in a number of countries. The work of all these organizations is directed towards the elaboration of draft conventions, which are presented to the governments.

The codification schemes now referred to aim at the universal regulation of the matters concerned. Consequently, the organizations which have taken upon themselves to prepare these conventions are open to all states willing to adhere to them. Until now, however, they have not achieved universal adherence, their membership being mainly composed of European states and of some American and Asian states that have long been members, while most of the new states are still outside. It should also be mentioned that during the General Assembly of the United Nations in the autumn of 1965, Hungary proposed that the United Nations should take up the codification of matters of private law in the same way as had already been done in the case of public international law. A start would be made with the rules relating

to international trade; the laying down of such rules, it was stated, would be of great interest to the developing states because of their special situation, If, as the result of this proposal, the United Nations does take up codification in the field of private law,[1] various problems are likely to arise concerning the relation of such efforts to the work already being done by the older international organizations created for the same purposes.

As to the question what position should be taken by the Nordic legislators if the same matter should come up for codification on both the Nordic and the universal plane, the answer may differ according to the nature of the matter and the relative chances of achieving positive results along either road.

One aspect that also seems to be worth considering and that is conditioned by the constitutional machinery of the Nordic countries is the following. As has already been said, Nordic legislative cooperation does not normally imply the conclusion of treaties creating obligations to adopt laws with a certain content. When the draft laws elaborated by experts from all of the Nordic states are submitted to the parliament of each state, there is therefore nothing to prevent a parliament from amending the proposed texts. A strong reason why this should not be done is, of course, the desirability of uniform Nordic laws. It is, however, not impossible that, on particular points, special national circumstances may speak in favour of a divergence from the draft law and, if so, the parliament's right to amend it is undiminished.

On the universal level the work is, on the contrary, aimed at the adoption of conventions. When such a convention is presented to the various parliaments for ratification, its text has already been definitely fixed at the conference where it was adopted and the parliaments therefore only have a choice between approving the convention in its entirety (in so far as it does not allow reservations) or rejecting the government's proposal for its ratification. Recently, however, some of the international codification work in the field of private law has been based on the idea that there should be adopted only so-called model laws in the form of conventions; the national legislator would be authorized to diverge from such model laws. It remains, anyhow, to be seen to what extent this expedient will be resorted to.

Considerations of the kind indicated above are likely to in-

[1] Since this address was given, the United Nations has created an organ, UNCITRAL, for such codification.

fluence the answer to the question whether Nordic legislation about a certain matter should wait for the result of an international codification effort on the same subject or whether the Nordic legislation should first be finished before we move on to the international level.

If the Nordic states first take part in the work on a convention, it is obviously of importance that their delegates shall be instructed to promote, through their proposals, interventions and voting, a convention text corresponding to what the Nordic parliaments could be expected to approve. Otherwise, there would be the risk that, when the convention is finished and presented to the various parliaments, these will disavow the instructions under which the delegates have acted and refuse to ratify the convention.

It could therefore be argued that the more certain the Nordic governments are about what public opinion in their countries is prepared to accept as a convenient solution of a legislative problem, the less they should hesitate to take part in work on an international convention on the matter in question. The risk of unexpected reactions at home is of course rather small where the convention in question concerns matters of a highly juridical and technical nature, which are best appraised by government experts. The risk may be greater in the case of conventions concerning matters of great practical importance for the citizens in general or for certain groups with substantial support in the parliament. When preparing its participation in the work on such international conventions, a government might be wise to make contact with the legislature.

Nowadays, it goes without saying that the Nordic countries' participation in international lawmaking should be preceded by consultations between their governments, aiming at the determining, as far as possible, of a common position to the questions involved and of a common attitude during the negotiations.

