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The Saami and Sápmiland as an
example of the application of
Indigenous Rights within the
European Union

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Dedication

To my Grandma, A courageous and inspiring liberal thinker. Her trip to Sweden meant more to me than anyone can ever know.

Summary

This thesis concerns the relationship of the EU and the Saami indigenous people of Northern Scandinavia and the Kola Peninsula. The thesis highlights the positive and negative features of Sweden and Finland's accession to the European Union in 1995 and Norway's subsequent signing of the European Economic Area agreement. The Saami are Europe's only recognized indigenous group and the accession to the EU brought about a question of potential marginalization within greater Europe. This thesis evaluates the EU and Domestic/Member State level rights provisions for the Saami in comparison to the ILO Convention no. 169 that has come to be recognized as creating the highest international standard of achievement in the recognition of indigenous rights protection. Certain areas of EU law that have significant impact on the Saami will be addressed in greater depth; In particular competition provisions that potentially threaten the granting of Saami exclusive rights such as traditional knowledge and free movement provisions that have restored and legally empowered the Saami ability to operate traditional economic activities across national borders. This thesis does not concentrate wholly on either EU law or Saami law it rather seeks to highlight, examine, and postulate the post 1995 nexus of effects between the EU Law and the indigenous rights of the Saami people

Preface

*Did anyone tell you
that we live in Sámi land?*

*Did he say
that this is Sápmi?
Did he even admit
That it is ours?*

*Didn't he tell about
the primitive culture
of simple people?*

*Or did he claim that
they had come with the light?*

Nils Aslak Valkeapää, The Vast Expanses Within Me

*Listen brother
Listen sister
Listen to the voice of our ancestors
Why do they let the earth suffer,
Be poisoned and tormented?
Listen brother
Listen sister
Hear the voice of the primeval
mothers
The earth is our mother
If we take her life
We die too
Have you also been hurt?
Are even you a part of the race?
Listen
They ask you
Have you forgotten where you come
from
You have brothers
You have sisters
In the rainforest of South America
On Greenland's barren coast
Have you forgotten where you come from?*

Mari Bone , from the Saámi: People of the Sun and Wind

Abbreviations

Art. - Article
COE – Council of Europe
COR- Committee of Regions
EEA- European Economic Area
EC – European Community
ECHR- European Convention on Human Rights
EU – European Union
ECOSOC- United Nations Economic Social Council
ICCPR – International Covenant on Civil and Political Rights
MS- Member States
NC – Nordic Council
NCM- Nordic Council of Ministers
QMV – Qualified majority voting Procedure in the Council
TEU – Treaty on the European Union
UN- United Nations

Note: Same, Sámi, Sami, Sámme and Saami all refer to the same Indigenous group inhabiting Northern Scandinavia and Kola Peninsula. In all text that is not quoted Saami will be utilized.

1 Introduction

This thesis will evaluate the indigenous rights standards that should be applied to the Saami in the EU and contrast them with what is actually present. The thesis for the most part will be confined to the territory of the European Union and therefore only evaluate the standards applicable in Sweden and Finland since neither Russia or Norway are members of the European Union. Norway is a signatory to the EEA agreement that brings it into the ambit of the application of some EC law but the entire Treaty on European Union does not apply to Norway as well as certain EC economic headings such as agriculture and fisheries. For this reason the real impact of the EU accession for Saami is in respect to the populations present in Sweden and Finland. Also Sweden and Finland signed the important *Protocol 3 on the Sami people* that is appended to the accession treaty to the EU.

First this thesis will present the historical background of the Saami indigenous people and define those features that make them an indigenous people entitled to indigenous specific rights in international law. This thesis will focus mostly on the implementation of those rights that are specific for indigenous culture such as land rights and traditional knowledge. It will also explore some European initiatives in the field of minority rights that of course also yield their benefit to indigenous peoples. The thesis will only address the legislation and EU measures that influence Saami group rights and it will not address those that further empower Saami individual rights for example equality and non discrimination in the workplace. These rights while benefiting Saami do not benefit them as indigenous but rather as ordinary European Citizens. It is not the aim of the thesis to explore the comprehensive law of any area within the EU, such as competition or free movement but rather to speculate and apply the current law in respect to the indigenous situation of the Saami so as to discern what affect it has or could have on the Saami people.

The main problem that this thesis seeks to address is what is being done to safeguard indigenous rights in the European Union and at what levels this process is occurring. It is important to evaluate the protections in the EU context because the EU has assumed many of the powers that were traditionally the exclusive province of the state. The regulation of many economic and social interests that have the power to influence the course of Saami life and development as an indigenous group have been transferred by Sweden and Finland to the EU despite initial Saami objections. As a result the Saami have become the only indigenous group in a huge new Europe. It is therefore important that devices are in place and functioning, that will prevent further Saami marginalization and cultural erosion since within European Union context the Saami indigenous are an even more significant numerical minority than in the previous Nordic/Russian context. Some of the most important devices and initiatives aimed at the preservation

of the Saami will be evaluated in their EU context. The potential for the EU to use there extensive delegated powers to create directly effected legal provisions for Saami benefit will also be addressed. This ability is especially prevalent in regard to economic activities that are intimately associated with indigenous rights such as agriculture and fishing, resource management, and development. The potential impairment of Saami rights and indigenous culture will also be addressed particularly with respect to European Competition proceedings that may influence traditional monopolies, state aid, and protection of traditional knowledge. It should be remembered that it is the purpose of this thesis to examine the nexus of connection between different areas of EU law and indigenous rights in international law, primarily those contained in ILO 169 that is the current backbone of indigenous protections.

2 Brief Historical Background of the Saami Indigenous

Europe is the continent with the least indigenous people. While there are over 300 million indigenous people worldwide Europe has only one primary group of indigenous people numbering approximately 60,000 – 70,000.¹ Approximately 40,000 Saami live in Norway, 15,000 in Sweden, 3,000 in Finland and 2,000 on the Kola Peninsula in the Russian Federation.² The Saami have inhabited northern Scandinavia and the Kola Peninsula since time immemorial.³ Archeologists have found traces of Saami artifacts dating back to 1500 BC.⁴ It is clear that no one knows for certain the origin of the Saami or when exactly they migrated to present day Scandinavia. Saami livelihood and culture prior to Nordic contact was predominantly based on and around the use of the land and resources. After the initial exhaustion of wild resources the Saami took to the practice of reindeer husbandry or the domestication and herding of reindeer.⁵ The Saami semi-nomadic way of life largely developed around this practice of reindeer husbandry. Saami life however did not exclusively involve reindeer husbandry but also revolved their uses of sustainable natural resources such as fishing and hunting. These natural resources were primarily exploited for subsistence or on a need based system.

The year 1673 saw the official start of colonization of the Saami area of northern Scandinavia. Between 1720- and 1729 the Saami from Västmanland, Kopåparberg, and Gästrikland were deported to a new Lappish administrative region that was later to be renamed Lapland. In this period Saami religion and beliefs became the subject of persecution. In 1751 the borders were set in Strömstad treaty between Norway and Sweden and in 1809 the border was delimited with Finland. The Saami way of life had become confined and delimited by colonization and the creation of the modern nation state. It is in this situation that the Saami remained until the 1948 Declaration of Human Rights and subsequent creation and ratification of subsequent international hard law treaties that began to pave the way for Saami individual and group rights and re-empowerment.

Inga-Maria Mulk sums up the history of the Saami and abuses of their human rights and indigenous rights well when she wrote that:

Our history is full of the excesses and injustices committed by the strangers who came to our land. But we are still alive. We have not been the objects of genocide. Still, discrimination exists in different ways. We are confronted

¹ The Sami: People of the Sun and Wind, Pg. 3

² The Saami of Lapland, Minority Rights Group Report Number 55 pg. 4

³ *ibid.* pg. 3- 4

⁴ The Sami: People of the Sun and Wind, pg. 8

⁵ Indigenous Peoples, with Tero Mustonen pg. 3

by it in the laws of the nation-states that deal with the Sámi. Our rights have been undermined in the name of democracy. Today are rights to the land and water, which we have considered ours for the past several thousand years, are put into question. We are not many and our land is large. We are not making big demands. What we would like is to have the right to make decisions, which affect our lives, our culture, and our land.⁶

It is the purpose of this thesis to examine how the membership in the EU has affected or will affect the Saami in their quest to wrest control of their lives, culture, and land through use of the indigenous rights standards to which they are duly entitled. It is also possible to look at the EU as fertile grounds for Saami initiative to use the delegated powers of the EU to achieve implementation of economic and certain social dimensions of these invaluable, and immemorial rights.

⁶ The Sami: People of the Sun and Wind, Pg 3

3 The Optimal Legal Situation of the Saami

3.1 Indigenous Rights in International Law

3.1.1 Defining the Saami as an Indigenous People

There is no internationally accepted definition of a minority for the purposes of international law even though there are a plethora of international treaties and soft law concerning their rights and protection. Similarly there is no international definition of an indigenous person, people or, peoples. However some common elements are present in proposals for definitions of a minority that also have importance for the definition of indigenous peoples.⁷

Objective – The group must have an objectively discernable characteristic that makes it a minority

Subjective – there must be present a subjective feeling of belonging to that minority

Numerical – They must be numerically less than 50 percent of the population in the State or entity

Time Element – This is the most disputed area by the international community but proposals range from two generations to over 100 years of presence on the territory of the member state.

