

**LEGAL STATUS
OF THE NORDIC NATIONS**

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CHAPTER SIX

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CHAPTER SIX**LEGAL STATUS OF THE NORDIC NATIONS****SECTION ONE****Formalised Nordic Cooperation****§ 1.1. Background.****§ 1.1(A). Introduction.**

Five countries in Northern Europe share both a largely common heritage and a desire to maintain and further develop their close connections.¹ The countries are Denmark, Finland, Iceland, Norway and Sweden, which commonly are referred to as Norden.² A 1962 treaty of cooperation specifies six main areas of cooperation: legal, cultural, social and economic, transport and communication and environmental protection.³

The Nordic Council and the Nordic Council of Ministers are two important frameworks for respectively initiating and advising on and deciding on this cooperation. Briefly stated, the Nordic Council is an assembly of parliament members, while the Nordic Council of Ministers is an assembly of members of the participating countries' governments. No supranational power can be said to be vested in the councils.⁴

As an introduction, the geography of the region and its history will be sketched. After pointing out some similarities and differences between the five countries, some results of the regional cooperation will be described. Then the formation, composition and functions of the Nordic Council and the Nordic Council of Ministers will be dealt with, including the recent amendment allowing representation from the three autonomies in the Nordic region.⁵ Finally the position of these institutions in public international law will be commented on.

§ 1.1(B). Geography.

The Scandinavian peninsula, part of which extends north of the polar circle, may be called the core of the Nordic region. This peninsula contains Norway⁶ and Sweden, who share a 1000 mile border and both border Finland in the North. Finland and Norway border the north-western part of the Soviet Union. The Danish island Zealand is within viewing distance across the Sound from the south of Sweden. To the south, Denmark borders Western Germany. Greenland belongs to the Danish kingdom, making her the largest country in western Europe. Iceland is situated in the Norwegian sea, between

Greenland and Norway, just south of the polar circle. Halfway between Iceland and Norway we find the small archipelago Faroe Islands, which is part of Denmark. The Aland Islands is an archipelago in the Gulf of Bothnia between Sweden and the south of Finland, and is part of the latter.

Excluding Norwegian dependencies⁷, but including the 840,000 square miles of Greenland, the land area of the region is about 1.3 million square miles, larger than the rest of Western Europe. The population is approximately 22.5 million, slightly less than the population of Canada. Excluding Greenland, Sweden is largest both in area and in population. With about 10% the size, and 60% the population of Sweden, Denmark is by far the most densely populated. The populations of Finland and Norway are slightly smaller than the Danish, and the two countries are approximately 70% of Sweden's size. While the area of Iceland is 25% of the area of Sweden, the population is 4% of the Swedish.⁸

§ 1.1(C). History.

Going back more than a thousand years to the Viking Age, we find strong expansionist trends in Scandinavia. Besides founding an empire in present Normandy and discovering North America, the Normans inter alia populated Iceland and Greenland.

In 1397, Denmark, Norway and Sweden were united under one monarch in the Kalmar Union. To effectively meet the German threat from the Hanseatic towns, a common foreign policy was formed and the defenses were integrated. Independence was, however, maintained in internal affairs.

Sweden broke out of the union in 1523, starting two centuries with numerous wars and major shifts of territory within the Nordic region. During this period, the main states were Denmark and Sweden. With Norway, including Greenland, Iceland and Faeroes, Denmark formed the western block, and Sweden with Finland the eastern.

A period of peaceful coexistence reached in the eighteenth century was disrupted by the Napoleonic wars. In 1809, Finland, including Aland, was ceded from the Swedish king to the Russian czar and became a grand duchy under the latter.⁹ In 1814, the Norwegian mainland¹⁰ was ceded from Denmark to Sweden. Simultaneously, the Norwegians proclaimed independence and adopted a constitution, but eventually accepted the Swedish king as their monarch and adherence to Swedish foreign policy.

In 1905, Norway broke the union with Sweden. After the Russian revolution, Finland gained independence. Iceland gained independence in 1918, but remained associated with Denmark through adherence to its foreign policy and monarch until 1944. Since 1920 the Aland Islands and since 1948 the Faroe Islands have had self-government (autonomy), and in 1979 home rule was established in Greenland.

§ 1.1(D). Common Culture.

This brief outline of their history shows extensive interaction between the Nordic countries. The majority of the people in the region share both a common origin and a common cultural background. Social and political developments have been similar. All five countries are parliamentary democracies.¹¹ While Finland and Iceland are republics, Denmark, Sweden and Norway are monarchies. This difference is, however, more formal than real, and not significant with respect to the material political system. Both democratic ideas and respect for human rights are deeply rooted in the region.¹² All five

countries have adopted the Lutheran church as their official religion.

The majority of the population also speaks closely related languages. Each country has its own language: Danish, Finnish, Icelandic, Norwegian and Swedish, respectively. Three more languages are spoken in the region: Faeroish, Greenlandish and Saami.¹³ In, e.g., the Nordic Council, translations are provided to and from Finnish. Members from the other countries usually speak Danish, Norwegian or Swedish, which are mutually understood.

The legal systems in the region are similar. Customary law was developed based on the same social values. During the period of two blocks, Danish law was introduced in the western part of the region, while Swedish law was introduced in Finland.¹⁴ The influence of Roman law was not as strong as it was in countries further south in Europe.

There is broad cooperation between the nations based on formal institutions and through more informal meetings. One example of private cooperation initiative is the Norden Association. Founded in 1919 to promote cooperation between the Nordic nations, it now has 80,000 members.

Based on the common heritage and cultural similarities, it may be said that the population in Norden is largely homogeneous. By outsiders, however, this homogeneity within the region tends to be overestimated.¹⁵

§ 1.1(E). Nordic Cooperation.

§ 1.1(E) (1). Introduction.

The Nordic countries have concluded several agreements or treaties which cover different aspects of regional cooperation. Initiatives to form these agreements often come from the Nordic Council. The results of the most important agreements will be outlined.

While most of the cooperation activity may be said to be carried out internally, there is also a considerable amount of external cooperation. When participating in international organisations, the Nordic countries often share common objectives and cooperate to reach these goals more efficiently. Advance joint consultative meetings are held to coordinate views. When the views presented are backed by five countries, they carry more weight in international fora.¹⁶

§ 1.1(E) (2). Rights of Citizens.

Citizens of the Nordic countries travel freely within the region without passports. Non-Nordic citizens are allowed inter-Nordic travel without passport control. The countries have a uniform policy regarding visas for short visits.¹⁷

Since 1954, Denmark, Finland, Norway and Sweden have been a common labor market.¹⁸ Employees move freely between the countries, work permits are not required. In some professions, authorisation in each country is still needed. Within professions in the health sector, a Nordic authorisation is given.

A citizen of one Nordic country is entitled to the same social benefits as citizens of the host country when he or she moves. This applies to medical care, child allowances, pensions, unemployment benefits and pensions.¹⁹

§ 1.1(E) (3). Communication.

In 1946, the national airlines of Denmark, Norway and Sweden started a joint

transatlantic service, Scandinavian Airlines System (SAS). In 1951, SAS took over all the operations of the national airlines. It is controlled by three national holding companies. Iceland and Finland have their own national airlines.²⁰

According to a 1972 treaty, the countries cooperate in the field of transport and communication.²¹ Infrastructure is connected across the borders. Denmark, Norway and Sweden also have an extensive common network for transfer of hydroelectric power.

In 1976, a Nordic investment bank was established with headquarters in Helsinki.²² Its purpose is to make loans and give guarantees to investment projects in and exports from the Nordic countries. It is to follow normal banking practice, but socioeconomic considerations shall also be taken into account when projects are evaluated.

§ 1.1(E) (4). Culture.

Cultural cooperation is carried out in two major fields, education and research.²³ Both structure and content of the educational systems in the five countries are harmonised. National research programs are sought, coordinated, common research projects are encouraged, and information on research activities, methods and results is shared.

A Nordic Fund for Cultural Purposes is established, annually allocating means to encourage cultural cooperation.²⁴

§ 1.1(E) (5). Regional Cooperation.

According to a 1977 agreement among Denmark, Finland, Norway and Sweden, the governments of these countries have authorised local authorities in border districts to cooperate with their counterparts across the border.²⁵

§ 1.2. Nordic Council and Nordic Council of Ministers.

§ 1.2(A). Nordic Council.

§ 1.2(A) (1). Formation and Recent Changes.

In the middle of the nineteenth century, a Pan-Scandinavian movement blossomed. Formal cooperation in some fields among Denmark, Norway and Sweden was initiated in that period.²⁶

The movement varied in strength. Later studies also show that, although apparently generated by homogeneity, the concept of Scandinavian, and subsequently Nordic, cooperation was probably a response to, and depended on, outside pressure.²⁷

A Danish proposal for closer cooperation through formation of a consultative body was rejected by the other Nordic countries in 1938. At the 1951 meeting of the Nordic Interparliamentary Union,²⁸ there was more support for a Danish proposal to establish a Nordic Consultative Parliamentary Assembly.²⁹

Statutes for the Nordic Council were drafted and adopted by Denmark, Norway and Sweden in June 1952. In Denmark and Sweden, all parties except the communist parties voted for the establishment of the Nordic Council. In Norway, the socialists voted for and the conservatives voted against the proposal. Iceland adopted the statutes in December the same year, and Finland in October 1955.³⁰

The first session of the Nordic Council was held in 1953. Originally the stated purpose

of the Council was consultation between the individual parliaments and governments.³¹

In 1971, the statutes were incorporated into the Helsinki treaty.³² The statutes have also been changed to emphasize cooperation between parliaments and governments in the Nordic countries.³³

Each parliament elects a fixed number of representatives. In addition, each government may be, and usually is, represented by appointed members who, however, may not vote. Each country's delegation consists of a fixed number of elected members, parliamentarians, and a varying number of members of government.

