

Swedish Shipping and Maritime Law in Retrospect 1965–1980

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1. A starting point

When I became affiliated with the Stockholm Centre for Commercial Law (SCCL) it was not because of me being once upon a time involved in maritime law.¹ Considering that Johan Schelin and the Institute of maritime and transportation law has now joined the SCCL contributing to an important broadening of its activities, it may at this point be appropriate to give a brief recounting of what was a rather long time ago part of my life, in particular because in a Swedish perspective (and for that matter not only Swedish) the shipping industry has undergone drastic changes during the past 50 years.² The following is therefore an effort to tie together some development lines of Swedish shipping and maritime law with that of SCCL considering the time span.

In the end of the 1960's and the beginning of the 1970's I was a doctoral student at the Institute of Jurisprudence at the Gothenburg School of Business with professor Kurt Grönfors as my tutor.³ Kurt Grönfors was at the time one of the most renowned Scandinavian scholars in the area of maritime and transport law, and the institute was much involved in business and legal

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¹ It was through Jan Kleineman, the creator and the at the time leader of SCCL that I got the privilege of being affiliated with the center. Göran Millqvist and I then laid the basis for the course in financial law (finansmarknadsrätt) now headed by Kelly Chen and Sara Göthlin.

² Johan Schelin has kindly read a draft of this article and provided me with helpful and useful comments.

³ The below article may be seen as a late homage to him and his important work at a particular time where Swedish shipping played a role worldwide also involving an updated legal framework.

aspects related to containerization and gradually also questions concerning transport documents and documentary replacement.

At the time several Swedish shipping companies were still often running their vessels under Swedish flag and the Swedish merchant fleet was comparatively large.⁴ The Swedish shipbuilding industry having its heydays in the 60's and early 70's started to crumble following the expansion of the Japanese Shipbuilding industry with a number of Korean shipyards following suit. Beside some smaller shipyards there were at the time still important Swedish shipyards, such as Kockums Mekaniska Verkstad, Öresundsvarvet, Götaverken with Arendalsvarvet, Eriksbergssvarvet and Uddevallavarvet. Some of them were also closely connected to a shipping company. Also, other functions involved in the maritime infrastructure were at the time well represented in the Swedish market, such as shipbrokers, ports, ship agents, forwarding agents and maritime lawyers.⁵ Apart from ocean carriage there was also a growing involvement in road carriage and freight forwarding into what was recognized as combined transport or later multimodal (or inter-modal) transportation.

As the "rector" of the Gothenburg School of Business Administration and as the head of its Department of Jurisprudence Kurt Grönfors arranged various activities dealing with issues related to the shipping industry and maritime law.⁶ He had among other things organized a seminar group covering maritime law issues involving participants from shipowners, shipbuilders, banks, courts and law firms, known as Sjörettsakademien.⁷ Strong ties were

⁴ For some figures, see below in footnote 10.

⁵ Of course, there are still large ports in Sweden, but with respect to other parts of the maritime sector there has been a considerable decrease.

⁶ There are certain difficulties with respect to the translation in the circumstances. The institute at the time was called "Rättsvetenskapliga Institutionen" in Swedish, and in English it was then generally known as the Institute of Legal Science. Also, the head of the Gothenburg School of Business Administration was then often called "rector" in English. Maybe a better expression in English would have been "department of jurisprudence". Corresponding university titles to "rector" (head) would be vice chancellor, but presently the head of the Stockholm School of Economics is known as President.

⁷ As far as I know it still exists in some form. New literature in the area was being introduced to an increasing extent, e.g. *Huvudlinjer i svensk frakträtt*, 2nd ed. Stockholm 1962 (authors K. Grönfors, K. Pinéus, F. Schmidt and G. Wilkens), somewhat later replaced by Grönfors, *Allmän transporträtt*, 5th ed. Stockholm 1977.

The Gothenburg Maritime Law Association together with the Swedish Maritime Law Association (they were both merged at a later stage) played important roles with respect to the publication of maritime law literature. These publications to-day reckon more than 80 titles.

developed with the Scandinavian Institute of Maritime Law in Oslo (below NIFS) and also with the Stockholm Institute of Maritime and Transportation Law.⁸ Also institutions such as the Swedish Club (then Sveriges Ångfartygs Assuransförening) as well as the banking industry played important roles in the development. Through Kai Pinéus (average adjuster, *dispachör*) who was for a long time the president of Comité Maritime International (CMI) there were also strong ties to the international maritime law community, and Kurt Grönfors was connected with maritime law departments on the university side but also with maritime lawyers in practice around the world.

