

SELF DETERMINATION AND INDIGENOUS PEOPLES

Sámi Rights and Northern Perspectives

An IWGIA compiled document



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Self determination
and
Indigenous Peoples

Sámi Rights and Northern Perspectives

Compiled and edited from the Seminar
»Self-Determination and Indigenous Peoples«
organised by
the Oslo and Copenhagen Local Groups of IWGIA

Copenhagen March 1987

The papers in this document were first presented at a two-day seminar held on 2-3 November, 1984 in Copenhagen which was arranged by the local groups of IWGIA in Oslo and Copenhagen. The topic of the seminar was the rights of indigenous peoples, particularly Sámi, of the Northern Cap - i.e. Norway, Sweden, Finland, Greenland and Canada. The seminar focused primarily on the degree to which the political principle of self-determination is reflected in present legislation and future legislation now under preparation for the peoples in the region.

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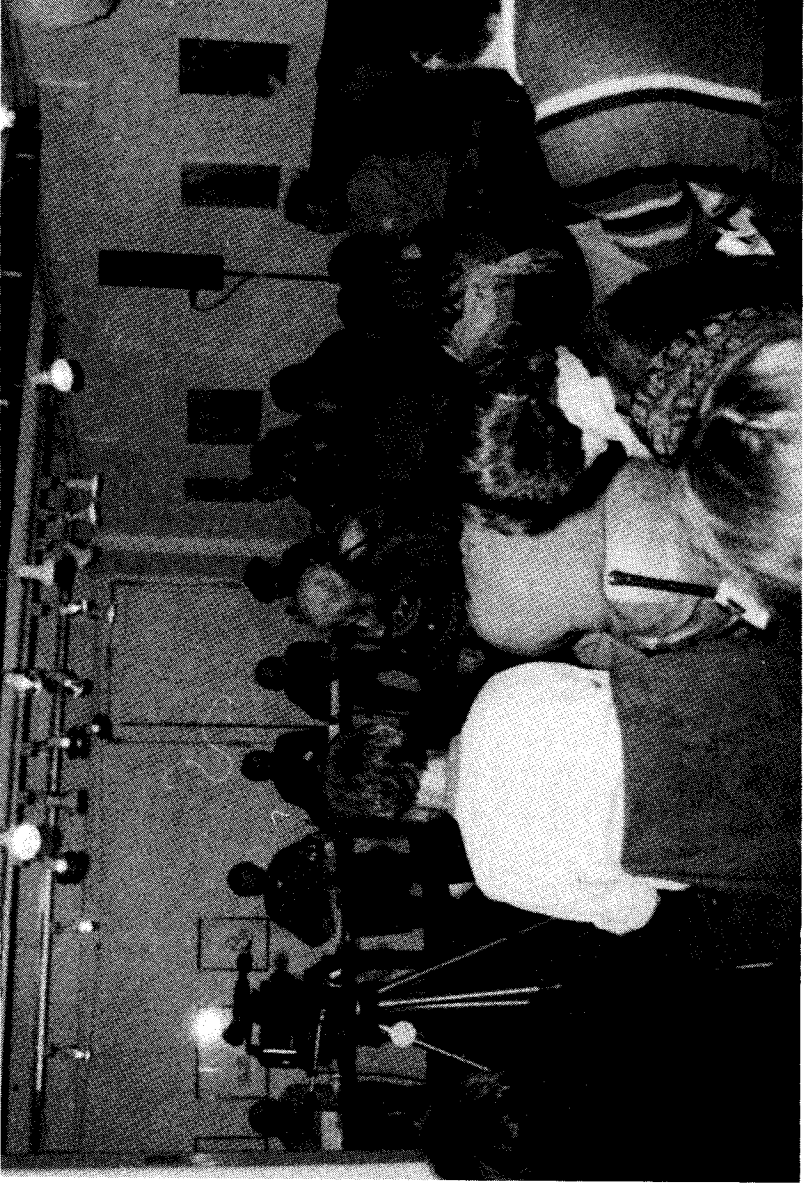
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Seminar on Self-Determination held at Copenhagen, November 1984 (Photo: Espen Wähle)

Introduction

By Georg Henriksen

In 1984 the Sámi Rights Committee delivered the first of two reports on the Sámi in Norway reviewing their history and evaluating their present situation with respect to the standards set by international law concerning ethnic minorities and indigenous peoples (as discussed by Arnesen and Brøsted in this volume). One of the major conclusions drawn by the Committee is that the Sámi of Norway have not been treated justly and fairly, and that their culture is severely threatened. On this background, the Committee recommended that certain institutional innovations be implemented in order to secure a future for the Sámi as a people with its own particular culture. The most crucial among these are the suggestions to add a paragraph to the Norwegian Constitution and that a national Sámi political body, a Sámi parliament - a Sámiþing, be instituted.

According to many Sámi, they have now left behind the "bad years" when the burden of discrimination from the majority population of Norwegians was felt as almost unbearable. The emancipation from gross discrimination and the establishment of the Sámi Rights Committee, as well as the new ground which is broken in its report, must first and foremost be credited to the Sámi themselves and the many years of their ethnic and political struggle and mobilization. Indeed, many Norwegians have positively contributed to this struggle, which may be seen as a Norwegian struggle as well as a Sámi one. I shall briefly return to this point below.

Although many, both Sámi and Norwegians, view the

recommendations in the report as not going far enough (see the paper by Stordahl), they may nevertheless become pathbreaking for the future of the Sámi, and the relationship between the two peoples living in Norway.

In spite of its shortcomings, the report, being a huge document of nearly 700 tightly written pages, and equivalent to a book of 1,300 pages, must surely be seen as a milestone in the long process of establishing the Sámi society as a living political unit within the Norwegian state. The report was therefore immediately met with considerable interest, both in Scandinavia and further abroad. Regrettably, although the report has been on the agenda in Sámi and Norwegian political administrative bodies, it has not generated the public debate in Norway which many of us had hoped for (but see the references below).

A few days ago, on the 20th of March, 1987, a law-proposal was presented to the Norwegian government. Building on the report of the Sámi Rights Committee, it proposes the establishment of a Sámiþing which is to be elected by the Sámi themselves. In order to have the right to vote, one must be counted in a Sámi census which is to be made for this purpose. Initially, the Sámiþing shall have advisory capacity, but the Minister of Justice, echoing Carsten Smith (also in this volume), has stressed that the question of mandate and the power to make decisions will be continuously considered once the Sámiþing is functioning.

Immediately, the major Sámi organizations were split in their evaluations of the law-proposal. The Association of Norwegian Reindeer Herders, in claiming that their members are maintaining the most typical of all Sámi occupations and that this is pivotal in Sámi culture, demands separate electorates and special representation in the Sámiþing. This demand is not new, and at the moment it seems rather unlikely that they shall gain the necessary support for it.

In effect, the Association asks that the whole matter of a Sámiþing be postponed until the Sámi themselves agree upon its mandate, and how it shall be constituted.

In addition to the Association of Norwegian Reindeer Herders, there are two other national associations, reflecting among their members two contrasting views and evaluations of how the relationship of the Sámi to the state and the majority population shall be shaped and regulated. One of these associations, the Sámi National Association (SLF), has already announced that it will go against the law-proposal, and that it will not participate should there be an election to a Sámiþing.

The reaction was predictable, as this association vocalizes the view of many of its members that Sámi persons have a Norwegian identity to take care of, as well as their Sámi one. They stress the fact that most Sámi live widely interspersed among the Norwegians, and that most of them pursue the same occupational careers as those of the majority. This fact, and also the rather recent experience of discrimination which many Sámi have experienced, makes many want to hide their Sámi identity, or at least not announce it loud and clear through a separate Sámi census.

Although the National Association of Norwegian Sámi (NSR) has not yet, at the time of writing this introduction, announced its views to the press, it seems likely that it will endorse the law-proposal, as this is very close to the recommendations of the majority in the Sámi Rights Committee (to which NSR on most issues agreed - but again see Stordahl, this volume!). This reflects an alternative strategy to that of SLF in how to deal with the minority situation, entailing a stronger stand on ethnic issues and a demand for self-determination, which among other things implies the rights to natural resources and the necessary political institutions and powers to manage these for the



Reindeer Herding in Helgeland: moving towards the calving grounds in spring
Photo: Georg Henriksen

Sámi society and culture (see e.g. Magga 1985 for a short review of the position of NSR).

We see, then, at least three different strategies and interest groups springing out of the minority situation of the Sámi and generating quite disparate evaluations of the proposed law which builds closely on the report of the Sámi Rights Committee. Indeed, this is not a unique phenomenon, but may be found in many other parts of the world where state authorities have done their best to assimilate indigenous populations into the culture and societies of the majority (see e.g. Brantenberg 1985, Eidheim 1985, Henriksen 1985, and Magga 1985, all concerning the Sámi in Norway). The danger is, of course, that the state authorities shall use the internal disagreements of an indigenous people to refrain from implementing any radical reforms. It is hoped that in Norway the time is ripe enough for action in spite of such disagreements; disagreements which the state itself has created by the policies it has pursued throughout its history.

This leads us to what for some must be seen as a major weakness of the Sámi Rights Committee's report: that it has prepared well enough neither the Norwegian public, the different Sámi groupings, nor the Norwegian politicians in- and outside the Parliament (Stortinget) to discuss and deal with the disparate views and interests of the heterogenous Sámi population. Sure enough, these cleavages are reflected in those issues of the report where the Committee is openly split in a majority and a minority view. But the lack of a sufficient and overall analysis of the contemporary social dynamics of Sámi/Norwegian relations makes it difficult for the reader to evaluate the disparate views and alternative actions proposed by the Committee. Without such a presentation and analysis it is also difficult to judge to what extent the disparate views in the report reflect the real and long term needs of the Sámi people (to the extent

that such needs can be pinpointed), and to what extent they are the result of the different parties' deliberations of what is politically feasible in the present situation in Norway. For example, it should be noted that in the discussions taking place after the papers, one of the three members of the Norwegian parliament who were invited to the seminar reminded the participants of the geopolitical implications of Sámiland being located next to the Kola peninsula in the USSR. He said that this fact alone places severe restrictions on what might be possible to pass through the Norwegian Parliament in terms of self-determination for the Sámi.

Hence, when criticism is launched against the Committee's recommendations (for example pertaining to the limited powers of the Sámiþing and the mode of its election), it may be too easy to brush it aside by pointing to the fact that the major Sámi political views are represented in the Committee and therefore that the recommendations of the majority in the Committee must be seen as the only feasible ones at the moment. In line with this, Carsten Smith has warned (Smith 1986) against a new kind of political guardianship, whereby certain political solutions, clothed in scientific reasoning, are advocated contrary to the solutions advocated by the major Sámi organizations. He is certainly correct when he concludes that it is part of the Sámi's right to self-determination that they themselves formulate their political claims (ibid.). However, it must be both a right and a duty for non-Sámi persons to participate in the debate about the institutions that so decisively will influence the future of Sámi/Norwegian relations. It must be just as obvious that participants with a social science background use their empirical models of the Sámi/Norwegian situation to deduce solutions to the problems addressed by the Sámi Rights Committee. Our point is simply that all parties participating in the public debate taking place in Norway

would have been better off if a more complete analysis of Sámi/Norwegian relations had been presented by the Sámi Rights Committee. In the law-proposal referred to above, the Ministry of Justice stresses the point that the organisation of the relations between an ethnic minority and the state cannot simply be decided upon by a majority vote, but that it must be constructed on some basic principles inferred from our experience and analysis of multi-ethnic situations.

The Sámi Rights Committee report gives a careful and impressive account of the history of the Sámi people, and of its standing in relation to human rights and international law. What is lacking in the report is a proper use of synchronic studies that have been made of the socio-cultural dynamics of Sámi/Norwegian relations and other inter-ethnic relations. Contrary to what some people seem to think, we would argue that it is no less legitimate to draw conclusions from such social studies and anthropological models than it is to look for precedents through historical and legal studies. I believe that our disagreement on this point may be due to paradigmatic barriers between fields of law and history on the one hand and social anthropology on the other. But surely, whatever is the professional basis of the knowledge that is brought to bare on indigenous affairs, the question remains how to transform this knowledge into political solutions in specific instances, and doing this without exercising guardianship over the ethnic minority.

Let us take a very basic point in the report, namely that the ultimate aim of all the actions recommended is to secure the best possible conditions for the development of Sámi culture and society. This is not the place to present the kind of empirically based models we have referred to above. Suffice to say here that given the same aims as stated above, such an analysis would render strong arguments for the most radical solutions formulated in the report, including direct elections, but in addition extending



A Sámi building firm at Nesseby (Photo: Sámi Aigi)

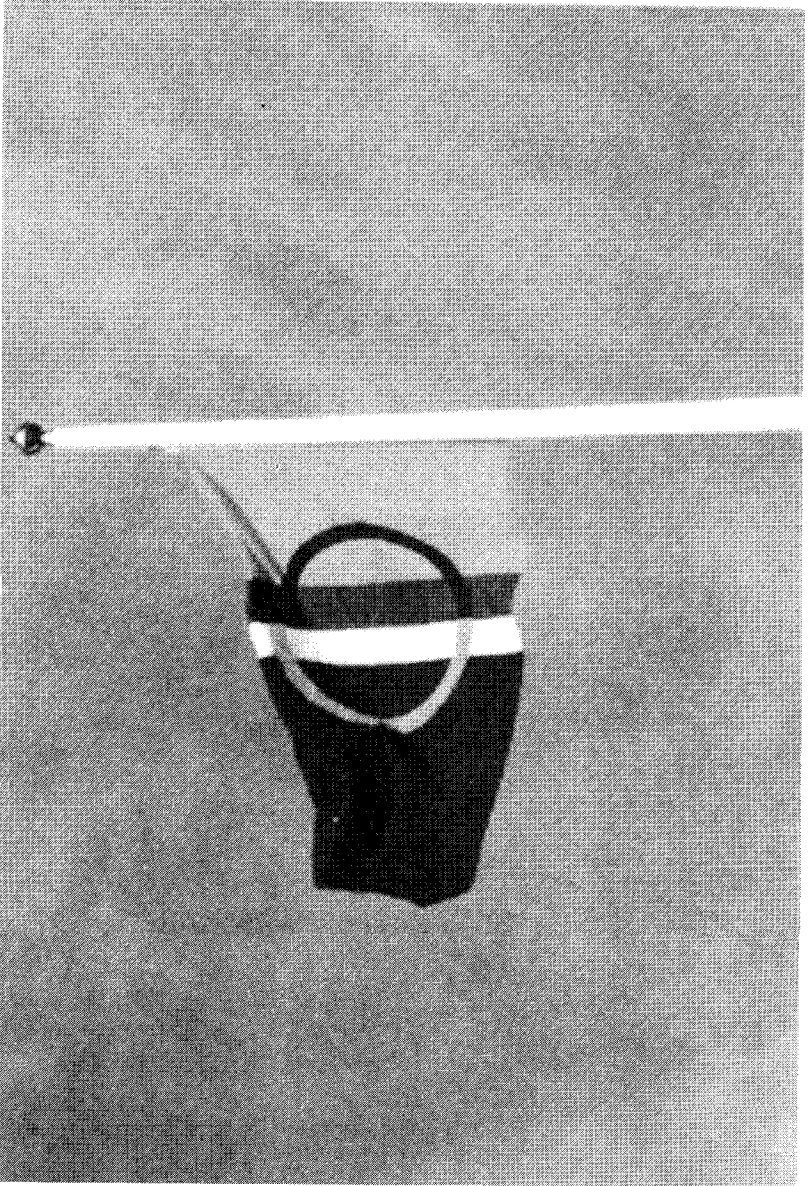
decision-making powers to the Sámiing and the other Sámi political bodies which is suggested by the Committee on the county and municipal levels. The crucial part of the analysis, and of the argument, would be the relationship between a people's, or an ethnic minority's chances to develop its culture and social institutions, and the same people's command over the necessary resources and political power to make decisions concerning their own affairs.

Again and again the crucial link between power, culture and self-respect emerges in the accounts given by indigenous peoples themselves, as indeed it does in some of the papers in this volume. But in addition to this, we believe there is enough empirical evidence from around the world to demonstrate this crucial link. From the study of this empirical evidence we can construct more general models of inter-ethnic relations from which we can deduce some of the necessary preconditions for a people to be able to maintain and develop its socio-cultural institutions in a specific natural and socio-political environment.

A relevant concept here is, of course, self-determination, a concept which the Sámi Rights Committee says covers a leading ideal in the international work on the question of indigenous peoples. The problem is, of course, what we shall mean by self-determination for indigenous peoples who live under such different circumstances as do the Sámi (see Aikio, Lasko, Stordahl and Åhrén), the Inuit in Canada (see Gordon and Jull), and the Greenlanders (see Petersen). While the Greenlanders have their territory, and the Inuit are about to get their Nunavut, the Sámi have no autonomous territory, but live interspersed amongst the majority populations. Yet, we are convinced that institutional solutions can be found also here, so that aspirations for political power so strongly vocalized by Stordahl and Lasko in this volume can be realized, thereby giving content and real meaning to the gloss term of self-determination in the Nordic context.

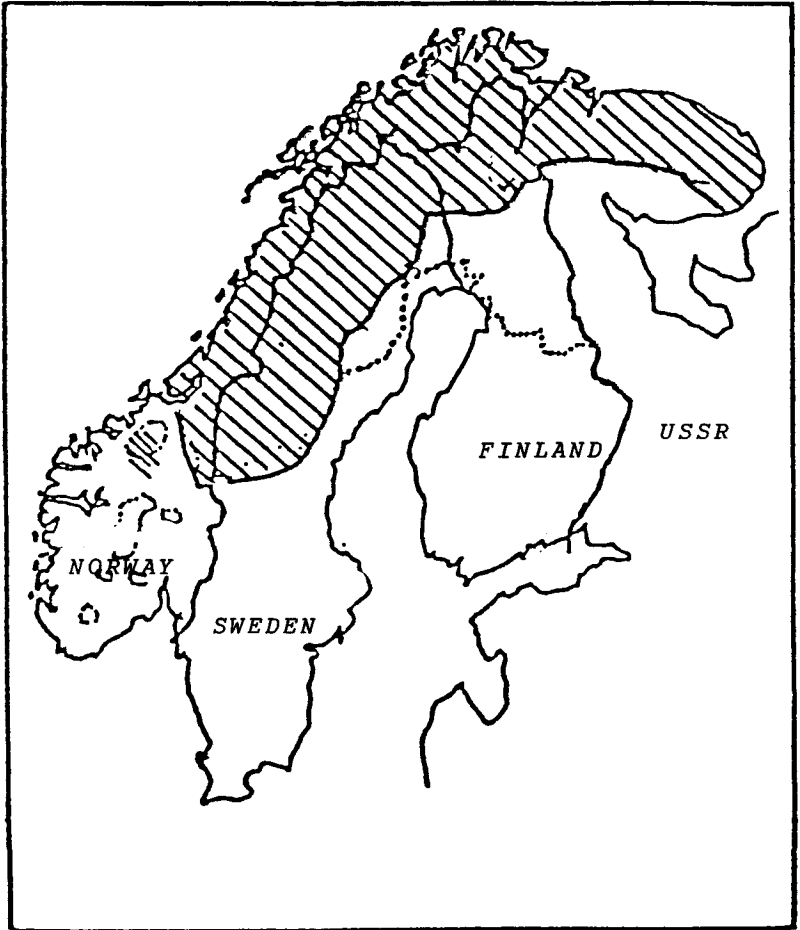
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Sámi Flag (Photo: Jørgen Brøchner Jørgensen)

Part I: Sámi Rights in Norway



Map of Sámi land

The Sámi Rights Committee: an Exposition

By Professor Carsten Smith (Norway)¹⁾

Introduction

The Sámi are a distinct people living in Norway who must be provided with the necessary means to enhance and develop their own culture. This ought to be the guiding tenet in all work on Sámi rights and Sámi policy. During the 1980s the Sámi Rights Committee has endeavoured to function as an instrument for this type of legal and political work.

Through the years the Sámi people and Sámi culture have been the subject of extensive investigations by ethnologists, historians, and linguists. But the Norwegian legal profession has only taken up the responsibility of clarifying the legal position of the Sámi to a limited degree. The work which has been done, such as Erik Solem's "Studies of Lapp Rights" (1933), is largely concerned with investigating the particular aspects of law that pertain to life within Sámi society. Legal debates on the position of the Sámi within Norwegian society, i.e. the relationship between the Sámi and the rest of the Norwegian population, are almost non-existent. However, a few works do touch upon

¹⁾This paper forms the basis of a lecture on the work of the Sámi Rights Committee. The lecture was given at a seminar in Copenhagen on November 2-3, 1984, under the auspices of the International Work Group for Indigenous Affairs. The manuscript has since been reworked and expanded.

important aspects of the problem, especially the pioneering work by Sverre Tønnesen, "The Right to Land in Finnmark" (1972). In respect of the larger debate, however, legal circles in Norway have shown little initiative.

Sámi culture is vulnerable. In the last century Norwegian authorities set out on a course of "Norwegianisation" in the belief that - in the words of Johan Sverdrup - "for the Lapps the only salvation lies in their assimilation into the Norwegian nation". This line of thinking was, to a very large extent, continued until the Second World War. Even though the policy has been changed, Sámi culture is still heavily influenced by other cultures and this influence is difficult to withstand for a people so few in numbers.

The central issue of minority rights is the protection of culture. In terms of legal policy minority rights protection is not primarily concerned with providing the minority with a standard of living on a par with the majority population. The main object is to ensure that the minority is able to maintain and further develop its own culture. It is not enough for the individual members to gain a standard of living which is acceptable in economic terms. If their own particular culture perishes they cease to exist as a people.

The Sámi hold a special position among ethnic minorities in Norway. Firstly, the entire Nordic Sámi culture is dependent upon the treatment it receives from Norwegian authorities. Unless Sámi culture is provided with ample conditions for survival in Norway, it is extremely doubtful that it could survive in the other Nordic countries as most of the Sámi people live in Norway. Secondly, the Sámi have a particular, historical relationship with the Norwegian state compared with other ethnic minorities. The Sámi lived here long before the formation of our state.

They were never immigrants in the Norwegian state, although the exact time of their settlement in various parts of the country is difficult to determine. Sámi culture is therefore an important part of the Norwegian national cultural heritage.

The dependence of Sámi culture upon the Norwegian authorities gives Norway a particular international responsibility. On the other hand, the position of Sámi culture in Norwegian history gives the country a particular national responsibility.

The legal status of the Sámi is a wide issue with many facets: it embraces the rights of the Sámi as individuals as well as their collective rights as reindeer breeders and as a people; it includes the rights of the Sámi according to Norwegian law and legal practice as well as their rights according to international law; it concerns general minority rights for the Sámi as well as their particular rights as an indigenous people; it concerns Sámi rights today according to current legislation with all its concerns and uncertainties as well as the current developmental process working towards a strengthening of their legal status. This debate concerns political and economic as well as cultural rights.

The Sámi Rights Committee.

The Committee was formed in the autumn of 1980, during the conflict surrounding the expansion of the Alta/Kautokeino project. The 18-member strong Committee represents different interest groups, professions and settlements. The principal Sámi organisations have always been represented, except for a period of conflict in 1981-82 when the National Association of Norwegian Sámi withdrew their representatives from all public councils and



Sámi Pastoralists in Counsel (Photo: Terje Brantenberg)

committees. The Committee gave its first submission in June 1984. The press in northern Norway called it an historical submission.

The task which the Committee was given by the government is comprehensive and wide-ranging. Firstly, its concerns are general and political rights, and include constitutional protection for the Sámi and the establishing of their own separate, democratically elected representative body. Secondly, the Committee looks at economic rights, including particularly Sámi rights to natural resources such as land and water.

The Committee is both a review body and a legislative body. It has to review the legal position of the Sámi today. Here, it is supposed to clarify as far as possible those legal questions which are at present unclear and controversial. This is a task of huge proportions and only a limited amount of preliminary work has been done. The major part of Finnmark is today claimed to be state property. The Sámi, however, dispute this and claim that they have, at the very least, extensive rights to the area based on historical use. In the Sámi settlements and farming areas outside Finnmark there are also uncertainties and controversies.

While the task of a review may be very important for the Norwegian Sámi, the political side of the Committee's work is probably giving rise to the greatest expectations. This is because the Committee has also been given a relatively open mandate to evaluate any changes in the law that may be considered desirable. In this respect the Committee has been given a legislative function and thereby a political function.

In the early stages of the work of the Committee, and after an initiative by the Association of Norwegian Reindeer

Herders (NRL) and the National Association of Norwegian Sámi (NSR), the government asked that the questions of adding a clause to the constitution and establishing a new Sámi body be given higher priority than the work on rights to natural resources. The recent Report, (NAU 1984:18), considers these constitutional and administrative questions. It is a comprehensive document, comprising both a report section with basic material and an advisory section with evaluations and recommendations. The Report also provides some basis for evaluations and suggestions concerning the Committee's future work on rights to land and water.

The Report opens with an account of the Sámi in Norway. The main responsibility for this work lies with the Nordic Sámi Institute. The account presents the Sámi as an ethnic group in Norway today and explains their special position within the Norwegian state in respect of history, settlement, livelihood and language.

Here a brief word on terminology may be appropriate. The Sámi Rights Committee uses the term "people" when referring to all Sámi, including those who are settled in Finland, Sweden, and possibly the Soviet Union. However, for a separate term referring to the Sámi who are settled in Norway, the Committee employs the wording "ethnic group".

When we are concerned with various treaties and other international documents where the term "people" is employed, it will of course be a matter of interpretation of each individual document to determine whether it applies to the Sámi in general or to the Sámi in Norway.

One part of the Report which received special attention is the analysis of the debate about Sámi rights. It is meant to form a legislative basis for the further work of the Committee concerning Sámi rights to natural resources within their settlements and farming areas.

The most central part of the Report concerns a comprehensive review of foreign legislation and especially international law on the protection of ethnic minorities, in particular indigenous peoples. Here, the central point is the Lapp Codicil which is an addition to the 1751 border treaty between Sweden and Norway, and the 1966 UN Human Rights Convention on Civil and Political Rights. In both instances the conclusion, formulated by a special work group, is that Sámi legal protection is stronger than previously acknowledged.