Originally the elected members of the Nordic Council were elected by and from the five national parliaments in the five member countries. To better accommodate the autonomous territories,³⁴ this structure has been modified.³⁵

When Greenland was granted home rule in 1979, Denmark proposed a change to allow Åland, Faeroes and Greenland direct representation by elected members of the Nordic Council. Normally only sovereign states are viewed to have full international legal competence and allowed full participation in international organisations.³⁶ The autonomies' legal competence is limited. Commonly, autonomies do not enjoy full but associate membership in international organisations. In accordance with this, the Nordic autonomies were not made members of the Nordic Council.³⁷ They were, however, given the right to participate in Nordic cooperation on a near-equal basis. They elect members to the Nordic Council, they may participate in committee work, and they have the same right to initiatives as member countries. The elected members from Greenland, Faeroes and Åland are, however, considered members of the Danish and the Finnish delegations respectively.³⁸

§ 1.2(A) (2). Composition.

The statutes taken into the Helsinki treaty determine the composition and functions of the Nordic Council. They are supplemented by a working procedure adopted by the Council.³⁹

The Nordic Council consists of three institutions: the Plenary Assembly, the Presidium and the Committees.⁴⁰

Since January 1984, the number of elected members to the Council is 87. The Icelandic parliament elects seven. The Danish parliament elects 16. The Danish delegation also includes one member elected by and from the Faroese Provincial Assembly, one member elected by and from the Provincial Assembly of Greenland, and two members elected by and from the County Council of Greenland. The Finnish parliament elects 18 members, and similarly two additional members of the Finnish County Council of Åland. The parliaments of Norway and Sweden each have 20 representatives in the Council.⁴¹

The members are elected for one year.⁴² Different political factions in the individual assemblies shall be represented in the national delegations.⁴³ Each, or at least most, political parties represented in each parliament are given proportionate representation in the delegation.⁴⁴ This way the political structure in Norden will be reflected in the Council. The members of the Council may also form Nordic Party Groups or political factions within the Council. The Presidium is to be notified, and the group must have at least four members from at least two countries.⁴⁵

In addition to elected members, the national governments, the provincial administrations of the Faroe Islands and Greenland and the county board of the Åland Islands

appoint from among their members the number of representatives they want to send to the Nordic Council.⁴⁶

Each national delegation elects its chairman and vice chairman. Only elected members of the delegation may vote.⁴⁷

The Plenary Assembly annually holds one ordinary session,⁴⁸ usually for five days in February or March. The location changes between the Nordic capitals.

At the ordinary session, the Plenary Assembly appoints a Presidium from among its members. It consists of one president and nine other members, two from each delegation. Various political factions shall be represented in the Presidium.⁴⁹

The Presidium represents the Nordic Council between sessions and directs a secretariat located in Stockholm. The Presidium also appoints committee secretaries. Each delegation has its own secretariat in connection with the national parliament. The Presidium secretary and the secretary of each national delegation make up the Presidium Secretariat.⁵⁰

The Plenary Assembly decides on the number of committees, and each national delegation's representation to the various committees.⁵¹ There are currently six standing committees. Five of them correspond to the areas of cooperation outlined in the Helsinki treaty. The Legal, the Social and Environmental and the Communications Committees each have 13 members, one appointed by the Icelandic and three appointed by each of the other delegations. The Cultural Committee consists of 17 members, one appointed by the Icelandic delegation and four appointed by each of the other delegations. The Economic Committee has 22 members, two from the Icelandic delegation and five from the Danish, Finnish, Norwegian and Swedish delegations.⁵² Each committee appoints a chairman and vice chairman.⁵³

The sixth standing committee is the Budget Committee. It consists of the chairmen of the other committees, one appointed member from the Icelandic delegation and two appointed members from the other national delegations.⁵⁴

The Plenary Assembly appoints two members from each delegation to serve on the Information Committee,⁵⁵ and the Presidium constitutes the Election Committee.⁵⁶ The committees meet five to ten times during the year.⁵⁷

§ 1.2(A) (3). Functions and Procedure.

The main purpose of the Nordic Council is to initiate and advise on cooperation between the five Nordic countries and Greenland, the Faroe Islands and Aland.⁵⁸ The Council may adopt recommendations, make representations or issue pronouncements to one or more of the Nordic governments or to the Nordic Council of Ministers.⁵⁹ According to Article 46 of the Helsinki treaty, the Council shall be given the opportunity to state its views on major questions of Nordic cooperation.

The Nordic Council of Ministers, the Nordic governments, the provincial administrations of Greenland and the Faroe Islands, the county board of the Aland Islands and the members of the Council may submit proposals to the Nordic Council.⁶⁰ Proposals shall be submitted in writing to the Presidium.⁶¹ The Presidium refers the proposal to the appropriate committee,⁶² and informs the members, the governments, the provincial administrations and the county board of the proposal.⁶³

The committee report, including minority opinions and a reasoned proposal for a decision or pronouncement, is submitted to the Plenary Assembly. In some instances,

when the committee proposes that the Presidium make a representation or pronouncement, the report is submitted to the Presidium.⁶⁴ Decisions in the committees are by simple majority vote.⁶⁵ Committee meetings are not open to the public.⁶⁶ In committees where there are no members from the autonomies, members from Greenland, the Faroe Islands or the Aland Islands may take part in the committee work.⁶⁷ Members of the national and local governments also have the opportunity to participate in committee work, and the committees may invite other Council members, experts and other nonmembers to participate in the committee discussions.⁶⁸

The Plenary Assembly discusses and votes on the committees' proposals. A quorum exists when 50% or more of the elected members entitled to vote are present.⁶⁹ On questions concerning the application of treaties between certain countries, only the elected members from these countries may vote.⁷⁰ Appointed members do not vote.⁷¹ Recommendations or pronouncements require affirmative votes from a majority of the members present.⁷² Decisions require that the number of members voting in favor exceeds the number of members voting against.⁷³ Proceedings of the Plenary Assembly are open to the public.⁷⁴

Decisions, statements or recommendations are directed either to one or more of the governments of the Nordic countries or to the Nordic Council of Ministers.⁷⁵ The decisions, statements or recommendations are not legally binding on either the governments or the Council of Ministers. Through its composition, the Nordic Council does, however, reflect the political parliamentary situation in the region.⁷⁶ Both the elected and the appointed members of the Council are generally among the more prominent and influential politicians in their respective countries. For these reasons the expressed opinions of the Nordic Council do carry weight.

In the Plenary Assembly, elected members may submit questions to a government or to the Council of Ministers on matters concerning Nordic cooperation.⁷⁷ This provision may *inter alia* be used to bring attention to what members of the Council deem as poor cooperation efforts.

§ 1.2(B). Nordic Council of Ministers.

§ 1.2(B) (1). Formation.

While the Nordic Council is a body of cooperation for the Nordic parliaments, the Nordic Council of Ministers is a body of cooperation between the Nordic governments. Since the 1983 amendments, the provincial administrations of Greenland and the Faroe Islands and the county board of the Aland Islands participate in the work of the Council of Ministers.⁷⁸

The Council of Ministers was established in 1971 by an amendment to the Helsinki Treaty. The initiative came from the elected members of the Nordic Council, who saw the need for both a body of governmental cooperation and an intermediary institution between the Nordic Council and the individual governments. The statutes establishing the framework, power and procedure of the Nordic Council of Ministers are supplemented by a working procedure adapted by the Council of Ministers itself.⁷⁹

§ 1.2(B) (2). Composition.

The Nordic Council of Ministers is modeled after the Council of Ministers in the EEC.

One minister in each national government is responsible for Nordic cooperation in addition to his normal portfolio. Membership in the Council does, however, depend on the issues to be discussed. It is made up of the ministers within whose portfolio the issues to be treated fall. For instance, legal cooperation is dealt with by a Council of Ministers consisting of the heads of the departments of justice in the Nordic Countries. Since the 1984 amendments, representatives of the three autonomies also participate in the Council of Ministers.⁸⁰

The Council of Ministers is assisted by civil servant committees, which, in turn, are assisted by subcommittees and working groups.⁸¹ These bodies carry out the studies upon which the decisions of the Council of Ministers are based. The Nordic Council of Ministers is also assisted by a Secretariat located in Copenhagen.⁸²

§ 1.2(B) (3). Functions and Procedure.

The Nordic Council of Ministers decides on issues in Nordic cooperation.⁸³ A decision is binding on the members if all members are represented and none of them vote against the decision.⁸⁴ The decisions are binding on the Faroe Islands, Greenland and the Aland Islands insofar as the autonomies accede to the decision in accordance with their self-government provisions.⁸⁵ Questions which exclusively concern certain members may be decided on by those members only.⁸⁶ If the constitution of a member country requires parliamentary approval, these decisions are not considered binding on any of the countries until such approval is given.⁸⁷

Meetings are held at the request of one member. The chairman is the minister of the country in which the next session of the Plenary Assembly of the Nordic Council is to be held. The meetings are not open to the public.