If, however, the Nordic states should choose first to adopt Nordic legislation on certain matters before engaging themselves in international negotiations concerning a convention on the same subject, they can be sure of the situation at home. This, of course, might be said to strengthen their position in the negotiations, but it may also cause a certain rigidity likely to imperil the result of these. There still exists the type of expert who considers it his bounden duty to convince the other delegates of the supreme excellence of his own country's law and of the absolute

necessity of taking it as a model. It is easily understood that if every delegate were to persist in such an attitude, the conference would end in a complete deadlock.

There may, in other words, appear individual and national psychological symptoms of the same kind as would also occur inside the Nordic region, if one Nordic state were to adopt legislation of its own in some field, before any consultations with the other Nordic states had taken place. In relation to the outer world this would imply a *nationalisme à cinq*. In both situations the negotiators should, however, regard as their duty also to report home what changes in their own national law would seem indicated, either because—as may sometimes be the case—better solutions have been found elsewhere or because a certain change appears to be unavoidable if an international meeting of minds is to be achieved.

To point out some recent situations in which the sequence between Nordic and international lawmaking has been of importance, I shall choose two examples from the field of intellectual property rights.

The first example concerns industrial property. When the Paris Convention for the Protection of Industrial Property was last revised at a diplomatic conference in Lisbon in 1958, the question of the protection of designs was also taken up. In the revised text of the convention there was inserted an article under which the contracting states undertake to provide for the protection of designs in their municipal law, without any exception being allowed in respect of specific branches of industry. In Sweden designs are at present protected only in so far as the metal industry is concerned. As a result of Nordic cooperation, a committee of experts has now presented a report containing the draft of a new act on the protection of designs. The committee considers that the protection should not be confined to the metal industry. It had, however, been argued that an exception should be made for the textile industry and above all for the clothing sector. Nevertheless, the committee proposes that the protection be extended also to the textile industry, including the garment trade. The main reason for this is that a Swedish adherence to the Lisbon text of the Paris Convention, which appears to be desirable from other points of view, would seem impossible unless this change in our law is made. Thus the situation in this particular case is that Swedish legislative measures are taken after the revision of the international convention and that the latter leaves

no choice as regards a question that had not been fully discussed in Sweden before the revision of the convention.

In respect of the protection of literary and artistic works, on the other hand, the situation is the opposite. The last revision of the Berne Convention, which provides for international protection in this field, took place at a diplomatic conference in Brussels in 1948; and now a new conference for its revision will take place in Stockholm in 1967.[2] Here the situation is that, even before the Brussels conference, the Nordic states had begun in concert to prepare new copyright laws. After the Brussels conference, this work had to be directed towards the introduction into the new Nordic statutes of the principles adopted by the conference, but the work also covered new questions which had not been dealt with in Brussels and which had partly arisen because of the technological evolution, e.g. in the field of television. This Nordic cooperation resulted in the new Nordic copyright acts which were adopted during the early 1960's and which carried Nordic legislation beyond the stage represented by the Brussels text of the Berne Convention. In preparing the Stockholm conference, for which Sweden, as the convening power charged with the elaboration of the basic revision proposals, has a special responsibility, it is obviously a great advantage to have the new Nordic legislation as a background. At the same time, it is important to avoid creating the impression that the Scandinavians are unable to imagine that solutions better than their own could be arrived at on the international plane.

At the Stockholm conference, contrary to what was the case in Brussels, the Nordic legislation will thus be ahead of the international one, a state of affairs which could lead to a greater rigidity in the positions taken by the Scandinavian delegations at the conference.

In the two examples now mentioned concerning intellectual property rights, the question was how to adjust Nordic and international lawmaking to each other. There are, however, also instances in which the Nordic states have managed to participate in international lawmaking while preserving their Nordic legislation intact. Thus, the two Hague Conventions of 1964 relating to a Uniform Law on the International Sale of Goods and to a Uniform Law on the Formation of Contracts for the International Sale of Goods open a possibility for states, which al-

[2] It has not been possible to assess here the outcome of this conference, which took place after the drafting of the present paper.

ready apply between themselves the same or closely related rules on sales and contracts, to declare in common that they do not regard themselves as "different states" for the purposes of the uniform laws embodied in the conventions. The effect of such a declaration is that these laws will not apply to contracts concluded between parties who both have their place of business or habitual residence in the states in question.