We will now look further into these legal sources, and then present the central parts of the recommendations of the Committee.

The Lapp Codicil

This old international agreement is an extensive set of rules for the purpose of the "preservation of the Lapp nation". The document has been called the Magna Carta of the Nordic Sámi. Such a formulation evokes strong images. However, the extent to which this terminology corresponds to legal realities is questionable.

One issue which has been debated for a long time is whether the Codicil establishes a Sámi right to use which is protected by law like other forms of property rights, or if it is simply a so-called permission to use, i.e. a permission to use the natural resources so long as this usage does not conflict with any other rights. The review concludes that the best arguments clearly advocate that the Codicil established a protected right to use for the mobile Sámi.

A central point in the interpretation of the Lapp

Codicil concerns the question of whether it protects only the Sámi of the neighbouring country or if it applies also to Norwegian Sámi inside Norway, and hence to the relationship between Norwegian Sámi and Norwegian landowners. Prominent professional and political sources have maintained that the Lapp Codicil is a wedge between two states with all the limitations this implies, which means that it only protects Norwegian Sámi living in a neighbouring country and is not national law. Here the Report reaches a different conclusion, which is based in part on a legal-theoretical analysis concerning the origin of the Codicil, on the examination of previous administrative practice and also on decisions of the supreme court.

In a previously unpublished principal decision from 1862, the Supreme Court considers the Codicil as a piece of legislation. It is also stated explicitly that from the Codicil it can be "definitely ascertained that there is a right of migration for Norwegian Lapps, since this right has been granted to Swedish Lapps". The same interpretation of the law was stated by the Supreme Court thirty years later (Rt.1892 p. 411ff). Until now the importance of this ruling does not seem to have been fully realised. The case concerned a compensation claim put forward by a group of "farmers from Ålen" against a "Mountain-Finn (Sámi) from Rørås parish". The claim was due to damage done by grazing reindeer to the farmers' "pastures, harbour areas and hay crops". The Sámi was held responsible. The Supreme Court here goes by what "according to general law" is supposed to be contained in the "so-called Lapp laws", and the Supreme Court mentions first and foremost the Lapp Codicil. This case was concerned with the duties of a Sámi. When, however, the Codicil has been used in this fashion against a Sámi, it is thereby acknowledged as a piece of legislation on the relationship between a Norwegian Sámi and a Norwegian landowner. Similarly, the Codicil can be used when it

applies to the rights that it grants to the Sámi.

The Norwegian government has expressed the opinion that the Codicil - after the signing of the present Reindeer Grazing Convention of 1972 - can be terminated freely and unilaterally. The report throws doubt upon this position.

Today the Lapp Codicil is not of the same importance as previously, but it is still invoked quite often, not least in the debate on Sámi policy. As a treaty it has for the time being been overshadowed by the more precise stipulations of the 1972 convention. As a piece of Norwegian legislation it has largely become obsolete after the acknowledgement in recent years by Norwegian courts of rights to use for Norwegian reindeer breeders, based on ancient custom. When Norwegian Sámi seek protection in international law, there are other rules which may be of greater importance, first and foremost international minority rights protection.

Minority Protection in the UN Human Rights Convention.

The two 1966 UN Conventions on Human Rights - the Convention on Economic, Social and Cultural Rights, and the Convention on Civil and Political Rights - both open with a declaration on the right of peoples to self determination. This principle has been the mainstay of decolonisation. There is no doubt that an ethnic minority like the Sámi are a people in both the political and the sociological sense; but in the Convention of 1966 the principle of self-determination was worded in such a way that, according to the advisers to the Committee, it does not include ethnic minorities living within an established nation-state. On the whole, according to this viewpoint, the legal sources available do not support the conclusion that these minorities may demand self-determination. Therefore, the



Carsten Smith at the Seminar
Photo: Espen Wæhle

Sámi in Norway are in a different position from that of the Inuit population of Greenland. For ethnic minorities within the territory of a nation-state a special minority protection was defined in Article 27 of the Convention on Civil and Political Rights.

This Article stipulates that "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 practise their own religion, or to use their own language."

The question is what rights this Article gives the Sámi vis-à-vis the Norwegian state.

Undoubtedly Article 27 supports demands for positive discrimination. The very point of the rule is that it gives special protection to minorities. Therefore, a state that has an ethnic minority does not fulfil its obligations by merely ensuring legal equality for its citizens (avoiding negative discrimination). The principle of formal equality is therefore, in international terms, a thing of the past where minorities are concerned, and the principle of positive discrimination has even been adopted as one of the most basic human rights. Just how far the state should go in the direction of positive discrimination will depend upon the actual situation in the individual state. The minority is entitled to "enjoy its own culture".

When the article was formulated, its aim was to secure for minorities the right to live without interference from the state. It was, in other words, a protection against assimilation policy. After the Convention had been signed, however, the interpretation of it seems to point to a widening of its scope. The conclusion of the report is that Article 27 probably imposes an obligation on states to give

economic support to enable minorities to enjoy their own culture. Concerning the quantification of this obligation it is assumed that a state is obliged to carry through sufficient practical measures to allow a minority group to express itself culturally in relation to the rest of society.

According to the above, the Norwegian Sámi have firstly, the right to a certain degree of self-determination in matters of culture, secondly, the right to state support for the expression of their culture, and thirdly, the right to partake in the life of the community on equal terms with the majority population.

A central point of the interpretation concerns the perception of the concept of culture mentioned in the Article. It is obvious that the concept of culture encompasses such means of expression as books, newspapers, drama, art, etc., but, having scrutinized a vast amount of material, the review concludes that the stipulation also refers to the material basis of the culture of an ethnic minority. In this instance the occupational and other economic factors should be included in so far as they are decisive for an ethnic group to maintain and further develop its own culture.

The object of the Article is cultural protection. This means that the ethnic minority concerned should be able to claim the material basis necessary for their cultural expression.

The Sámi are without question one of the ethnic groups that are embraced by the cultural protection of Article 27. Therefore they have the right to support from the Norwegian state in the expression of their culture. Furthermore, the Sámi are an ethnic group whose culture is to a great extent founded on a traditional use of natural resources. They

will thus very likely be able to claim that their traditional occupations are to some extent also protected by Article 27. This is supported by an old tradition in international law acknowledging a particular form of legislative protection of "indigenous people". The Report deals with the basis of such special rights for indigenous people, and the link between Article 27 and particular legal sources on indigenous people is underlined. At present it is probably not possible to state precisely how far this legal protection goes.

Some matters of importance may, however, be emphasized. It is not enough to ascertain that individual Norwegian legislation and individual Norwegian administrative decisions do not conflict with the UN Convention. The Article puts an obligation on the Norwegian state to play an active part in the further development of Sámi culture in Norway. It is therefore necessary that the sum of decisions on the part of Norwegian state authorities enable the Sámi to maintain and develop their culture. Moreover, a dimension of time will enter into the evaluation. Whether the state does in fact fulfil its obligation will also be judged by considering the development of Sámi culture in the years to come.

The Convention on Civil and Political Rights is supplemented by the so-called "optional protocol". States that are signatories to this protocol accept the right of individuals who consider their rights under the convention to have been infringed to bring an action to the UN Human Rights Commission. Such action may also pertain to Article 27. Norway ratified this protocol in 1976. The Norwegian Sámi have therefore got an international complaints system should they feel their rights have been infringed.

A basic view of the Sámi question.

There has been a weakness in Norwegian Sámi policies in that they have hardly ever been expressed as a total, coherent set of policies based on fundamental principles of justice between a minority and the rest of the state. To a large extent it has been a case of individual measures taken in various areas on the part of the state authorities. The last time the Norwegian parliament had a major debate on the Sámi question was at the beginning of the 1960s.

The Committee's Report opens with an overall view of the Sámi question. The purpose of this is to form a basis for future policy on the Sámi question. On this point the Committee is unanimous. Supporting this view are organisations and institutions who are frequently found to be taking opposing views on questions of Sámi politics.

This part of the Report begins with a statement on Sámi ethnicity, explaining that the Sámi are a special ethnic group who differ in some respects from the rest of the Norwegian population. These are basic facts. The Sámi have their own particular culture with their own community separate from the rest of the Norwegian population. This fact remains even though the contact between people across ethnic barriers is now so widespread that there are cases where the exact determination of ethnic affinity can be difficult.

Although the Sámi are a separate ethnic group, it is also a basic fact that the Sámi in Norway are Norwegian citizens which means that they are part of the community of the Norwegian population. Furthermore, whether through occupational capacity, as a member of an association or a religious community, as an inhabitant of an isolated area, a consumer or in other contexts, the individual Sámi shares a common interest with other groups of people in Norway which cuts across ethnic barriers. The common interests that are

of an ethnic kind are expressed in varying degrees of intensity in a variety of cases. The degree to which the government ought to consider Sámi ethnicity in formulating its policies will therefore vary from case to case.

The Committee further mentions what has been termed Sámi plurality. This finds its expression in language, settlement and livelihood. It is also stressed that the authorities should consider the fact that within the Sámi population there are different groups with different needs and to some extent with conflicting interests too.

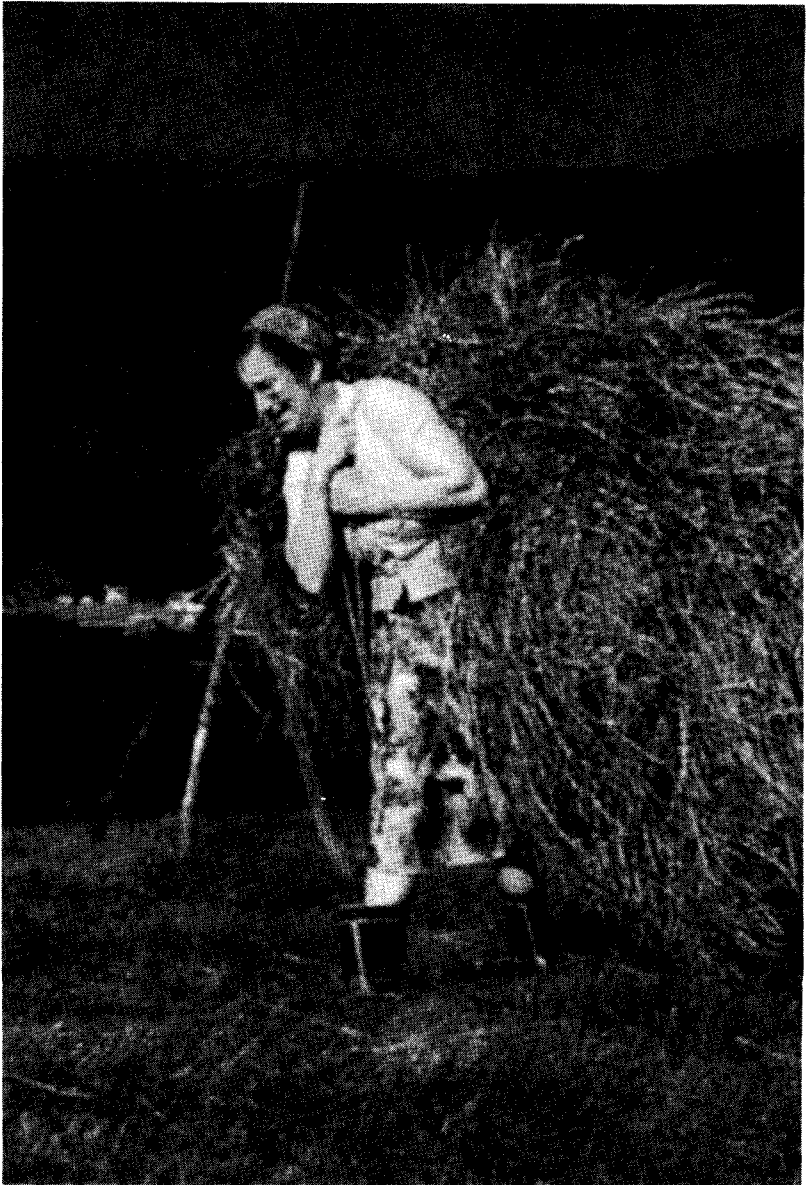
The main opinion in the Report stresses the responsibility of the authorities for Sámi culture. In the summary we find an example of this which is quoted below:

"The Committee supports the view that the authorities have a responsibility for the maintenance and further development of Sámi culture.

"The Committee agrees that the preservation of Sámi language is of decisive importance for the maintenance of Sámi culture in the long term. However, the Committee wishes to draw attention to the fact that Sámi identity is not linked to language alone.

"The object should never be to "freeze" Sámi culture at a particular point in its development. On the contrary, the task of the authorities must be to pave the way for the maintenance and further development of the Sámi cultural community, adapted to the demands of modern society.

"According to the Committee, a precondition for the maintenance and further development of Sámi culture in Norway is the granting of satisfactory conditions of development for the traditional local Sámi communities so that the population there may live according to their cultural tradition."



Haying in the coastal Sámi area (Photo Ivar Bjørklund)

This basic attitude also explains the Committee's view regarding equal rights and equality in the relationship between the Sámi and other Norwegian citizens as well as between Sámi culture and other cultures within our society.

The Committee also deals with the questions of Sámi influence in society, the freedom of choice for the individual regarding ethnic affinity, the Nordic perspective, international responsibility, the relationship with other minorities, and the peaceful co-existence of different ethnic groups.

In this respect the Committee deals with a number of questions which have been discussed by Sámi organisations during the past decade.

This basic view is expected to become the foundation for future legislation.

New provision in the Norwegian Constitution

A majority on the Committee propose that the Constitution be amended to include the following:

"The state authorities are obliged to provide the necessary preconditions that will enable the Sámi ethnic group to enhance and develop their language, their culture and their community."

Such a constitutional provision would put a political and a moral obligation on the Norwegian state with regard to the Norwegian Sámi. This must be assumed to be the most important point about such a constitutional amendment. Although the main result of this provision would be of a political and ethical rather than legislative nature, it

would, however, also introduce a certain legal kind of obligation on the state authorities. In principle the provision would set binding guidelines for Norwegian state authorities on the question of future Sámi policy. The implementation of these guidelines must be done by legislation and other decisions by public authorities.

The special mention given in the document to Sámi language is due to the language being a central element of Sámi culture. As far as Sámi culture is concerned, this is a term which is used in different senses in different contexts, sometimes narrowing, sometimes widening its scope. The Committee does not attempt any precise definition of the concept of culture. Nothing original or profound is said on this matter. That was not the objective. The purpose was to establish that the term "culture" should be given its widest interpretation when used in a constitutional provision. In this context Sámi culture is first of all what is expressed by the Sámi. This expression of culture will have a large degree of Sámi characteristics and will be the target for the special protection of Sámi culture. In individual cases, however, it is not possible to put forward particular demands concerning what constitutes Sámi cultural traits. The central point is that the Sámi are the active party contributing to the developmental process which over a period of time is creating Sámi culture.

The report puts great importance on the dynamic side of cultural life. It is stressed that a constitutional provision must not contribute towards an artificial freezing of Sámi culture. The constitutional provision must be directed towards the future. The draft was made bearing in mind both protection and development of Sámi culture; but it is the Sámi ethnic group itself who should be in charge of this development of their culture. What the authorities can do is to "provide the necessary preconditions".

Even though it has already been emphasized that the term "culture" should be given its widest possible interpretation, it may be necessary to add a rider to this in order to ensure that the provision will also be given sufficient scope in practice. Here the Committee chose the term "community life". This refers to that part of social life which is sustained by the Sámi themselves. One of the concerns here is the various areas of Sámi organisation. It points out that the life of the Sámi has to a large extent traditionally been collective in nature.

The report ascertains that constitutional cultural protection also provides the necessary protection for the material foundation of culture, and that this holds true even though the provision does not explicitly mention Sámi occupations. It emphasizes that the provision would oblige state authorities to provide the economic means necessary for this cultural protection.

There are, however, strong dissenting opinions in the Committee concerning this constitutional amendment.

The arguments in favour of a Sámi Paragraph include that:

- a) a provision in the constitution would represent the strongest possible emphasis on the responsibility of Norwegian authorities towards Sámi culture,
- b) the introduction of a Sámi Paragraph into the constitution has international precedent,
- c) a Sámi Paragraph may contribute towards the strengthening of Sámi community and identity,
- d) a Sámi Paragraph might contribute towards strengthening the position of common Sámi interests in Norwegian political life,
- e) a Sámi Paragraph may have a positive effect for other minorities as well and
- f) a Sámi Paragraph would help improve the relationship

between Sámi groups and Norwegian authorities as well as between various groups of Sámi.

The arguments against a Sámi Paragraph include that:

a) it may be considered unfortunate to emphasize very strongly the singular characteristics of the Sámi and the protection of Sámi culture in a community with different groups of people living side by side,

b) this will apply in particular to Finnmark where a Sámi Paragraph might worsen conflicts within the communities,

c) politically a Sámi Paragraph might result in competition between different councils and districts,

d) a Sámi Paragraph might create fears among the population of the coastal areas that their interests in conflicts concerning livelihood might be downgraded,

e) a Sámi Paragraph would further the divorcing of policies concerning conditions of life from the policies concerning ethnicity, two things that should be viewed together,

f) there are within our society differing views regarding the need and desirability of special measures for the Sámi population,

g) other minority groups might feel discriminated against and cast aside if the constitutional protection is granted to only one of many groups

h) it is not necessary to write a paragraph into the constitution in order to protect Sámi language, culture and community,

i) the constitution should not be encumbered unnecessarily with declarations of intent,

j) a constitutional provision might increase the pressure on the authorities in the direction of granting special rights to the Sámi on an ethnic basis,

k) the draft of the declaration contains several ill-defined concepts and

l) recent elections indicate only little interest in the matter.

These arguments for and against a Sámi Paragraph are discussed in greater depth in the Report. It should, however, be mentioned that the Committee is unanimous in respect of the very rule which the majority want to be written into the constitution. The minority which is against the constitutional provision is only opposed to its being written into the constitution, not to the content of the provision. This is clearly expressed in the unanimity concerning the laying down of a similar rule as the preamble of the draft bill of a "Sámi legislation" which is also submitted.

I was one of the majority and wish to add the following comments. It is my opinion that the constitution should include such legislation as is of particular importance to our society. I consider the Sámi people and their culture to be such an important element of our entire society that it would be natural for our constitution to deal with this.

The principal contribution by the representative of the Association of Norwegian Reindeer Herders was a constitutional proposal which included Sámi occupations. The Association did, however, later state that it would support the majority proposal.

The Committee's Bill of Constitution was put forward in September 1984 by representatives of six of the parties in parliament. The debate on the factual aspects of the bill has been due since the 1985 election.

As already mentioned the constitutional provision must be implemented through legislation and other measures taken by public authorities. In their draft for the new legislation, the Sámi Rights Committee has drawn up new



Selma's Hairdresser's in Karasjok (Photo: Sámi Aigí).

principles for the formulation and implementation of Sámi policy in order to ensure that the constitutional provision be implemented. This is discussed in greater detail below.

The Sámithing

There is general agreement in the Committee that the Sámi should have their own elected nationwide organ, called the Sámithing. This Sámithing will be a representative national body for all Norwegian Sámi.

We need not waste time debating the need for a separate national body to deal with Sámi questions. We in Norway have come further than that in the development of Sámi policies. The Norwegian Sámi Council - which since 1964 has been a consultative committee on Sámi matters - has already clearly stated this need. What we should discuss is the detailed structure and function of such a body.

One of the main objectives of the suggested reform is that members of the Sámi central body should be elected in such a way that they are more representative of Norwegian Sámi than is the Norwegian Sámi Council today. At present, the members of the Norwegian Sámi Council are appointed by the government. The Sámi Rights Group proposal is that they would be chosen by public election in constituencies throughout the country.

The reform is thereby related to the general democratisation of Norwegian society. This process has been going on for several decades and includes direct elections to county councils (1976), the introduction of industrial democracy in both the private and the public sector and the changes in the reindeer-breeding administration (1978). The reform under discussion can therefore be seen partly from the point of view that now in the 1980's democratisation has

truly - and somewhat belatedly - reached the Sámi area of society.

The scope and competence of the Sámiþing will be the same as that of the Norwegian Sámi Council. Its field of activity covers economic, cultural, legal and social affairs and matters concerning the exploitation of natural resources particularly relevant to the Sámi. According to the draft bill the Sámiþing will be mainly an advisory body, although the Sámiþing may also have the decision-making powers over the disposal of public funds for particular purposes. The Sámiþing will take the initiative to raise any questions which it considers to be of importance for the Sámi and will be free to arrange its own priorities for issues. It is to be expected, though, that the Sámiþing will deal primarily with matters of principle.

What is different about this assembly is not its powers. The difference lies in the way the assembly is made up - that it is going to be elected as a Sámi Parliament.

One might question the actual political importance of an advisory Sámiþing. It is not possible to give any precise answer to this until the Thing has been functioning for a while. At this time I would judge that a Sámiþing with its origins in the whole of the Sámi population would speak with a great deal of political weight on Sámi questions. The political influence of the Sámiþing would probably be of a magnitude quite different from that of the Norwegian Sámi Council. (This estimate is not made out of lack of respect for the work done by the Norwegian Sámi Council.) In this Sámiþing the Sámi will be able to develop a Sámi policy with democratic voting procedures, so that there will no longer be any doubt as to the political opinion of the majority of the Sámi at any given point in time.

In the public debate the reform has been seen by many as the formation of a new body, while others see it as a matter of re-organisation of the Norwegian Sámi Council. When does the stream become a river, when do the trees become a forest? Obviously, here as in other cases of organisational re-structuring it is a matter of opinion whether one wishes to speak of a new body or of the re-organisation of an existing institution.

I myself see the re-organistaion as being of such a radical nature that I consider the Sámiething to be a new organ - not just in name but also in reality. I do not agree with the sentiments expressed in the press that because there is the same kind of mandate this is in reality still the Norwegian Sámi Council - or that the assembly will have the same status as the Norwegian Sámi Council. This shows a lack of understanding of what is in principle a new situation arising from the new rules of election. The particular character of a body does not just stem from its mandate, it depends to a high degree on its composition - on whom it represents.

There are further questions which can be asked on the possibilities of an extension of the mandate of the Sámiething once it has been established. The Committee states that the decision-making powers of the body should, in principle, not be determined once and for all. They should, instead, be developed according to the views of the body itself and the general view of society regarding the position of the Sámi population in Norway.

As far as I can tell there are three different roads that may lead to an extension of the powers of the Sámiething. Firstly, there are the statements to come from the Sámi Rights Committee. The Committee has been given the mandate to take a decision on the question of the management of land and water in Sámi settlement and farming areas, so

that if the Committee should so desire it might allocate a larger or smaller degree of authority in this area to the Sámiþing. Whether this will happen or not is an open question. Secondly, at present, a number of Sámi cultural questions, such as the question of education, are being debated in a separate Committee on Sámi Culture. Here there will be possible topics for the extension of the mandate of the Sámiþing in the cultural sphere. Thirdly, it is possible that the Sámiþing itself may take up the question of its own mandate with the state authorities. During the debate some Sámi representatives have maintained that this latter course of action is the one which will safeguard Sámi interests in the best possible way. In this instance the Sámiþing would be formulating its views and possible demands as representatives of the Sámi.

It is hardly rash to predict that the area of competence of the Sámiþing is going to be a central question in the field of Sámi policy in the future.

The Committee has debated whether the Sámiþing should be a compulsory appeal body for Sámi matters. The Committee was, however, unanimous in its misgivings on the issue. If there were to be a more detailed right of appeal than already exists in Norwegian administration today, this could easily lead to the reduction of the Sámiþing to little more than a body reacting to initiatives taken elsewhere thereby reducing the possibility of making its own contributions.

Constituencies and distribution of seats.

As a basis for election to the Sámiþing, the country has been divided into constituencies. Proportional representation in multi-seat constituencies is to be used as

a means of reflecting the complexity of Sámi society and it is supposed that three representatives from each constituency will be adequate to reflect the various attitudes on the Sámi question that have widespread support within the constituency. According to this proposal the Sámi thing would have 40 members altogether.

When drawing up boundaries of constituencies there were of course cases of conflict of interests in terms of districts. Firstly, there was the question of how much representation should be given to cultural minorities within the Sámi. The Committee was unanimous in securing a constituency for the minority southern Sámi, namely the area stretching from Saltfjellet in Nordland County to Engerdal in Hedmark County, and a majority of the Committee made the same provision for the minority of Lule Sámi in Nordland County.

Secondly, there was the question of the Sámi who have moved out of the traditional Sámi areas to settle in the southernmost part of the country, mainly in the cities, and whether these should also be represented in the Sámi thing. The majority was in agreement over this view, based on the principle of the Sámi thing representing the Sámi as an ethnic group, thereby not excluding any of the Sámi resident in this country. At the same time this representation was limited by turning the whole area south of the south-Sámi area into one constituency. A minority wants a limitation of the electoral area so that it would include only those parts of the country where there is a tradition of Sámi settlement. It was argued that the matters for consideration by the Sámi thing would mainly be of importance for the traditional Sámi areas. If any group from outside these areas were to have influence on these matters, it might be seen as unwarranted interference from outsiders and as going against the principles of participatory democracy. The minority further maintained that people who have moved out

and lost daily contact with a Sámi environment would also lack the necessary preconditions for evaluating matters of importance to local Sámi communities.

The question of a separate reindeer breeders' constituency also arose. The arguments for special representation for the reindeer breeders are: that the Sámiþing may have considerable influence on the use of land, even as an advisory body; that reindeer breeding takes place across constituency boundaries; and that reindeer breeding is a mainstay of Sámi culture. Some of the arguments on the other side are: that the Sámiþing is to be an assembly for all Sámi; that it is to draw up guidelines for the general Sámi policy of Norway; and that the reindeer breeders already have their own separate bodies in accordance with the special legislation on reindeer breeding.

The prevailing view was that the Sámiþing should be an ordinary, democratic body with no form of special representation.

The method of election and a census of Sámi.