§ 1.2(C). Interaction between the Nordic Council and the Nordic Council of Ministers.

As mentioned, the Council of Ministers functions as an intermediary between the Nordic Council and the national governments. The majority of the decisions by the Nordic Council are directed to, and depend on implementation by, the Council of Ministers. The Council of Ministers may also, as mentioned, submit proposals to the Nordic Council.

Before the annual session of the Nordic Council, the Council of Ministers submits a report on Nordic cooperation with special account of past years' and plans for future cooperation.⁸⁸ The Council of Ministers may hold joint meetings with the Presidium of the Nordic Council.⁸⁹ The Council of Ministers may also permit members of the Nordic Council to be present at meetings of the Council of Ministers.⁹⁰

Normally the committees of the Nordic Council invite the ministers to be present and participate in discussions relevant to their departments. These forums for information and exchange of opinion between parliamentarians and members of governments constitute an important aspect of the formalised Nordic cooperation.⁹¹ Although formally two separate institutions, their work is highly integrated.

§ 1.2(D). The Legal Character of the Nordic Council and the Nordic Council of Ministers.

When the Nordic Council was established, a proposed binding treaty was rejected. Instead, similar statutes were adopted in each state. In Denmark, the statutes were

adopted as law and unilaterally promulgated as a treaty. In Norway and Sweden, and subsequently Iceland and Finland, the statutes were enacted through parliamentary resolutions.⁹²

Prior to 1971, then, participation in the Nordic Council was clearly not a legal obligation on the Nordic countries. Propositions to make participation mandatory have, like propositions to confer elements of supranationality to the Council, been turned down. The Helsinki treaty includes provisions for termination. Six months after notice the termination is effective for the notifying state.⁹³

Efforts have been made to classify the Nordic Council within the international law framework. A normal definition of an international institution includes four elements. It should be an association of international law subjects, constituted by a multinational treaty, possessing its own legal personality and acting through own established organs.⁹⁴

As mentioned, the Nordic Council was not established through a treaty. With the amendments of the Helsinki agreement, this has now changed. Further, it is not composed of states, but of individual parliamentarians, the Nordic parliaments. From its establishment, most writers did agree that the Nordic Council was a new creation in the field of international law.⁹⁵

All the Nordic countries belong to the United Nations. The Nordic Council and the Nordic Council of Ministers can probably be classified as regional organisations as described in article 52 of the UN charter. Any possible relationship to this provision in the UN charter was, however, not discussed when the Nordic Council was established.⁹⁶

As an international organisation with the authority and organs to perform acts binding upon its own organs, the Nordic Council is also a subject of international law.⁹⁷

Since the Nordic Council of Ministers independently has the authority and necessary organs to perform international acts, it is probably correct to view the Nordic Council of Ministers as a separate international law subject.

SECTION ONE FOOTNOTES

1. See preamble to treaty of cooperation between Denmark, Finland, Iceland, Norway and Sweden signed March 23, 1962. The most recent amendments, signed May 6, 1985, are expected to enter into force in 1986. The treaty will be referred to as the Helsinki treaty.

2. These five countries are normally referred to as Norden or the Nordic countries, while Denmark, Norway and Sweden normally are referred to as Scandinavia. See, e.g., *Encyclopaedia Britannica*, 1970 edition.

3. See art. 1, Helsinki treaty.

4. A supranational organisation usually refers to an intergovernmental organisation to which member states have ceded part of their own jurisdiction. The international law position of the Councils will briefly be commented upon later.

5. The autonomies are The Aland Islands, The Faroe Islands and Greenland. A short description is given in A. Grahl-Madsen, *The Small Nations of The North in Nordic Cooperation*, in *Nordisk Tidsskrift for International Rett*, Vol. 51 1982 Fasc. 1-2 p. 5.

6. The Scandinavian peninsula contains the Norwegian mainland. Svalbard (i.e., Spitsbergen and Bear Island), Jan Mayen and an area in Antarctica are Norwegian dependencies. Svalbard is considered part of the kingdom, while the other dependencies are viewed as possessions. The legal status of Spitsbergen was established by the treaty of February 9, 1920. Conflicting claims in Antarctica are "frozen" under the treaty of December 1, 1959.

7. See note 6.

8. Approximate size in square miles:

Sweden	175,000	
Finland	130,000	
Norway	125,000	
Iceland	40,000	
Denmark	16,500	(mainland)
Greenland	840,000	

1979 Population

Sweden	8.3 million
Finland	4.8 million
Aland Islands	23,000
Norway	4.1 million
Iceland	227,000
Denmark	5.1 million
Greenland	50,000
Faroe Islands	43,000

9. As a grand duchy, Finland was recognised as a separate nation. The constitution and legal system were kept as it had been while Finland was a part of Sweden. F. Wendt, *The Nordic Council and Cooperation in Scandinavia*, Munksgaard, Copenhagen 1959, picture text opposite p. 33.

10. At the time of the Kalmar union Orkneys, Shetlands, the Faroe Islands, Iceland and Greenland were Norwegian dependencies. Norway later unsuccessfully claimed East Greenland. See *Eastern Greenland case*, Denmark v. Norway, P.C.I.J., Ser. A/B, No. 53.

11. Briefly stated, the term parliamentary democracies refers to nations where the executive branch of the government depends on support from the legislative branch.

12. See, e.g., "Country Reports On Human Rights Practices For 1984," report submitted to the US Congress by the Department of State.

13. About 6% of the Finnish population speak Swedish. There are two official Norwegian languages ("bokmal" and "nynorsk"). Saami is used in certain areas of northern Scandinavia.

14. As mentioned previously, the western block consisted of Denmark and Norway with Greenland, Iceland and the Faroe Islands, and the Eastern block of Sweden with Finland and the Aland Islands. A copy of the Danish code of 1683 was introduced as the Norwegian code in 1687. In Finland and Sweden, a general code was introduced in 1734.

15. E. Solem, *The Nordic Council and Scandinavian Integration*, New York: Praeger Publishers, 1977, p. 38-39, F. Wendt, in foreword, E. Solem, *op. cit.*

16. The Nordic countries cooperate *inter alia* within EFTA, GATT, OECD and IMO and within the United Nations and its specialised agencies. Examples of external cooperation are given in the Annual Report of the Nordic Council of Ministers for 1985, p. 7.

17. I) Protocol between the Governments of Denmark, Finland, Norway and Sweden concerning exemption of nationals of these countries from the obligation to have a passport or residence permit while resident in a Scandinavian country other than their own. Signed May 22, 1954. Iceland acceded December 1, 1955. Extended to apply to the Faroe Islands January 1, 1966.

II) Convention between Denmark, Finland, Norway and Sweden concerning the waiver of passport control at the intra-Nordic frontiers. Signed July 12, 1957. Iceland acceded September 24, 1965. Extended to apply to the Faroe Islands January 1, 1966.

18. Agreement between Denmark, Finland, Norway and Sweden concerning a common labor market. Signed May 22, 1954. According to sec. 6 of the adjoint protocol, Iceland may accede to the agreement.

19. Convention between Finland, Denmark, Iceland, Norway and Sweden respecting social security. Signed September 15, 1955.

20. Icelandair and Finnair respectively.

21. Treaty between Denmark, Finland, Iceland, Norway and Sweden concerning cooperation in the field of transport and communications. Signed November 6, 1972.

22. I) Agreement regarding the establishment of Nordiska Investeringbanken. Signed December 4, 1975. By the end of 1984 the Nordic Investment Bank employed 51 persons, its accumulated granted loans were worth 1,152 million SDR, and its equity capital was 215 million SDR.

II) Nordiska Investeringbanken, Annual Report 1984.

23. Treaty between Denmark, Finland, Iceland, Norway and Sweden concerning cultural cooperation. Signed March 15, 1971.

24. Agreement between Denmark, Finland, Iceland, Norway and Sweden on a Nordic Fund for cultural purposes. Signed June 12, 1975.

25. Agreement between Denmark, Finland, Norway and Sweden concerning cooperation over the Nordic national frontiers between local authorities. Signed May 26, 1977.

26. *Inter alia* a Scandinavian postal union was established in 1869, predating the Universal Postal Union established in 1874, and a monetary union was established in the mid 1870's.

27. B. Strath, Nordic Industry and Nordic Economic Cooperation, Stockholm: Almqvist & Wicksell, 1978, p. 43.

28. The Nordic Interparliamentary Union was founded in 1907 as a regional unit of the Interparliamentary Union. Most Nordic parliamentarians belong to the Interparliamentary Union.

29. The initiative was private and came from the Danish statesman Hans Hedtoft.

30. Delay on Finland's part was due to negative pressure from the Soviet Union. In Soviet media, the Nordic Council was strongly criticised as a way of bringing Sweden and Finland under NATO and US influence. With the relaxation of the cold war, however, the critique ceased.

31. The text of the original art. 1 of the statutes was: "The Nordic Council is an organ for consultation between the Folketing of Denmark, the Riksdag of Finland, the Althing of Iceland, the Storting of Norway and the Riksdag of Sweden, as well as the governments of these countries, in matters involving joint action by any or all of the countries." Unofficial translation by author in S. Anderson, The Nordic Council, A Study of Scandinavian Regionalism, Seattle, University of Washington Press, 1967, appendix A.

