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**Defining a People:  
How do international rights  
influence the identity formation of minority groups?<sup>1</sup>**

by

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**Abstract**

This paper looks at the macroeconomic performance of EMU since it started in 1999. It argues that Euroland has benefited from a benign environment, appropriate monetary policy and structural reforms. However, there is no institution clearly in charge of formulating coherent economic policies in Euroland and this is reflected in the euro's external value.

The paper then evaluates the need for policy coordination, distinguishing between weak and strong forms of coordination failure. It shows that intergovernmental coordination may be an answer to the latter, pareto-improving multiple equilibria. However, overcoming weak coordination failure requires further policy delegation to the EU-level, particularly for the definition of an aggregate fiscal policy stance. Yet, this is only possible if the democratic deficit resulting from intergovernmental cooperation is closed by a European-wide policy consensus. To achieve this should be the objective of a European constitution.

Keywords: European monetary integration, economic policy coordination, fiscal policy, monetary policy, public goods, consensus

JEL classification: D71, E6, E61, E63, H3, H77, H87,

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<sup>1</sup> This is a revised version of a paper presented in November 2000 while I was a Visiting Scholar at the Center for European Studies at Harvard University. I wish to thank the CES for a very stimulating year. My gratitude for financial support goes to the Alfred Kordelin Foundation and the Emil Öhmann Foundation in Finland. I owe a debt of gratitude especially to Lynn Tesser for her insightful comments and kind help.

# **Defining a People: How do international rights influence the identity formation of minority groups?<sup>1</sup>**

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This paper has two aims: first, to discuss the definition of ‘minority’ that is implied in the international minority protection system, and second, to address the obstacles in implementing these treaties. My primary argument is that the international minority protection treaties have an enormous influence on the process through which the minorities define their identities and articulate their interests. From an anthropological perspective, I provide evidence for this claim from the Saami movement by referring to data collected during fieldwork from 1995 to 1997, as well as from recent follow-up visits.

After elaborating on my main argument, I consider the Saami movement, the only indigenous people of Northern Europe. I also describe more generally who they are, and where they live<sup>2</sup> as well as the most effective international legal instruments to protect national minorities and indigenous people within Europe. I then continue by describing some major problems in defining the rights of groups like the Saami as well as the right to be a member of minorities like the indigenous Saami. Finally, I discuss a few further questions with which I am currently grappling with. These concern the problem surrounding its defining and justifying concepts such as ‘minority rights’ and ‘indigenous people’.

## **Minority rights as an identity resource**

This analysis emerges from interdisciplinary research done at the boundaries of anthropology

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<sup>2</sup> In addition to the city of Oslo which has the highest number of Saami.

and international law.<sup>3</sup> I aim not only to understand the underpinnings of national minorities' legal and social situation, but also the status of their culture. Two minority groups were chosen as case studies: The Sorbs in Germany and the Saami in Finland. This choice was motivated by the surprising cultural survival of these tiny minorities. Modernization theories coming from even as recently as in the 1970's hypothesized that these groups would eventually disappear. Focused on minority activists, my fieldwork thus aimed to sketch out reasons not only for why the ethnic groups still existed but also for why they seem to be gaining even more opportunities to develop their own policies. My essential aim was to compare how Sorbian and Saami activists explained their revival. After I began interviewing minority activists in Lausitz<sup>4</sup>, however, I started to feel frustrated as many of those interviewed saw me as a “megaphone”, expecting me to repeat all their arguments and demands exactly as told. I was also struck by how professional the activists were and how they referred repeatedly to decisions and treaties made by European and international bodies. They were particularly knowledgeable about precedent cases treating other minority groups that had helped them to negotiate better conditions with their own respective governments. This led me to think that the minority rights treaties themselves might function as “motors” or motivating bodies in modifying and even predetermining the strategies that activists used to further their revivalist work.

After continuing fieldwork in Finnish Lapland<sup>5</sup>, I had conducted a total of 45 thematic interviews with individuals who either worked part- or full-time in minority organizations or who dedicated a great deal of their leisure time to a minority organization or association. I also interviewed many people indicating that they were of Saami or Sorbian origin, but did not want to be identified as members of these minorities. During these interviews, we spoke from one to three hours about all aspects of life and culture and the situation of the minority. While listening, I paid close attention to how the activists described and defined their respective minority groups and, especially, which arguments they used.

