Philosophy of Law in the Arctic

edited by Dawid Bunikowski

The University of the Arctic

The Arctic Law Thematic Network

The Sub-group of Philosophy of Law in the Arctic

Rovaniemi 2016

The term "Arctic" is not only ecological but also mythical. The term refers to the areas which were thought to be located under the constellation 'Ursa Major' (the Great Bear).

J. Pentikäinen, *Shamanism and Culture*, Helsinki 2006, p.120.

If we shadows have offended,
Think but this, and all is mended,
That you have but slumber'd here
While these visions did appear.
And this weak and idle theme,
No more yielding but a dream,
Gentles, do not reprehend:
if you pardon, we will mend (...).

William Shakespeare, *A Midsummer-Night's Dream*,
Epilogue, Cambridge University Press 1924.

"

9.

Sámi Relationship with the Land: What Does the Law Fail to Recognize?

*Leena Heinämäki, Sanna Valkonen, Jarno Valkonen**

Abstract

The purpose of this article is to make an overview on how UN Human Rights Committee (HRC), a monitoring body of CCPR, articulates and protects Sámi culture and its values. The further aim of this writing is to discuss Sámi people's relationship with the Land, its ontological basis and the failure of Finnish legislation to recognize crucial aspects of this relationship and inherently connected worldview.

1. Introduction

An integral part of Indigenous people's culture and worldview is their special relationship to the land and the closely connected traditional knowledge and practices. The relationship to the land is a fundamental question of existence for Indigenous peoples, as cultures grow from the land and in places. The relationship to the land bears on the place where an indigenous people dwells and is, where its members practice their traditional way of life, and what the people's broader cultural conception is of itself, its identity and its past.[88]

Although international law, significantly stronger than the Finnish national legislation, succeeds to recognize some key features of Sámi and other indigenous peoples' unique relationship with the Land, it necessarily fails to embrace and thus protect its totality, while resting on profoundly different premises than an indigenous worldview. In other words, the

* *Senior Researcher Dr.* Leena Heinamäki (Finland; University of Lapland, Northern Institute for Environmental and Minority Law), *the vice-leader* of the University of the Arctic Thematic Network on Arctic Law), leena.heinamaki@ulapland.fi, *Associate Professor in Sámi research Dr.* Sanna Valkonen (Finland; University of Lapland, Faculty of Social Sciences), sanna.valkonen@ulapland.fi, *Professor of Sociology* Jarno Valkonen, (Finland; University of Lapland, Faculty of Social Sciences), jarno.valkonen@ulapland.fi
(S. Valkonen and J. Valkonen are Sámi.)

[88] See T. Ingold, *The Perception of the Environment. Essays on Livelihood, Dwelling and Skill*, Routledge 2000, pp. 148-150.

reality of indigenous peoples, as widely experienced and expressed, is based on a different ontology than that underlying the Western way of seeing the world.[89]

One of the main international human rights instruments, ratified by the most states of the global community, including Finland, which has an established practice related to indigenous peoples, is International Covenant on Civil and Political Rights (CCPR).[90] The aim of this article is to have an overview on how UN Human Rights Committee (HRC)[91], a monitoring body of CCPR, articulates and protects Sámi culture and its values. The further aim of this writing is to discuss Sámi people's relationship with the Land, its ontological basis and the failure of Finnish legislation to recognize crucial aspects of this relationship and inherently connected worldview.

2. Sámi and other Indigenous Peoples' Relationship with the Land in Covenant on Civil and Political Rights

Article 27 of the CCPR may be regarded as a basic norm in protecting the right of indigenous peoples to their cultural integrity. HRC recognizes that indigenous peoples' subsistence and other traditional economic and social activities are an integral part of their culture. Interference with such activities may be detrimental to their cultural integrity and survival.[92] HRC has acknowledged that, in the context of indigenous peoples, the right to culture under Article 27 may apply to a *way of life* that is closely connected to a territory and the use of its resources. Furthermore, it has stated that the enjoyment of such rights may require positive protective legal measures and methods for ensuring the effective participation of minority communities' members in decisions that affect them.[93] The

[89] See M. Blaser, *Ontology and Indigeneity: On the Political Ontology of Heterogeneous Assemblages*, "Cultural Geographies" 2012, pp. 1-10; T. Ingold, *The Perception of the Environment. Essays on Livelihood, Dwelling and Skill*, Routledge 2000, pp. 132–152; see also S. Valkonen, J. Valkonen and V.-P. Lehtola, *An Ontological politics of and for the Sami cultural heritage – Reflections on Belonging to Sámi Community and Land*, In A. Xanthaki, S. Valkonen, L. Heinämäki and P. Nuorgam (eds.), *Indigenous Peoples' Cultural Heritage: Rights, Debates, Challenges*. Brill. Forthcoming 2016.