These were a kind of heydays of Swedish shipping with numerous ship-owners involved in the international carriage of goods covering liner service as well as tramp service in different segments, such as tanker and dry cargo operations.⁹ The Swedish merchant fleet in 1970 counted 257 cargo ships flying the Swedish flag with a combined deadweight carrying capacity of 5.378.000 ton (consisting of 147 tankers, 17 ore tankers, 6 bulk and tankers, 4 ore carriers, 46 bulkships, and 35 reefer vessels).¹⁰

⁸ At NIFS the series *Arkiv for Sjørett* (AfS) was published consisting of several volumes covering various studies. The NIFS publications (AfS) embrace 14 volumes, but the new series *Marius*, replacing AfS, now count more than 600 titles.

⁹ Traditionally shipping was carried out by ships, where the ownership of the vessel embraced a variety of functions generally related to the ownership. Later, in many cases, there was a split of the overall ownership into several various functions, such as financing, manning, management, operation and chartering. These functions could be split between different entities carrying out business in different countries. See about this development for instance Gombrii, Graver, Landmark & Sandmark, *Nordisk Skipsfart under fremmed flagg*. Oslo 1979.

¹⁰ The figures emanate from Statistiska Centralbyrån (Swedish Official statistics). See also comments in *Svensk sjöfartshistoria. I storm och stiltje. 1960–1974. De gyllene åren* p. 180 et seq. compiled by Anders Lindström and Gert Malmberg. Breakwater Publishing 2010. When comparing with figures available for 2023 they are compiled by Trafikanalys from Sveriges officiella statistik (the Official Swedish statistics) but it then has to be recognized that for different reasons certain changes have been made with respect to the material used, and in the comments it is set out that there is a trend counting fewer ships. The figures then set out with respect to 2023 41 tankers, 2 bulkers, 33 roro vessels, 34 general cargo ships, 3 other cargo carrying ships and 32 ropax vessels. As general comments in the analysis it is also stated that the ships are getting older, and the proportion of Swedish registered ships in relation to the world's fleet of ships is decreasing.

2. Maritime law in a Swedish transport perspective

At the time the then effective Swedish Maritime Code of 1891 (Sjölagen 1891:35, below SMC), was in large parts common for the Nordic countries.¹¹ The Hague Rules of 1924 (the Brussels Convention) were brought into Swedish law in 1936 in the form of separate legislation on bills of lading generally known as the Hague Act ("Haaglagen" in Swedish), but it was not until after WWII that those rules came to be applied more broadly. During the end of the 1940's and 1950's several disputes were brought before courts world-wide including also the Nordic countries involving the ocean carrier's liability for damage to goods; a number of them found their way to the Swedish Supreme Court.¹² There were specific rules in chapter 5 regarding the ocean carrier, its duties of performance and liability also including rules related to bills of lading apart from those that were introduced into the legislation as the Hague Rules.¹³

During the 1960's and 1970's an extensive discussion had developed among maritime lawyers from around the world with respect to the Hague Rules and their role in an international maritime law context. The arguments turned around issues such as whether the rules could be regarded as fair and

¹¹ The Danish Maritime Code of 1892, the Norwegian Code of 1893 and the Finnish Code of 1939. In all the Codes there were rules on the ocean carrier's liability for loss of or damage to goods carried based on strict liability but with a right for the carrier to limit its liability. The Danish and Norwegian Codes in the particular respect now discussed, according to legal writers were rather based on negligence.

¹² Among them let me just refer to the much discussed Lulu- (NJA 1960 s. 742) and Gudur- (NJA 1962 s. 159) cases, see i.a. Grönfors, *On carriage in Swedish Maritime Law. Six lectures on the Hague Rules* (ed. Kurt Grönfors) p. 31 et seq. See also Tiberg, *Who is the Hague Rule carrier?* In *Six lectures on the Hague Rules* (ed. Grönfors) p. 129 et seq.

¹³ This means that Swedish law in the context was based both on the rules in the SMC 1893 and those which stemmed from the Hague Rules (Haaglagen), but they applied in different circumstances. The SMC rules were stricter with respect to the carrier's liability than those in the Hague Rules, but they allowed a certain right of contractual freedom. With the advent of the Hague Rules the Nordic Maritime Codes (NMC) with respect to the ocean carrier's liability for loss of or damage to goods carried came to be applicable regarding intranordic transportation, but otherwise the Hague Rules applied. Also, it is common that there is in bills of lading a reference to the Hague Rules. Initially the Hague Rules was incorporated in the legislation through a separate enactment, which was later amalgamated into the SMC. Furthermore, it should be mentioned that the rules were modernized through the 1973 supplements, and later the present Maritime Code came into being (again in parts common for the Nordic countries) through the SMC 1994:1009, which replaced the old code. The new code was based on various international conventions (also partly based on the Hamburg Rules). Kurt Grönfors played an important role in the drafting of the new SMC.

in different aspects up to date (particularly the rules regarding limitation of the carrier's liability). Not least certain lines of development then had an impact particularly with respect to the growing use of containers in ocean carriage but also various features related to combined transportation involving the carriage of goods, where different modes of carriers were involved with respect to individual shipments.¹⁴