To summarize, minority activists used the common-sense understanding of minorities as homogeneous groups, a notion international treaties on the protection of national minorities also rely on. They continue to create and re-create themselves as “a people” with a “collective identity” with the help of international minority law, which is also often used as an argument to

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<sup>3</sup> See Toivanen 2001.

<sup>4</sup> Lausitz is situated in two Bundesländer Saxony and Brandenburg in the Eastern part of Germany

<sup>5</sup> I concentrated my study only on Finland because the Saami are treated differently by the governments of Norway, Sweden, Russia and Finland and I wanted to control for the influence of the state policies.

demonstrate that the minority organization may set limits for its membership. In practice, this means that most minorities are under a great deal of pressure to homogenize and nationalize the people inside the movement. The activists legitimate their internal nationalization policies with arguments originating from international minority law that claim, in sum, that only those groups that are able to demonstrate that they have one common language, one descent, one set of traditions etc. as signs of one collective identity are recognized by international law to be genuine minority groups. Minority activists think that their only option is to build homogeneous and coherent groups, ideally having their own organizations and institutions and official representatives. Simply put, my claim is that the non-dominant cultures in Europe (and perhaps elsewhere) feel pressure to imitate the hegemonic model of the nation-state used and cultivated in international law in order to be taken seriously as minorities.

### **The Saami people-- The indigenous people of Lapland**

Today, the Saami people live in four different states: Norway, Sweden, Russia and Finland and are estimated to total 70,000 (Pentikäinen 1995a; Kitti 1995).<sup>6</sup> There are anywhere from nine to eleven different Saami languages and even more dialects. Three of the languages, Northern-, Inari- and Skolt Saami, are spoken in Finland. Since it is a difficult and costly task to maintain all the Saami languages, there is a great deal of worry that only the largest of the Saami languages -- the Northern Saami -- which is spoken in Norway, Sweden and Finland will “survive” (Pentikäinen 1995b). Perhaps it is also worth mentioning that the Saami do not form a visible minority.

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<sup>6</sup> About 6,500 Saami live in Finland, 15,000 in Sweden and 50,000 in Norway.

Saami homelands in Finland are situated in the municipalities of Utsjoki, Inari and Enontekiö and in the Northernmost part of Sodankylä (Vuotso).

The Saami people are unique in that they enjoy the status of being the only indigenous people of Europe. Saami mythology says that the Saami have always lived in harmony with nature in Lapland (Aikio, Aikio-Puoskari and Helander 1994). Saami activists today continue to use this argument to deal with

problems with extractive industries in their traditional home lands.<sup>7</sup> Together with fishing and hunting, the Saami see reindeer herding as the centuries-old way of earning one's livelihood even though reindeer were only domesticated in the late seventeenth century. It is important to note that international treaties on indigenous people have put a great deal of weight on a people's traditional occupation. Beyond that, the national laws of all three Scandinavian countries have presumed that indigenous people do not understand individual property rights -- an assumption that has facilitated governments' dispossession of lands. This idea came from the nation-building of Sweden-Finland and Denmark-Norway, during which all of Lapland suddenly became a non-man's land. Even Saami historiography seems to follow this line with claims that the Saami used to be nomads, following the course of wild reindeer until the settlement of new inhabitants reduced the size of land open for grazing. During recent years, however, scholars such as Kaisa Korpijaakko-Labba (1994) have found plentiful evidence for the fact that the Saami families have been legal landowners in Lapland, even paying taxes for their property. The notion of private property were thus hardly foreign to them.

Returning to the issue of the settlers, these new-comers are generally considered to be Finns' ancestors -- as DNA-studies appear to indicate that both the Saami and the Finns are genetically different (Carpelan 1996: 10-14; Savontaus 1995). This information is important for some Saami activists because it helps back-up their claim of being distinguishable people. As one activists put it: "We are not Finns, Swedes or Norwegian, even the genetic studies prove this" (interviews FS24).

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<sup>7</sup> There are various industries such as mining and quarrying companies and state co-owned timber producers that are interested in exploiting the natural resources of Lapland.