32. See note 1.

33. See note 38.

34. See note 5.

35. From 1969, the Faroish parliament elected two members of the Danish delegation, and the Alandish parliament one member of the Finnish delegation. The number of elected representatives from each country was 18, except from Iceland, which sent six parliamentarians. Faroes and Aland were also directly represented by one appointed government representative, while the local government in Greenland appointed one member of the Danish delegation.

36. That is, sovereign states as opposed to non-sovereign states. Organisations as international law subjects will be commented on later, see also note 96.

37. I) See G. Lindholm, The Right of Autonomous Regions To Participate In Nordic Cooperation, Nordisk Tidsskrift for Internasjonal Rett, Vol. 54 1985 Fasc. 1-2, p. 79-84.

II) A commission (Samerettsutvalget) is currently analysing the rights of the Sami people in Norway. Their position in Nordic cooperation is, however, not changed.

38. Art. 44 of the Helsinki treaty now states: "In the Nordic Council there is cooperation among the popularly elected assemblies of the Nordic countries and of the Faroe Islands, Greenland and the Aland Islands, the governments of these countries as well as the Provincial Administrations of the Faroe Islands and of Greenland, and the County Board of the Aland Islands."

39. *Cfr.* note 1. The Helsinki treaty is used with the 1985 amendments. These will probably be ratified *primo* 1986. In the following notes "art." will refer to the relevant article in the Helsinki treaty. "Workprocedure" refers to the working procedure for the Nordic Council confirmed by the Plenary Assembly February 17, 1971 with later amendments.

40. Art. 50.

41. Art. 47.

42. Art. 47.

43. Art. 47.

44. "A mathematical formula is applied to allocate the seats among the parties. . . . When the allocation is made, each party decides which of its members shall be chosen, and the result is ratified by the legislature." S. Anderson, *op. cit.* p. 26. Lists of the delegates and the political parties they represent in the national parliaments are given in the annual report from the Presidium to the Plenary Assembly, *cf.* workprocedure sec. 22.

45. Workprocedure sec. 37.

46. Art. 47.

47. Workprocedure sec. 36.

48. Art. 51.

49. Art. 52.

50. Art. 54.

51. Art. 53.

52. Workprocedure sec. 24.

53. Workprocedure sec. 25.

54. Workprocedure sec. 24.

55. Workprocedure sec. 31.

56. Workprocedure sec. 32.

57. *Inter alia* the Presidium's annual report to the Plenary Assembly gives an account of the committee's activities.

58. Art. 44.

59. Art. 45. A description of the Nordic Council of Ministers follows in a later chapter.

60. Art. 55.

61. Workprocedure sec. 41.

62. Workprocedure sec. 44.

63. Workprocedure sec. 41.

64. Workprocedure sec. 45, *cf.* art. 56.

65. Workprocedure sec. 29.

66. Workprocedure sec. 27.

67. Workprocedure sec. 27.

68. Workprocedure sec. 27. See also F. Wendt, *The Interplay Between Organizations, Parliaments and Governments, in Nordic Council, Instruments and Achievements, NU B 1979:3, Oslo/Stockholm, Nordisk Ministerrad/Nordisk Rad, 1979, p. 21.* (Publication of papers delivered at the Nordic Council Presidium's VIIth International Conference in Esbo, Finland, June 1978.)

69. Workprocedure sec. 10.

70. Art. 49.

71. Art. 49.

72. Workprocedure sec. 12.

73. Workprocedure sec. 14.

74. Art. 51.

75. Art. 45.

76. *Cfr.* note 44.

77. Art. 57.

78. Art. 60. "Art." still refers to the article in the Helsinki treaty, *cf.* note 39. "Workprocedure 2" refers to the working procedure for the Nordic Council of Ministers confirmed by the Nordic Council of Ministers February 17, 1973 with amendments.

79. Workprocedure 2 sec. 5.

80. Workprocedure 2 sec.4.

81. Art. 61, workprocedure 2 sec. 13, 14.

82. *Ibid.*

83. Art. 60.

84. Art. 62.

85. Art. 63.

86. Art. 62.

87. Art. 63, *cf.* art. 46 of the Vienna Convention on Treaties, which to some extent allows a state to invoke internal rules of competence invalidating a consent to be bound by a treaty. Vienna Convention on the Law of Treaties, signed May 23, 1969.

88. Art. 64.

89. Workprocedure 2 sec. 11.

90. Workprocedure 2 sec. 12.

91. F. Wendt, NU B 1979:3.

92. S. Anderson, Negotiations For The Nordic Council, in *Nordisk Tidsskrift for International Rett*, Vol. 33 1963 Fasc. 3-4 p. 23.

93. Art. 70.

94. A. El Erian, The Legal Organisation of International Society in M. Sorensen, ed. *Manual of Public International Law*, New York: St. Martin's Press, 1968, p. 68.

95. I) In his analysis of the Nordic Council, M. Sorensen concludes: "En somme on est en presence d'un ordre juridique particulier. Si cet ordre n'appartient pas a la categorie traditionnelle du droit international et s'eleve, d'autre part, audessus du droit national, il faut le considerer comme un ordre juridique sui generis." M. Sorensen, *Le Conseil Nordique*, in *Revue Generale de Droit International Public*, troisieme serie, tome XXVI, tome LVIII, 1955, p. 63.

II) H. Nagel first describes the trend: "in der scandinavischen Geschichte zeichnet sich eine gewisse konsner Union zu unabhingigen souveranen Staaten." (p. 211) and finds that the Nordic Council is neither a "Federation von Staaten" nor "der Beginn eines Bundesstaates" (p. 211). Further he states that: "Der Nordische Rat stellt auch kein Bundnis von Staaten dar, wie sie bisher im Internationalen Recht bekannt waren" (p. 212).

He also gives a positive description of the Nordic Council: "Positiv ausgedruckt konnte man vielleicht sagen: der Nordische Rat ist der Versuch einer neuartigen Zusammenarbeit parlamentarischer Mitglieder der heimatischen Parlamente mit Regierungsvertretern der betreffenden Staaten in einem fruhen Stadium bei der Gesetzgebung und Verwaltung in Angelegenheiten die gemeinsame Interessen betreffen" (p. 213). H. Nagel, *Der Nordische Rat*, seine Organe, seine Funktionen und seine Juristische Natur, in *Jahrbuch fur internationales Recht*, 6. Band. 1956, p. 199.

III) G. Petren *inter alia* compares the Nordic Council to the Council of Europe. Membership is one important distinguishing factor. Although the two bodies of the Council of Europe consist of parliamentarians and ministers, respectively, the members of the council are the various countries. In this respect the Nordic Council, where the parliamentarians themselves are members, is different. The title of his article also suggests that the Nordic Council is a special creation in international law. G. Petren, *The Nordic Council: A Unique Factor in International Law*, in *Nordisk Tidsskrift for International Rett*, Vol. 29, 1959, Fasc. 4, p. 346.

IV) S. Anderson cites Judge Jessup, who has suggested international parliamentary law as a part of public international law, and suggests that the rules regarding the Nordic Council will fit into this category. In this respect, he sees it as largely a continuance of the Nordic Interparliamentary Union. S. Anderson, *Negotiations For The Nordic Council*, *cf.* cit. note 92, p. 30.

It must be added that all these articles were written within a relatively short period after the Nordic Council was formed, and before the statutes for the Nordic Council were incorporated into the treaty of cooperation between the Nordic countries.

96. G. Petren argues that the Nordic Council falls within the category of regional organisations under article 52 of the United Nations charter. G. Petren, *The Nordic Council: A Unique Factor in International Law*, *cf.* cit. note 95 III, p. 346.

97. In his article *Objective International Personality of Intergovernmental Organisations*, in *Nordisk Tidsskrift for International Rett*, Vol. 34 1964, F. Seyersted also discusses the Nordic Council: "... one must admit the general international personality of the Council, in the sense this term is used in the present paper (legal capacity to perform any type of sovereign or international acts which it is in a practical position to perform, ...)" footnote 119, p. 51.

SECTION TWO

Nordic Legal Unification

§ 1.3. Introduction.

A question frequently asked is whether the Nordic countries have a civil or common law legal system. It has been met with a number of different answers, including the one that no intelligible answer can be given.¹ Most writers do, however, seem to agree upon the underlying assumption of the question, which is that the legal systems in the Nordic countries are largely similar.² Reasons for this include the common cultural heritage and long periods with extensive interaction, political and otherwise, between the Nordic countries.³ Another important contributing factor is the considerable unification efforts which have been carried out during the last century.⁴

This will be a description of how Nordic legal unification is achieved and of the level of unification reached. Unification is used in a broad sense, including both harmonization and uniformation.⁵ Legal is used as referring to the law in general. Since the larger part of Nordic legal unification is conducted through legislation, the presentation will primarily focus on legislative unification.

The Nordic Council currently plays an important part in this unification process.⁶ At the same time, Nordic legal unification is a central issue in the Nordic Council.⁷ The unification process began long before the Nordic Council was established. While it now is initiated and directed from within formally recognized structures, the unification process was originally conducted privately, and originates from a private organization.

Following an outline of the historical development of Nordic legal unification, the current role of the Nordic Council and the Nordic Council of Ministers, the methods used for legal unification, and current unification projects will be described. Finally, there will be a few comments on the status of the unification process.

§ 1.4. Historical Development.