[90] International Covenant on Civil and Political Rights (CCPR), G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), adopted 16 December 1966, entered into force 23 March 1976, 999 *United Nations Treaty Series* 171. Status of ratification: 161 (6 May 2008); Optional Protocol to the CCPR, G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 59, UN Doc. A/6316 (1966), adopted 16 December 1966, entered into force 23 March 1976, 999 *United Nations Treaty Series* 302. There are 111 parties to the Optional Protocol (6 May 2008).

[91] The UN Human Rights Committee was established under Article 28 of the CCPR, see CCPR, Arts 28-34.

[92] See *Kitok*v. *Sweden*, Communication No. 197/1985, CCPR/C/33/D/197/1985 (1988), http://www1.umn.edu/humanrts/undocs/197-1985.html (21 January 21, 2007).

[93] *Ibid.*, at 7.

Committee has also stated that the protection of the above mentioned right is directed at ensuring the survival and continued development of the cultural, religious, and social identity of the minorities concerned, which also enriches the fabric of society as a whole.[94]

When studying HRC's general comments as well as case studies, it becomes evident that more than emphasising indigenous peoples' worldviews or values, HRC tends to protect the economic sustainability of their nature-based livelihoods. The Committee has stated that Article 27 requires states to utilize the necessary steps in protecting indigenous peoples' titles and interests in their traditional lands and to secure the continuation and sustainability of indigenous minorities' traditional economies.[95] There are, however, some instances where indigenous worldview is touched upon, particularly related to indigenous peoples' places of worship (sacred natural sites). In its Concluding Observations on Australia (2000), HRC expressed "its concern that securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities, which must be protected under article 27, are not always a major factor in determining land use."[96] HRC further stated that the Australian law reform related to the Aboriginal and Torres Strait Islander Heritage Protection Act (1984), which recognizes also sacred sites culturally and traditionally significant for Australian Aboriginals, should give sufficient weight to the *values* important to indigenous peoples.[97]

It seems that HRC, in principle, is willing to recognize aspects of indigenous peoples' worldview, including spiritual, social and environmental values. It could be argued that if indigenous authors that bring claims to the HRC would strongly argue the need to protect their values and not solely a livelihood in an economically sustainable sense, there might be readiness in the Committee to expand the protection towards value-based rather than economic-based ground. For instance, in one Sámi case, *Länsman et al v. Finland*,[98] HRC did acknowledge that the mountain Riutusvaara continues to have a spiritual significance relevant to the culture of the Sámi community.[99] However, despite that in this complaint the Sámi authors observed that the site of this mount where the quarrying of stone took place is a

[94] *Ibid*.
[95] Concluding Observations of the Human Rights Committee: Australia, UN Doc. CCPR/CO/69/AUS (2000), paras 10-11.
[96] Para 510.
[97] Para 511, *Aboriginal Land Rights (Northern Territory) Act 1976, Part VII, s.69.*
[98] *Länsman et al v. Finland*, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992 (1994).
[99] Para 9.3.

sacred area of the old Sámi religion, where in old times reindeer were slaughtered,[100] the basis of the claim was not the value of the sacred area as such to Sámi people. Instead, the authors affirmed that the quarrying of stone on the flank of the Riutusvaara mountain and its transportation through their reindeer herding territory would violate their rights under article 27 of the Covenant, in particular their right to enjoy their own culture, which has traditionally been and remains essentially based on reindeer husbandry.[101] Perhaps because the authors did not actually reason the sacredness of the mountain area as a basis of the actual claim, also the Committee did not take a clear standpoint in this particular matter.[102] Since the Committee clearly recognizes spiritual values as a part of the cultural integrity of indigenous peoples, this argumentation could have brought an extra weight to this particular case that was lost by the Sámi authors, while HRC did not find a significant harm being done to the reindeer husbandry.