To define an indigenous group for the purposes of international law is far simpler than a minority because there is greater consensus on the nature and duration of the time element. The time element usually must be the presence on the land within the state from time immemorial. This time element is the primary difference between the definition of minorities and indigenous people.

While the UN Draft Declaration on indigenous peoples currently lacks a precise definition of indigenous the ILO Convention 169 offers one such definition in Art 1:1b and 1:2

1:1b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries

⁷ Definition and Classification of Minorities , Memorandum Submitted by the Secretary general E/CN.4/1987/WG.5/WP.1: Compilation of Definitional Proposals over a forty year period

and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

1:2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply

The Saami meet the 'internationalized' definition of an indigenous people having the objective, subjective, numerical, and presence since time immemorial in Sápmiland or Lapland.⁸ Further, the Saami were present on these lands at the time of northern conquest by the Nordic States and they retained some of their social, economic, and cultural institutions in conformity with the ILO 169 definition. Many Saami have strong sense of self-identification and continued commitment to the sustenance of Saami culture against the perils of integration, assimilation, or annihilation. Norway and Finland recognizes the Saami people as indigenous in their constitutions. Sweden's Instrument of Government only refers to the Saami in the context of Reindeer herding but Sweden has accepted the Saami as indigenous as well as a minority in other secondary international instruments. Although Sweden recognizes the Saami as indigenous and a minority the Saami have asked for their specific inclusion as such, in a revisions of the Instrument of Government.⁹

Individual Indigenous peoples are entitled to the exercise of all individual human rights with equality and non-discrimination.¹⁰ An individual may or may not desire to consider themselves as part of the indigenous group and this is reflected in both the subjective element of the 'internationalized' definition and the importance of self-identification in the definition in the ILO convention. An indigenous group in the exercise of their rights is entitled to exercise and benefit from both indigenous specific rights as well as the corpus of established minority rights.

The most important international treaty for the protection of indigenous rights is ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. ILO 169 is the best legal instrument and international benchmark upon which the EU and MS actions should be evaluated. This instrument outlines the specific indigenous rights as well as the equal treatment and non-discrimination provisions and minority rights applied and interpreted specifically for the indigenous context. This Convention entered into force in September 1991 and aimed at updating, extending, and superceding the previous convention 107 concerning the same subject. Only Norway has signed the ILO convention 169. Sweden and Finland have taken progressive steps towards implementation in the

⁸ For more on the Internationalized Thornberry, Patrick, International Law and The Rights of Minorities pg 331 - 382

⁹ Common Objectives and Joint Measures of the Sami Parliaments, <http://www.suri.ee/uc/4/samiobj.html>

¹⁰ ICCPR Art. 26

setting up of evaluative committees but have not come to any conclusive decisions on when ratification should occur. The EU institutions have taken a favorable position to the ratification of ILO 169 and this subject and its potential impact will be extensively evaluated under the heading the EU and ILO 169.

The most important ILO Convention articles for the benefit of the Saami in the EU context are:

Art. 14 The rights of ownership and possession of the peoples concerned over the lands, which they traditionally occupy, shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Art. 15 The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Art. 23 Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

Land rights, appropriation and use of natural resources, whether public or private, in conformity the traditional usage, and the protection of traditional knowledge are the three main pillars of indigenous specific rights. These rights guarantee the Saami the continued ability to sustain a traditional community. These rights are also substantially based on economic activity, which the EU is now empowered to regulate.

3.2 Who is a Saami? A question of domestic law and Saami self-identification

Until the creation of the Sametinget the definition of a Saami in Sweden for the purpose of special indigenous rights was that contained in the Reindeer Herding Act of 1971. This definition is still the definition applicable to the qualification to be considered a Reindeer Herding Saami but another definition for the purposes of voting in the Sametinget has been achieved. The Reindeer herding act 1971 act specifies that:

*The right to use land and water according to this law to support oneself and one's reindeer (the reindeer-herding right) belongs to the person of Saami ancestry if his father or mother or one of his grandparents had reindeer herding as a steady occupation. Under special circumstances, the county administration can grant a person with Saami ancestry the reindeer-herding right, even in cases not covered by the above paragraph*¹¹

Additionally each Saami who meets these strict requirements has to be a member of *Sameby* or village organization and spend at least half their time engaged in herding activity. Hunting, fishing, and wood gathering are considered subsidiary rights (*birättigheter*) to herding, and belong only to those Saami who are members of the *sameby*.¹² This is a very narrow definition, which Sweden has employed to identify those entitled to any Saami traditional rights. In this definition there is no place for Saami self-identification either at the community or individual levels. Additionally this definition may have once applied to almost all Saami people but today because of the effects of conquest and colonization this definition is no longer as substantive. In essence this definition fortifies the effects of colonization on the Saami and guarantees that these effects will continue to form the status quo definition. This definition allows for the erosion of Saami culture by disallowing those who have for three generations left the profession. A Saami under the 1971 definition must contemplate long and hard before leaving reindeer herding because this act may sacrifice the position of their decedents.

In 1991 the creation of the Swedish Saami Parliament Law afforded a wider definition of Saami entitled to participate in the autonomous assembly in the exercise of their minority/indigenous rights of autonomy and internal self-determination. This law states that:

*By Sami this law means anyone who considers himself or herself to be a Sami and is likely to have had Sami as his or her maternal language, or that Sami was likely the maternal language of parent or grandparent, or has a parent who is in the Sami parliament voter registration list.*¹³

The Finnish definition for eligibility to vote for the Finnish Saami Parliament is bit wider than the Swedish one allowing for

*He/She is a descendent of a person who has been entered in a land, taxation, or population register as a "mountain", "forest", or "fishing Lapp,"*¹⁴

The Norwegian Definition of Saami in the Saami Law allows for the Saami community to decide who will be considered a Saami as well as having an

¹¹ SFS 1971: 437

¹² Korsmo, Fae, The Northern Review #11: pg 34

¹³ SFS 1991:1433

¹⁴ Mynti 2000:209

objective definition like Sweden. This may be seen as a reflection of the incorporation of the standards of ILO 169 that Norway has already ratified dissimilarly to Sweden and Finland. The definition in the Saami Law act allows for those who

*Considers himself/herself a Sami and lives in entire accordance with the rules of the Sami society, and who is recognized by the representative Sami body as a Sami;*¹⁵

Ultimately in conformity with the Art 1 definition in ILO 169 it should be in part up to the Saami community as a matter of self-identification to decide who is and not entitled to be considered a Saami. This self-identification is an important feature of the formation of an indigenous community. However there also should be an objective State definition because there may arise issues in the community such as the distribution of land rights that may increase the desirability of the community excluding those who should otherwise be entitled. The Norwegian provisions of definition offer the compromise that balances the interests of self-identification and community autonomy (group rights) with the protection for those who might in certain circumstances risk exclusion (individual rights).

It should be recalled that there are also many linguistic, societal, and anthropological groupings that can be identified within the Saami as having specific needs and customs. Although this is relevant to a study of Saami identification and the larger indigenous issue it will be excluded from further examination in the current study.

¹⁵ Act No.56 of 12 June 1987

4 Saami Governance and legal situation within the EU

4.1 The importance of Autonomy

Autonomy for minorities and autonomy for Indigenous people can in some important respects manifest itself quite differently. Indigenous people have an immemorial history of self-regulation on the land. While some minorities may have this historical autonomy such as the Hungarians in the Austro-Hungarian Empire or the case of Åland, typically the creation of the right to and implementation of minority autonomy regimes is the product of more recent international law and initiatives. The other feature that is different is that indigenous administration is often a cohesive part of the culture both in the traditional methods employed and traditional organization of the society that reflect the unique features of the indigenous way of life. On the proposal of a type of reindeer governing association a Saami commented that:

*"I am afraid they'll get the idea of reindeer association into the new law and I don't like that at all. If there's to be an association and I'm on day-labour I might as well give the whole thing up and go into the mine straight away, because the whole point of Sami life is lost, I mean the personal freedom. We must protect the Sami Culture."*¹⁶

There is a need in any effort for Saami autonomy to preserve the traditional freedom that is the essence of Saami culture. This can be seen in the Saami in the need to administer the needs of a moving population tied to a region and traditional routes but not to a single pasture with the metaphorical modern fences. In contrast to this situation most current minority regimes are reflections of more traditional modern democratic governance models. Therefore there is a need to ensure the ability to have specific indigenous governance for the Saami along traditional terms. The organization of the Saami parliaments and tri-partite cooperation between Norwegian Swedish and Finnish parliaments in the Saami Council is a reflection of some of these principles.

The Lund Recommendations¹⁷ an instrument of soft law character, enunciates useful suggestions for the administration of autonomy regimes that minorities (and correspondingly indigenous) should be entitled to receive the benefit of:

Non-Territorial Arrangements

¹⁶ Ethnicity and Mobilization in Sami Politics pg 220

¹⁷ Lund Recommendations, www.rwi.lu.se

That consists of

” 17) Non-territorial forms of governance are useful for the maintenance and development of the identity and culture of national minorities.

18) The issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion, and other matters crucial to the identity and way of life of national minorities.

** Individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names.*

** Taking into account the responsibility of the governmental authorities to set educational standards, minority institutions can determine curricula for teaching of their minority languages, cultures, or both.”*

And, or

B. Territorial Arrangements

That consists of:

” 19) All democracies have arrangements for governance at different territorial levels. Experience in Europe and elsewhere shows the value of shifting certain legislative and executive functions from the central to the regional level, beyond the mere decentralization of central government administration from the capital to regional or local offices. Drawing on the principle of subsidiary, States should favorably consider such territorial devolution of powers, including specific functions of self-government, particularly where it would improve the opportunities of minorities to exercise authority over matters affecting them.

20) Appropriate local, regional, or autonomous administrations that correspond to the specific historical and territorial circumstances of national minorities may undertake a number of functions in order to respond more effectively to the concerns of these minorities.

** Functions over which such administrations have successfully assumed primary or significant authority include education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, and housing, health, and other social services.*

** Functions shared by central and regional authorities include taxation, administration of justice, tourism, and transport.*

21) Local, regional, and autonomous authorities must respect and ensure the human rights of all persons, including the rights of any minorities within their jurisdiction. ”

Both the Non-territorial models and territorial models have been employed at different levels in affording the Saami community a level of autonomy in Sweden, Finland, and Norway and correspondingly the EU/EEA area.

Following the Lund recommendations Non-territorial parliaments linked to Saami ancestry rather than traditional territory have been some of the most useful initiatives in ensuring Saami autonomy since the Saami people are prone to movement throughout territory that crosses national borders. Art. 6c. of ILO 169 dictates that states should *”establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.”*

Also other instruments of international and regional character have helped to influence Saami self-regulation particularly Art. 27 minority rights cases taken through the individual complaints procedure before the human rights committee of the ICCPR, since the Saami themselves are best at determining what constitutes their culture and how to preserve it. The law making and governing instruments at the International, Regional, Sub-Regional, Sub-national, Domestic, Saami and finally EU levels need to be understood in order to properly understand the forces that regulate and govern the Saami in Europe. These organizations will be evaluated in light of the Lund Recommendations and the rights of Saami autonomy.

4.2 International Competences and Law

The Charter on Fundamental Rights of the European Union:

Reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Although a soft law declaration type instrument the European Union is obliged to take account of the preservation and respect for the rights enunciated in the charter. As the preamble states the community is committed to adhering to the international obligations common to member states. This provision is of great important for the rights of the Saami indigenous. The EU has committed itself to consider the tenets of Art. 27 ICCPR and the recommendations of the human rights committee because this is an instrument of law effective in all 15 Union member states.

Although in both the cases of *Lansman vs. Finland*¹⁸ and *Kitok Vs. Sweden*¹⁹ the Human Rights committee did not find violations of Art. 27 in the facts at hand, the committee recognized that the Saami traditional economic activity they concerned could come under the provisions of Art. 27. Of greater importance is that the Human Rights committee in *Lansman vs. Finland* stated to the effect that future more extensive incursions on traditional Saami land might endanger Saami culture to such an extent to warrant a decision that Art. 17 had been violated.²⁰

The EU must be cautious in light of this jurisprudence to make sure that economic initiatives are in conformity with the established jurisprudence and provisions of the ICCPR. The MS individually will bear responsibility for violations since the EU is not yet entitled to be a signatory of the ICCPR even though the EU has obliged itself in the preamble of the Charter of Fundamental Rights to follow these common tenets of international law.

In 1982 the Working Group on Indigenous Populations (WGIP) of the Sub-Commission on the Population and Protection of Human Rights was established by a decision of the United Nations Economic and Social Council.²¹ This group has worked towards the adoption of a declaration on indigenous peoples at the UN level. ECOSOC Resolution 2002/22 created the permanent forum on indigenous peoples. The Representative from Norway who is one of sixteen members of the forum is of Saami origin. Although interesting for the future of law affecting the Saami these initiatives will not be discussed further since they do yet form hard or soft law for the EU area to warrant discussion in the context of this thesis.

4.3 Regional Competences and Law

4.3.1 Council of Europe COE

The Council of Europe has generated a plethora of treaties that can be used to afford Saami benefit both as individuals and minorities. Although the European Convention on Fundamental Rights does not afford group rights it can in some instances handle jurisprudence that concerns minority issues. The only Saami indigenous rights case to come before the ECHR system was *Österdahl v. Sweden* which concerned hunting rights and Reindeer Herding Act, but was never heard because it was declared inadmissible for time elapsed since the supposed violation occurred. Although outside the scope of this evaluation these ECHR standards must also be adhered to by the EU since all 15 MS are signatories of the Convention and the Convention is iterated into the preamble of the Union's Fundamental Charter of Rights.

¹⁸ Communication no. 671/1995

¹⁹ Communication no.197/1985

²⁰ Communication no. 671/1995

²¹ <http://www.un.org/esa/socdev/pfii/history.htm>

Other instruments to which all 15 MS are signatures are the European Charter for Regional and Minority languages and the Framework Convention on National Minorities. In conformity with the protections of the Charter for Regional and Minority Languages, Saami language has been officially recognized by the EU as a minority language.²² The EU also helps to fund the independent NGO called the European Bureau of Lesser Used Languages that gives aid to the continuation and development of the Saami language.²³

4.3.2 Organization for Security and Cooperation in Europe OSCE

The organization for Security and Cooperation in Europe has created the position of High Commissioner for National Minorities. The High Commissioner makes recommendations to states regarding the treatment of minorities. The OSCE issues general recommendations including the adoption of the Lund Recommendations on minority participation in public life, The Oslo Recommendations on linguistic rights, and the Hague recommendations on the rights of minorities in respect to education.²⁴ Often the High Commissioner can intervene to governments on behalf of minorities. The involvement of the High Commissioner with the Saami indigenous is not extensive however it is a mechanism of recourse that is common to all the MS of the EU and another level of legal standards applicable to the protection of Saami interests.

4.4 Sub-Regional Competences and Law

4.4.1 Arctic Council

The Arctic Council is an inter-governmental organization to address the common concerns and challenges faced by the Arctic region and its peoples. The members include the five Nordic Countries plus the United States, The Russian Federation, and Canada.

In addition to these eight members the Declaration on the Establishment of the Arctic Council of 1996 provides for the full participation of:

The Inuit Circumpolar Conference, the Saami Council and the Association of Indigenous Minorities in the Far North, Siberia, and the Far East of the Russian Federation are Permanent Participants in the Arctic Council. Permanent participation is equally open to other Arctic organizations of

²²<http://www2.riksdagen.se/Internet%5CEUsvar.nsf/Alla/1E26D89C930BDB77412569B900574C7D?OpenDocument>

²³ www.eblul.org/

²⁴ <http://www.osce.org/hcnm/documents/recommendations/index.php3>

indigenous peoples with majority Arctic indigenous constituency, representing:

**A. a single indigenous people resident in more than one Arctic State; or*

**B. more than one Arctic indigenous peoples resident in a single Arctic State.*

The category of "permanent participants" is uniquely afforded to the indigenous peoples of the Arctic on equal terms with the participating states. The Arctic Council is the first intergovernmental forum that has accredited indigenous peoples' organizations such a status.²⁵ The Saami Council representing all Saami people is able to participate in every aspect of the Council's work. In this connection the Arctic Council offers an international voice to the Saami Council and can be seen as the only forum offering such a high level of external autonomy.

The Council is highly important in the EU context since much of the EU's Northern Dimension development initiatives are implemented through the Arctic Council. The EU's fundamental treaty principle of Subsidiarity or accomplishing tasks at the lowest level possible dictates an important role for the Arctic Council. The Arctic Council forms a bridge between the Saami indigenous and the EU and because of their equal participation allows them to forecast the appropriation of EU money to what the Saami deem as appropriate.

The Arctic Council also employs an Indigenous Peoples Secretariat that can be important in monitoring and addressing the needs of the Saami. This Secretariat can form a bridge between the Saami council and the EU as well as Sweden, Finland, Norway, and Russia, when the Council is not in session.

4.4.2 Nordic Council and Nordic Council of Ministers

The Nordic Council is the body founded in 1952 for Nordic inter-parliamentary cooperation. The Nordic Council of Ministers is the forum founded in 1971 for inter-governmental cooperation. The Saami parliaments although pushing and being considered for full membership on the Nordic Council on Inter-Parliamentary cooperation have only an observer status. Other autonomous bodies such as those of the Faeroe Islands, Greenland, and Åland are fully represented as permanent members.

The Nordic Council has many initiatives that can benefit the Saami. Some of these are development schemes that similarly to the Arctic Council can be in cooperation with the EU. Further the Council has great influence in achieving harmonization in the Nordic Countries. This is very instrumental

²⁵ <http://www.arctic-council.org/about.html>

in the placing the pressure on Sweden and Finland to ratify ILO 169 after Norway ratified this Convention. The Nordic Councils initiatives have included the founding of the Nordic Saami Institute for Saami research and Education.²⁶ The free movement provisions that can benefit the Saami between countries were also a product of this inter-Nordic cooperative forum.