CMI was an important forum for the modernization of the law related to shipping and to the ocean carriage of goods, but later international organizations, such as UNCITRAL and UNCTAD came to play a gradually more important role.¹⁵ The Hague Rules of 1924 related to the carriage of goods by sea became national legislation in the Nordic countries only several years later, around 1936, and gradually more case law developed in the different convention states. Those cases did not always contribute to a common understanding and application of the rules, and issues related to the documentation (bills of lading), the period of liability (the tackle-to-tackle-principle) and the limitation rules again came to be criticized in different ways, thus calling for revision of the rules.¹⁶ New efforts were made to modernize the rules, efforts which led to the introduction of the Hague-Visby Rules, the Hamburg Rules and later the Rotterdam Rules (see further below in sec. 5). Obviously, the development in one respect led to greater uniformity of the rules, but, as indicated, the application of the rules came to differ between the various jurisdictions involved. Hence the effort to harmonize the related rules did not always have the intended effect. The several new efforts intended to create further harmonization also had as an effect that

¹⁴ It became gradually more common that maritime carriers operated not only by their owned tonnage but also through tonnage chartered often on time charter basis. This was not a new feature, but it seems to have been growing and the related development was also later recognized in the legal literature. Atlantic Container Line (ACL) further mentioned below in footnote 18 was for a time an important and successful pool arrangement involved in the international carriage of goods in containers. In reefer services the pool arrangement between Maritime Fruit Carriers and Salén Reefer Services covered global carriage related to the reefer market.

¹⁵ UNCITRAL (United Nations Committee on International Trade Law) and UNCTAD (United Nations Conference on Trade and Development respectively).

¹⁶ Besides the several studies by Kurt Grönfors himself, reference could in particular be made to the study by Erling Selvig on Unit limitation of carrier's liability. The Hague Rules art IV (5). I AfS vol. 8 Oslo 1961. In the circumstances also the study by Sjur Braekhus on the Hague Rules catalogue (appearing in Six lectures on the Hague Rules referred to below in sec. 3) merit particular mentioning. International discussions were held in different fora and extensive work was carried out regarding the work on new rules.

different countries chose to adhere to different international conventions thus in effect reducing the harmonization efforts.

Related to different legal and other issues arising in the area several seminars were held in Gothenburg within the framework of “Sjörättsakademien”, as well as in Oslo within the auspices of Nordisk Institutt for Sjørett (NIFS, the Scandinavian Maritime Law Institute). Furthermore, also the Nordic maritime law seminars, arranged by NIFS, regularly every two years, involved issues with respect to these rules, but also other aspects of maritime law nature. Beside the Nordic seminars the Hässelby colloquia played an important role in the circumstances to create a forum for discussions and research related to international maritime law.¹⁷

In the context it should furthermore be mentioned that at the time, apart from being an important port, Gothenburg, from an overriding perspective, came to have a particular position with respect to the maritime sector in a general business perspective as well as from a legal point of view. Apart from “more traditional” maritime carriage a number of Swedish shipowners in the beginning of the 1970’s became involved in the development of container traffic.¹⁸

This involvement in ocean carriage also necessitated much thought around various legal issues related to for example the use of bills of lading and other transport documents, liability rules (in particular related to the period of liability and the limitation of liability). Through these different measures maritime lawyers came to play a role also closely tied to the development of new rules related to ocean carriage. Hence in a Swedish perspective Kurt Grönfors had a central position, both as participating in international con-

¹⁷ The Hässelby colloquia were financed by the Johnson foundation (related to the Axel Axelson Johnson Group), but later its interest in issues related to shipping ceased. Various seminars were being published in the Gothenburg Maritime Law Publications series, see further in footnote 19.

¹⁸ This involved the Broström Group (mainly Svenska Amerika linjen), Rederiaktiebolaget Transatlantic, Walleniusrederierna – cooperating in Atlantic Container Line (ACL) –, but also shipowners, operating somewhat smaller size ships in what was often referred to as “near traffic” mainly involving the Baltic and the North Sea trades. Those sea carriers were shipowners such as RederiAB Svea and Svenska Lloyd as well as slightly later the Tor Line Group. The Johnson Group in Stockholm was an important player as a liner operator, whereas the Salén Group also in Stockholm had its main activities in reefer service, oil transportation and dry cargo operations. In Gothenburg the Stena Group at the time had not yet become fully the important company in the maritime sector as it is to-day, when it is one of the few remaining international shipping groups operating in a Swedish environment (beside being also involved in various other businesses).

ferences and as a fervent researcher in the field. Sweden also came to play a particular role in the international work in CMI (Comité Maritime Internationale) but also in the UN organizations UNCITRAL and UNCTAD.