One limit to fully recognize collective elements of indigenous peoples' cultures and related worldview is that cases brought to HRC cannot invoke the violation of article 1 of CCPR, a people's right to self-determination, because the right of self-determination is a right of a collective (a people), and HRC deals with individual claims.[103] This may limit HRC from putting a collective rather than particular individuals at the center, thus failing to get a comprehensive picture of and place focus on the collective values in a wholesome way. The right of self-determination is, however, endorsed by HRC in State reporting system.[104] In 2013, HRC, in its Concluding Observations on Finland's country-report, expressed its concern that the Sámi people lack participation and decision-making powers over matters of fundamental importance to their culture and way of life, including rights to land and resources.[105] The Committee also noted that there might be insufficient understanding or accommodation of the Sámi lifestyle by public authorities and that there is a lack of legal clarity on the use of land in areas traditionally inhabited by the Sámi people. HRC also stated

[100] Para 2.6.
[101] Para 3.1.
[102] For an analysis, see, L. Heinämäki and T. Herrmann, *The Recognition of Sacred Natural Sites of Arctic Indigenous Peoples as Part of their Cultural Integrity*, "Arctic Review on Law and Politics", vol. 4, 2/2013, pp. 206-231.
[103] See, *Lubicon Lake Band v. Canada*, Communication No. 167/1984, CCPR/C/38/D167/1984.
[104] See Concluding Observations of the Human Rights Committee on Canada UN Doc. CCPR/C/79/Add.105 (1999). Explicit references to either Article 1 or to the notion of self-determination have also been made in the Committee's Concluding Observations on Mexico, UN Doc. CCPR/C/79/Add.109 (1999); Norway, UN Doc. CCPR/C/79/Add.112 (1999); Australia, UN Doc. CCPR/CO/69/Aus (2000); Denmark, UN Doc. CCPR/CO/70/DNK (2000); Sweden, UN Doc. CCPR/CO/74/SWE (2002); Finland, UN Doc. CCPR/CO/82/FIN (2004); Canada , UN Doc. CCPR/C/CAN/CO/5 (2005); and the United States, UN Doc. CCPR/C/USA/CO/3 (2006); Sweden, UN Doc. CCPR/C/SWE/CO/6 (2009); Finland, UN Doc. CCPR/C/FIN/CO/6 (2013).
[105] UN Human Rights Committee, Concluding Observations on Finland, CCPR/C/FIN/CO/6 (22 August 2013), para 16.

that decision-making powers of Sámi representative institutions, such as the Sámi parliament should be strengthened. Finland was asked to increase its efforts to revise its legislation to fully guarantee the rights of the Sámi people in their traditional land, ensuring respect for the right of Sámi communities to engage in free, prior and informed participation in policy and development process that affect them.[106]

This Concluding Observation makes several important statements. First of all, HRC expresses its concern that public authorities may have insufficient understanding about "Sámi lifestyle". Although not directly speaking about the necessity to understand Sámi worldview, HRC is in the right track by viewing that the seed of the problem might be the lack of understanding Sámi lifestyle – thus their way of life. Second important comment of HRC is the requirement of strengthening the Sámi institutions such as Sámi Parliament. This Concluding Observation is based on article 1 (people's right to self-determination), article 26 (equality before law) and article 27 (right of minorities to their culture) of CCPR. HRC, referring to the right to self-determination, emphasizes the need to empower Sámi Parliament and declares strong participatory rights.

This Concluding Observation points towards Sámi people's right to free, prior and informed consent in decisions that are crucial to them. Although using a milder formulation of "participation", it should be mentioned that after the international adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007), HRC, in a case against Peru, has explicitly acknowledged indigenous peoples' right to free, prior and informed consent.[107]

As it can be seen, HRC makes strong statements in relation to State Parties to CCPR. A general problem, in Finland and elsewhere, is the lack of national implementation in a satisfactory manner. Recently, there has been several attempts in Finland to follow HRC's recommendations, such as ratification of ILO Convention No. 169, changes in legislation related to Sámi Parliament (stronger decision-making powers, Sámi definition etc), and Metsähallitus (Forest Park Service managing the state-owned lands), which all have failed in