Like all minority movements, associations and organizations have always been part of the modern Saami existence. Yet, interest in “helping Lappish people” to create their own organizations came also from many Finnish and foreign academics. Such interest led to the foundation of an academic support organization for the Saami in the 1930's. As the Saami experienced a national awakening in the beginning of 1970's, the Saami Parliament was founded to establish a relatively democratic basis for Saami politics in Finland. During the following decades, the Saami gained recognition as a pan-Nordic minority movement. After long political contests, the Finnish Saami were finally accorded cultural autonomy guaranteeing them special rights in language and cultural matters by law in 1996 (Government Act 974/95). Saami parliaments have also been founded in Norway, Sweden and even in Russia two years ago. While Saami activists have slightly different goals in every country, the Saami Council -- the cooperative organ of all Saami organizations -- develops their main program.

Since the late 1980's, Saami activists have emphasized that the Saami people should be seen as an undivided nation with “immemorial usage” of Lapland. As recognized by the International Human Rights agenda, they have also stressed equal rights to self-determination. However, there has not been serious demands for a Saami state. As a sign of true nationhood, activists designed a Saami flag in 1986, chose both February 6 as their national day as well as a common national hymn.

While a distinguishing characteristic of the Saami is a “traditional” lifestyle in occupations like reindeer herding, fishing and hunting, Finns too work in the same fields today. Another challenge to conventional wisdom comes from a fact that these occupations have become highly modernized. A reindeer owner, for example, no longer needs to follow the animals, but can check the herd's location with a cellular phone. What this anecdote and many others indicate is that basically all inhabitants of Lapland live in similar kinds of houses and share many of the same aspects of life, regardless of their ethnic background.

### **Legal instruments to protect minorities**

Here I introduce a few legal instruments protecting national minorities and indigenous peoples. While these treaties would not necessarily be legally binding for the governments involved, they do provide orientations for national policy, at least in Finland.

Already in 1947, a Sub-Commission on the Prevention of Discrimination and Protection

of Minorities was founded by the United Nations (UN 1947). Its aim was, and continues to be, to ensure equal access into the system of universal human rights for every human being. While the UN Declaration of Human Rights from 1948 itself emphasizes strictly individual rights (UN 1948), the article on the Right to Self-determination does have a collective character. This section of the Declaration has led to both lively discussion and controversy today. Many modern-day minorities see themselves as “culturally distinctive groups indigenous to the territories of independent states that have been constructed around them” (Anaya 2000, 4) and consequently define themselves as indigenous peoples or nations. Not unrelated is the United Nations Human Rights Charter’s guarantee of equal rights and self-determination to all peoples (Kingsbury 2000, 22).

Today many researchers share minority activists’ interpretation of the Covenant on Civil and Political Rights (CCPR) and the Covenant on Economic, Social and Cultural Rights (CESCR) -- both in force since 1976 (UN 1976a; 1976b). The right to self-determination applies to “all peoples” in identical terms in Article One of both covenants, indeed a very visible location. Understandably, this placement at the very beginning of both documents brings about high expectations. The CCPR, moreover, recognizes the right of individuals to submit complaints if they believe their rights set forth in the CCPR have been withheld or violated. The Human Rights Committee acts under the CCPR’s and its Optional Protocol’s jurisdiction. Article 27 of the CCPR has, thus far, been the most important section for ethnic and national minorities as Article One (the self-determination right) has not really been available for them.

In 1992, the UN Declaration on Rights of Persons belonging to national, religious and linguistic minorities strengthened the positive understanding of international rights (UN 1992). This document aims to make state governments actively concerned with the existence and promotion of minority identities. Together with the UN Declaration on the Rights of Indigenous Peoples of 1993, this document was prepared by many participating states and NGO’s. This last declaration states clearly that indigenous peoples have the right to own, develop, control and use the land and territories that they have traditionally owned, occupied, or used -- yet, always: “in accordance with international law” (UN 1993). Next to the UN, the International Labor Organization has been active in establishing indigenous peoples’ rights and has drafted two important instruments: Convention Nr. 107 in 1957, and it’s revised version, Convention No. 169, in 1989 (ILO 1957; 1989). These documents are significant because they are legally binding for states choosing to ratify them. Finland was among the first Western countries to sign

Convention 169, but has not been able to ratify it.<sup>8</sup> The Convention's Article 15, declares that people should be compensated if their land is used by others. It also states that indigenous peoples have the right to participate in the use, management and conservation of these resources. Yet, many states have major problems with these kinds of statements.