The regulations covering the method of election to the Sámiþing proved to be a matter of extreme difficulty. Different factions in the Committee proposed direct and indirect elections, respectively. The full Committee, however, drew up the rules for the different methods of election.

In the case of direct elections, the election would be based upon a census of the Sámi. The inclusion of anyone in the census should be voluntary. The right to be included in the census presupposes the objective condition that the Sámi

language should be one's "home language" or the "home language" of at least one of a person's parents or grandparents. Secondly, there is the subjective condition of a statement to the effect that one considers oneself to be a Sámi. One must also be entitled to vote in local elections in the constituency. The right to inclusion in the Sámi census will in future also apply to the child of a person who is or has been included in the Sámi census regardless of language considerations. It was discussed whether marriage to a Sámi or long-term settlement in Sámi areas should be enough for a person to qualify for getting the vote. This, however, was rejected.

In the case of indirect elections, a special Sámi electoral college would be chosen by local councils and county councils. This Sámi electoral college would then in its turn elect the representatives of the Sámi thing on the basis of lists of candidates drawn up by Sámi in the constituency. Only Sámi may be proposed as candidates. The system involving a Sámi electoral college and lists of candidates from the Sámi in the constituency aims at strengthening the Sámi element in the election compared with ordinary elections to local councils and county councils.

The difference between direct and indirect elections lies mostly in the fact that the latter is not sufficiently representative. A body which is elected indirectly can also be said to be publicly elected. This method of election was used in our parliament from 1814 to 1905. The weakness inherent in the system of indirect election to the Sámi thing is, however, that by this method the Sámi thing would not be elected exclusively by Sámi. True, it is elected among Sámi, but not exclusively by Sámi, since the starting point of the elections is the whole of the Norwegian electorate.

In the case of indirect elections no precise definition has been made as to who should qualify as a Sámi. This is



Moving Camp (Photo: Terje Brantenberg)

left to social control in general. In the public debate this too was stressed as a negative side of indirect elections, but there is hardly any reason to make this an important point. This is the way all elections have been made until this very day. This means that representatives such as those that are members of the Norwegian Sámi Council have been elected without prior definition - and this does not seem to have presented any problems.

The objections to direct elections are mostly related to the question of a Sámi census. It is the opinion of the Committee that a census of the Sámi is a necessary precondition for direct elections. Other possible forms of direct election were discussed and subsequently rejected, among these the territorial demarcation of Sámi areas.

Among the arguments in favour of a census of the Sámi the Committee mentions that:

- a) this would be a means of furthering Sámi culture,
- b) it would contribute towards granting the Sámi the status of a separate ethnic group and
- c) that this would be in keeping with the Nordic legal co-operation due to the similar arrangement of the Finnish Sámi Parliament.

Some of the arguments against a census of the Sámi claim that:

- a) it would create conflicts within the local Sámi communities,
- b) it would entail publicising the individuals' political stand on Sámi matters,
- c) it goes against the principle of equality for all Norwegian citizens,
- d) it would create doubts of a very serious nature for

the individual which might cause great strain and
e) it is impossible to draw up fair criteria for the
right to vote.

These conflicting views within the Committee resulted in a group of Committee members drawing up plans for a mixture of the methods of election. They accept the principles of a census of the Sámi and direct elections and regard this as the procedure which is the most democratic and the most representative. They do, however, feel that the matter should to some extent be settled by the local Sámi population who are to elect their representatives.

This mixed method of elections would result in direct elections in constituencies where the census of the Sámi has been supported to such an extent that it is sufficiently representative. The suggestion is made that a minimum of 200 Sámi should be on the census for it to be used as a basis for elections. In constituencies where the census of the Sámi is not supported to this extent there will be indirect elections. This mixture of methods of election refers to the principle of local democracy. The positive aspect of this will be seen in the case of the support being widespread enough to indicate a general wish for representation through direct elections. The negative aspect will be seen in the case of the support being insufficient. The census figures would then be too small to be used as the basis for an election. The rather low figure of 200 was adopted to take account of the electorate of Sámi minority areas.

Local and regional Sámi Committees

The recommendations contain a majority proposal for the creation of separate bodies, so-called Sámi Committees, in

both local council and county council areas.

Such local and regional Sámi Committees would be able to take the initiative in strengthening Sámi cultural work in the area. They would be able to uphold local and regional Sámi interests in concert with decisions made in the local and county councils. It is important for the impact of Sámi influence that there should be such bodies at all levels parallel to Norwegian administrative bodies.

These local bodies would have little interest for the large Sámi settlement areas of Finnmark. However, it is important that these large areas do not hold a negative attitude to the proposal because of lack of local interest, and that their statements from the hearings at least show some understanding for the need for such bodies in Sámi minority areas.

The review states that these Committees, in some cases, may contribute towards the laying of a better foundation for decision-making. This will primarily be achieved by the conveying of Sámi interests to the appropriate authority. Secondly, the Sámi Committees should provide a clearer order of priorities from the Sámi thereby covering any conflicts of interest which may exist between various groups of Sámi. This accord would lead to a much better chance of all Sámi interests being taken into account.

Sámi Committees will be of particular interest to those Sámi who are not reindeer breeders. The reindeer-breeding Sámi already have their own bodies due to the legislation on reindeer breeding. It is rightly claimed that the remainder of Sámi culture has been given too low a priority in Norwegian society. Through the local and regional Sámi Committees Sámi who are not associated with reindeer breeding would be provided with bodies where they could put forward their points of view, and which could uphold these

points of view in dealing with the authorities.

In local councils situated where the Sámi are a minority of the population (the majority of the Sámi population in Norway are resident in such council areas) the Sámi are usually also a minority in the decision-making body (if they are represented there at all).

It might be objected that more committees would delay proceedings, but in areas with Sámi minorities it might be said that for Sámi culture it is "five minutes to midnight". Local Sámi Committees just might provide the necessary support to prevent total eradication. In this case the argument about the danger of delay in proceedings can not be given much weight.

Taken in this perspective the need for Sámi Committees will differ from one council area to the next. This means that the establishment of such bodies should not be compulsory but be dependent upon the degree to which the Sámi in a particular council area feel the need for a Sámi Committee to strengthen their interests.

Although we can set up special Sámi bodies at both local and county council level, there is still a need for special legislation, for several reasons. Present procedures in local and county councils are based upon majority decisions. We, however, are concerned with minority rights. If a minority is to be granted legal rights then a minority should be able to put through its demands. The main point of the legislation is precisely this: a Sámi minority should be able to demand the setting up of a Committee. Furthermore the draft bill enables the local Sámi population to nominate candidates, and the proposal ensures that the local communities will be given financial support from the state for the activities of the Committees.

A minority within the Sámi Rights Committee opposes special legislation for such local and regional committees in the belief that it is superfluous.

Norwegian authorities and Sámi policy.

The Committee is putting forward its proposals in the form of a draft bill on a Sámi thing and other Sámi legal matters (The Sámi Law) and associated regulations. This draft bill also includes new principles for the way in which state authorities should develop and carry out their Sámi policies. The draft bill has drawn up a set of rules to ensure that the authorities regularly evaluate the extent to which the purpose of the bill regarding protection of Sámi culture has been fulfilled. The proposals are also meant to ensure that the authorities initiate appropriate measures for all eventualities. According to the draft bill the government must inform parliament at least once in every session on the guidelines for their Sámi policies. The draft bill then allows the government to make its decision on the implementation of these guidelines in local and county council areas, based on the discussions in Parliament. This method should ensure that the constitution and the proposed legislation do not stop at good intentions but are also put into effect.

The system proposed here will serve several purposes. Firstly, it will ensure that Norwegian Sámi policies will in future be viewed as a whole by political authorities and that different initiatives in different areas will be judged in their total context. Secondly, it will ensure that Norwegian Sámi policies are evaluated regularly and changed as necessary depending upon the development of society and future needs.

It will also ensure that the debate in Parliament will have the necessary legal effect, even if this debate should end with Parliament entering the case in the minutes without a vote, for according to the draft bill it is enough for the guidelines on Sámi policies to have been put before Parliament and debated by Parliament. This gives the government the necessary mandate to make actual decisions in order to effectuate these guidelines.

The draft bill lays down the general principle that the state is to cover the extra expenses that will fall on local and county councils when the Sámi Law has been passed. The economic burden following from positive Sámi policies should be regarded as a national responsibility and the expenses from special measures on Sámi policies should be covered mainly by the state, not by local or regional bodies.

For my last central point concerning the draft bill I shall mention that there was a proposal - unfortunately only a minority proposal - concerning the relationship with international law. The proposal states that those international rules which are binding for Norway and which are relevant to the legal position of the Sámi as an ethnic minority should be considered part of Norwegian law. This means that these international guidelines would be used by Norwegian courts and Norwegian administration on a par with Norwegian legislation. Such a provision would clarify - in a positive way I believe - a problem which is at present rather unclear.

Future work

The future reports of the Sámi Rights Committee will deal with the right to natural resources - to land and water

- in Finnmark (the second report) and in other parts of the country where there are Sámi settlements and farming areas (the third report).

On the question of the Sámi legal position with regard to natural resources the wording of the mandate from the government begins with the following instruction:

"The Committee should review the general questions of the legal position of the Sámi population with regard to the right to usage and exploitation of land and water".

I shall elaborate on the substance of this task.

Among the areas to be examined, Finnmark has been given special attention by the government, but this question should be dealt with by the Committee in relation to other parts of the country with a Sámi population. The Committee is also supposed to examine conditions at the fjords and in coastal areas. The Committee understood the mandate to include not only fresh water but that the right to fish along the coast and in the fjords in areas with Sámi settlements could also be examined when this is pertinent to the evaluation of Sámi legal rights.

The review is to include all forms of rights and the question of ownership as well as rights of use. An important point here is the question of possible group rights for the Sámi since it has been claimed that Sámi rights to land and water from time immemorial were collective rights.

The review is to deal not only with the rights of individuals or groups of people but also with the question of public administration of natural resources. Central to this issue is the evaluation of the rules covering the so-called unregistered state land in Finnmark which constitutes more than 90% of the county council land and the evaluation

of the customary procedures of the authorities which deal with the sale of land in Finnmark. The administration of state property in other county council areas does, however, also fall within the scope of Committee where this is related to Sámi settlement areas and farming areas.

The Committee has been specifically directed to base its evaluation upon a review of historical developments. In the public debate many arguments have been put forward referring to customs and old conceptions of law.

The Committee was also requested to present a report on the actual usage of land and water in Sámi settlement areas. This is to be done insofar as it is necessary in order to map out existing legislation and put forward new solutions. This is vital if the results are to have a realistic basis. Such a review of the actual usage of land and water is related to Sámi demands that custom should be respected far more than has previously been the case. The Committee was therefore also directed to clarify matters concerning present day conceptions of law.

Conflicts of interest will mainly arise from competition for the use of the areas. On this question the mandate states:

"The Committee should map out and put forward proposals for the solution of possible conflicts between different uses of the land - including reindeer breeding, agriculture, stock-breeding, forestry, fishing, industry and water power, mining, tourism, nature reserves, and outdoor life. These conflicts may be between Sámi and non-Sámi users as well as between different interests within these two groups".

This enumeration alone is indicative of the possible conflicts about usage. An extensive part of our work has

consisted in gathering the necessary information on the issue, on the needs of various interest groups with respect to usage and their views on the matter of present and future conflicts over usage.

To some extent the Committee has worked on these matters from the time of its creation. In the time to come the work will be concentrated exclusively on rights to natural resources and their administration.

Closing remarks

The Report of the Sámi Rights Committee has been, and still is, the subject of a comprehensive, public debate in the northern part of Norway. While the conflict surrounding the expansion of the Kautokeino-Alta project for a while turned the conditions of the Sámi into a main topic for the nationwide mass media of southern Norway, the radio and newspapers of southern Norway have shown considerably less interest in this, the more constructive phase of development. The overall impression is that the Report was generally well received. At the national conference of the National Association of Norwegian Sámi in 1984 the president stated that the Report had been awaited by the Sámi for generations.

The recommendations of the Committee are, to a large extent, unanimous. There is some disagreement in important areas. Naturally, those matters on which there is disagreement will be brought into the foreground in the debate. There is general agreement on the presentation of the basic material, on the basic views, on a number of general principles in the draft bill, on the main outlines for establishing a Sámithing and the formulation of the technical set of rules for the different methods of

election. It is my opinion that the Report forms a realistic basis for a considerable degree of unification of Norwegian Sámi policies.

In my view the most important aspect of the Report of the Sámi Rights Committee lies in the fact that a process has been started in which Norwegian Sámi policies are evaluated not as a collection of individual measures but rather as a whole and where public decisions are no longer seen merely as measures of economic and cultural support, but are instead seen to be the honouring of legal obligations to the Sámi by the Norwegian state. If our political authorities follow the report, the most important consequences will be that the state acknowledges a great international responsibility, that a constitutional basis will be provided for Sámi policies, and that special Sámi democratic bodies will be established.

The proposals have the very real effect of ensuring that Norwegian Sámi policies have a clear aim that is that the state authorities are obliged to protect Sámi culture and provide opportunities for its further development and that the Norwegian Sámi will be able to work out their policies on Sámi matters in their own Sámi thing.

The Sámi are a people with all that this word entails. There is, therefore, no reason to expect the Sámi to agree among themselves, neither on matters of social consideration nor on Sámi matters. But those conflicts that exist within the Sámi people between different occupations, different districts and different basic ideologies must be solved democratically, by the Sámi themselves. For this reason alone it is important that a representative Sámi thing be established as soon as possible.

In his latest collection of poems "In Stallo's Night" (1984), the Sámi poet Ailo Gaup paints the picture of a

strong and independent Sámi woman, characterizing her by these words, " (she) does not believe in the Sámi Rights Committee". Obviously, there are limits to what a review committee can do, but I certainly believe that the Committee is a necessary part of a process which aims to clarify and strengthen the legal situation of the Sámi. It is regrettable that this work was not started before, but it is hardly possible to bypass this stage.

Previously - and especially during the period between the two World Wars - Norway was grossly out of step with the development of international law on minority protection. As a consequence of this, Sámi culture is less widespread and more vulnerable today than it would have been if this country had chosen to follow the guidelines concerning minorities drawn up by the League of Nations. Since this was not the case, it is vital for Norwegian authorities actively to encourage the Sámi to "enjoy their own culture" - that is to enhance and develop it - in accordance with the stipulations of the Human Rights Convention on Civil and Political Rights.

In the last analysis, legislation in this field is based upon a fundamental conception of value. As we recognise that the individual human being is valuable in him/herself, so we must also respect the particular value of each individual culture. The right of indigenous peoples to enjoy their own culture must now be included among the most basic of human rights.



Vigdis Stordahl addressing the seminar: Photo Espen Wähle

Sámithing and Sámi Committees - a Useful Political and Administrative Solution for the Sámi in Norway?

By Vigdis Stordahl (Norway)

We, the speakers following Carsten Smith, have been asked to comment on whether the Sámi Rights Committee's report and proposed work reflect the political principle of self-determination. The answer to this question is perfectly simple - no. The Sámi are not treated as a people in the legal sense of the word - according to the way in which the established nation-states have chosen to define a people. Norway has never been terribly concerned with the principle of self-determination when carrying out initiatives on Sámi matters. The question, in fact, only became topical with the Alta case.

However much this definition of who qualifies as a people may be too narrow, too old-fashioned and marked by the self-interests of the colonial powers... we cannot afford to waste time here discussing whether any particular peoples are a "people" and therefore have the right to self-determination. We are bound to disagree about these interpretations. The lawyers will probably refer to UN interpretations and will not agree among themselves. On the other hand those of us who are politically involved in the cause of indigenous peoples will maintain that the right to self-determination should be recognised for all peoples whether there is or not a sea between them and their colonisers. Such a discussion is important, but here we must limit our discussion to the exchange of ideas about political and administrative models that might contribute towards solving the conflicts that are often found in the

relationship between indigenous peoples and nation-states.

As will be seen from the title I intend to comment upon the political and administrative structures suggested by the Sámi Rights Committee (hereafter referred to as the SRC).

Before considering whether the new system proposed by the SRC consisting of a Sámithing and local Sámi Committees will contribute towards breaking down the existing conflicts between part of Norwegian and Sámi societies, let us examine those bodies already existing whose task it is to bridge the gap between Sámi and Norwegian society. This will be necessary if we are to understand what the actual changes proposed by the SRC are. I also expect that there are many in the audience who do not know very much about the present administrative system in Norway.

The body that today has the task of liaising between Sámi society and Norwegian society is the NORWEGIAN SAMI COUNCIL. The council was established in 1964, superseding the Sámi Council for Finnmark. The establishment followed from recommendations by the Sámi Committee of 1959, although the council suggested by them was intended to have a wider and more outgoing scope than was actually given to the Norwegian Sámi Council. In 1980, at the same time as the Sámi Rights Committee and the Cultural Committee were formed, the council was re-organised, in order, it was said, to consolidate the work on Sámi matters. The number of members of the Council was increased from 8 to 18 and it was said that in local council areas with a substantial Sámi population, county councils and trade organisations were now to have better representation. At the same time the responsibility for the integration and co-ordination of Sámi matters was transferred to the Ministry of Labour and Local Government.1)

A co-ordinating committee for Sámi matters was formed

consisting of officials of the Ministries of Agriculture, Justice, Ecclesiastical Affairs and Education, Culture and Science, and the Ministry of Labour and Local Government, chaired by the Secretary of State for Labour and Local Government. This led to the establishment of the Secretariat for Sámi Affairs under the Ministry of Labour and Local Government. The Secretariat has been described as follows:

"As well as having the function of a secretariat for the co-ordinating committee, the Secretariat will be the co-ordinating body between the department and other central authorities which are responsible, each in their own fields of competence, for initiatives affecting the Sámi population. It will be the point of contact between the Sámi population and the central administrative body for the administration of many existing measures such as the Norwegian Sámi Council" (St. meld. no. 66 (1981-82): On the activities of the Norwegian Sámi Council during 1980, pp. 1-2).

Returning now to the Norwegian Sámi Council, what then is its purpose?

"1. The Norwegian Sámi Council is an advisory body for state, county council, and local council authorities. These authorities should submit to the Council important matters of an economic, cultural, legal, and social nature, as well as matters concerning the administration of natural resources particularly relevant to the Sámi

1) Previously, the Ministry of Agriculture was responsible for Sámi matters, as they dealt with reindeer breeding. This is still the case, but now a separate administrative body for reindeer breeding has also been established in Alta.

population. The Council will also have the opportunity to submit cases to these authorities should they wish to do so. The Norwegian Sámi council will also be able to take up such cases with private organisations, institutions, etc.

2. The Department may direct the Norwegian Sámi Council to make use of public funds within a pre-defined set of guidelines".

As far as I know, no analyses have been made of the operation of the Council, neither before nor after the re-organisation. I do, however, see the 1980 re-organisation as an admission that the Council had not been functioning satisfactorily, i.e. it had not provided the expected contact between Sámi and Norwegian society. If, however, we take a closer look at the areas of competence of both the old and the new council we will find that they are the same. The competence of the old Council was defined as follows:

"The Norwegian Sámi Council is to be an advisory body for the regional and central authorities in matters of an economic, social and cultural nature of particular relevance to the Sámi population. The Council will also be able to take up such cases on its own initiative".

Apart from the Norwegian Sámi Council we also have special councils and committees on matters concerning education and language, on cultural matters, a development trust, and a special reindeer-breeding administration.

Let us now turn to the proposals of the SRC concerning representative organs for the Sámi. The SRC's recommendations to the Norwegian authorities are as follows:

"The Sámi ethnic group in Norway should have their own

nationwide Sámiþing elected by and among the Sámi.

"According to the rules laid down in this law it is also possible to demand that special Sámi committees be set up in county council areas and in local council areas".

Since the Sámiþing is to be a nationwide body, Norway has to be divided into constituencies and each of these constituencies must be given a number of seats. The Committee now has four alternatives. It is agreed that there should be three seats in each constituency, but there is disagreement about the constituency boundaries of Finnmark and Nordland, and whether southern Norway should be a constituency. The new Sámiþing is to have a total of either 36, 39 or 42 representatives. These representatives are to be elected through direct or indirect elections. In direct elections it will be the individual Sámi who will cast his/her vote for his/her preferred list of candidates. In order to have the right to vote in the elections to the Sámiþing the voter must have been registered in a census of the Sámi. The Norwegian Sámi Council (NSC) is quite specific on this point. Only a directly elected Sámiþing is acceptable.

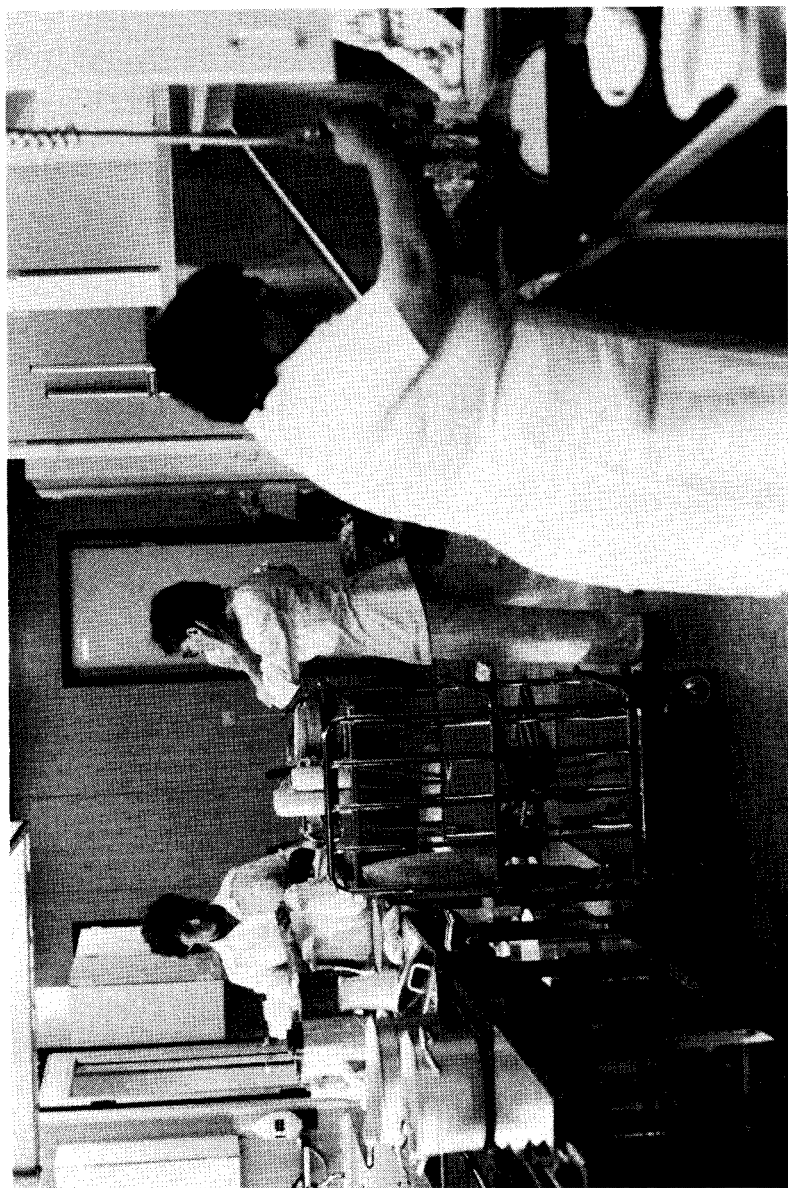
It is precisely this question of a census of the Sámi which is the reason for other members of the SRC being in favour of indirect elections. The consequence of this will be that the local council (or the county council in the case of the southern Sámi constituency) will elect an electoral college of five who in their turn will cast their votes for the lists of candidates. We, the Sámi, will be allowed to draw up lists of candidates, but we will not be allowed to cast our votes for them. That will be done by an electoral college appointed by the local council!

In the case of indirect elections there is no particular intention to ensure that there will be formal

control of whether those who stand for election, draw up lists of candidates, or get selected to the electoral college are in fact Sámi. It is supposed that "as a rule it will be generally known among the local population who are Sámi and who are not..." which would make possible "informal control of considerable importance by the local population" (p. 548). It is important to ensure formal control of whether those who use these opportunities are in fact Sámi. Otherwise there is a risk that this new body will suffer the same fate as all other Sámi bodies which repeatedly have to prove that they are Sámi. This is so because the question of representativeness is the crucial issue of the Norwegian debate. That representativeness is something to be agreed upon, rather than an objective criterion, is not acceptable in the Norwegian debate. The SRC's Sámithing is essentially similar to the Finnish Sámi Parliament. It will be recalled that such a Sámi Parliament, or Sámithing if you like, has also been favoured by the NSR. There is, however, a considerable difference here with regard to the mandate which such a body is to have. I shall return to this point, but let us look first at the other bodies proposed by the SRC.

In order to improve contact with authorities at county and local council level the SRC proposes that it should be possible to establish local SAMI COMMITTEES. The members of these committees are to be elected by local and county councils on the basis of electoral lists drawn up by the Sámi (cf. the indirect method of election). Some of the arguments put forward in favour of local Sámi committees are:

- Sámi Committees would strengthen Sámi influence and Sámi interests in matters of language and handicraft, in parochial matters, in various associations and in the registering of Sámi placenames, etc.



Health centre at Karasjok (Photo Sámi Aigi)

- Sámi Committees would help create a better foundation for decisions made at county and local council levels. This will be done first and foremost by ensuring a better procedure for bringing Sámi matters to the attention of the proper decision-making authorities. Secondly, the Sámi Committees would provide a clearer order of priorities from the Sámi of possible conflicting interests of different Sámi groups, and there would be a greater possibility for ensuring that all Sámi interests are catered for.

- Local Sámi Committees would provide the coastal Sámi with bodies where they would be able to put forward their views, and which in their turn would be able to put these views to the authorities.

- The Sámi Committees would also play the part of a "grassroots movement" vis-à-vis the central Sámi body. The Sámi Committees would help put cases of a fundamental nature for the central body.