4.4.3 Baltic Sea State Council

The Baltic Sea State Council is another important sub-regional intergovernmental organization. The Council cooperates on issues concerning the Baltic Countries and includes full Nordic membership as well as Russia. The Baltic Council also has a strong connection with the European Union with the European Commission enjoying membership status as one of the twelve members. The European Union has large interest in the initiatives of this council because it contains 4 EU member States two EEA member states and four members that will be part of the next round of European Union expansion and accession as well as Russia with whom the EU has a cooperation agreement. The EU cooperation also extends to the appropriation of development funds at the disposal of the Council under the heading of the EU Northern Dimension policies. At present the Council is not substantially addressing Saami concerns nor including Saami participation either formal or informal. This position could change in the future of the Council. Also some of those initiatives of the Council may have tangible economic impact for Saami living in the Baltic region.

4.4.4 Barents Euro-Arctic Council

The Barents Euro-Arctic Council has six members including the five Nordic countries plus the Russian Federation. The European Union Commission also signed the Kirkenes Declaration that established the Council in 1993. The European Union enjoys official status within the Intergovernmental meeting of the Council. In fact the reason for the inclusion of Euro in name is as a result of the European Commission's participation.

The fields in which the Council is operative include: economy, trade, science and technology, tourism, environment, infrastructure, educational and cultural exchange as well as improving the situation of the indigenous people.²⁷ To this effect the EU channels development funding to the Council and participates in projects in the region. Since the Saami primarily inhabit the Barents region in all four countries they are present this Council forms an important governance of initiatives that will tangibly benefit the Saami their economy and the environment. The inter-governmental Council covers matters of large significance largely those that are political and economic while there is a subsidiary organ called the Barents Regional Council that covers more practical issues of local importance.

²⁶ <http://www.nsi.no/>

²⁷ <http://virtual.finland.fi/finfo/english/barents.html>

4.4.5 Barents Regional Council

The Barents Regional Council is a sub-national inter-county cooperative council composed of the representatives and governors of councils in the Barents Region and representatives of indigenous people. It is set up under the inter-governmental Barents Euro-Arctic Council both to implement their decisions and to continue the objectives of the council on the regional level. The authority of this Council extends over a landmass larger than France across four countries.²⁸ Representatives from Saami administrations as well as Saami organizations are eligible to participate in the work of the regional council. This allows the Saami a direct role in overseeing the initiatives that are channeled down through the inter-governmental Council and largely funded by the EU.

4.5 Domestic Competences and Law

It should be remembered that the domestic level still plays a great role in Saami affairs even after the accession to the EU. Throughout this thesis there will be reference both to domestic rights and constitutional law that influence the Saami position in the EU. Ultimately until such time as the EU powers are extended it is up to national competences to ratify and bring into force the measures of international human rights instruments such as ILO Convention 169. These instruments as is discussed throughout this examination can in turn bind the community to act in conformity with those recognized and indigenous rights. It is still for Domestic courts to handle first instance cases and make references to the European Court of Justice except in the rare narrow instances for direct action before community courts. It is at the national level that action can also be taken degrading the treatment of the Saami that should be held in balance by the above methods of cooperation and international supervision. Although some competences have been shifted to Brussels and the international community no one should underestimate the continued importance of the member state level and the role of Sweden Norway, Russia, and Finland in protecting or failing to protect the Saami indigenous.

4.6 Saami exclusive competences and Law

It is the Saami level that should have the strongest level of participation in the regulation of the future of the indigenous community. The previous actors all should act in conformity with the desires of the community and their exercise of autonomy. The Lund recommendations should become the guidance behind the administration of Saami affairs.

²⁸ <http://virtual.finland.fi/finfo/english/barents.html>

In the past decades improvements have occurred towards these ends. The Saami now have parliaments in Sweden, Finland, and Norway. The Finnish parliament came into existence in 1973 and was granted full consultative status in 1991, on matter concerning them before Finnish parliament in Helsinki. Unfortunately the Saami in Finland still have no ultimate legislative power on matters concerning them and thus no real tangible autonomy.

The Sametinget was founded in Sweden in 1991. The Sametinget exists pursuant to the provision in the Swedish constitution that states that 'Opportunities should be promoted for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own'.²⁹ The Saami are one of the recognized minorities under the Swedish ratification of the Framework Convention on national minorities in addition to being recognized as an indigenous people.³⁰ The purposes of the Sametinget are to foster a living Saami culture, to monitor the Saami language, to distribute State funds for Saami culture, to appoint the board of the Saami schools, to advise the Swedish authorities on Saami affairs.³¹ It does not have the provision allowing for formal consultation before Riksdagen on matters concerning the Saami indigenous. Of the three Saami parliaments Sweden's remains the least developed and empowered.

The Norwegian Saami Parliament was brought into effect by the 1987 Saami law and began to function in 1989. The Norwegian Parliament has more extensive powers than the Swedish and Finnish Saami Parliaments. The Norwegian Saami parliament is permitted to scrutinize and contribute to Norway's submissions pursuant to international treaty reporting obligations. This provision enables the Saami parliament to have a strong voice in the international community through the Norwegian microphone. Of the three models of autonomy only the Norwegian parliament affords any decision-making powers above the local or regional level.

The three Saami parliaments are all based on the non-territorial model in the Lund Recommendation cited above. The parliament's voting schemes based on participation of all people of Saami origin not on a particular land mass. If however extensive land rights were to be afforded to Saami in the future one should consider how this grant might influence the Saami parliaments structure. The inception of extensive land grants requiring a territorial administration would necessitate the addition of a territorial model of autonomy for the Saami.

The most important nexus between the Saami parliaments and the EU is in the field of development initiatives and financing. The Saami parliaments as well as other Saami organizations are coordinated by an NGO type organization with consultative UN ECOSOC status called the Saami

²⁹ <http://www.uoc.edu/euromosaic/web/document/sami/an/i2/i2.html>

³⁰ *ibid.*

³¹ *ibid.*

Council. For international purposes for instance in respect to the Arctic Council it is typically the Saami Council that represents the Saami parliaments and interests. The Saami Council adopts a unified approach to the Saami interests in four countries. The Saami Council is intimately linked with the EU development initiatives and cooperates with the EU Northern Dimension programs of development policy. Eventually if the Saami are ever afforded a quasi international status it is probable this function will go through the Saami Council since the Saami people are not tied to one specific country but to Sápmiland in Sweden Finland Norway and Russia. Taking into account this migratory factor in Saami indigenous life is important to achieving effective Saami governance and autonomy.

4.7 The EU yet another dimension

4.7.1 Confusion of the levels of law and administration

The apparatus that governs and has legal and developmental affects for the Saami population is highly staggered and on many levels. The accession of Sweden and Finland into the EU and Norway into the EEA add yet another layer to this confusing array of regulation. It is no wonder that Saami skepticism was abound during accession negotiations that led to Swedish and Finnish accession. The EU has definitely added another level of law and governance, but has it added to the quagmire of Saami governance?

In many ways the accession can be seen as doing exactly the opposite of skeptics views and actually adding structure to the multitude of organizations affecting the Saami. Since the objective of the Union is to create unity it has become involved at all levels of cooperation including most of the above described organizations. This is particularly true in the structuring of development funds to the Northern Region. Today most Northern Development funds that will eventually benefit the Saami are part of the Northern Dimension policy of the European Union. Additionallu the EC treaty and EEA agreement have largely placed the Saami in three countries under one set of economic law and regulation rather than those of three countries. The EU generates its own law directly effective in member states rather than relying on cooperation to harmonize domestic provisions. It is important to remember that the EU/EEA has created an internal market that reunites all except Russian Sápmiland. Also as a powerful unified actor of which Russia desires to cooperate and receive benefit from the EU can have a powerful voice in setting in motion provisions that can aid Russian Saami as well.

4.7.2 The Northern Dimension

The northern dimension of the European Union covers the Baltic Sea region, Arctic Sea region and North West Russia. The Northern Dimension operates through the EU's financial instruments available for the region:

Phare, Tacis and Interreg.³² The Northern Dimension helps to provide for the EU's responsibility under title XII EC to provide for underdeveloped regions of the Union to achieve a greater economic equilibrium and cohesion across the Union's territory. The Northern dimension also covers external cooperation on development. The objective of the European Union's Northern Dimension is to address the specific issues of unique interest to this region. The EU partners with the Arctic Council, The Council of the Baltic Sea States, and the Barents Euro Arctic Council to implement its Northern Dimension policies. Since the Saami have an autonomous voice within the framework of both the arctic council and the Barents Euro-Arctic council they are given a strong Nexus of connection with the formation of EU policy and appropriation of development funds. Ultimately this leads to an indirect empowerment of the Saami parliaments on the EU level. The area of Saami concern is called the region of North Calotte and the Intereg IIA and Intereg IIIA structural funds are available to this region.