Many European documents concerning the rights of national minorities exist. During the turbulent years of the early 1990's, European countries acting as member states of the Organization for Security and Cooperation in Europe and Council of Europe were very eager to sign various treaties to protect minorities in Eastern and Central Europe. However, the willingness to apply these same tenets at home has been merely tenuous. To mention some significant documents, the Final Protocol in Vienna 1989 (OSCE 1989), and the Documents of Copenhagen 1990 and Moscow 1991, all stress that the states should acknowledge the rights of national, ethnic, religious and linguistic minorities (OSCE 1990; 1991). The Council of Europe has an even stronger reputation as an organization that fosters minorities. Though the European Convention of Human Rights was never reinforced with a protocol on minority rights (Tomuschat 1996)<sup>9</sup>, the case law body of the Council of Europe along with the European Commission and European Court on Human Rights comprise an essential part of European judicial tradition protecting minorities. The European Charter for Regional or Minority Languages is a document fostering minorities' cultural rights (Council of Europe 1992). The Framework Declaration for the Protection of National Minorities is the first legally binding instrument to protect European national minorities (Council of Europe 1995). Also, the European Union has working groups and Committees engaging with issues of cultural, national, regional and linguistic minorities (I.e. EBLUL<sup>10</sup>). To summarize, minority rights are today an agenda which all international organizations take seriously.

## **International law as way of life**

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<sup>8</sup> Norway was the first European country to ratify ILO 169. The Norwegian Saami, however, have criticized this swift ratification. In their opinion its passage occurred without careful preparation and foresight concerning its implementation. Finland, however, has taken 12 years to prepare this convention and will likely ratify it in early 2002. The main obstacle in the Finnish case, has been the strong language used concerning territorial rights of indigenous people.

<sup>9</sup> This was a great disappointment for many minority activists as well as for human rights lawyers.

<sup>10</sup> EBLUL= European Bureau for Lesser Used Languages, Dublin and Brussels.



After describing the international legal framework for minority rights, I now outline some major problems in implementing these rights. The difficulties begin with the definition of a minority. To use the Saami as an example, the question of who the Saami are is answered differently by all four states containing a Saami population, namely Russia, Norway, Sweden and Finland. Common in these divergent definitions is the presumption that those individuals with Saami background should identify themselves as Saami. This expectation can be traced to the self-identification clause in the OSCE-Document from Copenhagen 1990 (OSCE 1990). In addition to self-identification a Saami living in Finland has to either speak one of the Saami languages or have a parent or grandparent with Saami as their first language<sup>11</sup>. While in Norway and Sweden reindeer husbandry is a Saami-dominated occupation, in Finland all those living in reindeer-inhabited areas may own reindeer. For generations Finnish families have lived very similarly to the Saami.

Yet, what has led to much internal division and controversy in Finnish Lapland during the past few years? The answer lies to a great extent in the new 1995 law on cultural autonomy stating that everyone who has ancestors registered as Lapps<sup>12</sup> may claim a Saami identity (Government Act 1995). Following from this is the right to register for the Saameting (Saami Parliament) elections. Finland has only five million inhabitants, and intermarriage provides many with the possibility of finding a drop of Saami blood in their past. This is why many Saami activists have been afraid of a situation developing in which most of the voters of this Saami representative organ would not be “real” Saami at all. The worst case scenario would be a return to how things began wherein Finns decide everything concerning Saami life. Many Saami activists and international scholars has challenged this open definition. As a result of their campaign, language skills have been given more weight when the Saameting approves new members. In Finland and increasingly in Norway, the current debate addresses the question of who is actually a real, authentic Saami. This is a curious phenomenon because basically no Finnish person wanted to be registered as Saami as recently as 10 years ago. One interviewed person commented that “if you would have said two years ago that a particular person a Saami, they would have immediately given you a cross look. And today the same people want so eagerly be Saami” (Interviews FS3). Beyond that, even those committed to the Saami minority

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<sup>11</sup> In Norway even one’s great-grand parents with these language skills can qualify to establish Saami identity.