- The Sámi Committees would complement the special Sámi decision-making bodies set up in accordance with the legislation on reindeer breeding.

When I first read this I could hardly believe my eyes. Was it really possible for the Committee to be so naive as to believe that Sámi Committees would guarantee that all Sami interests would be catered for when the representatives are to be elected by the local and/or county councils? They would obviously consider party political interests, as is always the case when a committee is formed. I also thought that the Committee was aware that the democracy of committees is often democratic only in name and a source of frustration for those elected onto the committee, especially if they have no role other than to give advice, which would be the case for the Sámi Committees. And the notion that the Sámi Committees would be able to supplement the

decision-making bodies of the reindeer breeders is nonsense.

If it is intended that all the various Sámi interest groups will be heard, if there is such a great concern for the Sámi grassroots, why not build political structures that would allow for all this. If a political structure were to be made which would give real influence to the grassroots, a structure which would consider the object of democracy, this might even become a model for Norwegian society. As far as I know it is also difficult to activate the Norwegian grassroots. Those extraparliamentary movements which have been labelled as grassroots movements do turn out to be dominated by people like us who could not exactly be said to be grassroots.

I have attempted to sketch out the new political and administrative structures as I understand them after having read the recommendations of the SRC.

Norwegian	Sámi
Parliament	Sámithing
County Council	Sámi Committee
Local Council	Sámi Committee

We should, however, not be taken in by this sketch. The structure suggested by the SRC is not a Sámi political and administrative system mirroring the Norwegian system. This is obvious from the authority and/or scope these bodies are expected to have.

"The Sámithing and the Sámi Committees are advisory bodies. The Sámithing and the Sámi Committees can be given

powers of decision in matters of disposal of public funds for particular purposes.

"The Sámiþing and the Sámi Committees may take the initiative to raise and advise on any matter within their own area of competence. They may also put cases to the public authorities, to private institutions, etc.".

The attentive reader will probably nod in recognition. We have just read this above. This is really the same mandate and the same scope as was given to the present Norwegian Sámi Council.

The reason given by the SRC for granting only an advisory role to the Sámiþing is that "it is difficult to discuss the question of administration of natural resources divorced from the question of rights to natural resources" (p.452). Since the government asked the Committee to speed up the work on the question of Sámi representative bodies the question of rights will not be dealt with until the next report. The SRC made it quite clear that if the question of representative bodies were to be given a high priority, it was presumed that such bodies would be purely advisory (see p.452). This was also agreed by the executive of the NSC (unfortunately so, in my opinion). Although the recommendation states (p. 515) that the mandate of this body should in principle not be fixed once and for all, but rather develop as they define their own role and in line with the general views in society on the position of the Sámi population in Norway, the proposition which we are to consider gives us but the same mandate as that of the present Norwegian Sámi Council. This is stated in black and white in several places in the recommendation (e.g.: c. 13.3.2, p. 577 and c. 14.2, p. 588). The question of the management of resources is not on the agenda of the report (an unfortunate order of priorities, I believe, but I have to abide by it). This, however, is not a good enough reason



Sámi handicraft (duodji) shop in Kautokeino (Photo Sámi Aigí)

for the Sámi thing to become a carbon copy of the Norwegian Sámi Council, so that it will only have an advisory role. I do not see any problems in granting decision-making powers (in the sense of legislative powers) in a number of other areas which are of importance to us. Education, language, and cultural matters in general, why aren't these within the scope of the Sámi thing? Why are these still to be dealt with by various councils and committees? Why shouldn't we have a separate Sámi administration in these areas until the question of administration of resources has been dealt with?

It is obvious that a new body should be different from the Norwegian Sámi Council. The Sámi thing as proposed by the SRC is not. There is a strong demand from the NSR that the new body must not become a carbon copy of the Norwegian Sámi Council.

The NSR has put forward draft proposals for a publicly elected body, the "Sámi Albmotcoahkkin". The problem is that the proposal of the NSR is ambiguous with regard to the powers of this body. In my opinion the NSR did not succeed in thinking through exactly how the intended powers are to be executed in practice. Like our adversaries we are amateurs in this respect because this is a novelty in our country. Unlike our adversaries, however, we suffer from a fatal lack of human and economic resources. To formulate our ideas in concrete terms is going to be expensive. We need someone who is able to write down our ideas on paper and then travel abroad to explain the contents of this paper. It would have been better if we had been able to go abroad on study trips to learn from the experience of others. The only unifying forum in which we have been able to discuss these matters has been the annual general meeting of our Reindeerbreeders' Association. We do not have a General Secretary or anything like it. There is only one person employed in our office. Everything has to be done in one's spare time. I understand very well that people become

frustrated and tired. On top of all this our representative on the SRC has no opportunity to discuss openly in her organisation the matters under consideration. Is it any wonder that we are powerless? The Danish singer Trille sings about "dreams destroyed turning into violence". Let us hope that this will not happen.

The discussion on the SRC's recommendations has now begun within the organisation. What the results of this will be I do not know. We now have the challenge of finding a model which incorporates the following aspects:

- a) We are spread all over Norway, mostly living side by side with non-Sámi.
- b) We have in Inner Finnmark Sámi people who are confident and politically aware.
- c) We want to make the decisions about our own affairs, including the management of resources.

To construct a model which incorporates all this, is not easy. It calls for a willingness on all sides to be innovative. The SRC's proposals are not characterized by innovation.

Their proposed administrative and political structures fit nicely into the line of reforms that have been made over the past twenty years. Reforms which only meant patching up the old system. It is like putting a patch on your garden hose for the fifth time in the belief that this time you have managed to fix it properly, instead of realising that you have got to buy a new one.

I am well aware that it is not easy to work in this Committee, as it is made up of interest groups who have already invested a lot of prestige in the matters they are to consider, but I am not prepared to accept that fixed lines of battle in the Committee are to hamper us in the

discussion of future political and administrative solutions. Nor do I accept the argument for giving the new Sámi thing advisory powers only, which is that "Natural development will ensure that the scope of this body will in future be extended with respect to matters of particular importance for the Sámi population" (p. 578, my emphasis). The future is here. The Norwegian authorities will probably not set up any more committees, and we don't want any more.

A Sámi thing, certainly, but not if it is just going to mean a new name for the Norwegian Sámi Council. The Sámi thing proposed by the SRC is nothing like the Storting in Norway, the Folketing in Denmark, the Landsting in Greenland, the Althing in Iceland... It is an advisory body like the Norwegian Sámi Council and the Greenland Provincial Council. If the SRC's proposals are accepted we can look forward to the re-organisation of the Norwegian Sámi Council. If we are lucky this will coincide with the Council's 20th jubilee. What a birthday party we shall have.

Part II: Sámi Rights in Sweden and Finland



Nils Lasko (centre) at the seminar (Photo: Espen Wæhle)

The Importance of Indigenous Influence on the System of Decision-making in the Nation-state

By Nils Lasko (Sweden).

An indigenous people must be able to decide its own future, direct its own development and not depend solely on others. Therefore it is important for an indigenous people to be able to influence the decision-making of the nation-state. This is the main theme of this paper: to examine the degree to which indigenous peoples have an influence on present or future political, legal and administrative systems.

With regard to indigenous people's participation in the decision-making process or, if you like, their degree of autonomy, the Sámi position is the same as that of indigenous peoples the world over: they have no real decision-making rights at all.

An important question has been raised as to which factors will further and which will hamper the cultural creativity and future of an indigenous people. This is tied closely to their degree of participation in the decision-making processes of the nation-state. We heard above of the situation in Norway, I will now refer to the relationship between the Sámi and the State in Sweden.

Since time immemorial the Sámi have been organised. The present Sámi community organisation derives from earlier Sámi social structures centered around the "sita" system (smaller Sámi collectives with common areas, for fishing, hunting and reindeer breeding, etc.). The old Sámi social

structure had no single body linking the sitas and it is important to bear this in mind when describing communication between the Sámi and the nation-state.

The state never had - and still hasn't - any obvious negotiating stance. At the time of the revision of the 1898 law on reindeer breeding this became quite clear. A motion (1917:169) concerning the repeal of certain parts of this law led to parliament finding it necessary to enquire into the views of the Sámi. Hence the following decision by parliament:

"The Lapps should be given the opportunity to discuss and make suggestions at a general meeting of Lapps due to the general revision of the legislation concerning the right of Lapps to breed reindeer and other related topics announced in the proposition".

This led to the first general Sámi gathering in Sweden in 1918.

The 1917 parliamentary decision was not the first sign that communication between the nation-state and the Sámi was poor and that the Sámi were outside the decision-making processes. As early as 1898 the Minister of Justice, Mr. Ludvig Annerstedt, pleaded the case in parliament for the Sámi population becoming involved in decisions which affect them.

Later, in his motions no. 1920:209 and 1930:12 Mr. Carl Lindhagen, MP, was to demand Sámi representation in Parliament. These motions were, however, rejected.



Accountancy course for migratory Sámi (Photo: Sámi Aigí)

Figure 1 shows how the ordinary state system of decision-making consists of the People (including the Sámi), Parliament, the Government and the Administration. When I say that the People are part of the decision-making process I refer to the power of the people arising from their right to make decisions in the shape of our general elections every three years. The power of Parliament is thereby legitimised by the people.

To safeguard Sámi interests we have the main Sámi organisations. These are interest organisations without participation in the decision-making process itself. The organisations are only able to "influence" the decision-makers.

The National Sámi Association (Same-Atnam) was formed in 1945, and the National Association of Swedish Sámi (NASS) in 1950. In their capacity as pressure groups these main Sámi organisations have continually kept contact with Parliament, Government, and various administrative bodies.

In addition to those referred to in Figure 1 there are more Sámi organisations such as Saminuorra and Svenska Samernas Landsförbund, but for practical reasons I have chosen as my starting point the member organisations of the Nordic Sámi Council, namely Same-Atnam and the NASS. They are also the most important and the most active of the Sámi organisations in Sweden.

A single body for Sámi affairs at the central state administration was not established until 1977. Until then various departments took care of whatever Sámi matters might belong to their area. Among the Sámi matters in Sweden the question of reindeer breeding holds a special position, and it is included in the Department of Agriculture.

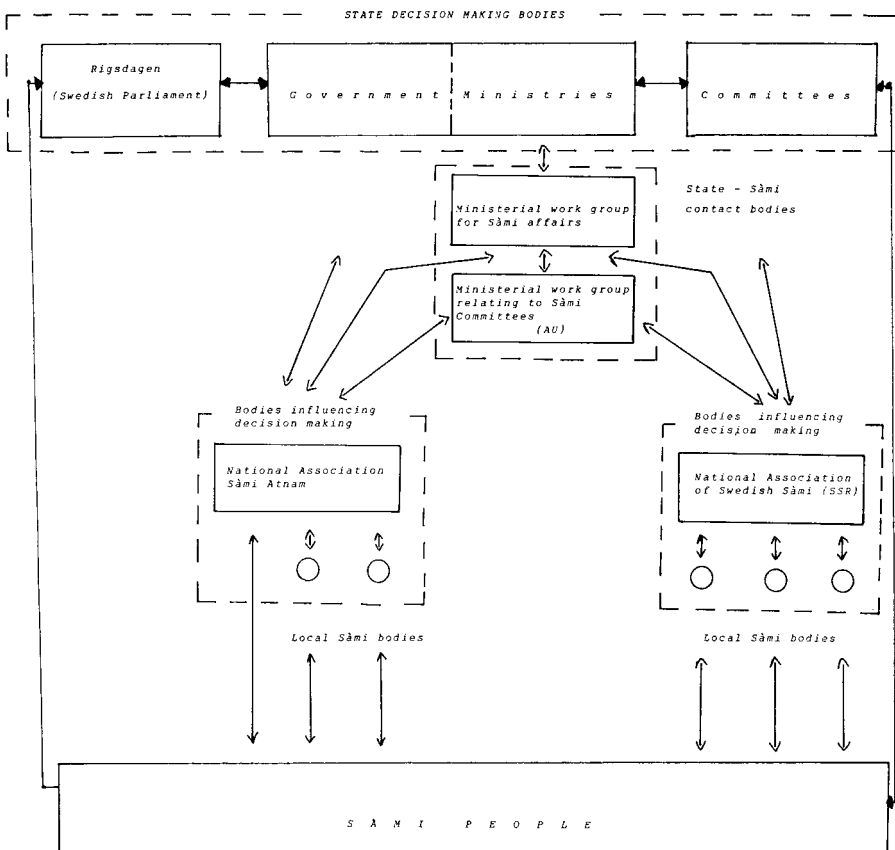


DIAGRAM OF THE SWEDISH SAMI ORGANISATIONS IN RELATION TO THE STATE AUTHORITIES

Figure 1

The Departmental Work Group is a contact body between the nation-state and the Sámi. The Work Group is also a coordinating body for different government departments in relation to Sámi questions. The Work Group has no advisory or decision-making function.

The situation in Norway is somewhat better than Sweden in that since 1964 there has been an advisory body, the "Norwegian Sámi Council" which replaced the "Sámi Council for Finnmark" of 1953 (See figure 2).

In Finland there has been an advisory Sámi body since 1972 which is also elected by Sámi in Finland (See figure 3).

Sámi history, like the history of many indigenous peoples, shows that the indigenous population have had great problems in communicating with the nation-state and that they are frequently excluded from the general processes of decision-making. They have little influence on various questions concerning their welfare within the administration and other power bodies of the state. It is difficult for indigenous peoples to have their demands and wishes adhered to.

In order to improve the situation of an indigenous population, it is necessary to create opportunities for them to influence matters concerning their future. The Norwegian Sámi Rights Committee's proposal for a publicly elected, representative body like the one which has existed in Finland since 1972, and like the one now being prepared in Sweden, is a big step forward. An example of the position of this body with respect to the decision-making processes can be seen in figure 4. The reports on Sámi rights in Norway and Sweden must, however, take care to provide a parliament with real influence on public decision-making processes.

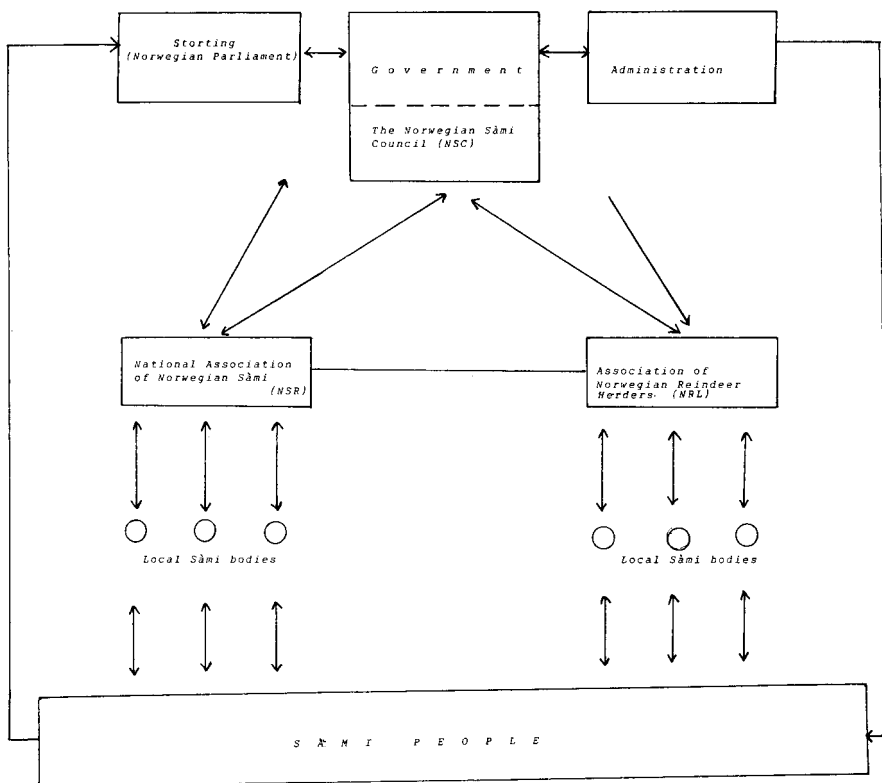


Diagram of the Norwegian Sámi organisations in relation to the state authorities

Figure 2

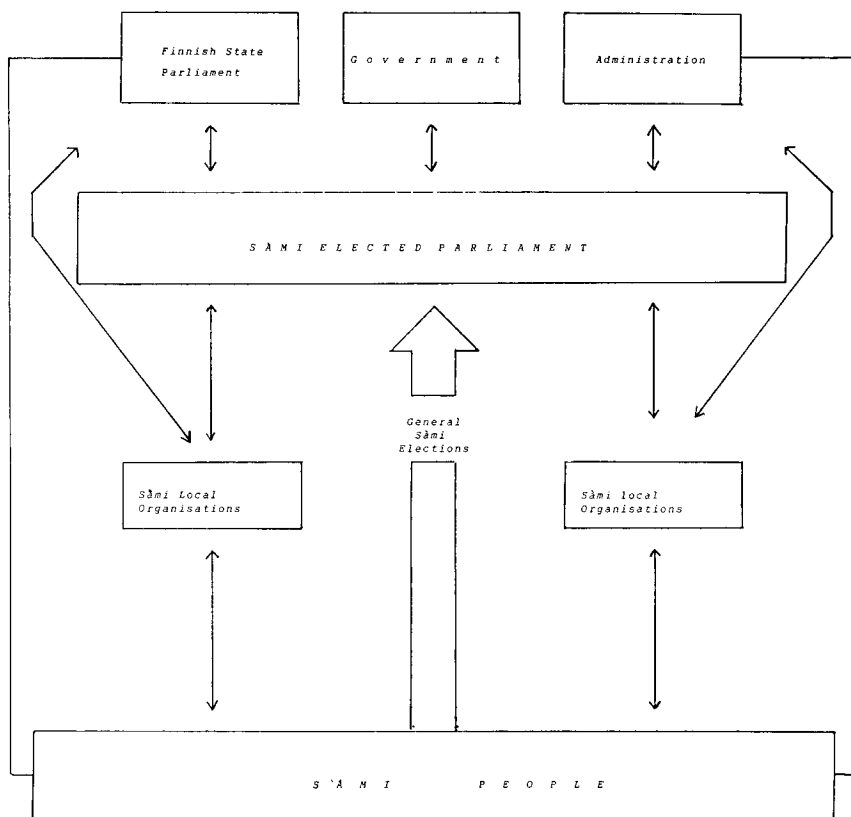


Diagram of Finnish Sámi organisations in relation to the state authorities

Figure 3

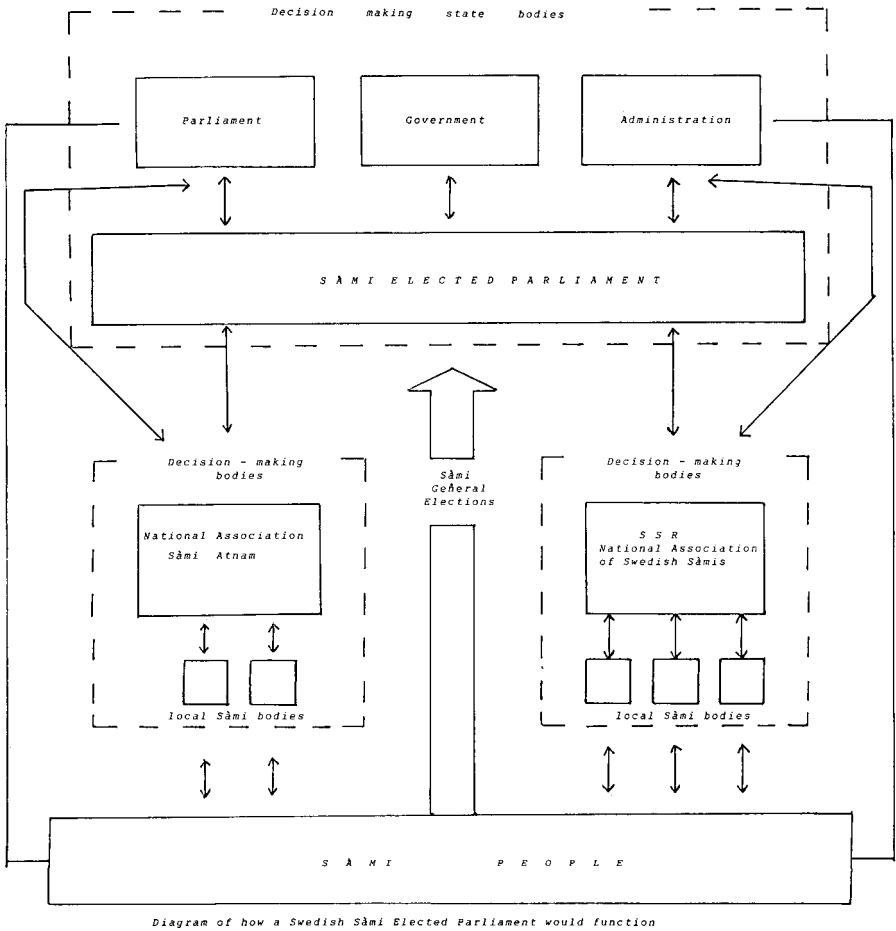


Figure 4

THE PARTICIPATION OF INDIGENOUS PEOPLES IN MATTERS OF LEGISLATION IN THE DECISION-MAKING PROCESS.

A central problem which has arisen in the debate at this seminar concerns the degree to which the indigenous peoples of the Northern Cap are able to influence the decision-making processes of the different nation-states.

All indigenous peoples represented at this seminar have one thing in common: they live within democracies which are politically stable. This is helpful for an indigenous population, or in the case of the Northern Cap where it is a question of minorities, for the minority to be granted some form of participation in the decision-making process.

Of central importance here is the legal system and the participation of the minority in legislation and legislative work. In this area there is, however, an important problem for the minority, a problem concerning the majority and the minority in relation to the democratic decision-making process. Democracy demands that legislation must be of the people, through parliament, or, to quote the principle of the sovereignty of the people as it is stated in the initial paragraph of Swedish constitutional law:

"All state power stems from the people".

This links the principle of the sovereignty of the people to Law No. RF 1:4 2 st on the exclusive right of Parliament to legislate.

In democratic countries there are preconditions for minorities to gain direct influence on the decision-making process, but the matter has not yet been solved in a way that is acceptable to them. This is particularly so in an

area of utmost importance for minorities - the area of legislation. Here participation need not conflict with the exclusive right of Parliament to legislate. Participation could be achieved through the minorities being granted greater influence in legislative work. This might take the form of their influencing the preliminary work of legislation by being represented on review committees, or even directly, in bodies under Parliament or under the government. One big step forward has been the representation of Sámi on review committees during the last decades and this has continued with the current Sámi Rights Committees in Norway and Sweden.

In addition, the Sámi must be granted real influence in the public system of decision-making, particularly in those parts of the system that are of vital importance for them. This does not apply solely to the Sámi, so that they may safeguard their interests, but to all indigenous peoples.

CO-ORDINATION OF NORDIC LEGISLATION ON SAMI MATTERS.

Legislation is of crucial importance to indigenous peoples and it should be made to suit them. A special problem that is not being dealt with at this seminar is the problem which arises from indigenous peoples who are subjected to several different legal systems.

In the Northern Cap the Sámi provide an excellent example of this. The Sámi are subject to four different legal systems: the Norwegian, the Finnish, the Swedish and the Soviet legal system. The Sámi are spread over an area stretching from the easternmost parts of the Kola peninsula in the Soviet Union westwards through northern Finland and northern Norway and southwards as far as the parish of Idre

in Sweden and the corresponding area in Norway. The fact that the Sámi are subject to several different legal systems does, of course, present them with a number of different problems. For one, the organisation of the population must be suited to these various legal systems.

Therefore, I have great hopes with regard to the reports of the Norwegian Sámi Rights Committee and the revision of the legal position of the Norwegian Sámi, as well as to the Swedish Sámi rights report which will revise the legal position of the Swedish Sámi. These bodies shall attempt as far as possible to co-ordinate their reports, and to co-ordinate further with the recent Sámi report from Finland with the objective of reaching an all-Nordic Sámi legislation. This would be similar to other pieces of Nordic legislation such as in the area of rights of purchase.

This problem is not specific to the Sámi, it applies to many indigenous peoples around the world. In those countries where an indigenous people is spread over several countries because the borders of these countries do not coincide with the borders of the indigenous peoples, there is a tendency for the respective nation-states to see the indigenous peoples - if they see them at all - as a minority of their own nation-state. This means that the nation-states usually fail to consider an indigenous people as a whole, and fail to consider the needs of the indigenous people as a people in their own right.

Extending the View

Ingvar Åhrén (Sweden)

In this paper I will "extend the view" of discussion from the legal perspectives discussed hitherto and place them in a wider context. The Sámi legal struggle goes far back in history - it can be said to have begun at the very first time the Sámi came into contact with the other inhabitants of Sámiland. From the middle ages there were representatives of the authorities living in the Sámi area. As early as the 15th century we find special lapp bailiffs; in the 16th century they were appointed by King Gustav Vasa. The reason was that many of these bailiffs were so-called "birkarle", (traders with special privileges) who had built up monopolies in Lappmark and whose power the king wanted to reduce. He was, however, dependent on these men, and therefore kept many of them as his lapp bailiffs.

In spite of this institution of lapp bailiffs, Sámi contact with the Swedes in general came much later. The contact led to the introduction of special rules and regulations, called the "plakat". By the use of the "plakat" the authorities sought to take the initiative to bring their influence to bear on Sámi areas. The first Lappmark Plakat was introduced in 1595. This was replaced by another Plakat in 1673, which in 1749 was replaced by the Lappmark regulations. These plakats and regulations gave certain freedoms and other rights to non-Sámi settling in Sámi areas. Through plakat and regulations, colonisation of Sámi land was encouraged, land which, according to the state, was uninhabited. A settler in Lappmark was exempt from certain taxes and from "knægte-skrivning" (conscription), to mention

but a few of their advantages. Not to have to go to war at a time when Sweden was often taking part in wars was for many Swedes a most valued privilege.