Although the development projects for this region are extensive and aid to the Saami has occurred in a number of significant areas two examples of EU projects are worth examining:

1. The Saami Council's has been afforded an interregional project to train indigenous peoples on international human rights standards and policy-making received EUR 668,502. It will offer indigenous representatives an opportunity to learn about international human rights standards and mechanisms, and will include three training programs, to be organized in indigenous areas.³³
2. Also the Saami have been given the ability to conduct a comparative study on indigenous culture, customs and traditions, organized by the Saami Council and funded with an EIDHR contribution of EUR 353,868, highlights the positive contribution indigenous peoples have made and continue to make in protecting culture and customary law.³⁴

Both of these programs not only provide aid to development for the Saami indigenous but also are funds towards programs that should strive towards future legal reform. In this way the EU is empowering the Saami political process. The EU unlike the MS does not have a history with the Saami and does not see the problem from the same subjective standpoint as the Nordic states. Also all the previous councils continued almost exclusively state with Saami populations; in the EU most states do not have indigenous populations. The EU in this way is a new less partial body that is interested in equally protecting certain, particularly economic rights of all its citizens. Also of importance is that in Sweden, Finland, and Norway there are relatively few minorities whereas in the EU there are multitudes. The

³² http://europa.eu.int/comm/external_relations/north_dim/

³³ 193.194.138.190/html/racism/minorpam14.doc

³⁴ 193.194.138.190/html/racism/minorpam14.doc

aversion of minority issues and development in the EU would be a mistake of Union policy of potentially disastrous proportion. The EU in many areas as can be seen from the above initiatives, has gone out of its way to address minority issues that may not be thought on the face of it to be of their direct concern. The Saami therefore can benefit from the EU's Northern Dimension Development policy through a new relationship that has many new actors.

The EU's development funds are very important in the post accession funding of Saami development because the EC treaty Art. 87 expressly forbids the granting of most forms of "state aid that may distort competition by favoring certain undertakings or the production of certain goods." Prior to the EU/EEA accessions the Riksdag, Storting, or Finnish parliament could appropriate money as they saw fit to achieve Saami interests. This is now no longer the case in relation to Art. 87 EC restrictions on state aid. While there are exemptible or exceptional situations listed in this article it is clear that development funding to Saami economic activities can no longer be the exclusive province of the national level. Even future developmental funding related to ratification ILO 169 might have to be channeled through EU mechanisms. This makes the EU the one institution that should be of greatest Saami concern and the EU's opinion on ILO Convention 169 increasingly important. The Saami lobby may need to be re-centered in Brussels and through the sub-regional councils they have already been given a voice that can be heard. This issue will therefore be substantially addressed later in this thesis.

4.7.3 Subsidiarity and the Saami

Art. 5 EC enunciates the EU pillar principle of Subsidiarity in that

In areas that do not fall within its exclusive competence the Community shall take action, in accordance with the principle of Subsidiarity, only in so far as the objectives cannot be sufficiently achieved by the Member states and can therefore, by reason or scale of effects be better achieved by the community.

Although it has been stated that Subsidiarity is more "a political maxim not a legal one" it is nevertheless an important operational principle of the Community.³⁵ For the Saami the importance of the principle is that the Union when carrying out its non-exclusive tasks will have to pause to consider at what level EU, MS, or local and Regional that the measure could be best carried out. For instance if the Saami parliamentary structures could aptly achieve the purpose of a given piece of the Northern Dimension policy then it should be carried out at this level rather than in the context of Community policy. Subsidiarity as a principle remembers that Europe is a

³⁵ kapteyn and verloren van thermaat, Introduction to the law of the European Commnites, pg. 139

diverse continent with many regions that can often be more effective at carrying out certain tasks than the Community organs in Brussels.

4.7.4 Committee of Regions

The Committee of Regions is an institution that was added to the EC by the Treaty of Maastricht in 1991. Its purpose is to recognize the importance of regions in the EU and in a sense to allow their participation and prevent marginalization. This body is important for the Saami for two main reasons. Firstly this body affirms the Union's commitment to empowering and paying attention to Regions and regional policy given that almost three quarters of European Union policy is implemented at this level.³⁶ Secondly the Committee of Regions affords a voice to the Regions of North Calotte that contains traditional Sápmiland. The committee may coordinate both with the sub-regional and sub-national organizations as well as the regional authorities. The Committee potentially allows for the direct contact of regional organizations such as the Saami parliament with Brussels. On matters that concern the regions, for example the amendment of protocol three on the Saami people, which will be discussed in detail later, the committee of regions has consultative advisory role to the Commission and Council.³⁷ This advisory role is intended to cover all matters of regional policy. Currently Sweden has 12 seats in Committee of Regions and Finland holds 9 seats.³⁸ It is probable that one of the central features of future treaty revision will be the further empowerment of committee of the regions since in an ever-expanding Europe the Committee will have an ever-greater importance in preventing regional marginalization.

³⁶ http://www.cor.eu.int/en/pres/pres_rol.html

³⁷ *ibid.*

³⁸ see Peterson John, and Shackleton, Michael, *The Institutions of the European Union* pg. 332

5 The EU Charter of Fundamental Rights and Saami Rights

While the Fundamental Charter of Rights has been said to be a document in legal limbo it is not altogether without effect.³⁹ The Inter Governmental Conference will decide the formal legal status in 2004. Meanwhile the Commission considers the Fundamental Charter of Rights compatibility of new legislative proposals it puts forward. Although the Fundamental charter does not contain specific indigenous rights it has importance for minority and indigenous groups whose interests may be brought into consideration when the Commission evaluates the human rights aspects of proposed measures of community law.

Certain rights that are spelled out in Fundamental Charter are of particular importance to the Saami indigenous. In the preamble the charter states:

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organization of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

This provision shows a clear direction of the Union favoring recognition and respect for diversity of cultures and national identities within the Union. The Saami have a very strong culture and unique indigenous identity, which must be taken account of in measures that will affect the Sápmiland area.

Art. 15 allows for the:

Freedom to choose an occupation and right to engage in work –

- 1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.*
- 2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.*
- 3. Nationals of third countries who are authorized to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.*

The right to freely choose ones occupation is of particular importance for the Saami so as to be able to choose to work in a traditional occupation and

³⁹ Craig and De Burca, EU Law text case and Materials, pg. 362

remain supported by the full array of extensive EU work and labor law for their protection. EU corporate provisions should be required to take account of and reflect the existence of traditional associations and more informal associations of indigenous peoples. This adaptation to the need of the Saami is necessary in order to really permit the freedom to work with the same benefit in an indigenous profession and respect Saami culture.

Closely linked with the provision to choose an occupation is Art. 16 that allows for the:

Freedom to conduct a business - The freedom to conduct a business in accordance with Community law and national laws and practices is recognized.

Provided it is legally conducted there should be no impediment to mar Saami foundation of any traditional business. Since EU law recognizes the ability to practice cross EU/EEA border businesses without restriction in accordance with both the right of establishment and principles of free movement this provisions offers a further protection to transitory reindeer husbandry.

Indigenous land rights are not protected within the scope of the charter however the charter doe protect individual land rights as well as intellectual property protection in Art. 17.

Right to property - 1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

While not affording any direct conference of title to the Saami Art. 17 when given a further force of law may one day invite inquiry as to the proper legal status of Sápmiland. The Commission in any initiative concerning land usage in Sápmiland area must consider the rightful ownership of the land. While not constituting an entitlement in itself, Art. 17 might probe an extensive and difficult inquiry at a later time. Art. 17 mandates the need for clarity of title. At some stage if the Charter becomes directly actionable in Community courts, Sweden or Finland may have to prove its case to the title of Sápmiland to the Community Institutions.⁴⁰

⁴⁰ Issues concerning Norway are currently adjudicated by the Court of the EFTA Surveillance Authority where it is questionable as to whether the Charter would be actionable without separate EEA approval.

6 The EU and ILO 169

While the ECJ has opined that at present the Community cannot enter into the ECHR⁴¹ it is clear that the community may enter into treaties within its internal competences.⁴² One of the clearest internal competences is in respect to employment, labor, and worker, which should permit the community to consider ratification of ILO conventions including the pivotal ILO convention 169 on the Rights of Indigenous and Tribal Peoples. In the new Working Group on External Action as part of the drawing up of a European Convention it has been suggested that the community pursue formal membership in certain international organization and be permitted to participate and accede to their standards. This ability would further and formally (Express Treaty Competence) increase the possibility of the Communities accession to ILO standards.

On a number of occasions the community has encouraged member states to ratify ILO standards.⁴³ In the European Parliament resolution on Human Rights in the World 2000 and the European Union Human Right policy paragraph 118 states that The Parliament:

“Asks the member states to increase their support for the UN International Decade of the World’s Indigenous Peoples, and the EU to support the UN /ECOSOC Indigenous Peoples permanent forum so that it can become operation as soon as possible, as well as the right to indigenous people for appropriate intellectual property laws and for an equitable benefit from the commercial use of their ancestral knowledge; urges all member states to sign and ratify ILO Convention 169 on Indigenous and Tribal Peoples;”

The fact that EU Common Foreign and Security Policy and External action in respect to internal competences is likely to evolve in the next few years means that we must therefore question what effect an EU accession to ILO 169 would have for Saami indigenous Rights particularly for the acquisition and maintenance of exclusive land rights and the protection of traditional knowledge. Certainly a ratification by the EU would mean that all EU policy including the application of intellectual property regulation and competition law would have to be modified to protect Saami interests in these areas. In this respect the existing protocol 3 would need amendment. The more interesting question is whether such an accession by the EU would create directly effected and implementable land rights for the Saami that could be protected in the courts of the MS. All EU secondary legislation under certain conditions is vertically directly effective and some horizontally directly effective. This means that the EU obligations under a treaty for which it is competent to join and brought into force by such

⁴¹ ECJ Opinion 2/94

⁴² particularly see Case 22/70 ERTA , Cases 3 4 6/76 Kramer, Opinion 1/77 Internal Waterways

⁴³ Alston, Philip The EU and Human Rights pg. 31 - 34

legislation can in most circumstances be directly effected into MS law and actionable in MS courts.