<sup>12</sup> This means they have pursued Lappish (in contemporary parlance, Saami) means of livelihood

were not interested in making use of their right to vote or to participate in decisions concerning the Saami movement.

Why has the membership in Saami organization become suddenly so popular? Many of the non-Saami seem to think that it would be nice to join in the wealth that the Saami population -- as a recognized indigenous people -- should be sooner or later enjoying. When Finland signed the ILO Convention Nr. 169 discussed above, it became clear that sooner or later Finland would have to guarantee some territorial rights for the Saami.<sup>13</sup> Since the landscape in Lapland is quite rich in minerals and metals such as nickel, not to mention timber, it is hardly that surprising that many people are interested in sharing these valuable resources.

As stated earlier, Finns with no Saami origin enjoy the same rights to natural resources as do the Saami. This also means that not only Finns in Finland are allowed to support themselves by herding reindeer or by fishing and hunting, but also all EFTA and EU citizens regardless of whether they own or possess the land. Many Finnish families, in fact, have resided in Lapland since the seventeenth century and now actively oppose all kinds of special rights that the Finnish state is guaranteeing to its indigenous peoples. These Finns argue that they should have the same advantages since they too have lived in the same area for centuries. They ask for how many centuries is it necessary to live in a certain area in order to be classified as an indigenous people, and also claim that many of the sedentary Saami families in Finnish Lapland are actually of Norwegian, Swedish or Russian origin. They also ask why these “foreigners” (meaning here the Saami of Norwegian, Swedish or Russian origin) should enjoy more rights than Finns proper who have worked hard to survive the difficult natural conditions in Finnish Lapland. Some of those people claiming Saami origin are indeed able to find proof of intermarriage with a Saami in church records so that they may justify their classification. Others consciously decided to fight for their rights as Finns now being discriminated against despite the fact that their lifestyle is nearly the same. This struggle in Lapland has been neither civil nor bloodless.

I am not the only one who finds it very difficult to have a clear opinion of the developments in Lapland as the situation is very fluid. The fluidity stems from the fact that the different “national groups” were never homogeneous entities. Many old conflicts have resurfaced in this period of giving modern rights to the Saami as family rivalries become politicized once again. Though Lapland is a large area, only 200,000 people live in the part lying in Finland, a number small enough to allow all residents to know about another’s existence. This controversy

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<sup>13</sup> As stated earlier, this Convention foresees explicit territorial rights for indigenous people. See, i.e., Article 15, para 1 and 2.

over who the indigenous people of Lapland are illuminates some of the realities hidden behind such concepts as ‘ethnic community’ or ‘indigenous people’. When confronted with empirical case, it is very difficult to employ these concepts. Identities however clear-cut and timeless they seem (Smith 1986), are always in a state of flux.

I would like to continue with one example on how different institutions can be helpful in making these “real and undivided” -looking nations. The Nordic Council will exemplify this case. The Nordic Council was founded in 1954 and constitutes the basis of cultural, political and economical cooperation between Denmark, Norway, Iceland, Sweden and Finland (and to a certain degree with Greenland, Faröar and Åland). The Nordic states do not consider it realistic that the Saami in Lapland would have their own state. At the same time, however, their actions support this albeit unconsciously through their cooperation in the Nordic Council. For example, in October 2000 the Nordic Ministers on Saami Issues within the Council as well as the presidents and chairmen of the three Saami parliaments from in Norway, Sweden and Finland met in Karasjok, Norway. There they furthered a goal that all the Saami organizations have been striving for since the 1970's: according the Saami Parliaments full membership in the Nordic Council. This ruling came about after the Council asked the three separate Saami organizations to create a singular body to represent all Saami people. Provided that the three national Saami organizations established a singular representative organ for all, only then would the Nordic Council accept the Saami as a full member. This is a fascinating development if one thinks about the overall influence of the Nordic Council on the institutionalization of the Saami. These national (Swedish, Norwegian and Finnish) Saami Parliaments were initially established because the Nordic Council made this a condition for participation and later membership in the Nordic Council as well as for the receipt of funding. As all three countries already possessed more or less democratic Saami parliaments, the Nordic Council thus decided that it was “too difficult to communicate with these representatives of Saami who speak many diverse languages and belong to tree separate Saami organizations”.<sup>14</sup> The Nordic Council thus asked the Saami to create a unified organ where all Saami identifying as Saami are democratically represented -- analogous to the representative bodies of all Nordic states in the Nordic Council. As someone who has been following these developments now for 10 years, it has been simply amazing to watch how the once highly differentiated Saami associations in Sweden, Norway and Finland have come to think of themselves as a unified ‘nation’. While there has been a common program to follow, no