[106] Ibid. The Committee was referring to Articles 1, 26 and 27.
[107] Human Rights Committee, Communication No. 1457/2006, Doc. CCPR/C/95/D/1457/2006 of 27 March 2009. On the legal developments of free, prior and informed consent see T. Ward, *The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law*, "Northwestern Journal of International Human Rights", vol. 10(2), p. 54; L. Heinämäki, *The Rapidly Evolving International Status of Indigenous Peoples: The Example of the Sami People in Finland*, in C. Allard and S. Funderud Skogvang, *Indigenous Rights in Scandinavia, Autonomous Sami Law*, Ashgate 2015, pp. 189-204; L. Heinämäki, *Global Context – Arctic Importance: Free, Prior and Informed Consent, a New Paradigm in International Law Related to Indigenous Peoples*, in T. Herrmann and T. Martin (eds.), *Indigenous Peoples' Governance and Protected Territories in the Arctic*, Springer 2016, pp. 209-240.

the last minute. In the case of reforming Metsähallitus Act, however, no final decisions have been made regarding Sámi people's rights. Importantly, UN Special Rapporteur on the Rights of Indigenous Peoples, has recently reproached Finland for its failure to recognize Sámi people's rights and full participation in the present draft of the Metsähallitus Act.[108] In the earlier draft, prepared years in consultation with the Sámi Parliament and Skolt Sámi village association, Sámi people were guaranteed rather strong rights of participation in all activities that might affect their nature-based way of life.

3. Ontological Basis of the Sámi Belongingness to the Land and Lack of Legal Recognition

The connection to the land in Sámi culture is an ethnic underpinning of all Sámi groups and the foundation from which Sámi culture dwells. According to anthropologist J. Pennanen, underpinning the Sámi feeling of ethnic identity is the conception that they belong to the same language family and share a nature-bound cultural background comprising the hunting, fishing and gathering livelihoods and reindeer herding.[109] Sámi culture has a connection to a historical place defined through their life practices, to the ethnic ties and social relations which prevail in that place, to memories and to biographical experiences of place. The connection to the land produces and sustains Sáminess and through the connection a Sámi today can experience an affinity with Sámi who lived millennia ago.[110]

Any examination of the Sámi connection to the land must take into consideration that the connection involves both the intangible and material cultural components. The Sámi worldview makes no distinction between nature and culture, nor are the two mutually exclusive. Accordingly, the connection to the land is seen as including not only a material bond but also elements of the intangible cultural heritage, such as place names and the oral tradition. In the Sámi worldview, the human being is not an agent who manipulates or exploits nature; rather, the relation entails a deeper awareness of, belonging to and obligation

[108] 17 December 2015, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16897&LangID=E

[109] J. Pennanen, *Ihmisen ja luonnon vuorovaikutus saamelaiskulttuurin lähtökohtana* [Human-Nature Interaction as a Basis of Sámi Culture], in: J. Pennanen & K. Näkkäläjärvi (eds.), *Siidastallan. Siidoista kyliin. Perinteinen luontosidonnainen saamelaiskulttuuri ja sen muuttuminen,* Inarin saamelaismuseon julkaisuja 2000, pp. 13–18.

[110] See J. Valkonen & S. Valkonen, *Contesting the Nature Relations of Sámi Culture*, "Acta Borealia*"* vol. 31(1) 2014, pp. 25 – 40.

towards a place.[111] The Sámi connection can be aptly described as ”ecological connectivity”, a term coined by D. Rose. It indicates a ”mode of existence”, in which the land is not only a place or object but also a subject (or ”agent”) in its own right.[112] According to Rose, for indigenous peoples, the land is ”nourishing terrain… a living entity with a yesterday, today and tomorrow, with a consciousness, and a will toward life. Because of this richness, country is home and peace; nourishment for body, mind, and spirit; heart's ease”.[113]

In R. Harrison's view, the ontological basis of Indigenous peoples' connection to the land hampers efforts to safeguard their intangible cultural heritage. He asserts that the protection of indigenous cultural heritage is based on a Western, anthropocentric mentality that emphasizes a distinction difference between culture and nature and a pre-eminence of human beings over nature. In indigenous ontologies, by contrast, there is no boundary between nature and culture; rather they emphasize that the two are intertwined and that culture is everywhere. Indigenous peoples' connection to the land and notions of protecting their culture proceed from a wholly different ontological basis, making protection of cultural heritage challenging.[114]