Apart from the regulations, other measures were taken, such as the drawing of the borders around the Sámi area. This continued after 1749, and in the middle of the 18th century the Lapp Codicil was introduced and new borders drawn with the Sámi of the other countries. However, it was not just a matter of drawing borders between nations - there were also borders within Sámi society and borders within Sweden. It was a matter of repeatedly re-drawing the borders in an attempt to control relations between the Sámi and the rest of the population.

Very early too, other interests begin to emerge in the Sámi area. Was this colonialism or not? Let me give just one example to illustrate that it may be pertinent to speak of colonialism in those days. The example stems from the Nasa mountain which was mined from 1635. Mineral deposits had been discovered in the Arjeplogs mountains and mining started. Labour was needed and the local population at that time were Sámi who were effectively turned into the slaves of the mining company. For example, the Sámi had to hand over a tenth of their reindeer to the mines and also "akkjas", sleighs, which were used to transport material from the mines.

For the Sámi, liberation in the modern sense of the word took shape at the beginning of the 20th century. This is when Sámi organisations began to spring up. The Sámi in the southern area felt compelled to better their conditions and one way of doing this was to organise themselves.

When we regard Sámi life we find that the Sámi have always and at all seasons lived on the surface of the earth and moved on top of their fields - unlike the farmer who dug



Ingvar Arthén at the seminar (Photo: Espen Wähle)

his way forward. This means that the Sámi - and with them other minorities - who live on whatever the earth gives them instead of trying to conquer it in their fight for survival, are put in a legal position which is different from that of other people in western civilisation. One might say that it is the misfortune of the Sámi that they did not use western tools, did not own a plough or a spade. Had they done so, their legal position today might be clear. For this is the starting point of western legislation: Someone used the ground, and while digging made a mark later to be pointed at when he made the claim "This is mine, and this is mine - this is where I was digging and no-one else!" The Sámi were unable to show tools such as a plough or a spade. The same is true of the Sámi in winter - they do not leave a trace. The fact that in the past the Sámi would never clear the snow but lived all winter directly on the snow, seems to me a good example of this. They lived on the ground, and that turned out to be their misfortune.

The effect of this is that what the Sámi regard as useful and valuable does not hold the same value in the society of which they form a part. Sámi and non-Sámi have completely different assessments of how to use land and possessions. If society finds anything of value in Sámi objects, the best that can be hoped for is that they will be put on a shelf in a museum. That is all that is left.

Where, then, is Sámi evaluation and knowledge - it never materialises. It is precisely this knowledge, this evaluation, which is missing in existing legislation. The Sámi can open great perspectives of distance - the liberating distance which we miss brought about by confrontation with the distant past, and which brings a sense of proportion to the present. We have to be able to extend our view and see further than the blossoming flower and be able to understand a dead and withered plant. This is the way in which Sámi society has always evaluated the

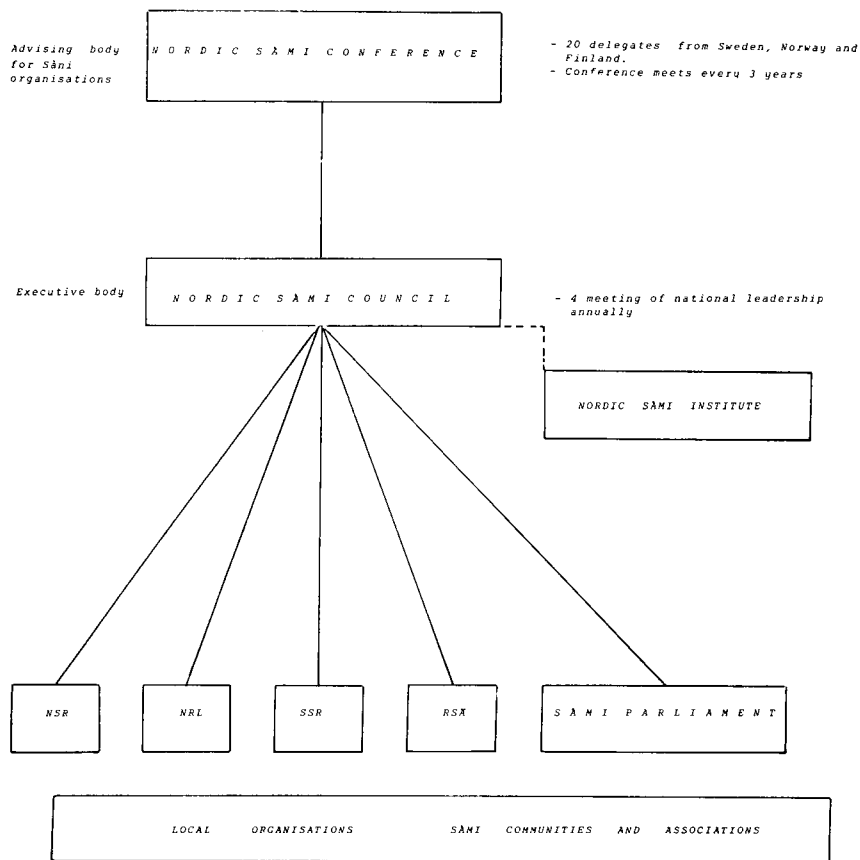


Diagram of Sámi organisations in Norway, Sweden and Finland

land on which it moves, even if the movement takes place on top of the earth. It is valuable in other contexts than when it is fertile. It is important to describe the total environment - an environment consisting of more than the usual elements of land, water and air; the total environment includes knowledge, evaluation - the totality of life. This must be brought to the fore, even the cycle of nature and the cycle of man which is essential for the Sámi. In one of his books, Ernst Manker called the Sámi the people of the eight seasons. There is a lot of truth in this.

This means that there are great differences in starting point when discussing Sámi rights or non-rights - not just to land and water, but also to knowledge. The implication of this is that the present reviews bear a great responsibility to change what might be called Sámi rights. The previous examples presented here were mostly concerned with the finer technical points: the way to progress according to western ideology. The starting point for a review of Sámi rights must be completely different and begin from Sámi principles.

Experiences Drawn from the Finnish Sámi Parliament

Pekka Aikio (Finland)

1985 marked the 10th jubilee of the Sámi Parliament and now 12 years have passed since the president of Finland signed the decree establishing it. The Sámi of Finland live in the Lappmark (Lapland) area of the country and we use the term "Lapp" interchangeably with "Sámi". This is different to the other countries in Scandinavia which use the word "Sámi" exclusively.

All autonomous Sámi organisations in Finland as well as in Sweden and Norway are of a comparatively recent date. Previously, however, there was another kind of autonomy. In the past Lappmark was organised in a totally different manner and there were boundaries to our lands known as "Lappmark borders". Although these borders are still found in Sweden, they are no longer found in either Finland or Norway. Behind Lappmark borders were situated Sámi communities. These were divided into areas subject to hereditary right and areas subject to taxation, the so-called "Lapp tax lands". In the Sámi hereditary right communities our people supported themselves by reindeer breeding, hunting and fishing. These forms of production are today collectively called "Lapp occupations". Those Sámi who lived in communities within the Lappmark borders on Lapp tax land, had to pay taxes on their territory. They were then entitled to breed reindeer, to hunt and to fish.

South of the Lappmark borders was the land of farmers with what was known as "Farmer occupations" - agriculture, etc. This situation certainly lasted until the 18th

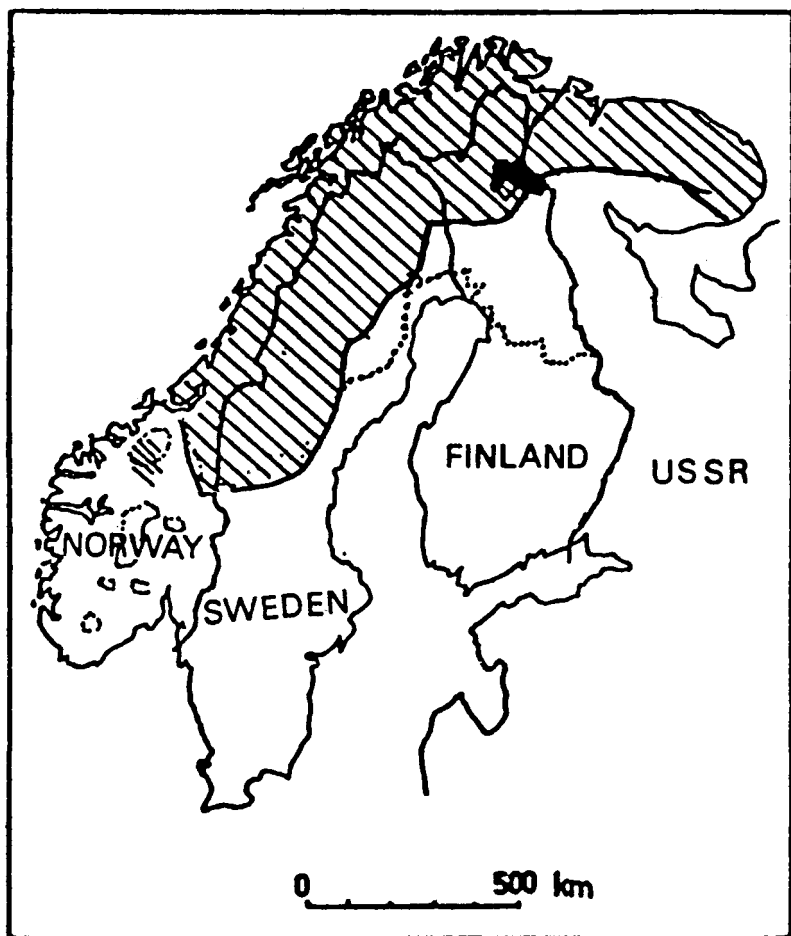
century, and it is my belief that it lasted until much more recently.

The paying of Lapp tax for the right to breed reindeer, to hunt and to fish, is a phenomenon that is interpreted by lawyers today as property rights. This means that the inhabitants of the old Sámi communities can be seen as owners of their area and that communities' lands were considered their property. As far as I understand this was confirmed by the ruling of the Swedish Supreme Court in 1981.

Therefore we can see that the Sámi Parliament is neither the first nor the only autonomous body of Finnish Lappmark.

During the past 20-30 years there have been many work groups and committees in Finland dealing with Sámi matters and reindeer breeding. Reindeer breeding is often connected with the Sámi, but I believe that we are now all aware that this is but one out of many Sámi occupations. The many committees in Finland which worked with the question of reindeer breeding therefore only touched upon one aspect of Sámi society.

From the end of the 1940s to the beginning of the 1950s there was a committee in Finland to deal with Sámi matters. The committee handed in its report in 1952. Part of the report consisted of proposals for a Sámi law. The report was a fine piece of work. It was used in the early studies on populations and occupations and there is still valuable information to be gained from it. The proposals of the committee did not, however, lead to anything being done, and there was a period of silence for twenty years or more before anything actually happened in Finland with regard to the Sámi. There were, of course, Sámi organisations, founded by the Sámi themselves, but it was not until the end of the



Map showing the extent of Sámi settlement after the 1950s. The shaded area denotes settlements and the dotted line the southern boundary of reindeer herding. The UKK-National Park is in black

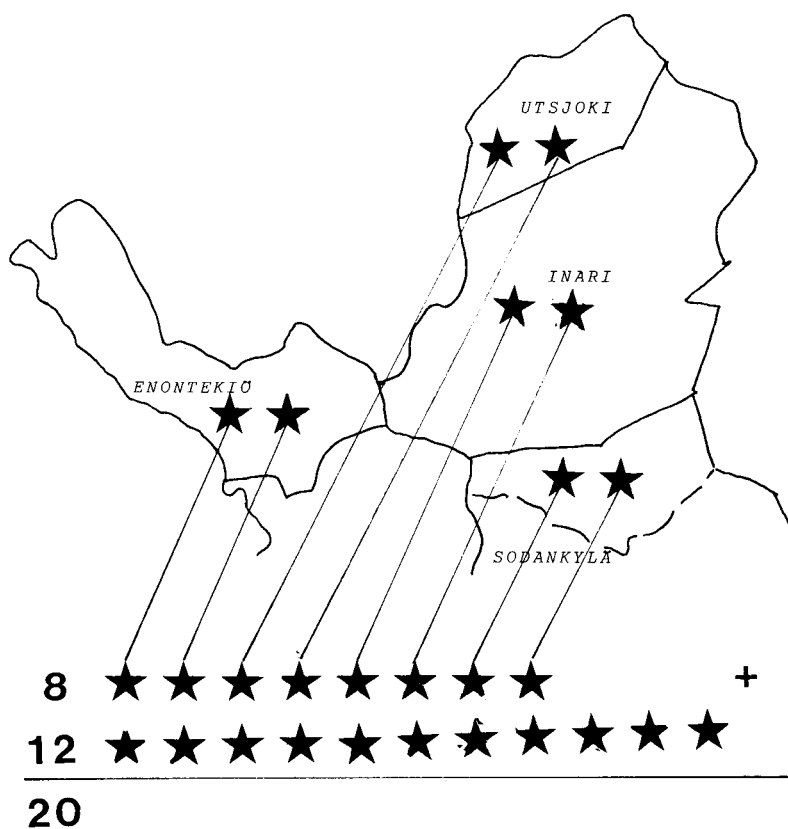
1960s and the early 1970s that anything new began to happen. In the beginning of the 1970s, in particular, there was a great deal of sympathy in Finland for minority questions. This was expressed through meetings, exhibitions and seminars on the situation of the Sámi in Finland.

During the years 1971-73 there was a Sámi committee working in Finland. The committee produced a report in May 1973 which consisted of a comprehensive review of the cultural as well as the economic, social and legal situation of the Sámi in Finland. It was a review and a research report which also contained many proposals for improving the situation of the Sámi; one of the most important being the proposal for a Sámi law. Many chapters of the proposal for a Sámi law dealt with matters such as the election procedures for the Sámi Parliament, Sámi language, and Sámi rights to land and water.

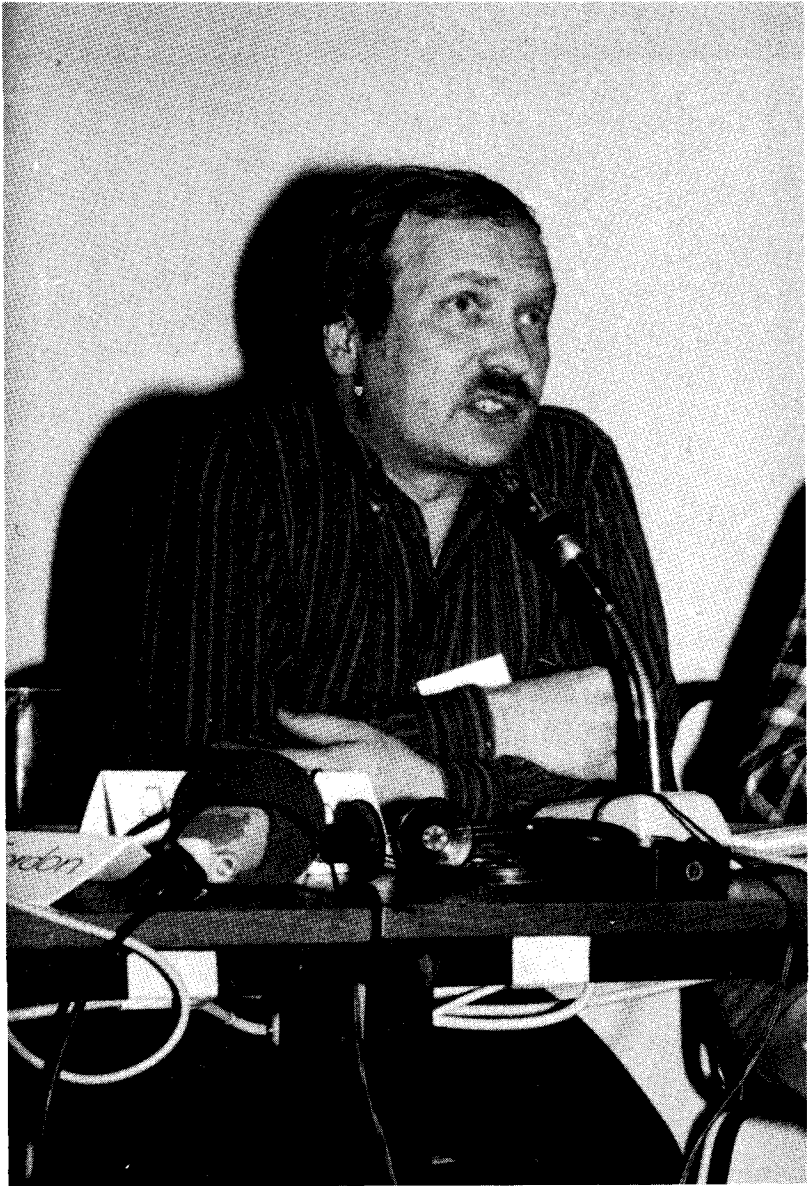
So far only the Sámi Parliament has come into existence, or, as it is officially called, "The Delegation for Sámi Affairs". Its mandate is explained in the decree on the Sámi Parliament (A 824/73). According to this decree the Sámi Parliament is subject to the Finnish state authorities. It has 20 members who should represent each of the local councils of 4 Sámi constituency areas (see map).

The election principles of the Parliament mean that it is made up of at least two members from each of these four councils. The remaining members of parliament (12) are elected according to the votes they gain.

Although the Sámi constituencies are situated in northern Finland, Sámi from other parts of Finland are also eligible for election - and may vote in elections. I myself, for instance, am a Member of Parliament, presently living in Rovaniemi. Two others are from Helsinki, and one more from Rovaniemi. So, at the moment there are four Members of Parliament who do not live in Sámi constituencies.



Map showing Sámi constituencies and the proportion of representatives



Pekka Aikio at the seminar (Photo: Espen Wæhle)

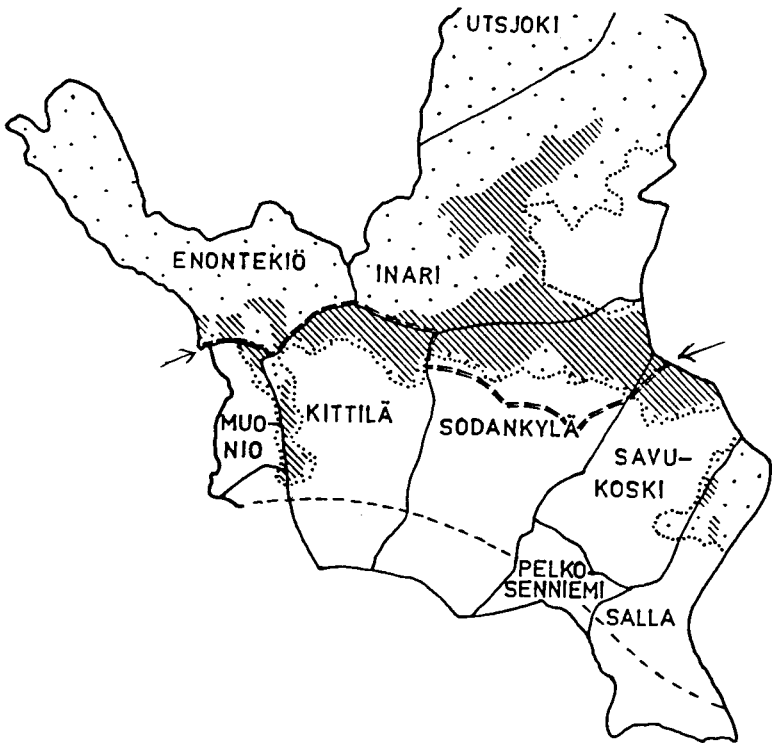
The Sámi Parliament is organised into a Work Committee plus four other separate committees: Legal, Cultural, and Occupational Committees, as well as the Committee for Health and Social Services. It also has a Secretariat in Inari.

The Sámi Parliament has no direct powers of decision-making. It can only decide when to meet and whereabouts in the Sámi area the assembly will take place.

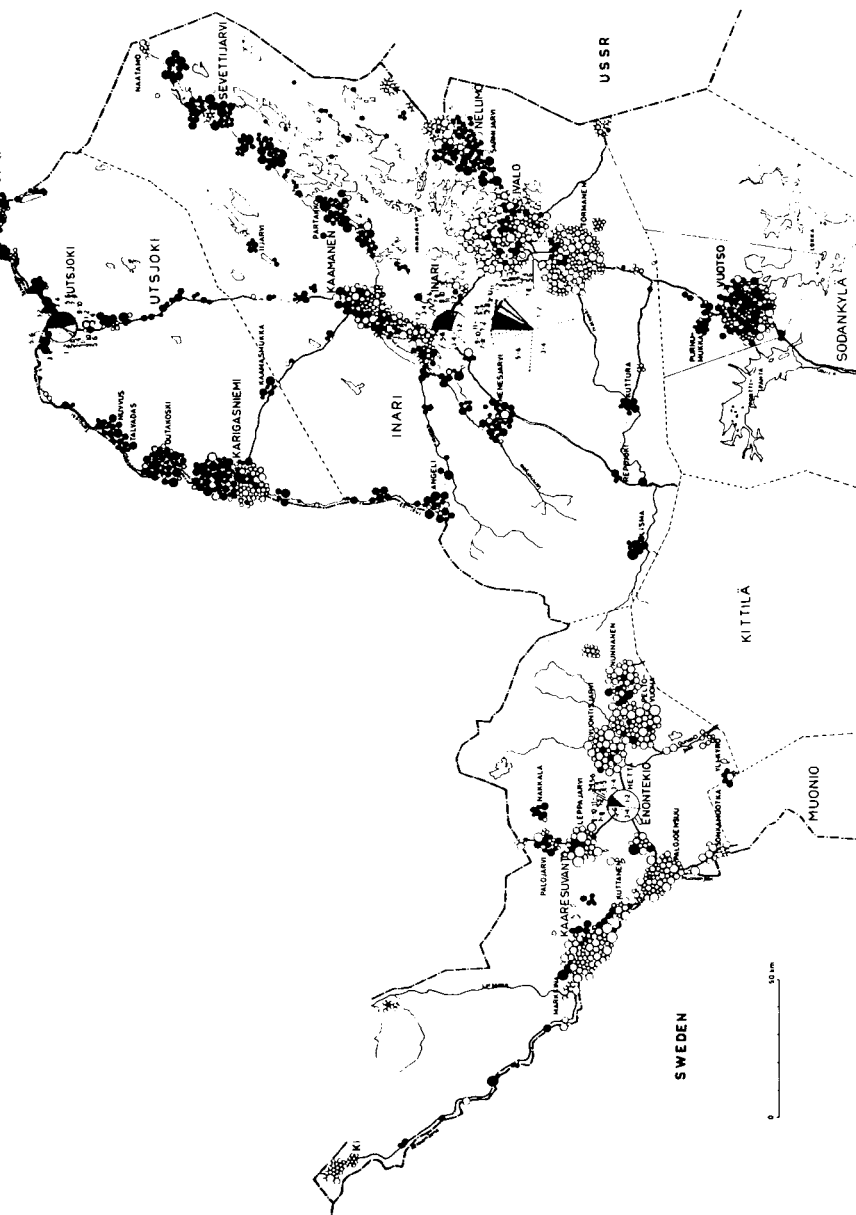
At the beginning of the 1980s the Sámi Parliament worked out a proposal for a legislation in the important field of Sámi language. Though the Sámi Parliament can only make proposals for legislation, it is important that we have the opportunity to put forward our ideas and wishes. If we had more resources e.g. people to do preparatory work on proposed legislation then it would be possible, in principle, for us to approach the realisation of these. The work of the Parliament is largely built on trust which makes it somewhat inefficient, but we do put forward demands.

It is our experience that the authorities of Finland are not positive towards our demands. Some have been listened to, but by far the majority have been ignored. It might be argued that we have presented our demands in such a way that the Finnish authorities have been unable to accept them and that we have brought up too many cases pertaining to fundamental Sámi rights such as the question of Lapp tax and the right of the Sámi villages, but we view the situation differently from the Finnish authorities. Our demands are not unjust.

It is a disadvantage that the Sámi Parliament is subject to the Finnish authorities. The effect of this is that the Parliament is not subject to the Prime Minister, but to the Ministry of State. The Sámi Parliament is therefore subject to the officials of the Ministry - the actual power is their's. We, the Legal Committee of the Sámi



Map of the northernmost part of Finland. The arrows show the southern border of the communities which comprise the entire reindeer herding area of "Lapland".



Sámi settlements in Finland; black circles = Sámi, white circles = Finns
 From Eino Siuruainen's "Population in the Sámi area of Finnish Lappland"

Parliament, feel that it would have been better for a minister, who is politically answerable, to take care of and be responsible for Sámi matters. This, however, is not the case in Finland. We often clash with the bureaucracy.

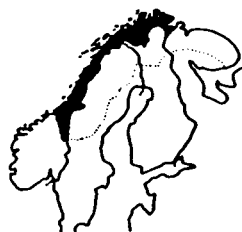
From January 1, 1986, the Sámi Parliament was transferred from the Ministry of State to the Ministry of the Interior. This should bring about better contact with the Minister who is politically responsible.

While on the one hand, the Finnish state has given the Sámi Parliament certain cases to take up and prepare, on the other hand the state itself, notably the Ministry of Agriculture and Forestry, has directed work groups and committees to prepare the same cases. These are cases which concern the Sámi and are very important to us.

In Finland we have an overwhelming number of committees on fishing laws, hunting laws, reindeer breeding, etc. At the moment a report is in preparation which concerns a cultural committee, directed by the Ministry of Education, on which the Sámi appear to be in a minority. Apparently it is the intention of the Finnish authorities to spread out our work over a number of different committees, so that the Sámi will be in a minority. There are even cases of committees without any Sámi on them at all - yet these very committees prepare and deal with cases that are of concern for the Sámi.

In Sámi areas 90% of all water and land is owned by the state - maybe even more than 90%. The remaining 10% or less is private property. However, when the state Parliament debates those draft bills that concern regulations on land, water, fishing, hunting and even reindeer breeding, they identify those Sámi that are property owners with property owners in general. We believe this is wrong, since it must be remembered that less than 10% of all land and water in Lappmark is private property.