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<sup>14</sup> The president of Saami Council, Mr. Per Stenbäck, complained of this problem in a 1996 interview published in Lapin Kansa 31.8.1996.

clear feeling of being part of the same nation existed. Today, in contrast, the Saami of all four countries (Russian Saami are, also, active) share very clear visions about the direction to pursue as an “undivided nation”.

### **When is a minority authentic?**

Who can decide who owns Sapmi, the historical homeland of the Saami? In the following, I will describe the difficulties of answering this question. In 1989, the International Labor Organization drafted a convention on the protection of indigenous peoples’ rights -- Convention Nr. 169 that was mentioned above -- that has since been highly controversial (Hannum 1993, 45). Among other things, it provides territorial rights for groups of people defined as ‘indigenous’. Yet, the convention opposes separation and secession and stresses that the rights of indigenous peoples shall not diminish the rights of other groups living in the same area (ILO 1989). Along with the notion of territorial rights and rights to natural resources, the states involved are asked to integrate their minorities more in decision-making processes and to consider returning lands to those who are descendants of people who lost their land unlawfully.<sup>15</sup> This, however, implies that cultural autonomy guaranteeing language rights -- such as Finland has given to the Saami -- is not enough. Yet, questions remained concerning how possible restitution processes should be organized and who should be eligible for redress? How could land be taken from people who, in some cases, have used it as their own already for generations?

Answers may come from a consideration of the Indian Mashpee tribe in Cape Cod pursuing claims to territorial rights in a Boston court. Here the legal process centered around the question of whether teachers, priests, lawyers, social-workers and house-wives of all skin colors and social and geographical backgrounds could file a suit as the Mashpee tribe that had, as they claimed, been deprived of collectively-held lands during the mid-nineteenth century (portrayed in Clifford 1988: 277-346). Here, however, is not only the question of who is allowed to form the group, but also the question of who may decide what the minority wants and what its goals as a movement are. The Norwegian Saami have had to deal with these questions in particular after the largest Saami political party (NSR) announced that its goal is to have the whole of Finnmark -- the Northernmost region of Norwegian Lapland -- designated as a Saami homeland. Some

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<sup>15</sup> Eero J. Aario from the Finnish Foreign ministry explains that the ratification of the ILO 169 does not mean that the Saami would get full ownership of lands in Lapland but “something similar” (Helsingin Sanomat 17.3.1996).

members of the party, however, declared another goal which was to form an independent Saami state in Northern Norway. The Chairman of the Main Organization of Norwegian Saami, Sven-Roald Nystö, opposed this idea because it violates international treaties.

In Finland, the government has needed twelve years to formulate concrete plans to implement the ILO 169 treaty. In Autumn 2000, a new committee led by the Governor of Lapland, Dr. Hannele Pokka, began drafting a plan that would be acceptable for the Saami, the Finnish inhabitants of Lapland, and the state; one that would also not hurt the forest industry (Helsingin Sanomat 23.11.00). When I discussed this with Mrs. Pokka last October, she was hardly pleased about being appointed to lead this working group as she thinks it has an impossible task.<sup>16</sup> Returning land or compensating for land loss is very difficult given the fact that the areas where indigenous people live, tend to be intermingled with others who have lived there for generations. Almost nowhere can one find an ‘ethnic community’ as defined in most minority treaties: a ‘traditional’ (completely pre-modern) people separated from and thus living without intense exchange with other groups (Cobo 1986).