While there is no space to give further examples of various patterns which might apply when Nordic legislation has to be balanced against international lawmaking, there are two more aspects of a more general nature which should be mentioned.

The first aspect concerns relations with the developing countries. In many contexts, their participation in international legislation on matters of private law would seem desirable, although these states may not as yet think that they have reached a stage of development allowing them to adopt the same provisions in their municipal law as are applied in the more industrialized states. The problem then arises how to draft transitional rules which, on the one hand, would allow the developing states to adhere to old and established convention systems without contracting at once all the obligations involved but, on the other hand, would not have the effect that such concessions to the developing states would produce a lowering of the level to which the existing conventions have brought the legislation of the industrialized states. Questions of this kind have arisen, for instance, in the field of copyright law, where they will be taken up at the forthcoming Stockholm conference for the revision of the Berne Convention, and the same sort of questions might be expected to be raised in other fields of private law with international aspects.

Another salient feature of the present evolution is that the borderline between municipal law, the content of which the states decide themselves, and international law, which imposes upon them reciprocal obligations, is gradually moving in favour of the area covered by international law. One important factor in this connection is the prominence that, in the light of recent experience, has been accorded to human rights since the second world war. The protection of these rights has been considered to be an international concern of the greatest importance both for the salving of the world conscience and for the prevention of such violations of human rights as might enable the rulers of a country to endanger peace and security. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly

in 1948, has served as a point of departure for the work on an international legislation in these matters which has thus been taken up.[3]

The attitude of the Nordic states towards this international legislation, which encompasses large areas that used to belong to municipal law, seems to have been influenced by the following two considerations. On the one hand, these states, with their old traditions of liberty, do not find that they themselves need any new legislation creating fresh guarantees for human rights, but on the other hand, they do not wish to stand aside from participation in a type of international legislation for which the need has been felt in a larger context, even if this would oblige them to adopt municipal legislation which would otherwise be unnecessary. The above-mentioned convention against racial discrimination offers an example of this attitude.

Attention should also be drawn to the European Convention for the Protection of Human Rights and Fundamental Freedoms, under which the contracting states have undertaken to secure to everyone within their jurisdiction a number of defined rights and freedoms. By adhering to this convention, which constitutes one of the major achievements of the Council of Europe, the contracting states have also agreed to their observance of the convention being supervised by special organs of the Council of Europe.

Another extension of the boundaries of international law has resulted from the proclamation by the United Nations General Assembly of the right of peoples to dispose of their natural resources. Quite a number of questions have arisen concerning the way in which this right is to be reconciled with the protection of foreign private property, especially of capital invested in land or otherwise in enterprises for the exploitation of natural resources. In connection with attempts to solve these questions such as can be expected to be made inside and outside the United Nations, at least some attention is likely to be drawn to the attitude taken by the Nordic states, as these states, on the one hand, take a great interest in the problems of the developing states and, on the other hand, are themselves exporting capital.

Turning from universal legislation to such regional legislation outside the Nordic region as might be of interest to the Nordic

[3] After the delivering of this address, the United Nations General Assembly has approved on December 16, 1966, two separate Covenants on Human Rights, one on Economic, Social and Cultural Rights, the other on Civil and Political Rights.

states, I must come back to the distinction between universal and regional lawmaking. Generally speaking, it can be said that lawmaking aiming at universality is concerned either with matters of importance to mankind as a whole—for instance peaceful coexistence between the states and protection of human rights—or with the facilitation of intercourse in general between states and continents.