At present most of the EU accessions to international treaties are economic or at least not purely social or rights based in nature and typically also have been ratified by all the member states in their own capacity. These treaties therefore bind the EU only in its own actions and do not require direct effect at the member state level since the member states are also under separate obligation to follow these economic treaties. A EU accession to a social rights based treaty by way of QMV that certain member states have not ratified poses a drastically different and difficult situation. It is possible that if the EU is permitted to accede to such treaties in the future that they will be restricted to binding only the community and not being directly effected. It is also possible to construct a scenario whereby ILO 169 would bind the community in its express and implied treaty competences and MS in as much as it pertained to the delegated or shared competences.

ILO Convention 169 specifically requires that:

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

This provision is important for the EU since it would mandate the EU to take into consideration Saami law and empower Saami law at the EU level. This would be very important for the development of EU law. This is particularly true in the areas discussed under headings below of free movement, competition law, intellectual property and EU fishing and agriculture policies. This provision would invite a discussion of the creation of EU specific law on permitting indigenous to use established tradition methods of self-regulation in these areas. This provision if implemented at the EU level would allow for resolution of some compatibility issues between MS law and EU law should Sweden or Finland ratify ILO 169. Even in the improbable scenario that the EU is not one day empowered to accede to ILO Convention 169 even though it is economic in nature, they may still review legislation affecting Sápmiland to make sure the provisions are compatible with the Convention. If the EU institutions truly have a commitment to ILO 169 indigenous rights they may still consider them in legislation affecting the Saami even without the binding force of treaty accession. The only impediment to relying on this moral rather than legal force is that EU governance can quickly change while treaty ratifications are more permanent.

Many of the provisions of the ILO Convention 169 are based on Economic factors that are within the current competence of the delegated powers of the EU institutions.

7 Sweden and Finland's Reservation to the Treaty of the European Union in Protocol 3

Protocol no. 3 on the Saami people was inserted by Sweden and Finland in the accession agreements at the behest of the Saami and in deference to their concerns over their future in the European Union. The Protocol has the effect that any progressive development in EU law for Saami rights will have effect and protects from any retrograde provision resulting from the accession to the EU that could potentially harm the Saami way of life. The only specifically recognized area of protection in Protocol III is that of reindeer husbandry; all others traditional economic means are discretionary and subject to subsequent incorporation and development. Although the Protocol protects reindeer husbandry as an economic activity and reserves it exclusively for the Saami it does not protect the vital interest of land rights upon which the reindeer husbandry and semi-nomadic way of life wholly depend. Protocol III does not permit the derogation from its provisions or permit modification by the EU institutions of the protection it affords.

Protocol number 3 reads:

”PROTOCOL No 3 on the Sami people

*THE HIGH CONTRACTING PARTIES,
RECOGNIZING the obligations and commitments of Norway, Sweden and
Finland with regard to the Sami people under national and international
law,
NOTING, in particular, that Norway, Sweden and Finland are committed to
preserving and developing the means of livelihood, language, culture and
way of life of the Sami people,
CONSIDERING the dependence of traditional Sami culture and livelihood
on primary economic activities, such as reindeer husbandry in the
traditional areas of Sami settlement,
HAVE AGREED on the following provisions,*

Article 1

*Notwithstanding the provisions of the EC Treaty, exclusive rights to
reindeer husbandry within traditional Sami areas may be granted to the
Sami people.*

Article 2

*This Protocol may be extended to take account of any further development
of exclusive Sami rights linked to their traditional means of livelihood. The
Council may, acting unanimously on a proposal from the Commission, and*

after consulting the European Parliament and the Committee of the Regions, adopt the necessary amendments to the Protocol.”⁴⁴

It should be noted that in addition to the protocol 3 Sweden has placed Reindeer husbandry in the Instrument of Government of 1974 2:20 para. 2.⁴⁵ This provision provides recognition for the right for the Saami to practice reindeer husbandry and provides for the regulation of regulation of Reindeer husbandry in law. It provides an exception to IG 2:20 that excludes restrictions that are made to further an interest of a particular person or enterprise. The Swedish Instrument of government further provides protection for recognized Saami interests in addition of IG 10:5 upon accession to the EU where it states that

“ The Riksdag may transfer a right of decision- making to the European Communities so long as the communities have protection for rights and freedoms corresponding to the protection provide under this Instrument of Government and the European Convention for the Protection of Fundamental Freedoms.”⁴⁶

This means that at such time that Sweden ratifies ILO 169 under or incorporated into the IG all EU law brought into effect in Sweden will have to comply with that convention. If the EU does not accede to ILO 169 there will be a potential for drastic incompatibility of EU law and domestic law. Costa vs. Enel firmly establishes the supremacy of all EU law. However in the German case of Brunner and others vs. the European Union Treaty the German court stated that certain supra-constitutional principles would in their opinion take precedence over EU law. The protection of vulnerable groups against incursions by EU law may be one such principle. This however is for Swedish and EU courts to render future ruling on and to reconcile any differences in this large dilemma in the supremacy of the current EU legal system versus the interests on fundamental principles and rights at the domestic level.

Finland’s Constitution states that “The Sami as an indigenous people.... have the right to develop their own language and culture.” This Finnish Constitutional provision does not afford the recognition of potential Saami monopolies in Reindeer husbandry that Swedish law provides and thus the EU protocol in respect to Finnish Saami becomes devoid of meaning until such time as exclusive or extensive reindeer husbandry interests and accompanying land rights are recognized in law for Saami populations. Also the Finnish Constitution does not have the deference to fundamental rights contained in the Swedish instrument of government. This second safeguard is an important one, as it can be used as outlined above in domestic courts to

⁴⁴ www2.riksdagen.se, This citation of the Protocol reflect the Swedish version, The Finnish Protocol is however almost identical

⁴⁵ The constitution of Sweden the Fundamental laws and the Riksdag Act, English Translation, pg. 68

⁴⁶ *ibid*, pg. 82

challenge the validity of the application of a harmful or Constitutionally incompatible EU provision.

The requirements for amendment to the protocol requires the Commission acting on the consultation of two bodies and a unanimous not QMV vote of the Council. The future adaptation of Protocol 3 is made quite difficult. This difficulty can have two potentially negative effects. Firstly if the EU is seeking new legislation it could fail to take into account indigenous interests and modify the present protocol. With the new and comprehensive agenda on human rights within the EU and the strong lobbies of three Saami parliaments and EU cooperation with the Saami Council it is unlikely that this possibility would come to harm Saami interests. Additionally the EU often has taken a more progressive stance than member states over the concerns of indigenous people both internally and externally. The second possibility is that the Union institutions may adopt a more progressive attitude to Saami rights, particularly land rights and not be able to place it into the protocol because of a dissenting vote of Sweden or Finland. The primary method of getting around this second problem would be through the development of QMV in external action voting in conformity with the proposal in the new constitutional working group on external action.⁴⁷ This QMV voting would allow the EU to independently accede to treaties favorable to the position of the Saami. The provisions of EU external accession would be directly effected into domestic law creating independent individual and group rights that could be relied on in MS courts.⁴⁸

⁴⁷ CONV 459/02

⁴⁸ Van Gend En Loos

8 The potential Effect of European Competition and Intellectual Property Law to the Saami people engaged in traditional activity

Protocol number three has the effect of affording a blanket exemption from European Competition scrutiny for any monopoly granted by Sweden or Finland to the Saami for reindeer husbandry. It should be recalled that at present only Sweden grants a monopoly to the Saami for reindeer husbandry whereas in Finland it is an open practice on equal terms for all Finns within a designated part of Lapland called the reindeer herding area.⁴⁹ If a state does not grant exclusive rights to the Saami than the activity will not fall under the protection of the protocol. The protocol is not broadly phrased and does explicitly apply to the Saami *activities* in the field of reindeer husbandry but rather only to the *exclusive grant* of such a right by the member state. In the case of Finland this has the effect that if a monopoly were attained by the Saami without the grant of permission for such a monopoly than European competition law would still apply. Finland has placed Saami reindeer husbandry in a precarious position by not affording it an official exemption or recognition in Finnish domestic law.