It is difficult or even impossible to fit the Sámi conceptions on their environment into public categories used in defining, protecting and managing cultural environments since to Sámi, natural landscape is also cultural regardless of whether it bears traces of human activity.[115] E. Helander-Renvall writes how the Sámi language does not even have the word 'culture', and the word for 'nature' relates rather to inner aspects of nature (such as the non-human mind) than to the natural environment or landscape. Nature can also be transformed into culture through different activities, such as handicraft, fishing and healing, and culture

---

[111] E. Helander-Renvall, *Saamelainen tapaoikeus* [The Sámi Customary Law], in P. Magga & E. Ojanlatva (eds.) *Ealli Biras. Saamelainen kulttuuriympäristöohjelma*, Sámi Museum – Saamelaismuseosäätiö 2013, pp. 132 – 134.

[112] D. Rose, *Sharing Kinship with Nature: How Reconciliation is Transforming the NSW National Parks and Wildlife Service*, NSW National Parks and Wildlife Service 2003; D. Rose, D. James, and C. Watson, *Indigenous Kinship with the Natural World,* NSW National Parks and Wildlife Service 2003.

[113] D. Rose, *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness*, Australian Heritage Commission 1996.

[114] R. Harrison, *Beyond "Natural" and "Cultural" Heritage: Toward an Ontological Politics of Heritage in the Age of Anthropocene*, "Heritage & Society", Vol. 8, No. 1, May, 2015, pp. 24–42.

[115] E. Helander, *Sámi Subsistence Activities – spatial aspects and structuration*, "Acta Borealia" 2, 1999, pp. 7-25; P. Magga, T. Elo, *Johdanto* [Introduction] [2007], in T. Elo and P. Magga (eds), *Eletty, koettu maisema: näkökulmia saamelaiseen kulttuurimaisemaan*, Lapin ympäristökeskus 2007; E. Helander-Renvall, *On customary law among the Saami people*, in N. Bankes and T. Koivurova (eds.), *The proposed Nordic Saami Convention: national and international dimensions of indigenous property rights*, Hart 2013, pp. 281-291; P. Magga, *Mikä tekee kulttuuriympäristöstä saamelaisen?* [What makes an Environment Sámi], in P. Magga & E. Ojanlatva (eds.), *Ealli Biras. Saamelainen kulttuuriympäristöohjelma,* Sámi Museum – Saamelaismuseosäätiö 2013, pp. 10 – 13.

may be transformed into nature.[116] "All places and lands have their special character."[117] According to Helander-Renvall, the places where the Sámi live are connected to "activities, experiences, stories, songs, ceremonies, mythic relationships, social interactions, and memories".[118]

Management of the environment in the Sámi homeland of Finland is governed for the most part by the Wilderness Act and the Conservation Act, which are an essential element of the Finnish system. In contrast, sites in the Sámi cultural environment, in particular cultural usufruct areas, have not been given any particular consideration. Yet, given that Sámi usufruct of the landscape and environment differs from the Finnish, it easily remains invisible. It lives in the cultural knowledge of small communities and, inasmuch as it has not been articulated and asserted verbally, it is ignored in decision making.

According to E. Helander-Renvall, the Sámi connection to the land is based on customary rights that are integrated in the form of an oral tradition into the daily practices of the local community".[119] The members of the Sámi community do not even conceive of these as rules; the practices are renegotiated if someone for one reason or another departs from the land-use practices established by custom. Helander-Renvall takes the view that the use and applicability of traditional legal notions is further eroded by the fact that there is a constant collision between them and national legislation and orders issued by government authorities. Moreover, the non-Sámi population in the Sámi region does not necessarily adhere to or even know the Sámi's traditional norms when it comes to use of the land, a situation which might even prompt some members of the Sámi community to depart from the norms.[120] What is more, as T. Kurttila and T. Ingold have shown, the Sámi's traditional system of knowledge underlying their use of the land is very difficult, if not impossible, to express in concrete terms, for it is far too dynamic and practically oriented and adapts too readily to the situation at hand.[121]

---

[116] E. Helander-Renvall, *Animism, personhood and the nature of reality: Sami perspectives*, 46 "Polar Record" 236, 2010, pp. 44–56.
[117] Ibid.
[118] Ibid.
[119] E. Helander-Renvall, *Saamelaisten perinnetieto, tapaoikeudet ja biologinen monimuotoisuus* [The Sámi Traditional Knowledge, Customary Law and Biodiversity]. 2011, 3, available at http://www.ymparisto.fi/download.asp?contentid=127691&Ian=fi (24.11. 2015).
[120] E. Helander-Renvall 2013, pp. 133–134
[121] T. Ingold and T. Kurttila, *Perceiving the environment in Finnish Lapland*, "Body and Society", 6, 2001, pp. 183–196.