Regional legislation, on the other hand, is aimed at a total or partial unification of the law within a group of states which are close to one another and to which such a unification seems desirable simply because they wish to constitute a community. A region in this sense often consists of states which are geographical neighbours, as in the case of the Nordic states and of the Benelux countries. However, mere geographical proximity does not offer a sufficient basis for regional legislation, as the feeling of community is above all conditioned by such factors as a similar composition of the population and a common history, religion, political structure, and cultural heritage. If such links are sufficiently strong, regional structures may appear even without immediate geographical proximity. In our part of Europe an historical example of this is the extension of the law of Lübeck to other parts of Germany and of the Baltic area. Today, common law is still a link between the now independent states which earlier were parts of the British Empire, just as French law is a bond between the many African states which, through their colonial past, share in French civilization. Incidentally, though the word colony is now of bad repute, in certain connexions it once had a different ring, which might lead to its rehabilitation, although this would perhaps require a return to Latin. Is it not, for instance, a source of pride to the greatest city of the Rhineland that is was called Colonia Agrippina, whence the name of Cologne is derived?

Regions with common legislation may thus be remnants of dissolved political structures, but there are also cases where the unification of the laws or part of the laws of a number of states has preceded the merging of these states in a larger unity. Thus, the North German Confederation with its uniform commercial law preceded the German Empire of Bismarck.

The Nordic states constitute, as has been already said, a region within which the unification of the laws of the different states has made great progress and is expected to continue. If, however, we ask ourselves to which other, larger regions these states or some of them belong, the Council of Europe should be mentioned

in the first place. Denmark, Iceland, Norway and Sweden are members of this organization. The object of the Council of Europe, as stated in its Statute, is to achieve a greater unity between its members; these aims are to be pursued, *inter alia,* by common action in legal matters. Since the establishment of the Council in 1949, a considerable legislative activity has developed under its auspices, the result of which is a great number of conventions in various fields of law. The progressive planning of the legal unification work takes place at regular conferences of the European Ministers of Justice and in a permanent committee of experts for legal cooperation, which meets between these conferences. It goes without saying that those Nordic states which are members of the Council of Europe take part in this work and that they keep close contact with one another in order to further common Nordic views on the drafting of the conventions.

What has been said above about the relations between Nordic legislation and universal lawmaking applies to a certain degree also to the relations between Nordic legislation and this European legislation. It should, however, be pointed out that in the course of the elaboration of the conventions of the Council of Europe, there also is an opportunity for parliamentarian opinion to make itself heard at the European level, i.e. in the Consultative Assembly, which is composed of members of parliament from all the member states. A special problem is created by the fact that Finland is not a member of the Council; this should cause the other Nordic states to see to it that the European cooperation does not lead to results in respect of their municipal law that are likely to impair the community of law existing between them and Finland.

If the Council of Europe has thus inaugurated a European legislation in which four of the Nordic states have participated for many years, there exists also another regional European organization, i.e. the Common Market, within which there takes place a considerable amount of lawmaking that is of interest to the Nordic states even though all of them are at present outside this organization. The economic integration of the Western European states, which is the object of the Common Market, presupposes the remodelling and the unification of important parts of the municipal law of the member states, regarding e.g. company law, patent law, the right of establishment, and restrictive trade practices. The application and development of this new body of European law has furthermore been entrusted to a special supra-

national Court of Justice, created for this purpose, to which private parties also have access. The general question whether uniform laws do not also require common tribunals, or rather a common superior Court, if the unity of law so created is to be preserved, lies beyond the scope of this introductory survey, but is worth mentioning in this context.

The lawmaking which is thus in full swing will obviously be of great importance for the Nordic countries, too, should they come to be connected with the Common Market, but it has an impact on their economic life even now. How closely the legislation of the Common Market can affect them is shown, for instance, by the fact that legislation on the sale of goods was being planned inside the Common Market at the same time as the conventions on the same subject which were later to be adopted at the Hague Conference in 1964 began to take shape. As these conventions promised to be satisfactory from the point of view of the Common Market also, the corresponding preparatory work of the latter was postponed until such time as the results of the Hague Conference should be known. Later, these results were accepted by the Common Market also. The Nordic states, which participated in the elaboration of the Hague Conventions, should, of course, greet with satisfaction this settling of their relations with the Common Market as regards such an important field of commercial law.