3. Various features in the legal environment of the Swedish maritime industry

As the leader of the Department of Jurisprudence at the Gothenburg School of Business administration Kurt Grönfors thus had a key role in the maritime law community, and around him several persons gradually gathered, writing their legal theses but also being involved in various other studies in the field of maritime law.¹⁹ Several researchers from other Nordic countries but also from other jurisdictions visited the institute for shorter or longer periods and contributed to the extensive publications during those years. The cooperation with NIFS also deepened, and the Nordic seminars in maritime law came to involve lawyers from all Nordic countries, and NIFS also came to be the host for several law students from the various Nordic countries there studying various parts of maritime law but later also other parts of law, such as EU law and offshore law.²⁰

As a consequence of Gothenburg shipowners being involved to such extent in liner shipping Kurt Grönfors came to involve himself nationally and internationally with issues related to the containerization and the replacement of transport documents, such as the bill of lading (documentary replacement – and electronic documentation) and also a growing interest in issues related to the time factor in liner shipping in particular.²¹

¹⁹ In particular, mention should be made of Ramberg, Cancellation of contracts of affreightment on account of war and similar circumstances. *Handelshögskolan i Göteborg skrifter* 1970 nr. 2 (40) and Sandström, Befälhavareavtal och sjöpanträtt. *Handelshögskolan i Göteborg skrifter* 1969 nr 1 (37). They were together with a number of other studies published in conjunction with the Gothenburg Maritime Law publications, where I also had the privilege of having my thesis published, *The Concept of the Common Carrier in Anglo-American law* as nr 43 in the series, 1971.

²⁰ In English *Nordisk Institutt for Sjørett* seems for some reason to have been set out as the Scandinavian Institute of Maritime law.

²¹ He created an environment at the institute where several studies related to various aspects were being published including his own contributions such as *Transporträttsliga studier*, *Sjörättsföreningens skrifter* nr 50, 1975 (a selection of his publications), but in the context reference should also be made to *Om ansvaret för lossat men inte mottaget goods*. Stockholm 1960, *Successiva transporter: En studie i transportöransvar*. Stockholm 1968. Furthermore, a number of studies appeared in the Gothenburg Maritime Law series sev-

Swedish shipowners, not least the Gothenburg liner operators, participated in efforts to create new developments in the international maritime law environment, but this evolution was also an effect of a technological development, involving faster and larger ships equipped with new cargo handling methods but also with new navigational equipment. So, in all, the structure of international shipping changed gradually, calling for legal amendments to various rules which were applicable at the time, and those needs covered issues such as the period of the ocean carrier's liability for loss of or damage to goods, the carrier's limitation of liability and the use of the bill of lading, but also involved a discussion on delay in connection with carriage.²²

4. The SMC 1891:35 and the Hague Rules – some overview

4.1 Some rules related to the ocean carrier and its liability

The SMC of 1891 covered several different features related to shipping, ship-owning and the carriage of goods. Chapter 5 in the SMC 1891 broadly covered ocean carriage of goods, both what is generally referred to as chartering (voyage charter and time charter) and the carriage of general cargo (frequently carried out within the frames of liner service) and also particular rules with respect to the bill of lading.²³ Related rules in sections 71–170 covered various aspects with respect to the ocean carrier's obligations to receive, load and carry the agreed cargo, to deliver it to the bill of lading holder. Rules on bills of lading were found in part IV, sections 151–170. The Hague-Visby Rules played an important role with respect to the introduction of certain features related to the use of containers.²⁴ In 1978 the so-called Hamburg Rules were

eral of them based on various Nordic or international colloquia among which could be mentioned Six lectures on the Hague Rules 1967:3, Cargo insurance and modern transport 1970:3 (41) and Modern transport and sales financing 1974 nr. 48, all with Kurt Grönfors as the editor.

²² See e.g. Grönfors, *Tidsfaktorn vid transportavtal*. Sjörättsföreningens i Göteborg skriftserie 1974 (nr 47), where he examines and analyses legal issues related to delay in connection with the international carriage of goods.

²³ See e.g. Grönfors, *Sjölagens bestämmelser om godsbefordran* (under medverkan av Lars Gorton). Stockholm 1982.

²⁴ So, for instance Sisula, *Containerklausulen i Haag-Visbyreglerna*, Göteborg 1970:1 (39).

introduced to regulate international ocean carriage of cargo in an updated way, covering i.a. rules concerning the liability for damage to goods.²⁵

Following the development somewhat different understanding and application of the various rules evolved in different jurisdictions. Not least there developed various approaches with respect to the understanding of the expressions “package” and “other unit”, tied to provisions on limitation of liability. Gradually courts in different convention states had to apply the rules, and they did not always come to the same result in their considerations. Hence, in this sense the various international conventions did not quite achieve the harmonization intended, something that became obvious not least where issues related to unit limitation were involved. Thereby parts of the ideas related to the harmonization the rules called for were not fully achieved, something that led to renewed efforts with respect to continued international work carried out.²⁶