The nature of indigenous peoples' connection of the land, including the underpinnings of that connection in customary law, has led to its not necessarily being accepted – or accepted at all – as equal to what is set out in the written legislation of the state. Yet, this does not mean that, for example, rules deriving from customary law cannot be taken as the basis for legislation or as part of it. There are many examples internationally of how customary law has been taken into account in legal proceedings and negotiations dealing with indigenous peoples' land rights. [122] According to Helander-Renvall, acknowledging the customary rights indicating the connection of an indigenous people in a state's land-use policies requires active elaboration of the connection to the land through different practices and discourses so that the rights will be recognized more broadly and become part of society's commitments. [123]

The right to cultural autonomy for the Sámi, as an indigenous people, is recognized by the Article 17 (3) of the Finnish Constitution. In accordance with this, several domestic legislations are in place in order to concretize this right. Sámi traditional livelihoods, namely reindeer herding, fishing and hunting, are recognized as a part of their culture.[124] General failure of the articulation in Finnish legal instruments is that it talks about livelihood, which emphasizes an economical aspect, thus failing to embrace the culture as a wholesome way of life that includes certain values and worldview. Although the Sámi Parliament is functioning with the task to "look after the Sámi language and culture, as well as to take care of matters relating to their status as an indigenous people"[125], in real, their decision-making powers are rather limited. Authorities are obliged to negotiate with the Sámi Parliament in "all far-reaching and important measures which may directly and in a specific way affect the status of the Sámi as an indigenous people and which concern matters in the Sámi homeland."[126] In reality, however, this means "an opportunity to be heard and discuss on matters". Failure to use this opportunity, however, in no way prevents the authority from proceeding.[127]

[122] See E. Helander-Renvall 2013, p. 132; See also M. de la Cadena, *Indigenous Cosmopolitics in the Andes: Conceptual Reflections beyond Politics*, "Cultural Anthropology", vol. 25 (2), pp. 334–70; M. Blaser, *Ontology and Indigeneity: on the Political Ontology of Heterogeneous Assemblages,* "Cultural Geographies" 2012, pp. 1-10.
[123] Helander-Renvall 2014, p. 132.
[124] PeVL 38/2004 vp.
[125] Sámi Parliament act, 974/1995 (amendments up to 1026/2003 included), Section 9.
[126] Ibid., art. 9.
[127] Sámi Parliament act, 974/1995 (amendments up to 1026/2003 included), Section 9.

4. Concluding Remarks

We argue that if there is a true will to protect the rights and cultures of Indigenous peoples in a way that future generations can engage with it and feel a connection to previous generations, it must be understood and taken seriously that indigeneity refers to a different way of conceiving of reality and the world. In other words, the reality of an indigenous people is based on a different ontology than that underlying the Western way of seeing the world.[128] This being the case, efforts to safeguard the culture and the very existence of Sámi as an indigenous people should be predicated expressly on the people's own ontologies and respect for those ontologies.

At least a partial legal solution in Finland would be the finalizing and accepting the Draft Nordic Sámi Convention.[129] Similarly to the UNDRIP, the Convention endorses Sámi people's right to self-determination and free, prior and informed consent in crucial issues such as matters related to the use and management of natural resources. The Draft Convention is not explicitly inasmuch as the UNDRIP based on indigenous worldview, but does succeed to recognize Sámi belongingness to the Land in the form of traditional knowledge, customs and customary laws, and places the intimate and inherent nature-culture relationship at the centre. The Draft Convention creates a space, where states, when (and only when) willing, together with respected Sámi Parliaments (that are given a strong role and decision-making power to actualize Sámi self-determination) could reach out to protect Sámi people's rights, dwelling rather from their own ontologies than solely on Western legal framework.