In many other fields, too, there is being created within the Common Market new law to which the Scandinavian countries have every reason to give attention, in view of what the future may have in store for them. It is known that this evolution is being followed by legal experts appointed by the Nordic governments and that thus the governments are showing vigilance. However, wider circles of Nordic jurists ought to follow closely the growth of the European law created within the Common Market. Nordic jurists have at present no opportunity to collaborate in the formation of this European law, which is therefore taking shape exclusively under the influence of the Continental legal systems. In order to become acquainted with this new law, it will be necessary to be familiar with legal thinking and legal terminology in the present member states of the Common Market. In this context, it is of some importance that the Common Market has four official languages, none of which is English, a language which is the first international language of most Nordic jurists and sometimes constitutes their only means of linguistic com-

munication with the outer world. The acquaintance with Continental legal thinking and legal language which the adherence of Britain to the Common Market would require from British lawyers has recently been stressed by E. H. Scammel of London University, who has expressed himself as follows:

> With regard to legal education, the wisdom of the current policy to oust Roman law from the scene of both academic and professional examinations may be doubted. Perhaps now more than ever before in recent history it is important for us to be able to understand the basis of Continental jurisprudence. It should, I think, also be borne firmly in mind that the language barrier, if not broken down, could place English lawyers at a real disadvantage. In the first place, since there are, at present, four official languages of the European Court of Justice and proceedings may be taken in any one of them, it is clear that appointments to the bench and permanent staff of the Court will be made only from amongst lawyers who have the necessary linguistic qualifications. It is also clear that in order to succeed as a Common Market lawyer linguistic knowledge will be indispensable. Even if, in the event of the United Kingdom being admitted as a member, English were added to the official languages of the Court, this would in no way override the above considerations.
>
> During the years which lie immediately ahead, English lawyers cannot participate in the evolution of Common Market law. These years may well see the emergence of a group of specialists in Common Market law. English lawyers must, I submit, equip themselves now to keep pace with Common Market legal developments and lay the foundation for possible future participation.[4]

What has thus been said by a British voice goes for the Nordic countries as well and underlines a need for preparedness not confined to a small group of governmental experts, in order to meet whatever changes the evolution of these countries' relations with the Common Market may bring. Independently of the form which an approach to the Common Market might take, the necessity of building up such a preparedness cannot be denied and a livelier discussion of the problems involved seems to be called for.

Sweden has always been open to legal influences from abroad, although in different degrees during different periods of her history. One of the earliest proofs of such an influence is to be found

[4] E. H. Scammel, "The Common Market and the legal profession" in *English Law and the Common Market*, edited by G. W. Keeton and G. Schwarzenberger, London 1963, p. 66.

in the oldest provincial law of Vestrogothia, where the concept of will, unknown in the original Nordic legal system, appears in the form of a provision that nobody may on the day of his death give property away from his heir, unless the heir acquiesces; but it is added: "Learned men say that under the law of God it is not permissible to say no".

In the same way as in those bygone days learned men, with canon law in the background, preached to doubting Vestrogoths that the salvation of their souls required the right of the dying to bequeath property for pious purposes, so today learned men from abroad might appear teaching Nordic lawyers that the new European law makes it necessary to change their laws in one way or another. They will then need learned men of their own who are capable of taking up a discussion on an equal footing.

If I may finish with another historical parallel, I would remind you of the son of a Swedish king who ended up on the throne of Poland, Sigismond III. In the old royal palace of Warsaw his courtiers are said to have whispered that three things, all beginning with T, had caused the misfortunes of their king:

> Tria *t* fecerunt regi nostro væ:
> tenacitas, tarditas, taciturnitas.

These seem to be precisely the three qualities which, in the face of present evolution inside the Common Market, Nordic jurists should take care not to indulge in.