The Hague Rules at the time of their introduction were considered as a compromise between the contractual freedom of the maritime carrier and the growing efforts to set a limit to the ocean carrier’s rights to limit its liability (thus an allocation and distribution of risks between the interests of the ocean carrier and the cargo owner). In the US particular rules had been introduced through the so-called Harter Act of 1896, which had evolved as an effort to curb what was considered as a misuse of the contractual freedom of the ocean carrier and to provide cargo owners with a certain minimum protection. The Hague Rules were introduced in order that ocean carriers would have certain minimum duties vis-à-vis the cargo owner and the bill of lading holder.²⁷

In the ocean bill of lading there were thus regularly particular contractual provisions limiting (or exempting) the carrier’s liability for loss or damage to goods. The Hague Rules were thus geared at limiting the carrier’s liability in the circumstances, but they also set out a minimum liability beyond which the carrier was not allowed to go with respect to its limits.²⁸ A particular ques-

²⁵ In spite of the several attempts to modernize the Hague Rules they still have significant role in present days’ ocean carriage of cargo in a global perspective.

²⁶ See in particular Selvig, Unit limitation of carrier’s liability, The Hague Rules art. IV (5). Oslo 1961, where on p. 68 et seq. he analyzes related matters.

²⁷ Too far-reaching exemption clauses would thus be prevented from being used, and after much international debate the Hague Rules were thus introduced, intended to reduce the contractual freedom which had been available before the Harter Act and the Hague Rules respectively.

²⁸ This meant that the Hague Rules thus prescribed a mandatory minimum liability, a solu-

tion was also related to the container itself; if carried empty would it then be regarded as cargo and if so should it be determined as a package or other unit or something else?²⁹

The differences thus did not overcome the risk of forum shopping and called for further international involvement in the creation of new international conventions. Below some of those issues will be somewhat discussed, primarily with respect to the situation as it appeared during the period in focus but in some respects also related to the subsequent development.

4.2 Rules related to the period of liability

The SMC 1891 in sec. 89 sets out that the charterer shall deliver the goods at the side of the ship and sec. 107 that the carrier shall deliver the goods and the cargo receiver (the consignee) shall receive the goods at the side of the ship. These settings were somewhat broader than the principle in section 1 e in the Hague Rules, which stated: “‘Carriage of goods’ covers the period from the time when the goods are loaded on to the time they are discharged from the ship.” This principle was often recognized as the “tackle-to-tackle-principle”, and it proved not always to be easy to apply.³⁰

The tackle-to-tackle-principle came to be dominant in the ocean carriage of goods. Even if this may often seem to be a relevant period applicable, it gradually became clear that it was not sufficiently clear in all circumstances. For example, with respect to the carriage of liquids (e.g. oil products of differ-

tion which was much discussed in legal writing, considering that the rules concerned B2B relations.

²⁹ Beside the private law question, which was approached by Gorton in *Haaglagen och containertrafiken – några rättsliga spörsmål*. Ekonomiskt Forum. Gothenburg 1965 p. 56 et seq. this is an issue which may still arise in different contexts and has been approached in some EU cases, such as case C-246/22 (*BW*) with respect to the interpretation of Directive 92/106/EEC and of Regulation (EC) No 1072/2009.

³⁰ See for instance i norsk rätt Sejersted, *Om Haagreglene*. Lov av 4 februar 1938 om gjennomføring av den internasjonale konvensjon om konossementer. Oslo 1938. Related issues had to be determined in a number of cases, in that it was necessary to determine what is understood by loading and discharge respectively, see for instance Grönfors, *Om ansvaret för lossat men inte mottaget goods*, Stockholm 1960 and later further discussed i.a. in Grönfors, *Successiva transporter*, Stockholm 1968 p. 190. It was also considered to mean that the rule applied from the passing of the rail of the ship upon the loading of the goods again to the passing of the ship's rail in connection with discharge. It was then necessary to determine what would happen if cargo damage occurred when the goods passed the rail of the ship. Were they damaged before the passing of the rail or after? This was an issue, where the Hague Rules created some problems in their use.

ent kinds) it was hard to determine that point, when the cargo was loaded on board the ship and also when the discharge from the ship actually occurred. This also became an issue, where the description in the bill of lading had to be taken into consideration, when stating that the goods were loaded in apparent good order and condition, unless something else was proved.

This also became one of the problems related to the use of containers with respect to the carriage of goods. Two main questions then had to be considered depending on when the goods were loaded into the container. If the container delivered to the port for carriage was closed and sealed for loading on to the ship, this was one situation, but if the goods were delivered to the carrier for loading into the container the situation was different, because in the former case the container was delivered to the carrier “said to contain...”, but in the latter case the different cargo units were delivered to the carrier for packing and loading and had thus to be noted accordingly in the bill of lading. Hence, the description of the goods in the bill of lading was important.