§ 1.4(A). Nordic Jurist Meetings.

In the late 19th Century, there was no common body of Nordic law.⁸ The primary historic legal sources were regional codes.⁹ In the 17th and 18th Centuries, comprehensive legislation had been introduced in Denmark and Sweden respectively.¹⁰ These two leading powers influenced the rest of Norden, which politically and culturally was divided into an eastern and a western block.¹¹ While the laws of Finland and Sweden on one side and Denmark, Iceland and Norway on the other were somewhat unified, the division between the two blocks was fundamental, and is still visible.¹²

Like modern Nordic cooperation in general,¹³ Nordic legal unification can be traced to the 19th Century Pan Scandinavian movement,¹⁴ which, in particular, influenced Danish, Norwegian and Swedish scholars.¹⁵ In 1872, a meeting of Nordic jurists was arranged in Copenhagen. The invitation to this meeting emphasised both the need for legislative reform and the desirability of Nordic legal unification.¹⁶ It also showed influence from the contemporary "Society for the Promotion of Social Science" in England and the German "Juristentage."¹⁷ Attention was in particular directed to the area of commercial law.¹⁸

Both expanding mercantile activity and increasing inter-Nordic trade created needs for modernized and unified commercial legislation. To some extent, the Nordic commercial laws also had a common root in the influence from the Roman *lex mercatoria*.¹⁹

One direct outcome of the first meeting was the simultaneous adoption of substantially similar bills of exchange acts in Denmark, Norway and Sweden in 1880.²⁰ This was the start of a legal unification process, initially directed towards limited areas of commercial law in which uniform legislation was enacted. Important areas where similar statutes were passed in these first years include checks, trade registers, firms and procuration, patents and maritime law.²¹

The Jurist Meetings would normally draw attention to certain areas of law where the participants perceived a need for new uniform legislation.²² In some cases, the meeting would also appoint a committee to draft new legislative proposals, which would then be presented to the various parliaments.²³

These privately arranged Nordic Jurist-Meetings are still regularly held every third year.²⁴ A forum is created for judges, law professors, government officials and practicing lawyers to exchange ideas and discuss legal development on a relatively informal basis. Given all the other institutions currently working for Nordic legal unification, the role of the meetings is more modest. But legislative reforms can still often be traced to initiatives first taken at these meetings.

§ 1.4(B). Private Law Commissions.

The cooperation was extended in 1901, when the Nordic governments established private law commissions and agreed upon a program for unification.²⁵ Eventually, this approach led to a virtually common Nordic law of contracts and commercial transactions.²⁶ The commissions *inter alia* prepared new uniform codes on sales, installment purchases, formation of contracts, commission, commercial agents and commercial travellers, and debt instruments.²⁷

In 1909, cooperation was established within the area of family law.²⁸ National family law commissions prepared new uniform legislation regulating relationships between spouses and between parents and children, including adoption and minority and guardians.²⁹

At the same time, more ambitious unification projects were not realized. One example is the initiative taken in 1899 by a Danish scholar to prepare a general private law code for the Nordic countries.³⁰ It would have resembled the German civil code,³¹ and was supposed to bridge the gap between the common law and civil law systems.³²

§ 1.4(C). Meetings of Ministers of Justice.

While Finland and Iceland had been somewhat periferal to the initial legal cooperation, these countries participated fully after the Second World War.³³ In 1946, the institutional base for legal cooperation was expanded further with the establishment of regular meetings between the Nordic ministers of justice.³⁴ They meet once or twice per year to discuss and decide on areas of unification, and to plan and coordinate the unification efforts.³⁵

In 1959, the Meetings of Ministers of Justice were supplemented by the designation of key Ministry of Justice officials as contacts for legal cooperation.³⁶ The officials maintain a higher level of contact with their Nordic counterparts than what is possible for the

ministers themselves.³⁷ With their position and information, these contact officials play a significant part in coordinating the legal unification process.³⁸

§ 1.4(D). The Nordic Council.

Within the Nordic Council, legal unification has been a central issue since the Council was established in 1953. In the Helsinki treaty, the legal field is mentioned as the first of six main areas of Nordic cooperation.³⁹ Article 4 further states that "The Contracting Parties shall continue legislative co-operation in order to attain the greatest possible uniformity in Private Law." Other important issues specially mentioned are uniform criminal provisions,⁴⁰ mutual coordination of legislation in general,⁴¹ execution of judgments,⁴² and equality between Nordic nationals,⁴³ including facilitating acquisition of citizenship.⁴⁴

§ 1.4(E). The Nordic Council of Ministers.

With the establishment of the Nordic Council of Ministers in 1971,⁴⁵ the regular Meetings of the Ministers of Justice became part of this institutional framework. Correspondingly, the system with contact officials continues as civil servant committees.⁴⁶

§ 1.5. Current Role of the Nordic Council and the Nordic Council of Ministers.

As mentioned above, Nordic legal unification is an important issue within the Nordic Council.⁴⁷ The main role of the Council is to provide initiative for, and supervision of, new legislation. The Council also coordinates the later stages of the legislative process in the various Nordic parliaments.

The procedure currently used was formulated in the mid-1970's.⁴⁸ Originally, initiatives would come from individual members of the Council.⁴⁹ Through its recommendation number 1/1974 to the Council of Ministers, the Council established a more formal procedure:

The Nordic Council recommends the Nordic Council of Ministers to adhere to the following principles for the development of the Nordic legislative cooperation according to the Helsinki treaty.

- 1) The objective for further development of the cooperation shall partly be a continuous cooperation on current legal questions, and partly a harmonization, or as far as possible uniform legislation, in areas suitable for Nordic cooperation.
- 2) The cooperation should include the traditional areas where need for legislation arises, so that legislation and legislative measures are adjusted to developments in the Nordic societies.
- 3) A program for the Nordic legislative cooperation in the long term is to be presented to the Nordic Council in the report on Nordic cooperation from the Council of Ministers. The program is to be updated, including *inter alia* results from talks held at least once annually between the Council of Ministers and the Nordic Council Legal Committee.
- 4) Development of patterns for cooperation regarding areas of legislation included in the program for legislative cooperation should be sought, whereafter the Nordic Council, normally through its Legal Committee, if possible, is given the opportunity to express views on reports, etc., when the Legal Committee asks for this during the discussion of the program. At the same time the Legal Committee should be given the possibility to go through existing remitted material.⁵⁰

In some instances, the Nordic Council will sponsor conferences to focus on new legal problems.⁵¹ Occasionally, inter-Nordic committees are also appointed, and studies commissioned to explore new areas where legislation may be needed.

The discussions held at the Nordic Council sessions are primarily based on material prepared by the Ministers of Justice and the Legal Committee. In this respect, some of the initiative in Nordic legal unification has been transferred from the Nordic Council to the Nordic Council of Ministers. This corresponds to the procedure in the individual Nordic countries, where legislative initiative is with the executive branch of government.

§ 1.6. Methods.

§ 1.6(A). Model Laws.

The Nordic Council has not been conferred any supranationality. When there is no supranational power, there are generally two possible methods for legislative unification. The countries may develop a treaty, which is signed and ratified, and then transformed to national law. Transformation is necessary because a ratified treaty does not automatically become internal law.⁵² Under the dualistic approach used by the Nordic countries, a treaty will only constitute an obligation on the state to create new legislation according to the treaty.⁵³

The other alternative is for the countries simply to pass similar internal legislation. This will be referred to as the model law approach.

Only in a few instances have binding treaties been entered into between the Nordic countries for the purpose of creating uniform legislation.⁵⁴ The principal method used for legislative unification in Norden has been model laws. This avoidance of international legal obligations conforms to the relative informality of Nordic cooperation in general.

§ 1.6(B). Legislative Method.

With the model law approach, the individual states decide unilaterally whether to adopt and whether to alter the proposed legislation. For minor legislation, the model laws are developed through cooperation between representatives for the Nordic ministries. The normal method used for more important new legislation involves the appointment of an expert committee within each country.⁵⁵ Varying with the complexity of the legislative project, these committees will be working over a period of several years and eventually complete a comprehensive report. Joint meetings between the national expert committees are regularly held to maintain uniformity.⁵⁶

In the later years, a division of labor has also been utilized. One national committee will be given the main responsibility for developing a new draft. Inputs in the form of information and views is given from representatives for the other countries, who also adjust the draft to their own country's laws.⁵⁷

The committee reports include a proposed statute, and an appendix will usually contain the similar proposed statutes in the other Nordic countries.⁵⁸ These reports are presented to the relevant Ministry, which, according to normal legislative procedure, will submit the draft to various national organizations and institutions for comments. Following this "hearing," the ministry prepares a new report which is presented to a parliamentary committee. The parliamentary committee prepares a third report for the parliament. While the ministry may alter the original draft substantially, there are normally a few major changes of the draft after it has reached the parliament.

At the original committee report stage, uniformity between the drafts is generally high.⁵⁹ Variances are largely technical, for instance, due to language differences, and not substantive. It is not implausible that interest groups coordinate their responses with their sister organizations in the other Nordic countries. There is, however, no formal cooperation at the hearing stage, and national differences may lead to variances.⁶⁰ To counteract divergencies, there is communication both between the ministries and the parliamentary committees.⁶¹

§ 1.6(C). Coordination in Time.