The Protocol thus places this one traditional Saami activity outside the Commission's grasp safeguarding the continued ability of states to recognize this one Saami indigenous right. While reindeer husbandry in certain circumstances is outside the potential scrutiny of European competition law many other important areas of indigenous rights and activities are not recognized by the Protocol and may until such time as the protocol is amended, be subjected to European competition provisions. The problem here lies at both the EU and domestic level. On the EU level the protocol has not been modified to include more than simply reindeer rights nor has subsidiary EU legislation been adopted to give effect to a protection wider range of indigenous activities. The other problem at the EU level is that the protection envisioned by the protocol is based on the protection of specific activities such as reindeer husbandry rather than the protection of land rights that would encompass almost the entirety of indigenous activities. Indigenous culture and economy is tied to and dependent on the land not on only one specific activity.⁵⁰ On the MS level the problem is that both Sweden and Finland have substantially isolated the definition of Saami

⁴⁹ The Saami of Lapland, Minority Rights Group Report Number 55 pg.9

⁵⁰ *ibid.* Pg. 12 para. 2

rights to be synonymous with protection of reindeer husbandry.⁵¹ Sweden and Finland lack a more comprehensive framework for protecting Saami indigenous rights and are far from granting the land rights envisioned by ILO Convention 169. The levels of the MS and the EU may be seen as interrelated until the EU is empowered to accede independently and by QMV to international conventions concerning indigenous rights. In the present situation unfortunately the EU in order to take action on the reform of the Protocol, needs to be certain that Sweden and Finland will be in favor of such discussion of a modification. Since modification requires unanimity any initiative would otherwise be wasted except for the embarrassment factor. Also the fact that European indigenous people are only present in two of fifteen member states means the effect on the community is limited and the community will often act according to more pressing interests.

The Saami should if ILO convention 169 were implemented be granted a range of monopoly interests far greater than just reindeer husbandry. These rights in accordance with article 25 of the ILO Convention 169 would include the sustainable exploitation from all natural resources to be found within the scheme of recognized land rights of Lapland. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands a share in the benefits of such exploitation. Similarly to the status of Reindeer husbandry these other traditional interests linked to land rights need to be protected in a revised protocol from potential Commission scrutiny in relation to the provisions of Art.81 and 82 EC on the prevention of anti-competitive activity.

The other dimension of indigenous rights that may be highly endangered by competition law and European intellectual property regulation is traditional knowledge. Art. 23 of ILO Convention 169 provides that states should strengthen the protection and promotion of such knowledge. This would intimate that a monopoly on these industries might be protected or that a different type of intellectual property protection should be applied. Traditional knowledge of the Saami that comes from time immemorial must be able to be sustained, maintained, and developed by the Saami for their exclusive use and appropriation for all time to come. To achieve this effective protection for traditional knowledge may entail granting indefinite ownership rights to traditional knowledge to the Saami and a monopoly on any reproduction or exploitation. This traditional knowledge is interlinked and inseparable from the cultural and often religious characteristics of the Saami indigenous.

In addition to traditional knowledge EU law will regulate and restrict some traditional methods. An example of this is in respect to the slaughter of Reindeer. The EU agriculture regulations specify how animals including domesticated reindeer are to be slaughtered. Also in many instances EU regulations and policy may dictate restrictions on animals or necessitate quarantines such as that taken against British beef in relation to the disease

⁵¹ *ibid* pg.12

BSC. While it is not the point of this thesis to evaluate these regulations in full it is worthy to note their potential cultural significance. These methods also may be present in traditional usage of waters scheduled for conservation or where fish stock is low. While some restrictions may be necessary for public hygiene and safety often certain methods related to other interests deserve consideration for exemption from special Union wide requirements. For instance the use of special kosher knives for Jews or Halal knives for Muslims would certainly deserve exception. The Fundamental Charter of Rights Art obliges the EU by Art. 23 to consider the effect of these regulatory or standardization factors on the Saami indigenous culture when making blanket Union policy.

Although there is an interest in economic freedom and unity in allowing for the potential commercial exploitation of Saami traditional knowledge by all European Citizens this must be weighed against the fundamental importance of these intellectual property rights for the continued existence of the marginalized Saami culture in an expansive new Europe. The other factor that must be considered is that while Anti Competition measures are considered to be an important pillar of the European free market that should not make substantial exceptions this must be contrasted to the fact that the Saami constitute the only European indigenous interest and therefore the only necessary exception in this area. Also it should be noted that since the Volk case and the subsequent Commission *De Minimis* notice certain anti-competitive interests of small proportions will not receive competition scrutiny. Even if some Saami interests might be great enough to receive scrutiny under Art. 81 and 82 another exemption should be considered based on the fact of the vital group rights interest that is at stake. Only through taking account of these factors and making provision for them both in modification of the protocol and in secondary competition and intellectual property legislation can the Union meet their commitment under Art. 23 the European Union's Fundamental Charter of Rights to "respect cultural, religious and linguistic diversity" for Europe's indigenous people.

The EU has an ever-expanding list of delegated powers. These powers particularly under the economic and social headings of the EC treaty can be utilized to enact regulations and directives on the Saami indigenous especially in the fields of employment, competition blanket exemptions, intellectual property exemptions, development, and environment. This capability is a powerful tool. Even if the EU never adopts ILO 169 the EU in its present capacity by the initiative of the Commission and adoption by the Council often using the QMV can enact substantive legislation for the benefit of the Saami. In certain areas this has been marginally accomplished but in the fields of competition and intellectual property rights that are two EU fields that most threaten the Saami there are as of yet not initiatives besides the treaty accession protocol 3.

9 The Four Freedoms and the Saami

Arguably the most important substantive rights created by the European Union over existing human rights systems are the four freedoms. The Four freedoms consist of the Freedom of movement of workers, goods, service and capital. For the most part these provisions contain individual rather than collective rights. However it should be recognized that some individual rights exercised collectively will have a different effect that benefits the collective. Since the Saami of Sweden and Finland are citizens of the EU and the Norwegian Saami are entitled to benefit from these provisions under the EEA agreement it is necessary to evaluate what if any benefit they may have for the Saami communities.

Free movement of persons, goods, services and capital⁵² have been central features of the Saami way of life. Living from the land and in part from reindeer husbandry has until recent times required constant movement of the Saami populations. Like the new EU vision this movement was linked to economic livelihood. Historically for time immemorial prior to colonization the Saami exercised this collective free movement in search of their livelihood. In the Strömstad treaty of 1751 the borders of Sweden and Norway were defined. This treaty saw the formal incorporation of Sápmiland into Sweden and Norway.⁵³ The new border did not have regard for Saami traditional grazing lands and in many cases divided them between the two countries. An addendum to the treaty was inserted to provide for the Saami people, which is entitled the Lapp Codicil

“The Sami need the land of both states. Therefore, they shall in accordance with tradition, be permitted both in the autumn and spring to move their reindeer hers across the border into the other state. And hereafter, as before, they shall, like the state’s own subject’s, be allowed to use land and share for themselves and their animals, except in the places stated below, and they shall, be met with friendliness, protected and aided.”⁵⁴

The Lapp Codicil recognized in a legally binding international treaty the right of the Saami to freely cross the border in line with their seasonal migration even though two states had delineated sovereign territorial boundaries.⁵⁵ The Lapp Codicil is one of the earliest legal instruments

⁵² Traditionally, the Saami did not always have capital as we know it but rather goods were used as a form of capital

⁵³ Sápmiland had already been divided between Sweden and Russia in the treaty of Teusina in 1595

⁵⁴ Silanpaa, Lenard Political and administrative Responses to Sami- Self Determination, Finnish Society of Letters and Sciences, 1994, Helsinki, pg. 6

⁵⁵ www.borealis.lib.uconn.edu/arcticcircle/historyculture/sami/samisf.html, Territoriality and State Sami Relations

protecting the vital interest of an indigenous group and has never been repudiated. While in modern times often unfortunately strictly delimited or narrowed, the Lapp Codicil has allowed for limited free movement of Saami linked reindeer populations across Sweden and Norway as well as Finland which was part of Sweden at the time of the Codicil prior to the 1808 annexation by Russia. The Codicil like many of the modern instruments of law such as Protocol 3 aimed at the protection of the Saami restricts the conference of the rights of free movement to only **one** economic or cultural activity namely, reindeer herding.

Unfortunately the free movement of Reindeer herders recognized in the Lapp Codicil has been further restricted by later legal developments. In some instances these developments may be highly incompatible with the Codicil. When the Union of the Kingdoms of Sweden and Norway ended in 1905 there was a new need to regulate cross border activity. In 1919 the reindeer grazing convention was adopted between Sweden and Norway that placed encumbrances and restrictions on the Saami traditional border crossings that had been supposedly guaranteed by the still operable Codicil.⁵⁶The 1972 Reindeer Grazing Convention while updating some provisions of the 1919 convention largely adheres to the same restrictions.⁵⁷

Both the Nordic Council on Inter parliamentary cooperation and the Nordic Council of Ministers have striven to tear down the border restrictions between the states. They have been able to implement free movement within the Nordic area to high degree. Individuals have had the right to live and work freely in the Nordic countries long before any accession to the EU. However these rights were based on national implementation of cooperation agreements and did not form hard law treaties empowering individuals in the way that individuals have rights in the community. At any given time the national parliament could derogate from the free movement. This is well illustrated by the fact that the provisions of the reindeer grazing convention restrict numbers of reindeer and seasonal border crossings in legally acceptable contravention of the normal Nordic cooperative procedure.