A statement from the Conclusions and Recommendations of the UN Experts’ seminar on Indigenous Land Rights and Claims in Whitehorse, Yukon, Canada from March 24-28 1996 conveys such an expectation: “There is a need to inform the non-indigenous public about the land rights for the very survival of indigenous peoples and respect their human rights. Land agreements are a way of building new constructive relationships between indigenous and non-indigenous communities”.<sup>17</sup> With the Saami in mind, how is it possible to follow such pronouncements? As stated earlier, relationships between the ‘non-indigenous’ and ‘indigenous’ are usually already very intensive. This fact leads every effort to favor indigenous people to conflict. At the same time, however, the liberal nation states actively supporting the assimilation of the indigenous people can hardly find a convincing argument for why favoring the indigenous culture justifies denying non-indigenous inhabitants the same privileges. State policies still support the movement of non-indigenous people to Lapland while state representatives in Finland, for example, receive a higher salary if they move to Lapland to work. Such actions are contradictory, indicating that the left hand knows not what the right hand is up to.

In what follows, I want to give one more example of the difficulty of deciding who is right --or rather, who is the most right since all the parties to the disagreement make relevant

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<sup>16</sup> The main reason for Dr. Pokka’s pessimism is the long history of the conflict and the fact that all claimants will likely have some right to land. Per our October 6, 2000 conversation at the Finland Institute in Germany (FinD) based in Berlin.

<sup>17</sup> See in <http://articcircle.uconn.edu/JEES/unresolution.html>.

points.<sup>18</sup> A group of reindeer herdsman from Muotkatunturi-area sued the National Board of Finnish Forestry in the UN Human Rights court in 2000 because the Forest Ministry continued to cut down trees in the area where the reindeers live, thus endangering the whole reindeer economy in this part of Lapland. If the Forest Ministry stops logging in this area before they get the green light from the UN Human Rights Committee, such action could lead easily to many similar cases through-out Lapland wherein the Finnish state owns 90% of the land and many reindeer husbandries share similar concerns. If the Ministry stopped cutting down trees in this area, many experts believe the whole Forest industry -- a key industry in the Finnish economy -- would eventually have to close down, at least in Lapland. Were this to happen, the director of the Nature Protection Area of Upper Lapland (Pertti Veijola) warns that the Saami Committee would lose its source of funding without having any replacements in sight. This argument is quite valid as the Forest Ministry co-finances the Saami Committee whose primary aim is to resolve territory-related conflicts in Finnish Lapland. Before the conflict around territory and natural resources is resolved, the representative of the national Board of Forestry warns that Finland will not be able to ratify the ILO 169.

The reindeer herd owners of Muotkatunturi complain that the forest industry has already managed to reduce the number of reindeer through the destruction of the pasture-land. However, the state-financed Finnish Game and Fisheries Research Institute points out that the reindeer economy is itself responsible for animal loss because reindeer owners have kept bigger herds than the land could support. At the same time, 13 lumberjacks (10 of which are Saami from this very same area) have received letters from their employer, the Forest Ministry, stating that they will be suspended if the Saami win this legal battle. Aarne Turunen, the representative of the lumberjacks, states calmly: "If the guys lose their jobs, their case will end up in the court and somebody will have to pay high compensation". Turunen argues that the state should recognize that the Saami people are not all reindeer owners, but also practice other professions (Helsingin Sanomat 9.11.2000). My ultimate point here is that it is difficult to isolate the Saami (and any other 'national minority' or 'indigenous people') in terms of where and how they live because they not only share the territory with others, but also economic, social and political interaction on a daily basis. It is, however, important to note that this is not a real conflict inside the indigenous movement but, rather, a conflict that is provoked and manipulated, i.e., by the Finnish state. The National Board of Forestry has been said to have recruited Saami lumberjacks with the deliberate

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<sup>18</sup> My observations of media coverage and personal conversations with different parties form the background material.

intention to pose the Saami against the Saami if the case ended in court, as it then happened.

## **Cultural survival requires learning to deal with international law**

The international community has several methods to establish a legal claim when a member of a minority or the group itself thinks that they have been discriminated against or that their rights have been violated. Yet, it is not easy to bring such matters to an international forum because minorities have to exhaust all national resources to bring a complaint to the international arena. The decision to consider the complaint also depends on the particular people involved, the place, and the time. Just as minority communities are continually shifting, so are the composition and implementation of laws relating to minorities. It is commonly assumed that rights -- and laws in particular -- are somehow static and sometimes even holy despite the fact that they are subjects and objects of an ever- changing world. The case of the Saami illustrates how much the indigenous groups (like other European national minorities) learn from international standards concerning minority rights and their application in other cases wherein minorities make claims against exploitative industries or their governments. How do activists understand and use international rights and how does this use affect and control the formation of group identities?