Although the major goal is substantially similar legislation, it is also considered to be important that the uniform laws come into effect at the same time.⁶² A need for legislative reform may arise or be detected earlier in one country than in the other.⁶³ Further, different work procedures in the various countries may complicate simultaneous enactment, even if the legislative work is started at the same time.

§ 1.7. Nonlegislative Unification Methods.

§ 1.7(A). Nordic Court Reporter.

Similar legislation does not necessarily result in unified law. The statutes are interpreted by courts operating within separate legal systems, and, over time, different precedents may develop. In 1958, members of the Nordic Council proposed establishing a special court which could advise the ordinary Nordic courts on the interpretation of uniform Nordic legislation.⁶⁴ This proposal met broad opposition, and was substituted by a proposal for a body of experts with a similar function to advise the courts on the application of Nordic uniform rules.⁶⁵ A study on the similarity between rulings by the Nordic supreme courts involving uniform legislation was then commissioned by the Legal Committee of the Nordic Council.⁶⁶ In the fields investigated, only minor divergencies were found.⁶⁷ The study showed that supreme court rulings in one country are influenced by cases from courts in other countries.⁶⁸ Another observation was that identical fact situations relatively seldom appear in the cases.⁶⁹ Following this, the Nordic Council instead took the initiative to publish Nordic supreme court cases involving uniform legislation in a separate reporter. This "Nordisk Domssamling" has been published since 1959. It is distributed to all the courts in the Nordic countries, and covers both uniform legislation and cases within other fields of law of Internordic interest. Torts exemplifies an area with few statutes and thus little uniform legislation, where much of the law flows from precedents and cases from another Nordic country can be highly relevant.

§ 1.7(B). Standard Contracts.

Privately, there has also been an effort among merchants to develop standardized contracts within Norden. The Nordic employer-organizations have published contracts which are similar to the standard contracts published by the United Nation's Economic Committee for Europe (ECE).⁷⁰ Contrary to the ECE contracts, the Nordic standard contracts are, however, also used in trade within one country.⁷¹

§ 1.7(C). Legal Theory.

The part in the unification process played by legal scholars should not be overlooked.

Often the same treatises will be used in all five countries, especially but not only, if the legislation covered is uniform. When legal questions are researched in depth in one country, it is not uncommon to include the law of other Nordic countries. There are several Nordic legal periodicals which normally contain contributions from each country.⁷² Finally, contacts are also maintained between law students at the various Nordic universities.

§ 1.8. Current Legislative Cooperation.

§ 1.8(A). In Summary.

Considerable efforts within the Nordic Council legal framework have recently been directed towards the issue of representation for the autonomies.⁷³ Another important field for legal cooperation within the Nordic Council and the Nordic Council of Ministers is Nordic participation in large-scale international unification efforts.⁷⁴ Regularly, advance meetings will be held by the Nordic representatives, and usually common policy positions will be formulated.⁷⁵ A decision to sign or ratify a convention will usually be made jointly by the Ministers of Justice.⁷⁶

An outline of the current work on legislative cooperation within the Nordic Council framework will describe the unification process. It will also give an indication of the level of legal unification reached. The diverse areas within which cooperation is carried out are normally divided into ten fields of law. The following is a short description of the most important current issues within these ten fields.⁷⁷

§ 1.8(B). Commercial Law.

The early efforts on unification of commercial law have led to a virtually common Nordic law of contracts and sales.⁷⁸ Currently important parts of the commercial law unification are carried out in the context of two Nordic Council projects. One seeks the establishment of Norden as a single market, which *inter alia* requires uniform commercial law.⁷⁹ Another Nordic Council project, on consumer policy, includes legislative protection of consumers.⁸⁰

In addition to these specific projects, the old codes need updates. Various developments also raise new legal issues, which again require uniform treatment if legal unity is to be preserved.

In 1980, a commission was appointed by the Nordic ministers of justice to draft new uniform legislation on sales.⁸¹ Acceleration of this work was urged by the Nordic Council in 1984,⁸² and in November that year new drafts were presented.⁸³ The commission also recommended that the Nordic countries sign the 1980 UN Convention on International Sales.⁸⁴ This was done by Denmark, Finland, Norway and Sweden in 1981.⁸⁵ Following this the commission was charged with recommending implementation of the convention in the individual countries.⁸⁶

§ 1.8(C). Corporate Law.

New corporation acts entered into force in Denmark, Norway and Sweden between 1973-77.⁸⁷ Similar acts were passed in Finland and Iceland in 1978, and entered into force in 1980.⁸⁸ In 1982, the Danish corporation act was altered substantially as part of the harmonization within the EEC.⁸⁹

A special Nordic corporate form has been considered by the Council of Ministers, but any further steps have not been taken.⁹⁰ Norway, Finland and Sweden have recently eased restrictions on the nationality of board members.⁹¹

The new act on partnerships entered into force in Sweden in 1981.⁹² Similar new legislation has reached various stages of preparation in Denmark, Finland and Norway.⁹³

§ 1.8(D). Law of Carriage.

In 1979 and 1981, respectively, legislation concerning the legal status of oil-drilling platforms was enacted in Norway and Denmark.⁹⁴ The same issue is currently treated by a committee in Sweden.⁹⁵

Following uniform proposals by the maritime law committees in Denmark, Finland, Norway and Sweden in 1981, new legislation altering the limitations on shipowners' liability and rules for the carriage of passengers were enacted in 1984.⁹⁶ Following the 1980 convention on international railroad transport, new legislation adjusting the internal rules has been adopted in Finland and Norway,⁹⁷ while a draft has been presented to the Swedish parliament.⁹⁸

Finland, Norway and Sweden have previously enacted uniform legislation concerning carriage of goods by road.⁹⁹ A similar Danish draft was expected presented to the parliament in 1985.¹⁰⁰

§ 1.8(E). Intellectual Property Law.

In 1975, the Nordic Council of Ministers decided that the Nordic rules on intellectual property should be revised by national committees, with the chairman of each committee constituting a coordination committee.¹⁰¹ High priority is currently given to work on copyright in connection with automatic data processing.¹⁰² Another important subject is transmission of television signals from a neighbouring country through cable. Legislation concerning this has recently been passed in Denmark and Norway,¹⁰³ and is expected to be passed in Finland and Sweden in 1986.¹⁰⁴

§ 1.8(F). Automated Data Processing.

Automated data processing is a new field where Nordic cooperation is seen as important and has grown in intensity over the recent years. The technological advances raise several legal questions and problems.

The 1981 European convention on protection of the individual in connection with computer processing of personal information has been ratified by Norway and Sweden and is signed by Denmark and Iceland.¹⁰⁵ The Nordic statutes for protection of personal information vary in structure, but largely build on the same principles.¹⁰⁶ In Denmark, Iceland, Norway and Sweden, a special regulatory agency supervises registers containing information on individuals.¹⁰⁷ Representatives of these agencies and a representative from the Finnish ministry of justice meet regularly to discuss and coordinate regulation.¹⁰⁸ Among the issues discussed are so-called "hacking" and trade and other transfers of files containing personal information.¹⁰⁹ The five countries also coordinate their work within the OECD on the legal questions involved with "transborder data flow."¹¹⁰

§ 1.8(G). Torts Law.

In Norden, this area of law has mainly been developed through cases. Similar acts codifying conditions for liability were enacted in Norway in 1969, Sweden in 1972, Finland in 1974 and in Denmark in 1984.¹¹¹ In Norway and Sweden, regulation of damages for personal injuries was enacted in 1974 and 1976, respectively.¹¹²

National committees have, for some time, discussed product liability.¹¹³ There have been several calls from the Nordic Council for wider cooperation efforts in this field.¹¹⁴ At the 32nd session in 1984, the Council of Ministers was requested to establish cooperation and create uniform legislation.¹¹⁵ This statement was discussed by the Ministers of Justice, who decided that for the time being uniform legislation in this field was not practical.¹¹⁶ Through Denmark, the countries have agreed to follow the development of a 1976 proposal for an EEC directive on product liability.¹¹⁷

§ 1.8(H). Family Law.

The work done by parallel committees established in Denmark, Norway and Sweden in 1909 resulted in similar legislation in all five countries in the 1920's.¹¹⁸ A permanent form of cooperation within family law was discussed in 1984, but it was decided to continue within the regular framework.¹¹⁹

Among the issues currently focused on are the financial position of spouses and cohabitants, which was a main theme on a conference held by the Nordic Council in 1982.¹²⁰ Discussions are now based on a recent Swedish draft.¹²¹ New legislation has reached various stages in the different countries, and the discussions reduce the differences between the drafts.¹²²

§ 1.8(I). Criminal Law.

Cooperation concerning criminal law has long traditions, and covers a number of fields. In part, special projects are carried out, usually following a request from the Nordic Council. One example is recommendation number 9/1984 from the Nordic Council asking the Council of Ministers to develop an Inter-Nordic program for reduction of narcotic drug-related crimes.¹²³ In 1984, this was discussed at two meetings between the ministers of justice, one of which was a joint meeting with the ministers of social affairs.¹²⁴ Recommended measures are intensified cooperation between the national police forces and customs officials, technical improvements of equipment used, and stricter procedures and sanctions in drug cases.¹²⁵ There is a current trend towards allowing enforcement officials more procedural leeway in these types of cases.¹²⁶

A Nordic committee on criminal law has published a study on alternatives to imprisonment,¹²⁷ and currently criminal sanctions are being reviewed in all five countries.¹²⁸ There is also cooperation on formulating and defining new criminal offences, for instance so-called "economic crimes."¹²⁹

Since 1982, discussions have been held between the ministers of justice on the possibilities for an extension of the Internordic enforcement of criminal sanctions to include certain fines used against corporations in Finland and Sweden.¹³⁰

A 1983 Council of Europe convention on transfer of persons for execution of sentences is not expected to have much impact on Nordic cooperation.¹³¹ Following a 1932 convention between the Nordic countries, sentences from one country are generally enforced in the other.¹³²

§ 1.8(J). Procedural Law.