The current situation where freedom of movement has been impaired and eroded since 1751 for Saami herders and not at all guaranteed for other non-herding Saami or their traditional activities is legally unacceptable. It is neither in conformity with the Codicil nor is it compliant with Norway's obligations under ILO 169 Art. 32 that

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields

⁵⁶ The Saami National Minority in Sweden: Rights of the Saami to Reindeer Grazing lands pgs. 62-75

⁵⁷ www.borealis.lib.uconn.edu/arcticcircle/historyculture/sami/samisf.html, Territoriality and State Sami Relations

The four freedoms provisions contained in the EC treaty and provided for in further implementary legislation have gone a long way to providing a means by which the Saami can finally pursue cross border activity. This new entitlement is not based on a recognition of indigenous rights by the EU system rather it is based on the application of EU/EEA citizens rights. The Saami holding EU citizenship is likewise entitled to benefit from its provisions and economic and social rights conferred. The EU measure has further reaching consequences than any other measure for the Saami free movement since it dispenses with the distinction between reindeer herding Saami, Saami engaged in other traditional activity, and Saami assimilated into the main population. This lack of distinction in EU Law will benefit the cohesiveness of the Saami community since the proper application of EC law would make sure movement rights will no longer be an issue of disparity between different Saami populations.

The free movement provisions apply equally to all Saami eradicating the polarization of rights to herders and allowing access to or resumption of traditional livelihood to all Saami, irrespective of social or economic origin. For instance a Saami not entitled to practice reindeer husbandry under the restrictive *Sameby* herding system under the Reindeer Herding Act 1971 in Sweden and therefore not protected by the monopoly provisions in Protocol 3 to the accession treaty could move freely to Finland. In Finland the practice is open to all people within the herding district and in conjunction with the EC Art. 12 since it is not guaranteed to Saami as a monopoly and the protocol is inapplicable, without distinction to nationality. States are obliged to respect both the Saami right of free movement as a worker whether self employed or employed for a corporation in conformity with EC treaty Art. 39 and 43 respectively. In accordance with Art. 28 and art 29 EC the reindeer or other traditional goods are not subject of quantitative or all measures having equivalent effect on both imports and exports. Since the creation of the EEA agreement these provisions are applicable in Norway in addition to Sweden and Finland. Eventually agreements may be reached between EU through regional council cooperation extending certain of these rights to Russian Saami. There is already an suggestion in the Murmansk Declaration concluded at the 16th annual Saami conference that Russia should allow the formation of a Saami autonomous body.⁵⁸ Such a body in conjunction with the other Saami parliaments could be helpful in serving as abridge between Russia the Saami council and the EU. The Schengen agreement that is signed by Sweden Finland and Norway will gradually eliminate all border restrictions that impair the full integration of the Union and the EEA, helping to complete the internal market and reunite the traditional Saami one.

Although based on individual and not groups rights the EU provisions facilitate the mobility of the Saami population along traditional lines in all their territory except Russia to a far greater degree than event he full

⁵⁸ <http://www.saamicouncil.net/english/murmanskdek.htm>

national implementation of the ILO would allow. In Saami tradition there was a northern free market without restrictions, borders, or currency and this may through the EU once again be possible. The EU allows for the Saami to defend these rights through member states courts and by reference to the Brussels jurisdiction. Unlike the Nordic model there is a judicial check on the MS ability to restrict free movement and a myriad of ECJ non-binding case law to rely on. At present there are still formalities for border crossings in excess of three months such as the necessity for a residence permit for most EU nationals however the Nordic Council provisions that go further than the EU have eliminated this requirement for Nordic citizens. The empowerment of the EU rights combined with the Nordic Councils previous cooperation have provided for a workable rights based situation for the protection of the Saami traditional way of life. Even though these free movement provisions are extensive, the eventual creation of legal protection on both indigenous specific collective rights as well as individual EU rights is of course the optimum standard to be achieved. In the meantime the EU and the EEA agreement definitively permit the Saami to use individual rights, collectively.

10 Conclusion and Recommendations

The Saami have along history of change, adaptation, and survival. Now we have entered upon an age where international law has asserted particularly in ILO Convention 169 that the Saami are not only entitled to survive as an Indigenous group but are permitted to let their indigenous culture thrive. Although at first glance the EU can be perceived as a body of great threat to the potential recognition of Saami indigenous interest this has largely proven not to be the case. In fact the EU has gone a long way to solving age old European cross border problems that affect the Saami as well as opening dialogue in areas of both internal and external indigenous concern.

The EU unlike many other international and regional organizations is not a project among states but rather is a project built to unite and recognize the interests of states, groups or regions, and individuals. The Union structure is built on these premises. Many have speculated that one of the primary purposes of the foundation of the European Communities in 1956 was the need to avert future intra-European conflicts and wars by making Europe and European peoples, at least economically, dependent on one another. This foundation sets in motion a necessary concern for minority and indigenous interest, as traditionally these have been areas to generate conflict among and within European States.

In the field of the International, European, Regional, Sub-regional, domestic, and Saami governance the EU has offered a framework in which these bodies can coordinate and cooperate. The key to any initiative of Saami benefit is often development money. Now that most development monies are appropriated by the EU and most other development money is forbidden pursuant to Art. 87, the EU will be able to decide in conformity with the principle of Subsidiarity where and at what level that money can be best used. This power of appropriation will make the many levels of Councils that have held power over Saami interests accountable to Brussels. Instead of the many political rights based lobbies that the Saami would previously have to form at multiple levels of governance, today the Saami may safely approach the EU level who through the Commissions representation at the regional council may carry this initiative forward. The EU in this context offers a fertile ground for Saami ideas as well as a more politically neutral entity on the Saami indigenous question than any of the domestic parliaments.

The one problem with the EU's coordination and custody of development funds for the EU area is that this gives them a large amount of power that could also negatively impact Saami interests. The EU however, has not in its 50-year history proven to be as politically volatile as the domestic level. Maybe this stability emanates from the fact that the EU must cultivate this

stability to ensure its own continued existence. Additionally the EU unlike the member states is founded on a liberal premise of forming continued peace among European peoples. Although there are no formal international checks on the EU system in the field of Human Rights this is not wholly the fault of the EU. It is exclusively the members that can revise the competences of the EU in the treaty and allow the EU to independently accede to instruments of the international law such as the ECHR, ICCPR, or the ILO Convention 169. What is reassuring for the interests of the Saami is that the EU has taken a positive stance to all three of these mechanisms: inquiring after an opinion to accede to the ECHR, placing international law standards common to member states as part of the Preamble of the Charter on Fundamental Rights for consideration in making Union policies, and encouraging member states to ratify ILO 169.

Apart from coordinating the collective rights areas of Saami governance and development the EU largely empowers Saami individual rights, that in certain instances can be used collectively to further group indigenous rights. The main example of this is in the field of free movement. The EU free movement provisions are addressed to individual citizens but permit the Saami in pursuit of their traditional or other economic activity to invoke the free movement provisions across Scandinavian borders. Although not as substantial as land rights these provisions allow the Saami the unquestionable right to freely move themselves and their goods and services and establish themselves in any part of their traditional territory. It has helped to restore indigenous free movement in Sápmiland to a level unprecedented in the modern context. This free movement is a central and immemorial part of the Saami culture that has been restored and will be permitted to continue in the EU context.

The greatest threat to Saami interests in the EU context is in the field of competition law. The accession Protocol 3 only protects reindeer husbandry if protected at the domestic level first. The other traditional interests do not therefore lie outside potential evaluation under and application of European Competition, rules even if Sweden and Finland ratify ILO Convention 169 and recognize them at the domestic level. The only possibilities to avoid this scrutiny are the expansion of the protocol to reflect protection for all traditional interests covered in ILO 169. Although a threat competition law at present should not be considered a great worry since most Saami economic activities are not of such great proportions to attract competition scrutiny and may as such come under the exemptions of the Commissions De Minimis notice.

The one area that needs immediate attention is the protection of Indigenous intellectual property rights to their traditional knowledge. Since patentability is an economic right there should be an economic mechanism within the community for the recognition of the Saami's right to their traditional knowledge and according protections from commercial exploitation without their consent or benefit. This knowledge can be both culturally vital and accordingly should not ever be exploited or this

knowledge can be profitable and should exclusively benefit the Saami communities. This traditional knowledge needs to have protection reflecting its importance at the EU level.

The greatest promise of the EU to the Saami is the eventual incorporation of ILO 169 Indigenous rights standards sometime after a conclusive new treaty has been established. The new revised Treaty is high the agenda since the expansion of the Union from 15 to 25 will surely require substantial revisions to the current TEU. With the positive attitude to these standards already in place only the treaty capacity and reform of voting procedures is necessary for the Union to ratify these standards. The Union can adhere to these standards now and certainly in the field of development programs has done so already. This treaty revision may also promises to further empower the role of the Committee of Regions, which could be used to great effect for promoting Saami interests at the EU level.

It is good that the Saami people and their representative organizations initially viewed the EU with skepticism. These euro-skeptics views necessitated the caution of a extendable Protocol 3 attached to the accession instruments and introduced Saami concerns to the EU level of law. The EU as a powerful multinational economic organizations should always be approached with a healthy degree of skepticism, particularly in relation to human rights concerns. So far in relation to the Saami the tangible legal benefits of EU membership, along with the discussions the EU has generated, and positive stances towards indigenous rights taken, outweighs the potential harm done by competition provisions. There should exist a continual process of reevaluation by the Saami themselves and by Sweden and Finland since as an indigenous group the Saami are always in a precarious position. The EU provisions will especially need reevaluation after either Sweden or Finland ratifies ILO 169. At present the power shift to Brussels poses only minimal dangers to marginalization compared to the many positive effects on the realization of Saami indigenous rights.

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