Here I want to treat one example of minority rights legislation, Article 27 of the Covenant on Civil and Political Rights (CCPR), to explore the changing attitudes and even interpretations of its contents. This article states:

*“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.* (UN 1976a).

This statement exemplifies a ‘negative right’, a right that prohibits action particularly on the part of governments. It claims that states should accept individuals practising non-harmful cultural and religious activities -- all the better if they are practised at home or in other parts of the private sphere. In the past it was interpreted as a right to practice cultural difference without implying material redistribution favoring these practices.

Decided by the Human Rights Committee in July 1988, the Kitok case first established the link between culture and traditional or otherwise typical means of livelihood. The case ruled that reindeer husbandry must be considered intrinsic to Saami culture because it is a key aspect

of being a Saami (Scheinin 2000, 193-194). After that, the Human Rights Committee expressed the following interpretation. If a particular kind of economic activity is an essential element of an ethnic community's culture, its application to an individual may fall under Article 27 (Scheinin 2000, 194). In 1994, the Committee issued a general statement on Article 27 stressing that territorial rights may be particularly important for indigenous communities when their use of land resources heavily informs their culture. This statement was subsequently "tested" by two Saami cases brought against Finland concerning interference in traditional reindeer herding in the village of Angeli -- the first one of which I consider here.

Within this case, the Saami claimed the operation of a stone quarry in the vicinity of a reindeer round-up place would endanger the reindeer economy. The Human Rights Committee decided that while quarries' operation does not violate Article 27 (as the Saami had been consulted during the proceeding), the Finnish state's claim that the operation of quarries are important for the economic well-being of the majority population is not a legitimate justification for eroding the culture of indigenous or minority groups. Finland thus received a formal warning. I should add that while I was conducting field-work in Finnish Lapland several Saami members referred to the "consulting" mentioned above in the Committee's decision. The informants told me that the Finnish state had sent officials to warn the inhabitants of Angeli about the negative economic consequences resulting from any protest against the quarry while also promising those who condoned the mine activity would have more work opportunities in the village.

Like many other minorities, the Saami have learned over the past years that to be 'indigenous' it is necessary to emphasize traditionalism and kinship according to the international minority rights standards. It is also important to emphasize the economic and resource dimension of the right to self-determination because this allows group culture to sustain itself. At least for the UN Human Rights Committee this is a factor that is has gained more significance.

This paper has touched on the controversies surrounding international minority right treaties and the specific situation of the Saami in Finland. At the outset, I summarized the results of an earlier project by stating that the minority right treaties form one kind of identity resource. This is that the out-dated, oft-repeated essentialist notions of the minority law that define what an 'authentic' minority is gives minority activists little choice but to homogenize and nationalize their identity politics. Only minorities that manage to conform with the expectations of the minority law are taken seriously as real minorities in national and international arenas. I then provided additional evidence for the these claims by painting a picture of the multifarious



problems experienced by the Northern European Saami minority. Saami identity is essentially decided, first, by who is allowed to be a minority member, and second, by which parties within the movement decide on specific aspects of the group's self-definition. I aimed also to draw a picture of how difficult it is to apply international law assuming homogeneity to naturally heterogeneous minority groups. This paper has treated the problems associated with defining a people and justifying these definitions. When one takes a critical view on minority-related issues, however, accusations of minority bashing often follow. This has been anything but my aim. Personally, I recognize the importance of minority protection and human rights legislation. Yet, I want to look critically at these instruments of minority protection particularly because they build to a great extent on essentialist identity theories. By defining minorities in a way that implies many things about their identity and behavior and also in their vagueness when groups or individuals are eligible for certain protections influences how minorities define and organize themselves. My current research similarly concerns how anti-discrimination and anti-racism treaties influence the organizational life of those who are defined either as 'racial minorities' or as people potentially subject to discrimination.

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