Sámi organisations in Norway, Sweden and Finland



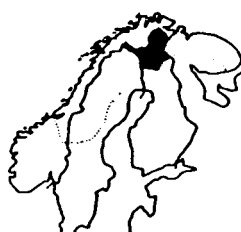
NORWEGIAN SÁMI

National Association
of Norwegian Sámi (NSR)
Association of Norwegian
Reindeer Herders (NRL)



SWEDISH SÁMI

National Association
of Swedish Sámi (SSR)
Same- Atnem



FINNISH SÁMI

Sámi Parliament
SA - PA

NORDIC SÁMI CONFERENCE

NORDIC SÁMI COUNCIL

Norwegian
Section

Swedish
Section

Finnish
Section

NSC work groups and commissions

SECRETARIAT OF THE NSC

The Sámi Parliament can not make decisions, it can only make reactions to state proposals. The state authorities are in a great hurry. At present they are working on a great many draft bills which will influence the areas of the Sámi. It seems as if the authorities are insisting on turning the rightful areas of the Sámi into common property. The Finnish authorities are in a hurry to get this done, because Sámi institutions such as the Sámi Institute, through research, are providing excellent arguments to support and mobilise the Sámi fight for their rights.

Part III: Indigenous Rights among the Northern Peoples of Greenland and Canada



Robert Petersen at the seminar (Photo: Espen Wähle)

Home Rule in Greenland

Professor Robert Petersen, Ilisimalursafik/Inuit Institute
(Greenland).

Introduction.

Prior to Home Rule, Greenland's history was that of a colony. However, it is only in the last few years that Danes have begun to speak of Greenland as a former colony, and some still maintain that Greenland never was a colony. One of the reasons for statements like this is the fact that the Danish administration used to distinguish between its colonies in the West Indies and its North Atlantic dependencies. As a clear expression of this difference, the Danish colonies in the West Indies were administered by the ministries, not by the parliament, while legislation for the North Atlantic dependencies was passed by parliament itself. This control from an elected body was probably a contributing factor to the establishment of councils in Greenland that were the forerunners of publicly elected bodies. The powers of these councils were, however, rather limited; in fact, they could not deal at all with the future of the country, except in the role of advisors. This arrangement of establishing a council is typical of a colonial situation.

This colonial practice continued, largely unchanged, until 1953. In the post-war decolonisation period the suggestion was put forward to integrate Greenland with the Danish state. Severe criticism could be levelled at the way this issue was treated. Little time was given for deliberations to the Greenland provincial council which had

suddenly received exceptional powers to make a decision about the future. Furthermore, while there was a referendum in Denmark on the amendment of the constitution, the population of Greenland was not asked for their views. (There is every probability, though, that there would have been an overwhelming majority for the amendment).

The speeches by Greenlandic politicians on Constitution Day 1953 were quite unrealistically positive. Any criticism of the old politicians may be upsetting to many, but without exaggerating, there is in fact quite a lot to criticize them for, although the criticism is, admittedly, often made with hindsight. Frankly, though, when I read the transcripts of these speeches, I did not understand them, and I still do not understand them.

The 1950s and 1960s saw the introduction of Danish norms in Greenland. It was also a time of optimism and it was thought that after a short, but hectic, construction period, Greenland would be able to manage, at least economically.

During all that period Greenland was only partly unionised. Trade unions were gradually being formed, first as local unions and later as amalgamations. One of the most influential of these was the Hunters' and Fishers' Council. It had become influential because it nominated candidates to the provincial council of Greenland and these candidates were among its more prominent members. Politically there was hardly any organisation in Greenland. A few attempts at forming political parties failed. The then most prominent party, the Inuit party, only succeeded in getting their candidates from among shopkeepers, and it was then regarded as the party of private shopkeepers. The other attempts at party formation failed and candidates were chosen because of their personality, or because one knew them personally. They all worked together from case to case, but they each

remained individual candidates.

The role of the Atlantic.

Greenland is separated from the rest of Denmark by about 4,000 km. It has a different climate, a different culture, a different economy, as well as a totally different language. In addition, Greenland is an isolated unit with its own cultural sphere that springs from whaling and sealing. Because of these facts it is easy for the Danes to regard Greenland as foreign. Any knowledge about Greenland is gained for most Danes through the descriptions by Knud Rasmussen and Peter Freuchen of life in Greenland during the first decades of this century. They read that Greenland became an area where the Danes had good possibilities for introducing "progress" and civilization, i.e. the European way of life and European thought. In this exotic area the Danes were willing to do a good job, even if would cost them a lot of work and a great deal of money.

The awareness of the exotic land on the other side of the Atlantic made it obvious that Denmark and Greenland were two completely different areas. Although there was a wish to forget this during the period of the integration policy in the 1950s and 1960s, it appeared clearly when ethnic rights for the Greenlanders were first discussed. Most of the Danish press understood nothing at all about ethnic rights, and in the same breath they would begin to speak about similar "rights for the people in Bornholm" - for some reason they always mentioned the people of Bornholm. They also used to speak about a "population" rather than a people, probably not because they wanted to belittle the problem, but rather because they were unable to understand this dimension. Politically speaking, then, Greenland was isolated from Denmark.

Excepting a communist movement in Qullissat around 1946, which had an uncertain affiliation, the people of Greenland always wanted to form their own political parties instead of merely forming Greenlandic branches of Danish parties. It must be said that credit is due to the Danish political parties for their respect for Greenland's needs. Their respect is greater than that of Danish trade unions who still understand very little of Greenland's needs, even though they ought to reflect on the minimal support they get from the trade union movement in Greenland.

Some results of integration policy.

The integration policy promoted ideas brought up by Greenland politicians in the Greenlandic Provincial Council, but in practice it was normally followed up in Denmark. A number of part-time politicians complained that their wishes on the issue were unfavourably received by technocrats and officials who pointed out that integration would bring about delays and increased expense and that in the end they, the politicians themselves, would have to take responsibility for the resulting inconvenience. Considering the fact that the deficit of the Greenland administration budget was at that time a favourite subject in the media, the politicians were not very convinced by this argument. Nevertheless, a number of experiences were gained from the integration debate:

The Greenlandic politicians learnt that it was practically possible to achieve integration without an ensuing serious political confrontation. As a matter of fact no political tension arose between Denmark and Greenland, although a number of leading Greenland politicians right up until about 1970 still countered certain political ideas by stating that these "might ruin the sympathetic Danish

attitude towards granting funds to Greenland". Strangely, statements like these were heard only from those politicians who were the most eager campaigners for co-operation with the Danes, even though they cast a considerable slur on the Danish political tradition.

Gradually the idea of a quiet period of construction of about ten years, followed by a quiet politicization of the country came to be seen as utopian. It became obvious that constructing the technological framework for modern life was a lengthy process.

The expectations that the Greenlanders themselves would run things after this construction period were dashed. The period led to radical changes in housing conditions; business life was commercialised in West Central Greenland thereby bringing about radical changes in family structures and family unity. Health care changed, due both to the introduction of new school systems and to the large increase in the intake of staff who did not speak the Greenlandic language.

All of this tended to alienate many people and the concentration of society into a number of towns also brought on more social problems as well as an indifference to the new ways of life. People did not feel they had any great responsibility for this creation, nor for its price.

Some criticism of the prevailing policy.

During this period a number of critical voices were heard. They were, however, voices of those who were regarded by the "nice" people as being troublesome. The Provincial Council member for Sisimiut, Mr. Jørgen C. F. Olsen, in particular, brought up the question of regional self-government for Greenland as early as the 1960s. He was

regarded as a politician of interesting ideas who should not be taken too seriously and this opinion of him lasted for many years.

The Greenlanders' Association and the Council of Greenlandic Youth in Copenhagen also had a number of political ideas which in Greenland were considered to be too radical and which were often said to be extremist. The two bodies were not at all popular among Greenlandic politicians at home. They were accused of not having enough knowledge of the actual conditions in Greenland, although it was evident even at the time that many of their ideas would become commonly accepted in Greenland after only a few years.

It is not very strange that such ideas should materialise first outside Greenland. Copenhagen is closer to international influence than Nuuk, and a number of changes had occurred there. The student revolts and the trends that followed in their wake had the definite effect of softening the climate for debating controversial issues, which in its turn led to a more widespread knowledge about ethnic minorities and their movements for better recognition, in North America as well as among the Sámi. In Greenland, where the cultural and economic pressures were not yet felt, the experience of others was needed to further new thoughts.

New thoughts emerged.

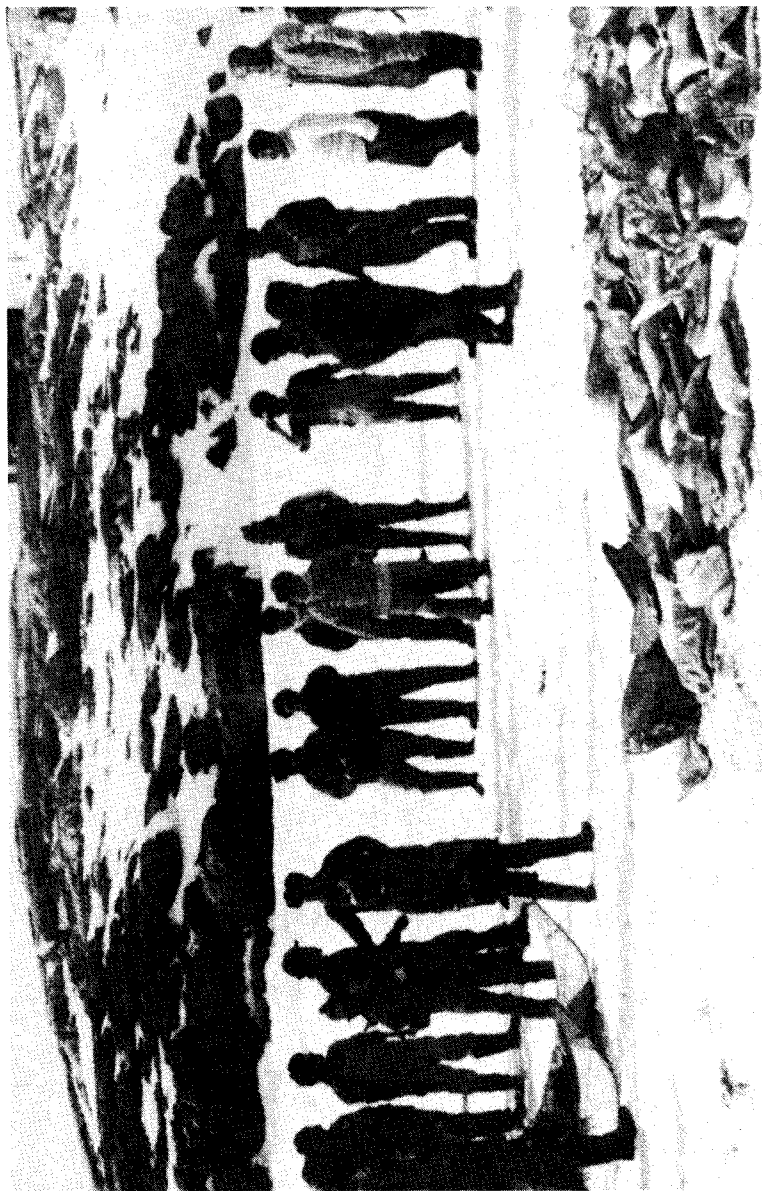
There were several reasons for the cooling of the enthusiasm for the integration policy. The results promised were slow to materialise while alienation became still more pronounced. And the reversal began. At a time when consciousness was growing with respect to the need for better protection of living resources, talk of Denmark joining the EC created some anxiety about the future among the people of Greenland.

One of the leaders of the Council of Greenlandic Youth returned to Greenland, and this was marked by a voluntary political agreement on co-operation between Jonathan Motzfeldt, Moses Olsen and Lars Emil Johansen. Their programme of Greenland politics on Greenlandic terms helped invigorate political debate in Greenland, since some people agreed with them, others disagreed, and even more were in agreement with their ideas, but found that they expressed them too harshly.

In addition, the beginning of the 1970s saw the emergence of a debate about identity which greatly strengthened respect for Greenlandic values. It was during that time - and it is said to have been during a long conversation between Jonathan Motzfeldt and Knud Hertling, the then Minister for Greenland - that the first serious steps were taken in Ilulissat in October 1972 towards Home Rule for Greenland.

In January 1973 its first body, the Home Rule Committee, was appointed with only Greenland politicians as members. They published a partial report on those areas they thought should be transferred to become the responsibility of the Home Rule Government. This report was presented in 1975.

The second body to be appointed was the Home Rule Commission. It was set up in 1975 with an equal number of Greenlandic and Danish politicians as members and with a Danish professor of law for its chairman. This Commission published its report in 1978, mentioning the relationship between the legislative responsibility of the Home Rule Government and the Danish parliament. It made suggestions for the construction of the Home Rule Government and dealt also with the relationship between the central bodies and the local councils.



Sharing of beluga "mattak" (skin) in a Greenlandic Settlement (Native Power)

A draft bill which resulted from this work came before Parliament and was passed. A referendum was also carried out in Greenland with the majority of voters voting for the introduction of Home Rule. Two groups, however, were against. One of them felt it was too early for the introduction of Home Rule, the other that the proposal did not go far enough. The relative strength of these two groups is unknown.

On May 1, 1979 Home Rule was introduced in Greenland.

The economic foundation of the Home Rule Government.

At the time of the actual preparations for the introduction of Home Rule, the idea was prevalent that the Greenlandic Home Rule Government must be based economically on Greenlandic financing.

It was said that "it was not the intention that Mrs. Petersen in Nørrebro should pay for it". Considering the economic problems of that period, it was obvious that new avenues had to be explored, and a number of Greenlandic politicians pointed to mining as a possible solution. It was, however, rather odd that none of the people who suggested this possibility had any policy on mining, in the sense of a well thought out exploration of problems and the way to progress in order to implement the ideas. In this situation Siumut showed great courage by posing some demands in connection with the oil exploration of the Davis Strait and refusing to depart from these demands - something which made them opponents of offshore exploration. They were heavily attacked for this by the Attasut group which had, by then, been formed, but they persisted in their opposition.

The Siumut group, and in particular Lars Emil Johansen, sought to force through a decision to have the question of

property rights of Greenlanders dealt with by the Home Rule Commission, and only moderated this claim at the point where it would have caused a collapse of negotiations. This resulted in the passing of a resolution which states that "Greenlanders have fundamental rights", after which it was possible to continue with the Home Rule question. So far it has still not been possible to define what those fundamental rights entail.

1975 saw a new development in Greenland when personal taxation was introduced for the first time. Previously the publicly elected bodies in Greenland had been financed through a 20% levy on all Greenlandic products. The new tax laws introduced proportional taxation, and although this amounted to 20% or a little less there was no doubt that this promoted a feeling of greater responsibility for what was happening in Greenland. This meant that there was practically no resistance to this taxation.

Furthermore, some of the major tasks surrounding the infrastructure were financed through the EC Development Fund, but in spite of these subsidies, which amounted to approximately 6% of the Greenland budget, there was no doubt that it would be unrealistic to expect the Home Rule Government to maintain the standard of living without substantial external subsidies, i.e. from Denmark.

While the work of the Home Rule Commission was still in progress it was therefore decided to introduce Home Rule in Greenland even if this meant continued financing through subsidies from Denmark. An agreement was made to the effect that neither Denmark nor Greenland would "profit from" the transfer of areas of responsibility to the Home Rule Government. This meant that part of the state budget would be transferred to Greenland in the form of block grants whenever an area of competence was transferred to the Home Rule Government.

This arrangement went on for years without problems, but in recent years the Home Rule Government has accused the Danish government of departing from this agreement. This accusation has been countered by the Minister for Greenland who has said that it must be realised in Greenland that there are public expenditure cutbacks in Denmark.

It is obvious that this system of introducing Home Rule subsidised by Denmark may contain a political weakness concerning the relationship between the Home Rule Government and the Danish government; on the other hand, the Home Rule Government itself leads to an actual transfer of Greenland legislation.

The system of Home Rule in Greenland.

The Home Rule Government holds executive powers which are placed in the hands of an elected government, the "Landsstyre", which receives legislation from the central administration of the Landsting (Parliament). The chairman of the Landsting is responsible for a number of departments each of which has an administrative leader and a political leader from the Landsstyre.

During the initial period there were three departments and one "governmental area" as well as a secretariat. The secretariat which is also the secretariat of the Landsting belongs to the chairman of the Landsstyre and is comparable to a prime minister's department.

The three departments are the Department of Commerce, the Department of Social Affairs, and the Department of Culture and Education. In addition there is the governmental area for settlements and outlying areas which has the

responsibility of working out development plans for these areas.

During subsequent election periods the tasks were spread out even more with the setting up of a proper department covering settlements and outlying areas as well as industrial development. A department covering economy and housing was also set up, and now there are six governmental areas with, practically speaking, the same main areas of interest; although a few tasks were transferred to another directorate. In the last two departments there are political leaders who are not members of the Landsting.

The Landsting is the legislative power. There are three large constituencies in West Greenland; one in the south, one in Mid-Greenland and a Disco Bay constituency: Uummanaq, Upernavik, Aversnasuaq (Thule), Tasiilaq (Ammassalik) and Illoqqortoormiit (Scoresbysund).

Three parties have been elected to the Landsting: Siumut, Atassut and Inuit Ataqatigiit. Siumut and Atassut each have 11 members elected while Inuit Ataqatigiit has had three members elected.

Two of the 25 members are women.

Since the introduction of Home Rule Siumut has been in government, but since 1984 it has been in coalition with Inuit Ataqatigiit. The government has four Siumut members and two members from Inuit Ataqatigiit. Several people believe this to be a good coalition as the Siumut and Inuit Ataqatigiit seem to have the same attitude to a number of important issues. This is so in particular in the case of their attitude to the relationship with the EC, their attitude to mining, and especially to uranium. In carrying out their policies, however, it would seem that Siumut want to see some practical results and are therefore prepared to

discard their basic ideas. Inuit Ataqatigiit, on the other hand, often take a critical stance in this respect. They are, however, also able to accept the decisions of the Landsting and work together with Siumut and Atassut without losing sight of their long-term ideals.

It is more difficult to explain the policies of Atassut. There are several reasons for this; the most important being that Atassut finds it difficult to form a clear policy which may have something to do with the structure of the party. It was not really formed around an ideology, but rather in opposition to Siumut and Inuit Ataqatigiit.

During the last election campaign, Atassut said they were pleased that the Siumut policy on raw materials had approached that of Atassut. It is difficult for others to judge whether this is so, since only Atassut knows. I myself have often discussed the policies of Siumut on raw materials and, apart from the fact that Siumut seem caught in their own argumentation against off shore exploration, (having previously stated (in 1976) that they are not against these), I find it difficult to see any change in their policies at all.

Unlike Atassut, Siumut has laid down specific demands as a prerequisite for accepting a particular mining enterprise, whereas Atassut has vaguely expressed a demand that it must not damage Greenlandic society without defining what they mean by "damage". Seen from outside, most of Atassut's so-called policies are of this kind. They lack action and the means to reach desired goals.

It is possible to follow Atassut's participation in solving many questions, but it is difficult from these decisions alone to discuss the policies of Atassut. Its

best known attitude is probably that of "affinity with Denmark". Since, however, Siumut too lists the "unity of the realm" among its main concerns there is no real difference here. When, however, there were strikes among the well-paid in Greenland, Atassut remained silent while Siumut tried to find solutions. For that reason one may question whether the "ideas of affinity" are a matter of policy or just an attitude. On the other hand, Atassut has made some general criticisms of the Siumut government's overspending on travel, administration, etc.

One reason why it is difficult to determine the actual political difference between Siumut and Atassut - now that the question of the EC has been settled - is the fact that they co-operate quite a lot in the Landsting. The actual difference between Siumut and Inuit Ataqatigiit, therefore, is more to be found in Inuit Ataqatigiit keeping to their ideology more often than Siumut, who have a more pragmatic approach to politics.

It was probably this very difference which lay behind the motion of no confidence initiated by Inuit Ataqatigiit in March '84, and which was passed with the support of Atassut.

The reason for this vote was an agreement on the situation of the fishing industry after the withdrawal of Greenland from the EC. This was preceded by difficult negotiations which resulted in the EC and particularly West Germany gaining fishing rights. Although the agreement was passed by the Landsting with the votes of Siumut and Atassut, the Inuit Ataqatigiit proposed a vote of no confidence. The proposal did not directly mention the fishing agreement and so it was passed with the votes of Inuit Ataqatigiit and Atassut.

On the economic foundation of the Home Rule Government.

In 1982 expenditure of the Ministry for Greenland was about D.kr. 2,113m, of which block grants to the Home Rule Government amounted to D.kr. 533m and general subsidies to the local councils to D.kr. 80m. State revenue was set at D.kr. 20m, of which D.kr. 15m came from concessions, etc.

The Ministry for Greenland Expenditure over the last three years can be broken down as follows (in 1,000,000 D.kr.):

	1981	1982	1983
Block grants to the Home Rule Government:	503	533	581
Other maintenance expenditure, subsidies:	655	788	687
Initial expenditure, loan costs:	673	792	733
Total:	1,831	2,113	2,005

In 1982 the Treasury had a total revenue of D.kr.973m, of which the block grant is shown above. Expenditure amounted to D.kr. 941m, giving a surplus of D.kr. 32m. Main income was derived from the block grant, import duties, taxes and a levy on profits from mining. The main costs of the Treasury are block grants to the local councils, social services expenditure and education costs, including those of occupational training.

In 1981 local council revenue amounted to D.kr. 769m, and the expenditure was D.kr. 761m. Revenue was comprised of income tax and block grants from the State and the Treasury.

Development grants from the EC were mostly spent on the

expansion of the infrastructure, on airports, harbours, warehouses, etc. These grants amounted to approximately 6% of the Greenlandic budget and they will probably be discontinued with Greenland leaving the EC. It was, however, sought to replace this amount through payment to Greenland in return for fishing rights.

On the occasion of the last referendum on the continued membership of Greenland of the EC (which resulted in a majority for withdrawal) the argument was put forward that prices would fall when there would no longer be an EC duty on imports from third countries. This is true in a sense, but it is still doubtful whether the population of Greenland will notice this. Greenland has a higher rate of inflation than Denmark. There are several reasons for this. The main reason is probably that the Home Rule Government is unable to control incomes and prices, even though the need for this has been stressed time and time again. Secondly, the repeated increases in freight rates, airport charges, etc. by the State is probably an important cause of the magnitude of inflation. It will probably be necessary to attempt to control the regulation of prices and incomes in future.

Although experiences of Home Rule in the Faroe Islands were considered in Greenland, Home Rule in Greenland has been based upon the particular location and history of Greenland. It may not be perfect, but it works. The actual ideas about Home Rule seem to have grown out of a wish for a greater participation in the development of Greenland.

This has happened to some extent, as the political representatives of the Greenlanders now have a much greater say in what is going to happen to Greenland in the future. The participation of ordinary people, however, does not seem to have increased to any great degree.

The Struggle for Self-determination

Mark Gordon (Canada)

When listening to the speakers from Sámiland during this seminar, I have found it very interesting to see how many similarities there are between the situation of the Sámi and that of the Inuit in Canada. To try to explain and express what our people have been through, I think it is best to take you through our history.

Primarily, our people has been left alone for many years. Our political development and, much more recently, our legal advances have only arisen since World War II. Prior to the war the only real contact we had with the outside world was through the fur-trading, the Hudson Bay Company and the whalers that came into the Arctic areas. This contact was for much longer than people realize. The contact with traders etc. had been going on in Northern Canada for several hundred years. But our own development has only really started since the 1960s.

Our relationship with the government is a very recent one. It is quite different from that of the Indian populations further south of us who had contact with the Canadian government for much longer. The Inuit have had a less confrontational relationship with the government than did the Indians, because our contact came recently when we were in desperate need of health facilities. Our population was starving and our people were dying from disease. So our first contact with the government was that of receiving aid. We were almost entirely wiped out between the 1930s and 1950 and our people remember very vividly what it was like in

those hard times. My parents and the generation just before me lived through these difficult experiences and so our approach towards the government has been tempered because of their help.

However, we have also had problems with the government and with the developers from the south. The way that my people in Northern Quebec began to have contact with the government illustrates this. We didn't really have any direct discussions with them until a hydro-electric project called the James Bay Development was created. Our people began to react to this project defensively, because we perceived this massive scheme as a threat to our livelihood and culture.

The James Bay Project was a turning point in our history. We began to try and find ways to stop the project which was going to be set up on our land. The government - through its crown agencies - intended carrying out this enormous plan. To give you an idea of its size, the James Bay Project has more dykes than the Netherlands has today. The project has flooded 4000 sq. miles, which is bigger than some of the European countries.

We had very few people in the struggle. Many of us were just out of school - and few of us had graduated. I was one of those who dropped out of school to fight for our people. We found out that we could use the courts to fight the project. And by going through the courts we began to find out that there was something called Aboriginal Rights, Native Rights and Land Claims. All these were new to us. We didn't understand much about them except that they were clever arguments that the lawyers could use to stop the project for us. In this way we became committed to land claims and aboriginal rights as means to the end of stopping the project. But things have evolved quite a bit since then and quickly.

We found that we could stop the project. We won the legal battle and stopped the project for one week. That was a big victory. But what happened was that the government had a legal concept which is called "the balance of inconvenience". In Canadian law that means that no matter how right you are, if you inconvenience more people than yourself, you lose. So they recognized that we were right but at the expense of others. After this we began to enter into negotiations and developed a land claim agreement and had to get an out-of-court settlement to solve the issue.

The project was only one special issue for us, and when we began to have discussions we expanded our negotiations to all the other areas where we were having problems. For instance, we had an education system being provided for us by two different governments, by the provincial government and by the federal government. We had absolutely no control of this education system - no say in what it could do. The federal government had not even allowed us to form a committee to advise on how education should be given to our children. The Provincial government, being a bit more democratic, allowed us to form a committee. They gave us authority over certain matters in school: 1) to hire the janitor, 2) to hire the man who went to pick up the smallest children in kindergarten to take them to school. That was the limit of our authority over our education.