Cooperation on procedural law has centered on bankruptcy rules.¹³³ This had led to new bankruptcy acts in Denmark, Iceland and Norway.¹³⁴ New comprehensive legislation is expected soon in Finland and Sweden.¹³⁵ A number of alterations in the Nordic convention on bankruptcy entered into force between Denmark, Finland and Sweden in 1983.¹³⁶

§ 1.8(K). Public Law.

A major issue in this area is voting rights for Nordic citizens at parliamentary elections.¹³⁷ In Denmark and Norway, this would require an alteration of the constitution, which involves a complicated parliamentary procedure.¹³⁸ Proposed Swedish legislation allowing resident Nordic citizens voting rights in Swedish elections does not seem to have the necessary political support.¹³⁹ For the time being there is thus not much progress on this issue.

§ 1.9. Current Status of Nordic Legal Unification.

The unification process is facilitated by existing similarities between the Nordic countries. For the same reason, it is difficult to assess its effect compared to the effects of other factors contributing to Nordic homogeneity.¹⁴⁰

The unification process has kept a varying pace over time.¹⁴¹ Periods with low activity in the past can be attributed to the two world wars, and the uncertainty about Nordic responses to the European common market around 1970.¹⁴² Compared to the significant results reached within a relatively short period of time early in this century, the unification process currently seems to have slowed down somewhat.¹⁴³ There are several possible reasons for this.

Denmark's membership in the EEC provides a link between Norden and the European Common Market.¹⁴⁴ One objective within the EEC is to create uniform laws, at least in certain areas. This is done through binding directives from the EEC to the individual member states. Consequently, Denmark is bound to follow the unification within the EEC. To ensure Danish participation in Nordic legislative unification, the rest of the Nordic countries will often adjust their unification process to the unification process within the EEC. Problems may arise, however, when previously uniform Danish legislation is changed to conform to new EEC law.

The early unification efforts took place in a liberal political context. At that time, legislation was primarily viewed as a technique to create optimum conditions for, for instance, commerce. One example is the early 20th Century sales codes, which provided non-mandatory, standard rules primarily written for merchants.

On the other hand, legislation is now more explicitly used to pursue certain political goals which may be viewed as more controversial. Within sales legislation, for instance, the emphasis has shifted to the creation of mandatory rules which protect a weaker party in the contractual relationship, normally the consumer purchaser. When legislation is used more explicitly to influence society in a certain direction, it will easily become more difficult for the various governments to agree on the specific content of the legislation.

The early unification was limited to certain areas of private law, where need for development and unification was widely recognized. The current unification efforts cover substantially wider areas of law, and frequently raise more difficult questions.

Finally, unification is not a goal in itself. The goal is to improve the Nordic societies and facilitate life in Norden's communities. Legal unification is, although important, just a means in this context. Legal unification will be pursued only when the indirect benefits of improvement to society are visible.

With a more structured organizational form, the role of the Nordic Council is also changing. With the Nordic Council of Ministers as a corresponding executive branch, and the Nordic Council as a form of a Nordic legislature, it will now function more like a parliamentary system.¹⁴⁵ Initiatives in the Nordic Council will result in demands from the Nordic Council to the Nordic Council of Ministers for constructive proposals.¹⁴⁶ This allows for a stronger Nordic policy formation and enhanced Nordic cooperation, including legal unification.

§ 1.10. Recent Developments.*

§ 1.10(A). Nordic Nations Join European Economic Area.

On October 22, 1991, the seven nations comprising the European Free Trade Association (EFTA), including Norway, Sweden, and Finland, reached an agreement with the European Community (EC) to form a free trade zone that would encompass almost all of Western Europe.¹⁴⁷ The free trade zone, to be called the European Economic Area (EEA) would be the largest single market in the world, encompassing some 380 million consumers, and accounting for forty-three percent of total world trade.¹⁴⁸ Under the agreement, the EEA will extend the EC's rules on the free movement of goods, labor, services, and capital to the EFTA countries.¹⁴⁹ In addition, the two markets will harmonize their standards and policies concerning most aspects of commercial life, eliminating the problems businesses had in adapting their products or services to the standards of the import country.¹⁵⁰ This will require the Nordic nations still in the EFTA to adopt some 1500 pieces of EC legislation without input or negotiation.¹⁵¹ This has been seen as a demonstration of the willingness of these nations to relinquish some aspects of sovereignty,¹⁵² in order to gain closer ties with the rest of Europe.¹⁵³

The European Economic Area Treaty was scheduled to take effect on January 1, 1993, but it first must be ratified by all nineteen nations that comprise the EFTA and the EC, and then the European Parliament.¹⁵⁴ Many Nordic nations in the EFTA have already voiced their intention to join the EC, or have already applied for membership.¹⁵⁵ Finland and Sweden have already submitted applications, and hope to gain admittance by 1995.¹⁵⁶ Norway is currently considering EC membership.¹⁵⁷

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SECTION TWO FOOTNOTES

1. A range of different answers is listed in Sundberg, *Civil Law, Common Law and the Scandinavians*, 13 *Scandinavian Studies in Law* 179, 204 n. 2 (1969). Gomard gives two reasons why no intelligible answer can be given: "The first is the fact that no clear and unambiguous fundamentum divisionis can be found behind the distinction between civil law and common law. The second is that this distinction, even if it could be accepted as a sound classification of the legal systems of today in the various communities of the West, is not exhaustive." Gomard, *Civil Law, Common Law and Scandinavian Law*, 5 *Scandinavian Studies in Law* 27, 29 (1961). Gomard further states that ". . . the question whether Scandinavian law is a civil or a common law system is not meaningful . . ." *Id.* at 33. But cf. Sundberg, who in particular emphasises the Roman law influence and the integration between the judicial office and the general civil service, and concludes that Scandinavian law belongs to the Civilian block. Sundberg, *supra*, at 198-205.

2. E.g., Von Eyben, *Inter-Nordic Legislative Cooperation*, 6 *Scandinavian Studies in Law* 63, 65.

3. See generally S. Anderson, *The Nordic Council, A Study of Scandinavian Regionalism* (1969), F. Wendt, *The Nordic Council and Cooperation in Scandinavia* (1959), but cf. E. Solem, *The Nordic Council and Scandinavian Integration* (1977). The homogeneity within the region tends to be overestimated by outsiders. *Id.* at 38-39.

4. See, e.g., Hellner, *Unification of Law in Scandinavia*, 16 *Am. J. of Comp. L.* 88, 89 (1968).

5. In traditional terminology unification referred to the establishment of common legal systems, with common adjective law and legal concepts in addition to common substantive law. Establishment of common substantive law alone was referred to as uniformation. There was originally also a distinction between harmonization and unification. Harmonization described a lesser degree of unification. The term unification is however now commonly used in a broader sense, including both harmonization and uniformation. Moller, *Metoder til Harmonisering og unifikation i Norden, EEC og USA*, 44 *Nordisk Tidsskrift for International Rett*, 229, 230-32 (1974).

6. Treaty of Cooperation between Denmark, Finland, Iceland, Norway and Sweden, signed March 23, 1962, amended February 13, 1971, March 11, 1974, June 15, 1983 and May 6, 1985 (the Helsinki Treaty). Article 40 states that cooperation between the Nordic countries takes place within the Nordic Council and the Nordic Council of Ministers.

7. See text accompanying note 39, *infra*.

8. E.g., Hellner, *supra* note 4, at 89.

9. *Id.*

10. The Danish code from 1683 was largely reproduced as the Norwegian code of 1687. Norway was at that time in a union with Denmark. The Swedish and Finnish code date from 1734, and were identical. At that time Sweden and Finland were one country.

11. Cf. note 8, *supra*.

12. E.g., *Nordisk Utredningsserie* 1976:32, *Oversikt Over det Nordiske Lovsamarbeides Utvikling og Resultater* at 7 I [hereinafter NU 76:32], Von Eyben, *supra* note 2 at 65.

13. E.g., Wendt, *supra* note 3 at 22-27.

14. E.g., NU 1976:32, *supra* note 12 at 8 I, Hellner, *supra* note 4 at 88.

15. E.g., Wendt, *supra* note 3.

16. The invitation is cited in NU 1976:32, *supra* note 12, at 7 I-8 I.

17. *Id.*

18. *Id.*

19. See, e.g., Hellner, *supra* note 4, at 91. The extent of Roman influence on Nordic law is disputed. See generally Sundberg, *supra* note 1 at 198-202.

20. E.g., NU 1976:32, *supra* note 12 at 8 I.

21. See generally Petren, *Nordic Cooperation in the Legal Field*, 41 *Nordisk Tidsskrift for International Rett*, Supplement: *Problemes Actuels du Rapprochement Regional des Droits Nationaux*, 55, 61-78 (1971), Von Eyben, *supra* note 2, at 84-90. [Both list legislation originating through Nordic cooperation.]