---

[128] See M. Blaser, *Ontology and Indigeneity: On the Political Ontology of Heterogeneous Assemblages*, "Cultural Geographies" 2012, pp. 1-10; T. Ingold, *The Perception of the Environment. Essays on Livelihood, Dwelling and Skill*, Routledge 2000, pp. 132–152.

[129] Negotiations are still ongoing. See, generally T. Koivurova, *The Draft Nordic Saami Convention: Nations Working Together* , 10 "International Community Law Review" 2008, 279; L. Heinämäki, *The Nordic Saami Convention: The Right of a People to Control Issues of Importance to Them*, in N. Bankes and T. Koivurova (eds.), *The Proposed Nordic Saami Convention, National and International Dimensions of Indigenous Property Rights*, Hart Publishing 2013, pp. 125-147; K. Hossain, *Human Rights approach to the Protection of Traditional Knowledge: An Appraisal of Draft Nordic Saami Convention*, "Yearbook of Polar Law", vol. 4, 2012, pp. 313-340.

Bibliography

Literature

Blaser, M., *Ontology and Indigeneity: On the Political Ontology of Heterogeneous Assemblages*, "Cultural Geographies" 2012, pp. 1-10.

de la Cadena, M., *Indigenous Cosmopolitics in the Andes: Conceptual Reflections beyond Politics*, "Cultural Anthropology", vol. 25 (2), pp. 334–70.

Ingold, T., *The Perception of the Environment. Essays on Livelihood, Dwelling and Skill*, Routledge 2000, pp. 148-150.

Ingold, T. and Kurttila, T., *Perceiving the environment in Finnish Lapland*, "Body and Society", 6, 2001, pp. 183–196.

Harrison, R., *Beyond "Natural" and "Cultural" Heritage: Toward an Ontological Politics of Heritage in the Age of Anthropocene*, "Heritage & Society", Vol. 8, No. 1, May 2015, pp. 24–42.

Heinämäki, L. and Herrmann, T., *The Recognition of Sacred Natural Sites of Arctic Indigenous Peoples as Part of their Cultural Integrity*, "Arctic Review on Law and Politics", vol. 4, 2/2013, pp. 206-231.

Heinämäki, L., *The Nordic Saami Convention: The Right of a People to Control Issues of Importance to Them*, in N. Bankes and T. Koivurova (eds.), *The Proposed Nordic Saami Convention, National and International Dimensions of Indigenous Property Rights*, Hart Publishing 2013, pp. 125-147.

Heinämäki, L., *The Rapidly Evolving International Status of Indigenous Peoples: The Example of the Sami People in Finland*, in C. Allard and S. Funderud Skogvang, *Indigenous Rights in Scandinavia, Autonomous Sami Law*, Ashgate 2015, pp.189-204.

Heinämäki, L., *Global Context – Arctic Importance: Free, Prior and Informed Consent, a New Paradigm in International Law Related to Indigenous Peoples*, in T. Herrmann and T.

Martin (eds.), *Indigenous Peoples' Governance and Protected Territories in the Arctic*, Springer 2016, pp. 209-240.

Helander, E., *Sámi Subsistence Activities – spatial aspects and structuration*, "Acta Borealia" 2, 1999, pp. 7-25.

Helander-Renvall, E., *Animism, personhood and the nature of reality: Sami perspectives*, 46 "Polar Record" 236, 2010, pp. 44–56.

Helander-Renvall, E., *On customary law among the Saami people*, in N. Bankes and T. Koivurova (eds.), *The proposed Nordic Saami Convention: national and international dimensions of indigenous property rights*, Hart 2013, pp. 281-291.

Helander-Renvall, E., *Saamelaisten perinnetieto, tapaoikeudet ja biologinen monimuotoisuus* [The Sámi Traditional Knowledge, Customary Law and Biodiversity]. 2011, 3, available at http://www.ymparisto.fi/download.asp?contentid=127691&lan=fi (24.11. 2015).

Helander-Renvall, E., *Saamelainen tapaoikeus* [The Sámi Customary Law], in P. Magga & E. Ojanlatva (eds.), *Ealli Biras. Saamelainen kulttuuriympäristöohjelma*, Sámi Museum – Saamelaismuseosäätiö 2013, pp. 132 – 134.