The federal and provincial governments have never done anything really malicious to us; they thought they were acting for our own good. Even recognizing that they were trying to do some good, they made some pretty bad mistakes. We had no authority over our communities. There were government agents in my community who could control the entire administration of the village. They could decide who got jobs, who got the welfare and who could go away to school - everything. All our villages were run by a government agent.



Mark Gorden at the Seminar (Photo: Espen Wähle)

This situation is what faced my generation who had just begun to go to school and we began to fight. We couldn't let our people be pushed around, ordered or guided as they were.

We also had contact with other Inuit in Northern Canada, but about the same time as the James Bay court case, the federal government began to fund native organizations and give us money to enable ourselves to become organized. By using these funds we set up six regional organizations in Canada. The six regions going from Labrador, Northern Quebec, Baffin Islands, the Central Keewatin and also the Western Arctic C.O.P.E. They call their own organization The C.O.P.E. (Committee for Original Peoples Entitlement).

These organizations formed one umbrella organization called "The Inuit Tapirisat of Canada". This began to lobby for our autonomy and for more control over our lives. The whole land claim issue then began to mushroom and expand throughout Canada and the North - not only within the Inuit group but also with the Indian groups in the Northern areas. There was a new momentum arising in Canada - a political momentum to try and resolve the outstanding native issues.

As this momentum built up, the Canadian government was also going through its own constitutional crisis with the provinces and federal government, which were trying to sort out where the powers of the country were going to be. There were many discussions going on about the national Constitution which was called the British North American Act and controlled from London.

As the discussion evolved throughout the country, land claims were evolving at the same time. They finally merged and we are now lobbying the government to recognize the constitutional rights of the native people. The constitutional discussions began to move much faster in recent years, particularly when Prime Minister Trudeau was

still in power. At that time there were many negotiations between the provinces and the federal government.

When the federal government began to decide what the Constitution of Canada should contain, they had many hearings. This gave us the opportunity to lobby and to put pressure on the government to recognize aboriginal rights.

After many governmental hearings and lobbying which means spending much time in Ottawa, we finally got the special Joint Common Senate Committee to make the recommendation that aboriginal rights be included in the Constitution. The phrase that was going to be put in very simply stated that aboriginal rights are herein recognized and affirmed. Because there was such a big discussion about this, many of the native groups throughout the country said that this was not enough. The government then did the most reasonable thing and pulled out. Every time the native people cannot agree it has always been an excuse for the government to not act. Every time there is a dispute, they say, "Well look, the native people cannot make up their minds, so let's forget it; let's not do anything". Unfortunately, this continues today. Every time there is a dispute - even though the disagreement may be a fairly minor one - the government uses it as a reason not to do anything. The problems of our people are still very great today. They are no way near being solved yet. We've only begun picking up the tools to start.

The government is finally beginning to understand that we are not asking them to solve our problems, we just want them to give us the means to solve them ourselves. We need resources and autonomy to be able to do it. Often the government looks at us as if we want to separate or to become independent. Some native groups in the country may want to do that, but the Inuit do not. What we want is the means, the will, the powers and the resources to be able to

become an effective part of Canada. To be a contributing part of Canada. This is what our approach is to the government and this is the way that we are trying to proceed.

We began in the Northwest Territories. There, the territorial governments were set up, but the native peoples were not initially included. Slowly, however, they began to allow elections to take place, and the native people slowly began to participate in these governments. Today it would be safe to say that the native representatives in the governments are the majority and have fairly effective control. However, the discussion in the Northwest Territories now is to divide itself into two territorial governments. The Inuit have always wanted to have their own territorial government in the eastern part of the Northwest Territories and have developed a proposal called Nunavut. Nunavut, incidentally, means "our land".

The Nunavut proposal is to set up a territorial government which will eventually evolve into a province like the other provinces of Canada. At this stage the Inuit are trying to separate it out from the rest of the territorial government and to create a new territorial government.

On the constitutional level the discussions are still going on. We now have a commitment that there will be a series of first ministers' conferences. That means that the prime minister of Canada and the 10 premiers of Canada will sit down with the native people and discuss what rights should be protected by the Constitution of Canada. This process came to a grinding halt with the change of government but recently it was agreed to continue with the discussions, and we will continue to push on. In Canada there are many different feelings as to what should be included in the Constitution. My own opinion is as follows:

The Canadian Constitution, as far as we see, will have to have the minimum guarantees that will allow us to operate as an independent society within Canada and run our own affairs. That means that we need to have our own resources and the right to be able to administer ourselves. Our government is always telling us, "We're willing to give you any kind of power to advise us what you want". I don't know why they have to legislate the right to be advised. They can take advice from their friends and neighbours. Why do they not take it from us without legislating for it. If they want to legislate over something they should deal with power. Power is what the people want. We don't want power to control outside society. We want the power to control our own lives.

I realize that there will be areas where peoples will come in conflict with the larger society within which they live. But these conflicts are not unresolvable. There are mechanisms that can be set up to resolve disputes. But we have got to be able to run our own lives, for example, we must be able to have a justice system. In Canada, the justice system is basically the white man's law which is then implemented in our areas. What happens is that these laws do not really have any relevance to the people whom they are meant to control. Our people, then, are exporting their biggest problems to the outside world - we are no longer dealing with them in our communities as we used to. This leads to social breakdown of the communities. But if the people have power to deal with their own problems, you can have a society that can function, if not, the society will break down. And this is exactly where we stand today.

Eventually we accepted the James Bay Agreement. The Agreement was very important to my people because it allowed them to take control of their communities, especially the basic services. It allowed us to take control of our education and of our health services. Many of these

services and benefits are what most Canadians take for granted as being their right to have. But the native people of Northern Quebec had to give up their land rights. They had to give up aboriginal rights to be able to gain the basic services which southerners enjoy without having to give up anything.

We knew that it was not a perfect solution by any means and we were called "sell-outs" by many people; but they didn't understand one thing - if we had not signed the James Bay Agreement the court judgement that came out one week after would have undone the legal precedents that had been created before by the Nishga Case, providing native peoples with no rights, either as native people or as Canadian citizens. Everybody made a noise about the James Bay Agreement, but nobody ever heard the judgement announced one week after. However, it didn't apply because we had made an out-of-court settlement. Many of the native and other politicians throughout the country only focused on the fact that there had been an agreement.

Our people are now in the process of developing greater resources to become economically self-sufficient; but we keep running into problems. Our primary economic base is that dependent on wild life resources. To give you an indication of how important the authorities consider our subsistence, it is put under the jurisdiction of the department for sports hunting - recreational activity for southerners.

Laws cannot simply be projected from the South into the North. Laws for the people in the North have to be made in the North by people who understand the circumstances with which they are dealing. The question of autonomy does not mean to escape from your own country, but to be a functioning part of your country.

And as we slowly push and try to gain some of these things that we believe are rightfully ours, it reminds me of a story I heard about six people only one generation ago - hunting. These six people were starving and trying to find food for their family. They saw a snow-owl who had just eaten a lemming. Snow-owls are very picky about their food, so they won't eat the insides of the animal but only the meat. These six hunters had to divide what the snow-owl would not eat. Our trying to get legal concepts and legal rights recognized by the government is often like the snow-owl: we often have to eat what he won't eat, and we have to make do with that. But hopefully that will give us enough energy to go on with the hunt.

Northern Canada and Northern Peoples: some Comparative Experiences

Peter Jull (Canada).

In northern Canada the Indian and Inuit descended peoples of the Yukon, Northwest Territories, northern Quebec and Labrador form considerably more than half the population. This area is more than half of Canada's land surface. Other areas further south also have large or predominant Indian-descended populations. As much as 75% or more of Canada's area is, or will soon be, governed at regional and local levels by public bodies controlled by Indian, Metis and Inuit peoples.

In Canada, political discussion does not centre on class structure, economic philosophy and such issues familiar in European politics. Rather, Canada is the scene of the politics of regions and their governments, and of the interaction between French- and English-speaking populations. For this reason, the "native movement" (i.e. the political movement of aboriginal Inuit, Indian and Metis peoples) of recent years has constituted a radical critique of Canadian history and society. It also opposes many of the most fundamental features of North American life.

Aboriginal peoples see history in reverse from the "discovery and settlement" mentality of the white population; their commitment to the environment and renewable resources is opposed to important aspects of industrial society and the exploitation of resources; their customs of land and water use and sharing are at odds with the European legal system, built on principles of private

and exclusive ownership; the police and court systems have not seemed their protectors but rather alien and often oppressive forces; they have traditionally lacked "consumerism"; and their strength of community and extended family values conflict with the social norms and goals of white Canadians.

This is slowly having an effect on Canadian politics in parts of Canada, notably the western and northern regions. There has been serious thought given to creation of a new, aboriginal-centered political party. With the spread of regional aboriginal and aboriginal-dominated governments and other public authorities, there may be significant implications for Canada's economic and resource policies. The economic and resource development mentality and the forms of economic enterprise in large areas of the country may be questioned and altered. However, the possibility and implications of such quiet but fundamental changes have not been considered by more than a very few Canadians.

Until recently the traditional political, social and economic assumptions of Canada's largely English- and French-descended population flowed into all corners of the country. This has usually been outwardly peaceful - to the extent that the newspapers have not reported the effects on, and even destruction of, aboriginal society. An exception was the 1869 rebellion of Metis at the site of present Winnipeg; a rebellion led against new settlers trying to use the traditional values of the Canadian population majority to take over the lands, resources and government of a hinterland area. This rebellion led to the creation of the province of Manitoba in 1870 with some promises of rights for the Metis; but quickly these were eroded and lost. The Northwest Rebellion of 1885 on the Great Plains pitted Indians and Metis against the forces of settlement and development from outside - forces pushing their communities out of traditional homelands.

In 1979, Inuit, Dene (Indian) and Metis associations in the Northwest Territories, an area one third of Canada's total size, decided that rather than continue to boycott territorial government politics, they would actively participate. Until then the NWT had been assuming a shape and nature like any other frontier areas elsewhere in Canada - more and more an area for white settlement, character and domination. In 1979 a strong group of Inuit, Dene and Metis took over the NWT Legislative Assembly and thus took over NWT politics. The new Legislative Assembly met immediately and reversed the most important constitutional, aboriginal rights and political development policies of the previous Legislative Assemblies. Since then a strong commitment to aboriginal rights and the development of government forms accommodating aboriginal needs have been the basic themes of the NWT government. In late 1983 another election reinforced this tendency, bringing even more power to the coalition of aboriginal and progressive white politicians.

However, the development of new governments in the NWT for the Inuit region (named Nunavut) and the Dene and Metis homeland (named Denendeh) will not be easy. Strong resistance among the white population in Denendeh and among government advisers and officials in Ottawa will be encountered for changes to public bodies reflecting special aboriginal interests. The Canadian cabinet minister responsible for aboriginal and northern affairs, Mr. David Crombie, is a former mayor of Canada's largest city, but a sensitive, progressive politician who stated publicly (at the end of October, 1984) that he was ready to accelerate work to establish Nunavut and other northern governments.

At the national level, the constitutional talks led by the Prime Minister of Canada and the Premiers of the ten provinces with the leaders of the Inuit, Metis and Indian peoples have recognised that self-government is perhaps the

most important issue for resolution, along with a list of rights to be guaranteed to Canada's aboriginal peoples. At a conference in March, 1984, the Canadian government and the provinces of Manitoba, Ontario and New Brunswick (with implied support from Quebec), strongly urged that the Canadian Constitution be amended to include a commitment to creation of aboriginal governments. Other governments refused to accept this, partly because of fear that undefined bodies could result in tremendous new demands on their lands, resources and provincial finances. Some of this reluctance may be attributed to the fact that the subject was new to governments. The push by aboriginal peoples for satisfactory self-government structures continues.

The Situation in Northern Canada Today.

In the Northwest Territories, a committee of the Legislative Assembly in 1980 found that the people of the NWT, especially the aboriginal majority, did not accept or identify with the government system or the boundaries now existing. A plebiscite was held in April, 1982, and in the eastern half of the NWT, the mostly Inuit population voted 4-1 for the creation of Nunavut. Nunavut is an Inuit proposal for a new government sensitive to Inuit culture and interests, but open to all people living in the region. Since most of the people living there are Inuit, and a condition of several years' residence would be required for voting, the Inuit would have security for some years in developing the territory according to their preferences. Nunavut would have the same powers as the present NWT (i.e. the powers of a Canadian province) minus full ownership of natural resources but plus Inuit language guarantees, a share of resources revenues and some powers of management of the ocean and ocean resources.

In the western half of the NWT, the plebiscite vote was not so clear. White people were mostly opposed to creating a



Peter Jull (left) at the seminar (Photo: Espen Wæhle)

new government, although they did not vote in large numbers. Dene and Metis people largely supported the change. The overall result for the whole NWT was 56% for division of the NWT into new territories.

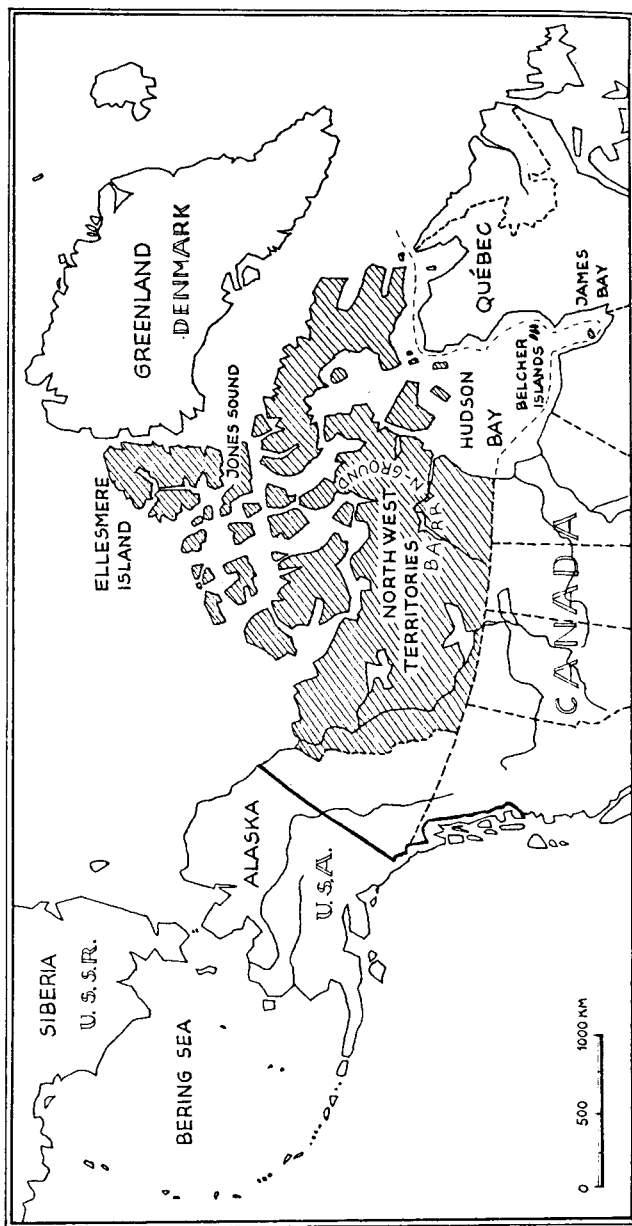
Following the plebiscite, the NWT Legislative Assembly voted 19-0 for a policy of division of the NWT. New bodies were created to develop these new governments through a process of study, public discussion, community hearings and the development of consensus among racial and regional groups. The Nunavut Constitutional Forum is made up of elected members of the Legislative Assembly from Nunavut, the heads of the national Inuit organisation (Inuit Tapirisat) and of COPE, and the Nunavut claims leaders. The Western Constitutional Forum includes Dene and Metis leaders plus elected members from the Legislative Assembly. These bodies are actively working now to create new governments; the first governments in Canadian constitutional history to be developed "from the grassroots". Although the Nunavut and Western forums are not immediately seeking the status of provinces, a status which must be agreed by a majority of the existing provinces and the national government, they assume that in the future they will acquire such status. Unfortunately a dispute over how far west the Nunavut boundary should lie has complicated relations between the two forums and they have difficulty cooperating on mutual interests vis-à-vis Ottawa. (Nevertheless an agreement has been reached in 1987.)

In the development of their proposals so far, the Dene seem to have stressed the importance of a decentralised, locally controlled government system, perhaps because they would be a population minority in their region. The eastern Inuit of Nunavut, on the other hand, have decided that a more centralised Nunavut government would better serve their interests and provide more strength, with a more limited role for regional bodies within Nunavut.

The Inuit of the Central Arctic (Kitikmeot), Keewatin and Baffin areas, the Nunavut hearthland, are negotiating land claims together, represented by a special body, TPN (Tungavik Federation of Nunavut). Many sub-agreements have been signed along the way to a main agreement, but important differences of viewpoint remain between Inuit and government, e.g. the government's refusal to accept Inuit decision-making (as opposed to advisory) power on matters such as wildlife management.

Indian and Metis people in the Yukon have a more difficult situation. Unlike the NWT they are not a majority of the population, but one third. The Yukon has a reputation for having a strongly entrenched white leadership opposed to aboriginal rights. Negotiations about land claims resulted in a draft settlement in 1984, strongly criticised by other aboriginal groups throughout Canada; among other things the Yukon aboriginal peoples would give up their Indian status and rights, accept extinguishment of aboriginal title and accept a "one-government" political system in the Yukon, i.e. the present Yukon government system which favours the white majority. Some Yukon aboriginal opinion has now turned against the draft settlement, however, preventing it from being concluded. It would appear that more aboriginal guarantees may be provided in a final settlement.

In northern Quebec the Inuit and the Cree Indians concluded the James Bay and Northern Quebec Agreement in 1975 with the provincial (Quebec) and national governments. This agreement provides for cash compensation, a separate education system, protected lands, various environmental and economic guarantees and a system of local and regional government. Implementation has been too slow to avoid major problems, and the Cree and Inuit have spent much of their leaderships' time in dispute with Quebec and Ottawa over these matters.



Map of Greenland and northern Canada

The Inuit of northern Quebec have recently set up a task force which is holding community meetings and conducting studies on an improved system of regional government. The Kativik Regional Government has not yet fully developed, but Inuit have been disappointed in some of its features, notably its inability to tax resources and development projects in the region to obtain sufficient and continuing revenue.

The Cree and Naskapi Indians of northern Quebec have just concluded a new law with the Canadian government to provide a system of Indian self-government. While the question of Indian self-government is unresolved at the national level in Canada, the Cree-Naskapi government law carries the present Canadian Indian Act to its ultimate point in providing an acceptable system of local and regional government.

Many other proposals and working systems of aboriginal government in various stages of development are found in other parts of Canada and Newfoundland. It is not yet clear what precise proposals they make for regional and local government.

In a law brought before parliament in June, 1984, the Canadian government proposed a new system of Indian government providing powers to Indian bands on their lands, and providing a further list of powers to be negotiated by each band according to its own needs and circumstances. Although this was not debated because of the Canadian election intervening, all national political parties agree that some such law must be negotiated with Indian people and brought before Parliament in the near future.

Three levels.

The Inuit, Metis and Dene of northern Canada are

working on three distinct, but obviously related, levels to obtain control of the future by:

- changing the national Constitution
- developing new governments in their homelands, under their control, and
- securing permanent rights through land claims agreements.

The Inuit of Nunavut, for instance, are willing to accept a government system which does not have permanent guarantees - other than use of the Inuit language in government - for Inuit qua Inuit, because they believe that they can gain enough other rights through the Constitution and a Nunavut claims settlement that they would have adequate protection for the future.

The Canadian Constitution now, as a result of aboriginal political campaigns in recent years, provides that rights gained through land claims agreements have very strong protection. These rights are specific to aboriginal peoples and to nobody else, so they are an important form of protection. Because of the relationship of aboriginal peoples to the lands and waters of their homelands, aboriginal people define many constitutional and political hopes in terms of "land". "Land claims" involve much more than land, however, and may include a wide range of rights including rights to self-government.

Aboriginal peoples hope to add significant new sections to the national Constitution to guarantee their rights to self-government, to protection of their traditional economic base and livelihoods, and the collective survival of their cultures, languages and societies. This process of constitutional negotiation is long, difficult and slow, but

it is continuing. More conferences will be held. These conferences, held on national television, are having a profound effect on Canadian public opinion. Aboriginal issues are now being better understood than ever before, and much public support has been generated. Nevertheless, many Canadians are uneasy about "special rights" for particular ethnic groups.

For further information on some of the above subjects:

Nunavut Constitutional Forum	Western Constitutional Forum
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Suite 300
63, Sparks Street
Ottawa, Canada
K1P 5A6

Box 1589
Yellowknife, NWT,
Canada
X1A 2P2

Dene Nation	Inuit Circumpolar Conference
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Box 2338
Yellowknife, NWT, Canada
X1A 2P7

176, Gloucester Street
Ottawa, Canada
K2P 0A6

Makivik (Quebec Inuit)	Constitutional Affairs
------------------------	------------------------

4898 de Maisonneuve West
Montreal,
PQ,
Canada
H3Z 1M8

Corporate Policy Branch,
Department of Indian and
Northern Affairs,
Ottawa, Canada
K1A 0H4

Part IV: Self-determination and Indigenous Rights



Left to right: Arne Arnesen, Georg Henriksen and Jens Brøsted (Photo: Espen Wahle)

Theory and Practice

Arne G. Arnesen (Norway).¹⁾

The experience I have gained from my activities as a lawyer and researcher has led me to become increasingly concerned about the utility of present legislation concerning indigenous peoples and minorities, and I believe that it is important for both lawyers and for the Sámi to be familiar with these legal problems. Particularly important here is how legislation relates to the needs and wishes of indigenous peoples and how the rights of these groups, organizations and individuals can be enforced and implemented.

The "enforcements of rights" is a problem which we know in domestic law everywhere, but it applies even more to international law. International law has neither a judicial system nor an international body to enforce legislation on states which have entered into specific obligations. We should therefore examine more closely the possibilities for indigenous groups themselves to ensure that current legislation is enforced.

¹⁾Arne G. Arnesen previously worked as a lawyer for a Sámi organisation in Norway (the NRL). He has also done some research work for the Norwegian Sámi Institute, mainly on the questions of international law in relation to indigenous peoples and minorities, and participated in the Sámi Rights Committee's work on international law. At present he is employed as a civil servant in the department of agriculture where he is dealing with Sámi matters relating to reindeer breeding rights.

During this paper I shall provide comments and suggestions as to the way forward for international law from the point of view of indigenous peoples. Opinions differ widely on this issue depending on one's objectives as well as the interpretation and development of international law.

If we try to measure fundamental needs against present legislation we can say quite clearly that present international law contains a well developed protection against negative discrimination. This is true for the human rights protection of both individuals and groups.

There is now a substantial body of legislation where the principle is clearly established, both in the UN as well as regionally. For us, the European Human Rights Convention is particularly important. Cultural minorities and indigenous peoples must not forget the significance of human rights protection against discrimination. It is strong internationally, both legally and politically and includes protection of all kinds of minorities within a state.

The significance here is that minorities have been put "on the map" in a legal sense. They are there as a unit, and this in itself is a starting point for a fundamental assertion of their rights in relation to state authorities. However, we must realise that legislation at the level of a general ban on discrimination does not in itself bring about positive rights.

The next question is the extent to which minorities and indigenous peoples are entitled to make special demands according to international law. We know that there are obligations in the domestic law of individual countries, which has influenced the development of European law since the 2nd World War. In international law, however, this was not fully treated until 1966 when the fundamental human

rights conventions were passed in the UN. The two Human Rights Conventions and the Convention banning Racial Discrimination form a group and all three are so constructed that they recognise unquestionably that minority groups, and thereby also indigenous peoples, are entitled to put forward certain demands of positive contribution from governments. After the signing of these treaties it was quite clear that such obligations were henceforth included in international law. This was a major step in the development of international law, but it is still unclear just how far we have come from there. In addition, this legislation was still built up in the traditional way: the UN adopts the conventions whereafter the individual states choose whether or not to ratify them. The starting point, therefore, is that only those states which are signatories to any particular convention are bound by it.

However, we should note that as far as human rights are concerned, the general legal principles behind the Conventions are considered binding on all states, (at least with respect to those articles that refer to protection against negative discrimination). This is so even if the state in question is not signatory to a particular convention.

Nevertheless, with respect to more extensive obligations on states, such as those included in the 1966 treaty, particularly in Article 27 of the Convention on Civil and Political Rights, it is still the case that only those states which are signatories to the convention are bound by its obligations.

As far as the Sámi of the Nordic countries are concerned, this gives hardly any problems, as all the Nordic countries are signatories to this Convention as well as to its so-called "Optional Protocol" to the Convention. This means that individuals and groups of citizens of these

states have the opportunity to follow certain complaints procedures in order to have the UN investigate possible breaches of the Convention by the state. We have here an important example - maybe the most important example - of a piece of legislation leaving the traditional starting point of international law which stipulates that only states can hold each other responsible. In this very important area concerning the application of Article 27 and its contents, those states who are signatories to this protocol have provided their citizens with the opportunity of international verification as to whether the obligations have been fulfilled and whether violations of the obligations have taken place.