4.3 Rules related to the documentation (bills of lading)

In shipping the traditional bill of lading had been in existence for a long time and it has its origin back in the law merchant (*lex mercatoria*).³¹ In a way this document as a negotiable document of title entitling its holder to demand the release of cargo, principally at the port of discharge against the presentation by the receiver of an original bill of lading. This also implies that the bill of lading is issued in several originals. Traditionally the ocean bill of lading has been issued in three originals and a number of copies.³² The originals served as documents in the relations between the shipper, the carrier and the consignee, and in connection with the financing by letters of credit, the bank(s) involved generally prescribed the presentation of “full set” of the bill of lading (that is all originals).³³ The reason for this practice using several originals was that the shipper was supposed to hold on to one original, one

³¹ See for instance Schmitthoff, *Commercial law in a changing economic climate*. 2.ed.1981 in particular p. 18 et seq.

³² This, of course has also been questioned, since it may some confusion with respect to what is understood as an “original” with what could be considered a “copy” respectively, but the background was and remains practical.

³³ See for instance Selvig, *Fra kjøps- og transportrettens grenseland. Om transportdokumentenes kjøpsrettslige funksjoner*. 2.ed. Oslo et al. 1974 Oslo p. 49 and also Gorton, *Rembursrätt* Lund 1980 p. 18 et seq. and 189 et seq.

original stayed with the carrier (to show and hand over to the consignee, if an original had yet not reached the port of discharge) and one original was sent separately to the cargo receiver (often the buyer) in case the first original got lost in the transit (in most cases the mail).

The traditional ocean bill of lading has been of paramount importance in ocean carriage of goods, both in the perspective of sale's law, the law of carriage and the law related to trade finance.

The bill of lading is a negotiable document of title, which serves different purposes. It is the evidence of a contract of carriage, it is a document in which the carrier verifies the goods being received for shipment or being loaded on board the ship, thus the distinction between *received for shipment* bills of lading and *on board* bills of lading.³⁴ As a negotiable document it is tied to the duty of the cargo owner claiming delivery of the goods being able to present to the carrier an original bill of lading in exchange for the delivery of the goods.³⁵ It is then regarded as a document of title. This has been the traditional role of the ocean bill of lading signifying both its role as the contract of carriage, as the document handed over by the carrier to the cargo owner/the shipper as proof of the cargo being loaded on board the ship and its role as a document of title entitling the holder of the bill of lading to demand delivery of the goods at the port of discharge in exchange for the presentation of the document in order to be able to claim the delivery of the goods at the port of discharge.³⁶

In its various capacities, the bill of lading has proved to entail certain problems, on the one hand the problem with respect to the "clean bill of lading" to be presented to the bank, and on the other hand the problem related to the bill of lading not being available for presentation and thus for claiming delivery of the cargo at the port of discharge.³⁷

³⁴ See for instance SMC (1891) sec. 151.

³⁵ SMC (1891) sec. 156.

³⁶ Bills of lading could be issued in the form of an onboard bill of lading (acknowledging that the cargo had been loaded on to the ship) and the received for shipment bill of lading (acknowledging that the cargo had been received for shipment of the goods for loading at a later stage). In traditional ocean carriage of goods the onboard bill of lading was the document regularly in use, but in certain types of traffic there was a growing use of the received for shipment bill of lading, see for instance in Grönfors, *Successiva transporter* p. 24 et seq.

³⁷ E.g. Selvig, *Fra kjøpsrettens og transportrettens grenseland*. p. 107 et seq. and Gorton, *Rembursrätt* p. 186 et seq.

Both aspects had an impact on the smooth handling, the carriage and the release of the goods including also particular issues related to the containerization and also to issues related to trade finance.

4.4 Rules related to the limitation of liability

An important article in the Hague Rules covered the rules on the limitation of the carrier's liability originally setting out in article 4 (5) a limitation per package or unit of the cargo.³⁸ This became an issue of paramount importance in various jurisdictions, and different approaches developed. In his study Selvig penetrated various issues arising in connection with damage to goods carried and in particular the different problems arising as a consequence of the limitation rules.

Such limitation principles were not unique for the carriage of goods by sea, but similar contractual solutions were (and are) being found in other areas of the law related to commercial contracts, but the unique approach in the law of transportation was and is the mandatory nature of the rules. In the field of maritime law this was regarded as part of the so-called Hague Rules compromise. Hence the rules prescribed that the ocean carrier had a mandatory liability for loss of or damage to goods carried, but there were several exceptions with respect to the liability.³⁹ So the basic idea was that the ocean carrier would be basically liable for loss of or damage to goods carried in several cases, a liability that he could not contract out of. On the other hand, there were several exceptions to the ocean carrier's liability, and also the liability of the ocean carrier was limited to a certain amount of money per package or other unit of the goods.

In his study Selvig showed that there were differences in approach with respect to the understanding of the expressions package or other unit. In some jurisdictions the shipping unit was regarded to be the unit to be used,

³⁸ With respect this practice dated back to much earlier times, and considering the frequently used exemption clauses in bills of lading they were at least sometimes of a character where they were said to have as an effect that the only liability of the ocean carrier was to collect the freight. The question also arose, whether "package" or "other unit" should be better replaced by a limitation based on weight. This was also something that came to play a significant role with respect to drafting of the subsequent international conventions.