K. Hossain, *Human Rights approach to the Protection of Traditional Knowledge: An Appraisal of Draft Nordic Saami Convention*, "Yearbook of Polar Law", vol. 4, 2012, pp. 313-340.

Koivurova, T., *The Draft Nordic Saami Convention: Nations Working Together*, 10 "International Community Law Review" 2008, p. 279.

Magga, P., *Mikä tekee kulttuuriympäristöstä saamelaisen?* [What makes an Environment Sámi], in P. Magga & E. Ojanlatva (eds.), *Ealli Biras. Saamelainen kulttuuriympäristöohjelma,* Sámi Museum – Saamelaismuseosäätiö 2013, pp. 10 – 13.

Magga, P., & Elo, T., *Johdanto* [Introduction], in T. Elo and P. Magga (eds.), *Eletty, koettu maisema: näkökulmia saamelaiseen kulttuurimaisemaan*, Lapin ympäristökeskus 2007.

Pennanen, J., *Ihmisen ja luonnon vuorovaikutus saamelaiskulttuurin lähtökohtana* [Human-Nature Interaction as a Basis of Sámi Culture], in J. Pennanen & K. Näkkäläjärvi (eds.), *Siidastallan. Siidoista kyliin. Perinteinen luontosidonnainen saamelaiskulttuuri ja sen muuttuminen,* Inarin saamelaismuseon julkaisuja 2000, pp. 13–18.

Rose, D., *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness*, Australian Heritage Commission 1996.

Rose, D., *Sharing Kinship with Nature: How Reconciliation is Transforming the NSW National Parks and Wildlife Service*, NSW National Parks and Wildlife Service 2003.

Rose, D., James, D. and Watson, C., *Indigenous Kinship with the Natural World,* NSW National Parks and Wildlife Service 2003.

Valkonen, J. & Valkonen, S., *Contesting the Nature Relations of Sámi Culture*, "Acta Borealia*"* vol. 31(1), 2014, pp. 25 – 40.

Ward, T., *The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law*, "Northwestern Journal of International Human Rights", vol. 10(2), p. 54.

Legal acts

International Covenant on Civil and Political Rights (CCPR), G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), adopted 16 December 1966, entered into force 23 March 1976, 999 *United Nations Treaty Series* 171.

Optional Protocol to the CCPR, G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 59, UN Doc. A/6316 (1966), adopted 16 December 1966, entered into force 23 March 1976, 999 *United Nations Treaty Series* 302.

Aboriginal Land Rights (Northern Territory) Act 1976, Part VII.

The Finnish Constitution.

Sámi Parliament act, 974/1995 (amendments up to 1026/2003 included), Section 9.

Cases

*Kitok*v. *Sweden*, Communication No. 197/1985, CCPR/C/33/D/197/1985 (1988), http://www1.umn.edu/humanrts/undocs/197-1985.html (21 January 21, 2007).

Länsman et al v. Finland, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992 (1994).
Lubicon Lake Band v. Canada, Communication No. 167/1984, CCPR/C/38/D167/1984.

Human Rights Committee, Communication No. 1457/2006, Doc. CCPR/C/95/D/1457/2006 of 27 March 2009.

Other

Concluding Observations of the Human Rights Committee: Australia, UN Doc. CCPR/CO/69/AUS (2000), paras 10-11.

Concluding Observations of the Human Rights Committee on Canada UN Doc. CCPR/C/79/Add.105 (1999).

UN Human Rights Committee, Concluding Observations on Finland, CCPR/C/FIN/CO/6 (22 August 2013), para 16.

Concluding Observations on Mexico, UN Doc. CCPR/C/79/Add.109 (1999); Norway, UN Doc. CCPR/C/79/Add.112 (1999); Australia, UN Doc. CCPR/CO/69/Aus (2000); Denmark, UN Doc. CCPR/CO/70/DNK (2000); Sweden, UN Doc. CCPR/CO/74/SWE (2002); Finland, UN Doc. CCPR/CO/82/FIN (2004); Canada , UN Doc. CCPR/C/CAN/CO/5 (2005); and the United States, UN Doc. CCPR/C/USA/CO/3 (2006); Sweden, UN Doc. CCPR/C/SWE/CO/6 (2009); Finland, UN Doc. CCPR/C/FIN/CO/6 (2013).

17.December 2015,
http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16897&LangID=E