22. Hellner, *supra* note 4, at 89.

23. *Id.*

24. The meetings were interrupted between 1905-19 because of the dissolution of the union between Norway and Sweden and the First World War, and between 1939-48 because of the Second World War.

25. E.g., NU 1976:32, *supra* note 12 at 8 I.

26. Hellner, *supra* note 4, at 91. Cf. *infra* note 78.
27. See generally Petren, *supra* note 21, at 61-78.
28. E.g., NU 1976:32, *supra* note 12, at 8 II.
29. See generally Petren, *supra* note 21, at 61-78.
30. See, e.g., Hellner, *supra* note 4, at 90, Von Eyben, *supra* note 2, at 70.
31. Hellner, *supra* note 4, at 90.
32. *Id.*
33. Finland has participated since it gained independence in 1918. Due mainly to the geographical distance and limited resources, Iceland has taken less part in the actual drafting process, except within family law, but has generally enacted the resulting uniform statutes. Hellner, *supra* note 4, at 89 n. 4.
34. E.g., NU 1976:32, *supra* note 12, at 10 I.
35. See note 77, *infra*.
36. See, e.g., NU 1976:32, *supra* note 12, at 12 I.
37. *Id.*
38. *Id.*
39. Helsinki Treaty art. 1, cf. note 6, *supra*.
40. *Id.* art. 5.
41. *Id.* art. 6.
42. *Id.* art. 7.
43. *Id.* art. 2.
44. *Id.* art. 3.
45. See 1971 amendments to the Helsinki Treaty.
46. See text accompanying notes 36-38, *supra*.
47. Cf. text accompanying note 39, *supra*.
48. E.g., Guttorm Hansen, spokesman for the Nordic Council Legal Committee, at the 1985 session of the Nordic Council. Printed in Nordiska Radet, 33 sessionen 1985, Protokoll, 6:e motet (7. mars) at 8 I. [hereinafter Protokoll 1985.]
49. *Id.* at 9 I.
50. Author's translation of recommendation number 1/1974 from the Nordic Council to the Nordic Council of Ministers, cited in NU 1976:32, *supra* note 12, at 16 I.
51. In 1982, for instance, the Nordic Council sponsored a conference on Nordic Family Law. The conference was attended by a number of politicians, civil servants and researchers, and it is a good foundation for future legal cooperation in the family law field. Berettelse Rorande det Nordiska Samarbetet, Nordiska Radet 33:e sessionen 1985 C I 1985, at 53. [The 1985 report on Nordic Cooperation from the Nordic Council of Ministers to the Nordic Council.] [Hereinafter Berettelse 1985.]
52. See, e.g., M. Sorensen, ed., Manual of Public International Law at 168 (1968).
53. *Id.*
54. The most important treaties for legal cooperation, apart from the Helsinki treaty itself, are the following: 1931 convention containing private international law rules for marriage, adoption and guardianship; 1932 convention on respect for and carrying out of judgments; 1933 convention on bankruptcy; 1934 convention on inheritance and estates. Treaties between three or more Nordic countries are listed in NU 1976:32, *supra* note 12, at 46-50.
55. See, e.g., NU 1976:32, *supra* note 12 at 21-23, Hellner, *supra* note 4, at 92-95, Moller, *supra* note 5, at 236-37, Petren, *supra* note 21 at 59-60.
56. See note 59, *infra*.
57. NU 1976:32, *supra* note 12, at 21 I.
58. E.g., Hellner, *supra* note 4, at 94.
59. "The possibility of arriving at common results rests largely on the skill and energy exhibited by the person who acts as chairman on such an occasion (joint meetings between the national expert committees), generally the chairman of the commission of the country where the session takes place. There is a definite aim to arrive at statutory texts that are as much alike as possible. . . ." *Id.* at 93.
60. Moller, *supra* note 5, at 237.
61. NU 1976:32, *supra* note 12, at 21 II-22 I.
62. E.g., Petren, *supra* note 21, at 60.
63. E.g., Moller, *supra* note 12, at 238.
64. See, e.g., Hellner, *supra* note 4, at 99.
65. *Id.* at 99-100.

66. **Id.**

67. **Id.**

68. **Id.**

69. **Id.**

70. Moller, *supra* note 5, at 240.

71. **Id.**

72. Three important Nordic legal periodicals are: "Tidsskrift for Rettsvitenskap," "Nordisk Tidsskrift for International Rett," and "Scandinavian Studies in Law."

73. Juridiska Utskottets Betenkande (Report from the Nordic Council Legal Committee), Nordiska Radet 33:3 sessionen 1985 C I 1985 supplement 1, at 1-2.

74. E.g., Hellner, *supra* note 4 at 105. See also Berettelse 1985, *supra* note 51 at 16-17.

75. **Id.**

76. **Id.** at 106.

77. In 1984, the legal committee of the Nordic Council met eight times for one or two days during the session between the plenary assemblies in 1984 and 1985. One meeting was held with the Ministers of Justice and the Civil Servant Committee for legislative matters. The Ministers of Justice met three times, and, in addition to the joint meeting mentioned one other meeting was held with the Ministers for Social Affairs. The Civil Servant committee for legal matters met twice. The heads of the offices for legislation in the ministries of justice also met once. In addition, special Nordic Council appointed expert committees met, and various national committees charged with legislative drafting held joint meetings. See generally Berettelse 1985, *supra* note 51, Juridiska Utskottets Betenkande, Nordiska Radet 33:3 sessionen 1985 C I 1985 supplement 1 (Report from the Nordic Council Legal Committee) and Presidierapporten till Nordiska Radets Session 1985 (Report from the Presidium of the Nordic Council).

78. Berettelse 1985, *supra* note 51, at 59-63. Cf. *supra* note 26. For a brief outline of Scandinavian cooperation in the law of sales, see Hellner, The Draft of a New Swedish Sale of Goods Act, 22 Scandinavian Studies in Law 53, 55-57.

79. Berettelse 1985, *supra* note 51, at 59-63.

80. **Id.**

81. **Id.**

82. **Id.**

83. **Id.**

84. **Id.**

85. **Id.**

86. **Id.**

87. Berettelse 1985, *supra* note 51, at 71-73.

88. **Id.**

89. **Id.**

90. **Id.**

91. **Id.**

92. **Id.**

93. **Id.**

94. Berettelse 1985, *supra* note 51, at 64-65.

95. **Id.**

96. **Id.**

97. **Id.**

98. **Id.**

99. **Id.**

100. **Id.**

101. Berettelse 1985, *supra* note 51, at 65-68.

102. **Id.**

103. **Id.**

104. **Id.**

105. Berettelse 1985, *supra* note 51, at 73-76.

106. **Id.**

107. **Id.**

108. **Id.**

109. **Id.**

110. *Id.*
111. Berettelse 1985, *supra* note 51, at 68-71.
112. *Id.*
113. *Id.* Scandinavian product liability law is described in Dahl, *Product Liability in Scandinavian Law*, 19 *Scandinavian Studies in Law* 59 (1975).
114. Berettelse 1985, *supra* note 51, at 68-71.
115. *Id.*
116. *Id.*
117. *Id.*
118. *Cf. supra* text accompanying notes 28-29.
119. Berettelse 1985, *supra* note 51, at 52-57.
120. *Cf. supra* note 51.
121. Berettelse 1985, *supra* note 51, at 52-57.
122. *Id.*
123. Berettelse 1985, *supra* note 51, at 76-80.
124. *Id.*
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.* This corresponds to "white-collar crimes."
130. *Id.*
131. *Id.*
132. *Cf. supra* note 54.
133. Berettelse 1985, *supra* note 51, at 80.
134. *Id.*
135. *Id.*
136. *Id.*
137. Berettelse 1985, *supra* note 51, at 80-81.
138. *Id.*
139. *Id.*
140. *Cf. supra* notes 3-4 and accompanying text.
141. E.g., NU 1976:32, *supra* note 12 at 16 II.
142. *Id.*
143. See, e.g., Gudvin Lader Ve in *Aftenposten*, Nov. 9, 1985, at 3, editorial, *Aftenposten*, Nov. 11, 1985 at 2. [*Aftenposten* is a Norwegian newspaper published in Oslo.]
144. *Cf. supra* text accompanying note 117.
145. Guttorm Hansen in *Protokoll* 1985, *supra* note 48, at 9 I.
146. *Id.*
147. *EC, 7 Other West European Nations Agree on Trade Pact; 'European Economic Area' Set*, Facts on File, October 31, 1991, at 825.
148. Thomas H. Irwin, *An Economic Giant is Born*, 78 *Jan. A.B.A.J.* 58 (Jan. 1992) [hereinafter Irwin].
149. *Id.*
150. *EC, 7 Other West European Nations Agree on Trade Pact; European Economic Agreement' Set*, Facts on File, October 31, 1991, at 825.
151. Irwin, *supra* note 9, at 59.
152. William Drozdiak, *National Destinies on the Line as EC Summit Convenes Member Countries Gather to Forge Pan-European Union*, *The Washington Post*, December 8, 1991, at A33.
153. *Id.*
154. *Id.*
155. *Id.*
156. *IMF Role Approved: EC Status Sought*, Facts on File, May 21, 1992, pg. 376, E2.
157. *EC Likely to Consider New Members*, 4 No. 5 *J. Proprietary Rts.* 36, at 36 (May, 1992).