³⁹ The Hague Rules thus contained a list of cases where the carrier would not be liable but also set out the principle based on the carrier's liability for negligence and with a reversed burden of proof. Sjur Braekhus in his article in *Six lectures on the Hague Rules* criticized the list and suggested its replacement by the principle of liability based on "culpa" with a reversed burden of proof.

in other cases the freight unit was tied to how the goods and freight to be paid was determined in the bill of lading.⁴⁰ So in one jurisdiction there was a case where a huge tank containing wine was considered to be a shipping unit and thus decisive with respect to the limitation rules. In another jurisdiction the carriage of a locomotive gave rise to the question whether the locomotive would be regarded as the unit or the rather as the way in which it had been described in the bill of lading. In many jurisdictions the courts found that the shipping unit was the correct measure but in others the freight unit was regarded to be decisive.

Not least as the consequence of the growing use of containers such discrepancies in the understanding of the rules gradually led to requirements for an updating of the rules.⁴¹ This also happened through the introduction of the Hague-Visby Rules 1968, whereby the old Hague Rules were brought into line with new patterns of carriage introducing the weight of the cargo as an alternate and additional approach.

The Hamburg Rules of 1968 took the development a bit further, and in Swedish law this became the case with respect to the new SMC of 1993, where the liability rules were partly influenced by the Hamburg rules although this convention has had limited international spread. In the meantime, there were also efforts to create an international convention related to multimodal carriage (that is carriage involving several modes of transport), which did not, however, come to a concluded convention. Furthermore, the relatively recent Rotterdam Rules, represent an updated approach in the problem area, but it seems that it is doubtful whether they will reach a stage where they will replace previous rules and have an overriding international coverage. So, contract law as well as particular legislation related to the ocean carrier's liability have both played a role with respect to the problem area here discussed, but mandatory legislation has come to play a significant role in spite of the B2B character of the relevant liability rules.

4.5 Swedish taxation with respect to “partrederier” (partownerships)

A different factor having some significance with respect to shipping under Swedish flag were new rules with respect to taxation in the field of shipping.

⁴⁰ The shipping unit meant the package as it was carried, and the freight unit (applied in for instance the US) the unit as described in the bill of lading.

⁴¹ See for instance Gorton, *Haaglagen och containertrafiken*, dealing particularly with issues related to the limitation of liability on p. 59 et seq.

Previous rules allowing for certain tax deduction against investment in ships under Swedish flag were changed for political reasons through a rather drastic and sudden decision by the Swedish government.⁴² The new rules meant that favors ceased, which had previously been allowed also for private investors to deduct against certain private income certain investment costs related to new built ships.⁴³

The effect of the new rules was that an important source of financing with respect to new tonnage disappeared and played a role with respect to the possibilities of shipping under Swedish flag. This undoubtedly had a negative consequence for the Swedish shipping industry.

5. Some concluding comments

When endeavoring to make some conclusions with respect to the above it is obvious that the past also throws some shadows onto what was at that time to become the future. The 1960's and early 1970's were periods when the Swedish merchant marine expanded and was modernized in different ways, but with the oil crisis in 1973 and 1974 the downsizing of Swedish shipping interests started.

A large fleet of tankers built at Swedish shipyards but also elsewhere was for several years laid up in Swedish and Norwegian fjords, tonnage that was in some cases never put into use. Another factor was the political strength of the trade unions and the limited interest of the Swedish politicians in shipping as an industry.⁴⁴ Through their political strength the activities of the trade unions in the maritime area (not only Svenska Sjöfolksförbundet (The Seamen's Union)⁴⁵ contributed to the downward trend of the Swedish

⁴² See i.a. Atterwall, G., *Den nya partrederilagstiftningen*. Skattenytt nr. 5 1973 p. 199 et seq.

⁴³ In Germany corresponding investments often under the name of "dentist ships" have continued until present times.

⁴⁴ The shipbuilding industry which had been regarded as such industry was no longer provided with government subsidies like they had been earlier.

⁴⁵ The Swedish unions did not accept Swedish shipowners to be able to operate vessels owned by them under another flag than the Swedish one, and the political strength of the union thus prevented Swedish shipowners from running their vessels at lower costs thus losing competitive edge as compared to ships carrying other flags. This was an argument often set out as a point of discussion with respect to the subject of flags of convenience, or as flags of necessity as set out by those in favor of foreign flag operated ships. Instead another insufficient model was introduced with the so-called TAP-agreement (TAP-avtalet), regulating conditions for certain personnel employed temporarily, as an effort

merchant marine, and gradually the Swedish involvement related to global ocean carriage started to crumble. Hence the involvement of Swedish flagged ships in international carriage of merchandise slowed down considerably, whereas in Denmark and Norway there was still a continued interest on government level to make sure that the national shipping industry was maintained. In those two countries international registries (NIS in Norway and DIS in Denmark) were introduced, whereas in Sweden such solution was not found acceptable. Swedish government interests reacted only too late trying to introduce some, but other and insufficient measures intended to reduce the downsizing of the Swedish merchant fleet under Swedish flag.⁴⁶ Hence related limited measures had limited effects with respect to maintaining ships under Swedish flag and even under indirect Swedish control.

Norway has still a large merchant fleet and involvement in the international carriage of goods (at least to some extent as a consequence of the oil and gas finds outside the Norwegian coast), Denmark has one of the world's largest container fleets (Maersk Line)⁴⁷, but there are also other Danish shipowners, and also Denmark has considerable interests in the off shore industry, although less important than that in Norway.

So, in retrospect the advantages that Swedish shipping interests had through their early involvement in container operation and combined transport, was lost and in present times Maersk Line is the totally dominant Scandinavian carrier with respect to international ocean container carriage.

The other side of the related development then involves the changes of the legal environment, related to new rules with respect to the ocean carrier's liability and the use of means related to documentary replacement. With respect to international rules efforts were being made to create new and more efficient rules related to the liability of the ocean carrier, and in 1968 the Hague-Visby Rules (The International Convention for the unifi-

to overcome some of the cost/competition problems for ships under Swedish flag. See e.g. the discussion in Sjömannen Jan. 25, 2016. Again, the efforts were not sufficient and came late. The decrease of the Swedish merchant fleet has been approached in various surveys and investigations, so e.g. SOU 2010:73 (Svensk sjöfarts konkurrensförutsättningar), Svensk sjöfarts internationella konkurrens, 2024 (Rapport 2024:11).

⁴⁶ In Sweden the Stena Group is one of the few remaining large shipping groups, partly carrying cargo on Swedish flag vessels.

⁴⁷ So, in spite of having been pioneers in the containerization Swedish shipowners were not able to expand and maintain their role in container operations, and instead A.P. Møller succeeded in building up a huge container fleet adopting various measures, where Swedish shipowners for a period had been in the forefront.

cation of certain rules of law relating to Bills of Lading) supplemented the Hague Rules of 1924, and subsequently the international legislator has tried to launch new rules with respect to international ocean carriage through the Hamburg Rules, which were adopted in Hamburg 1978, and also with respect to intermodal carriage. These various measures had various impact, in Sweden and other Scandinavian countries the Hamburg Rules had an impact on the drafting of the new Maritime Code (Sjölagen 1994:1009) with respect to chapter 13 on the carriage of “general cargo” (styckegodstransporter).

In December 2008 the UN Convention for the international carriage of goods wholly or partly by sea was adopted based on an initial draft by CMI (the Rotterdam Rules), but so far they have not been very successful in forming a new international framework with respect to international ocean carriage, and in Sweden there seems to be limited interest on the part of the government to work for a Swedish accession to the rules. Similarly, on government level there have been few efforts to work for a Swedish international registry corresponding to those in Denmark and Norway, and against this background it seems unlikely that the maritime industry and infrastructure in the traditional sense would increase noticeably.

So, considering different lines of development, one of them would be that the merchant fleet under Swedish flag has decreased since the 1970's. It also seems that there is a continued, limited interest on the part of the Swedish government to become seriously involved in issues related to a strengthening of Swedish shipping, at least if one would endorse the idea that the creation of a registry equivalent to those in Denmark and Norway might be beneficial, even if late. Also, the Swedish legislator has been slow at dealing with issues regarding documentary replacement and related matters in spite of requests expressed in various Swedish fora. This means that there are outstanding legal and practical issues which remain unsolved, which is, of course not only a Swedish problem. There will hopefully be a better listening ear among Swedish authorities in this respect.

Related thoughts have expanded into a more general discussion concerning the use of present days' techniques with respect to various trade documents used in international trade (thus still being approached through various measures taken within CMI and ICC). Still there is no general internationally accepted solution despite various efforts being made. Also, legal questions related to intermodal carriage have increased steadily, but it has proved to be hard to reach common rules covering such transportation. The role of logistics related to carriage has expanded, but there is still lacking legal

harmonization in this area, and in many respects the transportation industry still works its way through contractual solutions. Contractual solutions in relation to a number of issues have been approached and gradually solved, but others still remain unresolved.

So, in short, in many respects we still stand in the shoes of earlier times, but the shoes have changed both in size and in form. Having said that it also seems that contractual efforts have brought solutions which are in many cases useful albeit not sufficient. Despite efforts, significant challenges remain in modernizing the legal framework for ocean carriage of goods. Additionally, there are few indications that the volume of goods on Swedish keels will increase soon.

In the light of the above it seems that the joining of the Institute of maritime and transportation law with SCCL seems to have been made at the right time.