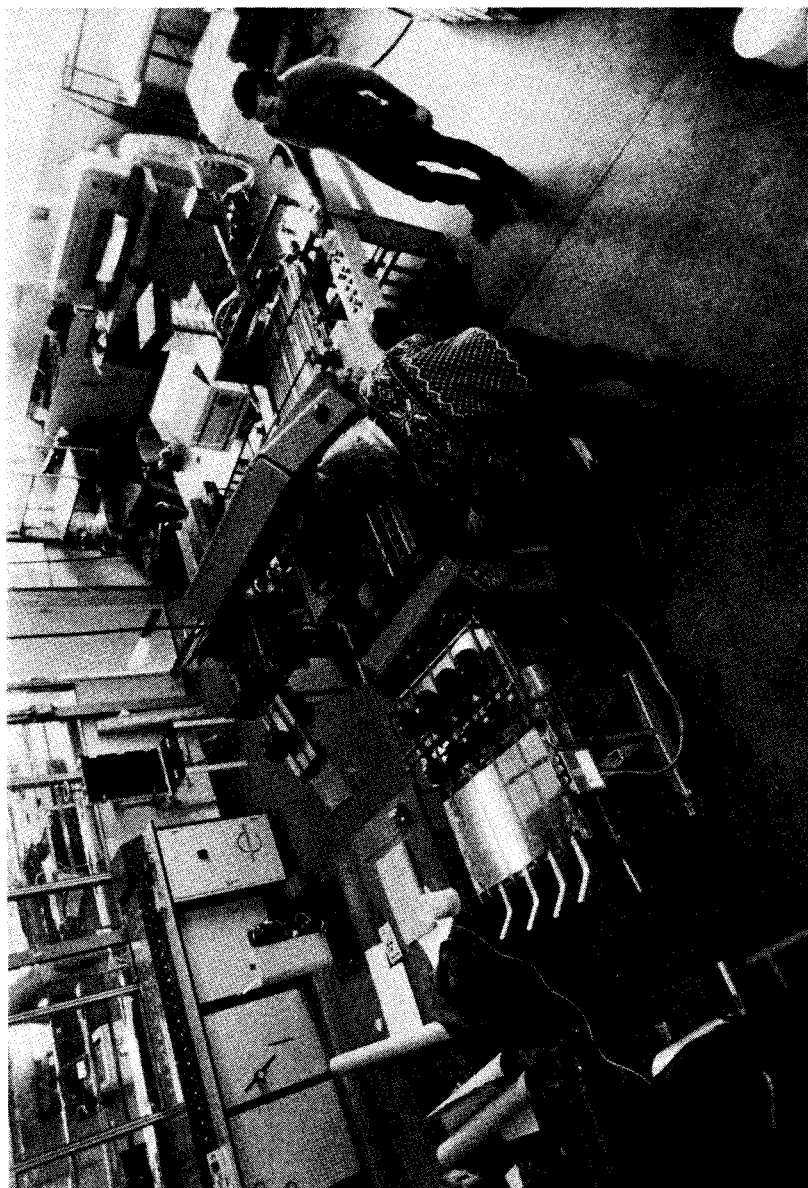
I believe this to be especially important when the discussion concerns the future development of international law. Indigenous organizations would be well advised to consider carefully the consequences of not taking full advantage of the procedure of Article 27, in order to concentrate solely on the continuing development of better legislation. I do not wish to give a definite answer to the question of the right way to proceed, but rather to point out the different possibilities. This should not necessarily mean an either/or choice as indigenous peoples can utilise the possibilities inherent in present international legislation while at the same time working on the further development. However, it is still important to be aware of the the extent to which current international law has progressed, and how it can be applied.

The third question here concerns autonomy. There are many degrees of autonomy and many ways of presenting these requirements, such as in terms of the degrees of political self-determination, of economic rights, and of self-government in the areas of language, education and culture. When we shift the focus to present legislation on autonomy, it has to be said that international law has not progressed

very far. It is a kind of "grey area" in which it is difficult to establish what exactly constitutes international law as it stands and what is "law in the making", i.e. legislation still being developed.

I have mentioned Article 27, but so far I have not mentioned the special rights of indigenous peoples. They are clearly relevant too. It is quite clear that these rights have had a long period of development, historically. This means that today we are faced with what we might call international rights of indigenous peoples, either based upon what we call international common law, (i.e. unwritten rules shaped by long standing custom of a number of states) or based upon general basic rules of international law as laid down in the statutes of the International Court of Justice, Article 38.

It is now well accepted that there does exist a special international common law with respect to indigenous peoples, and that its central point relates to an obligation on states with indigenous peoples to show special consideration with regard to areas which they traditionally used. The reason for this obligation is precisely that these peoples have their own culture and a way of life which means that it is important that their territories should not be utilized in a way that is fundamentally different from their traditions, unless they are themselves involved in the process. For this reason they are entitled to have these areas protected and, in my view, they are also entitled to be consulted and to have a say in how these areas should be used. I have to admit that it is difficult to determine how extensive this obligation should be. The substance of these special international rights of indigenous peoples bears a close resemblance to the central issue of Article 27, and the two sets of rules and regulations are in no way contradictory.



Sámi Printers at Karasjok (Photo: Sámi Aigí)

For an ethnic group to define itself as a cultural minority as well as an indigenous people does not present any problem for international law. A people may make use of both sets of legislation. The common interests are in areas such as culture, language and education. In addition, however, an indigenous people will have other particular needs, which need involve no conflicts with their rights as minorities. In this respect the Sámi population and organisations can choose freely.

I should also say a few words about the right to autonomy with respect to international law. This is an important matter, and in my view a problematical area. We all know that indigenous peoples have one thing in common: they demand some form of influence or autonomy to decide what use should be made of their land. This is the most crucial point in their endeavour to protect their identity and their future. When they demand different kinds of autonomy as peoples, this is a reflection of their conception of the legislation and of their own political views. The 1966 UN Conventions define the concepts "people" and "self-determination". They may be said to have been defined vaguely; but they have been defined and in a way which makes it rather difficult to combine these with the rights of indigenous peoples and minorities covered elsewhere in the legislation. These Conventions are so constructed that on the one side we find autonomy/people, on the other minority rights/unwritten rights of indigenous peoples.

At any rate I believe that as soon as an ethnic group or a group who considers itself to be a people invokes Article 1 - if they claim full rights of autonomy - they automatically preclude themselves from the possibility of using Article 27.

This again leads back to the very principle of autonomy

according to international law. I believe it to be impossible to ride both these two horses simultaneously - under present day conditions, anyway, although I realise that opinions differ on this matter.

In my opinion it is neither impossible nor unrealistic to imagine a development combining the special rights of indigenous peoples with minority rights - in particular by active use of Article 27. This would go a long way towards covering the needs of the indigenous peoples for self-determination. The only limitation would be that the authority of the state must not be challenged. There are, today, great possibilities for developing quite wide-ranging forms of self-determination, internal self-determination or "internal autonomy" - or anything else you wish to call it - as long as it is made quite clear that there is no intention of crossing the threshold of the principle of state sovereignty. In addition full self-determination cuts a people off from the possibility of using Article 27's "optional protocol".

Finally I would like to address a few remarks on the situation of the Sámi from this international perspective. I mentioned before that there is, in my opinion, no doubt that the Sámi people in the Nordic countries are both an ethnic and a linguistic minority of the states within which they live. There is in my view also no doubt that they are an indigenous people according to the rules of international law. Because of their history and their location, it is natural for them to have connections with other Arctic peoples, especially those of Greenland, Alaska and Canada. At the same time they are actually part of Europe, one among many other minorities of the states of Europe.

In my view the Sámi are really in quite a unique position to bridge the gaps in both political development and the development of international law. They have the

opportunity of contributing positively to the future development of minority rights in Europe and elsewhere while at the same time helping to improve the legal situation of all indigenous peoples.

We have of old in Norway and Sweden the important and much talked-about Lapp Codicil which is significant for both international law and domestic law. There is a lot of information to be gained on this, contained in the Sámi Rights Committee Report which was presented here earlier by Carsten Smith. It has been established that the Codicil is part of current legislation in both Norwegian law and international law. There is a continuity in both Norwegian and Swedish legislation going back for centuries which attaches special rights to reindeer breeding, and this has in its origin many similarities to the rights of indigenous peoples according to international law. So these matters are not unknown to domestic law in the Nordic countries.

Furthermore, very comprehensive legal reviews are now being carried out in all three Scandinavian countries. All have very wide mandates. The problem of what happens to Sámi interests when major interventions occur has become an urgent legal and political question. This is not to say that the problems have been solved, but today it is not possible, legally or politically, to begin a major oil/gas extraction in northern Norway while totally overlooking its effect on Sámi society. There are exciting possibilities here because although the Sámi organisations still have a difficult task to complete, they are also in an extremely advantageous position with regard to influencing the development of international law.



Picking potatoes in Sámland (Photo: Sámi Aigí)

Sámi Rights and Self-determination

Jens Brøsted (Denmark)

Indigenous peoples' central demands concerning their rights can be summed up in three simple statements:

- 1) the right to be themselves
- 2) the right to be left alone and
- 3) the right to participate.

The first statement, the right to be themselves, contains a claim that indigenous peoples have the right freely to exercise a decisive influence on their own conditions of life: a right to self-determination.

The second proposition, the right to be left alone, on the one hand implies that the social and cultural life of indigenous peoples must be free from the often incessant attacks from without - from state authorities or from private sources - and on the other hand it implies that their land, their territory, must be preserved for their own purposes and must be protected from external exploitation without the voluntary consent of the indigenous people.

Finally, the third statement implies a right to participate on an equal basis with other citizens of the state in such areas as the economic and political life of society. This principle has long been the official policy of the Nordic countries, but it is also difficult to carry out in practice. As a right, however, it is not controversial, and I shall not comment on it any further at this time. The first two items, though, have been controversial issues, and

so there is good reason to examine these further. In the following, however, I shall concentrate on what Mr. Arne G. Arnesen called a grey zone of international law: the right of all peoples to self-determination and in particular the opportunities of indigenous peoples for invoking the right to self-determination. It is my view that it is possible to carry the arguments further in this respect than the rather cautious argumentation which is found in the report by the Sámi Rights Committee.

But why should indigenous peoples be granted special rights - as distinct from the other members of society? This is an objection often raised. In my opinion the formulation of the question is false, for it is not a question of indigenous peoples claiming new rights. On the contrary, they are seeking to preserve rights which they already possessed before they were subjected to some colonising state. When seen in this perspective there is nothing particularly remarkable about the rights claimed by indigenous peoples: the right to make decisions about your own life, to protect and develop your social and cultural life and to the peaceful possession of your property, these are all expressions of universally acknowledged human rights. Likewise many of our fundamental legal principles can be used directly. Why then is there so much debate about special rights for indigenous peoples?

The answer is bound up with two facts: first, the colonising European powers often saw fit to depart from general rules of law where indigenous peoples were concerned, and secondly, indigenous peoples did not participate in the formulation of the rules, which are therefore not directly applicable to the situation of indigenous peoples.

Let me give a few examples:

Departure from the general rules of law was justified by means of various criteria of "primitiveness". Indigenous peoples were regarded as primitive, therefore they were unable to possess and to understand the meaning of rights in the same way as did civilized peoples. Changing periods of history each lent their own wording to the criteria, and each drew their own conclusions from them; but a peak was reached at the end of the last century with the breakthrough of industrialism and imperialism exerting great influence on international law. Allow me to illustrate this by way of a few examples from the prominent Danish lawyer, Mr. Henning Matzen, taken from his "Lectures on positive international law" from the year 1900. According to Matzen, international law presupposes that the members of the international community:

"have reached such a stage of civilization that they possess a certain conception of justice, so that they realise that certain facts such as agreements oblige them to act or refrain from acting in a particular way. In the case of totally uncivilized societies which lack such realisation, any application of international law is inconceivable. When, nevertheless, civilised societies do as far as possible treat them in accordance with the rules of international law, they do this solely from a sense of duty to themselves to fulfil their own conception of morality and humanity...".

Nevertheless, Matzen had to admit that international practice, for humanitarian and political reasons, tended "towards the signing of treaties with such uncivilised tribes instead of forcibly subjugating them". Such treaties did, however, aim for the submission of the tribes, they did not confirm that the parties involved had a relationship which would be governed by international law.



Branding and separating bulls from females before moving to calving grounds in Sámiland (Photo: Terje Brantenberg)

Such criteria of primitiveness are discriminating: therefore they have no validity and no consequences for modern international law. Nevertheless, as we shall see, they still raise their head.

Regarding the second point:

The rules of law are not directly applicable to the situation of indigenous peoples, since they did not participate in their formulation. The effect of these rules in relation to indigenous peoples is therefore somewhat accidental. This is one reason for the need to set up special international legislation on the legal situation of indigenous peoples.

The European Human Rights Commission provided an example of this when on October 3, 1984, it gave to the Sámi a totally new basis for their right to land and water. The European Convention on Human Rights does not contain any provision for minority rights, but Article 8 of the convention guarantees anyone "the right to private life, family life and a home". According to the Commission, a minority group is entitled to the protection of its particular life style, as this is part of private life. The Sámi complaint which followed the Alta demonstrations, was, however, dismissed for different reasons.

This new invention of the Commission which, strictly speaking, it had no need to put forward, came as a surprise for the Sámi who had not used this clause when arguing their case. It also came as a surprise for the Sámi Rights Committee which in its review of international law reaches the conclusion that the European Convention does not protect the rights of indigenous peoples or minorities to land and water (p. 250).

The accidental character of this example demonstrates

the need for a separate position in international law for indigenous peoples and for their direct influence on the rules of law by which they are bound. In this context it is fortunate that the Working Group under the United Nations Human Rights Commission which has the task of formulating a set of international rules on the legal position of indigenous peoples, has decided to be completely open to the active participation of indigenous peoples and to call for their suggestions.

Norwegian authorities and individuals have given considerable support to this important international initiative. Likewise, Norwegian law courts were responsible for the first major breakthrough for indigenous peoples in recent times with the Supreme Court ruling in the Altevann case in 1968 safeguarding Sámi reindeer breeding against expropriation and protecting time-honoured territorial rights. It was therefore no surprise that Norway was to be the first among the Nordic countries to investigate seriously the position of indigenous peoples. I have been anxiously awaiting the results of this investigation which are now beginning to appear.

The first report by the Sami Rights Committee turned out to be a momentous document, although by virtue of its bulk of some 1300 standard pages, difficult to grasp. It contains a significant exposition of the legal position of the Sámi seen in an international perspective as well as from the perspective of aboriginal rights and it puts forward a number of proposals for future arrangements. The latter have already been commented upon, so I shall concentrate on the factual discussion of the legal situation. Let me just add that as a consequence of the provisional nature of the review - and probably of the working conditions of the Committee too - it is not always easy to find the logical connection between the factual review of the Committee and its proposals.

The Sámi Rights Committee became a model for others even from its establishment, and similar committees have now been set up in Finland and Sweden. Greenland/Denmark are trailing behind, although here too there is a need for a similar effort, especially in the field of territorial rights. The exposition of the Norwegian Sámi Rights Committee on international law and the legal position of indigenous peoples will occupy a central position in future work, as it is the first Nordic document of its kind. The Committee itself does, however, stress that its work should not be regarded as final. While on the whole the Committee seems to me to be well-informed and prudent as far as its conclusions are concerned, I do believe that in a few instances it is too unimaginative or too cautious when interpreting existing law.

The right to self-determination of all peoples is a point in case where the Committee in my view is too careful or conservative in its interpretation. International law has developed fast this century, and it may be difficult to determine the scope of existing law, especially in areas where judicial practice is limited. Nor is international law consistent or uniform in this respect. The choice of interpretation is therefore largely a choice of political determinants and situational variables. The right to self-determination which was originally a fundamental political principle of the United Nations Charter was made a binding legal principle by the two UN Human Rights Conventions of 1966. Article 1 of both conventions establish in identical wording:

1) "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The second section of the article grants to all peoples the free use of all natural sources of wealth and resources, while the third section puts an obligation on states to respect the right to self-determination and to implement it. The application of the second point concerning natural resources and sources of wealth became a central issue of dispute during the preparations for Home Rule in Greenland.

On the basis of their preparatory work and the practice of the UN General Assembly, the Sámi Rights Committee reaches the following conclusions: 1) the right to self-determination is a safeguard for the sovereignty and the integrity of the individual state - which means that minorities can not break away from the territorial unity of the state, and 2) the right to self-determination is a weapon in the fight for decolonisation.

The main question for the Sámi Rights Committee: whether the right to self-determination is applicable to the Sámi minority in Norway is therefore answered in the negative. According to the Committee the Sámi differ in this respect from the Inuit population of Greenland: "The relationship between Denmark and Greenland is a typical colonial relationship, historically as well as geographically".

Undoubtedly the Committee is in agreement with major international doctrines in linking the right to self-determination with political decolonization and territorial integrity. In his investigation of the status of Greenland according to international law, Mr. Gudmundur Alfredson further links decolonisation as it is customarily practiced by the UN to overseas areas (the salt water theory). However, in a subsequent listing of unsolved problems of decolonisation he states Northern Ireland as an exception. There is thus no consistency between theory and practice. Furthermore it is doubtful whether these doctrines offer an

exhaustive description of the right to self-determination. Finally, it should be stressed that there are natural, statistical reasons for the UN decolonisation practice to be concentrated in overseas areas - this practice is therefore not based upon legal criteria. On the contrary, the UN decolonisation policy aims at abolishing colonialism in all its forms. In this light it is essential to examine the position of the Sámi Rights Committee on the question of the colonisation of Sámiland. The Committee can be said to have had the choice of either a model of harmony or a model of conflict, and this is probably a very sensitive matter in Norway. The Committee finds that the relationship most resembles that of a colonial relationship in the way in which Norway obtained sovereignty over Sámiland, while a long period of peaceful co-existence between Sámi and Norwegians is supposed to illustrate that the relationship is different from that of other colonial relationships. In particular, this is illustrated by the fact that the Sámi, from the beginning, were granted ordinary rights as Norwegian citizens. The Committee felt that it was not necessary to clarify this problem, and leaves it open: "No material has thereby been excluded, and no conclusion has been anticipated". This statement is correct in this context, but when later the right to self-determination with respect to the Sámi is examined solely as a matter of minority relations, not as a colonial relationship, the conclusion is in fact foregone.

In my view the Committee's distinction between Sámiland and Greenland is untenable: Greenland too has enjoyed a long period of peaceful co-existence without any typical colonial conflicts, and the colonial nature of the relationship has also been vigourously denied in Denmark. Nevertheless, both Greenland and Sámiland have been subjected to foreign, colonial dominance and control resulting in a state of dependence.

The legal positions of Finnmark and Greenland have also long been identical. Both were regarded as Norwegian/Danish dependencies. The one was no more overseas or difficult of access than the other, since at that time they were thought to be connected. On 17th century maps, Karelians were put on the East coast of Greenland. During the colonisation period of the 18th century the Sámi and the Greenlanders lived as free nations, as peoples who were not bound by the Civil Law of the state, but lived according to natural, customary law. Consequently, it is not correct to say that the Sámi in Norway consistently enjoyed the same citizens' rights as Norwegian subjects. At the time of the delineation of the border in 1751, there was only a master/subject relationship, which implied an obligation of obedience and allegiance. The emergence of a relationship involving civic rights did not occur in Denmark/Norway until 1776 with the introduction of the right of citizenship. The Codicil to the Border Treaty between Denmark/Norway and Sweden of 1751 further imposed upon the Sámi an obligation of neutrality, and this at any rate marks a departure from the general obligations of allegiance and obedience usually put on subjects. In 1847 the Norwegian Department of Finance stated that "Finnmark has therefore since time immemorial been designated and treated as a colony". A few years later the Danish parliament, the Rigsdag, decided that Greenland should be administered "as if it were a colony".

The colonial annexation of Sámiland was also made the basis of the ruling of the Norwegian Supreme Court in 1862, which has recently become known in full:

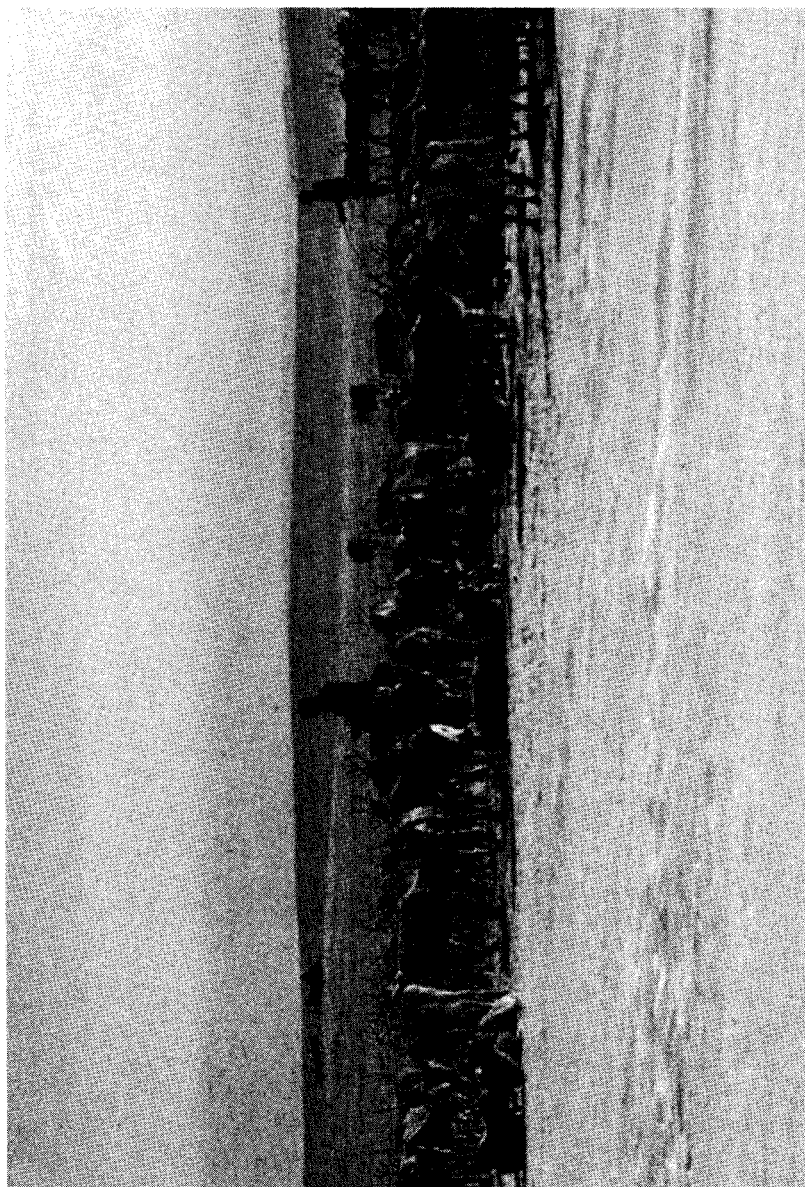
"The very historical relationship between the Lapps who were the original inhabitants of the land and the immigrant Norwegian owners, suggests the need to maintain and protect the right to use which the former have continued to exercise on what was previously ownerless land, even after the occupation thereof by the latter. The basic legal principles

of prescriptive right to use also support this view".

In effect, the Lapps were the original inhabitants of the country who had been subjected to or occupied by the Norwegian owners. In this context this should be interpreted as a possession of sovereignty, since the land could not have been regarded as ownerless land - or "terra nullus". Here I am in complete agreement with the report of the Sámi Rights Committee.

Therefore, the colonial character of the relationship was legally cognizable to all three state powers - the legislature, the executive, and the judiciary.

When in the present situation we attempt to interpret the meaning of the right to self-determination it is in my view imperative that we should recognize that indigenous peoples do not cease to be peoples, even if lawyers and nation-states are fixated on an interpretation which says that indigenous peoples are not peoples, thereby automatically putting limitations on the right to self-determination. This is actually nothing more than the criterion of primitivity in new disguise: the introduction of a general right to self-determination supposedly for all peoples, followed by a declaration that it is only applicable to those peoples who hold the state power. Furthermore, the formulations of the preparatory work of the Human Rights Commission contradict such a principle. Insofar as international law since World War II would claim to be universal, the interpretation of the principles must take into account the fact that indigenous peoples now form an important part of the international community, so that the interpretation of legal rules and regulations originally meant for one type of situation may get an unintended twist when used in another situation where general legal criteria prevail.



Branding and separating reindeer before moving to calving grounds (Photo: Terje Brantenberg)

With this in mind I believe that the right to self-determination may be interpreted as a two-way obligation. On the one hand the nation-states are obliged to respect the right of indigenous peoples to self-determination, and on the other hand the indigenous peoples are obliged to respect the territorial integrity of the nation-states. This ensures a fundamental respect for two fundamental norms of international law. Thereafter it must be left to the nation-states and the indigenous peoples themselves through negotiations to establish the way in which these two sets of obligations will interact.

It is generally accepted that the right to self-determination may find various forms of expression. Thus, the right to self-determination does not necessarily have to be expressed through the formation of an independent state by an indigenous people or a minority, but the nation-states do seem to react somewhat paranoically when indigenous peoples speak about their own sovereignty or self-determination.

This way of reacting is rather unnecessary, and it must be said that both the indigenous peoples and the nation-states must share the responsibility for this, since they do not sufficiently specify what they mean.

I shall now attempt to show that certain elements of the right to self-determination indicate that this right may be claimed by indigenous peoples; secondly, I shall examine the possibility of international material supporting an interpretation which would imply the two-way obligation suggested above.

The wording of the provision will be my first starting point. Here I shall draw the attention to some discrepancies between sections 1 and 3 of Article 1. Section one states that all peoples have the right to self-determination, while

section 3 specifies that the member states are obliged to respect this right to self-determination.

There is an important difference between the Norwegian and the Danish translation of section 3. I suppose the Danish version is closer to the English original, in the sense that the Danish version more lucidly expresses the contrast between the state and the peoples as entitled under and obliged by the Convention.

I do not believe that a satisfactory interpretation in international law can be arrived at if it does not respect the basic, fundamental meaning of the words. That is the element of interpretation which in English would be termed "plain meaning".

As far as the travaux préparatoire is concerned, the report of the Sámi Rights Committee shows that the 1966 Conventions found their final wording in the mid-50s. In 1955 the Secretary General of the UN prepared a document to the General Assembly, commenting on and specifying the content of the individual provisions. According to the report of the Secretary General, the draft Convention confirms the principle of a universal right to self-determination. It was refused to include special references to national groups and ethnic and linguistic groups in the concept of "people". The term "people" was to be given its widest interpretation, including the peoples of all countries and territories, independent as well as trust territories and non-autonomous territories (UN Doc. A/2929, 1955, p.40ff).

A brief look at practice will show that there is hardly any international precedent in this area. We may choose as our starting point the resolutions and interpretations of the General Assembly or the Human Rights Commission's treatment of this matter. As the report states, this is

rather meagre. However, the report overlooks - or refrains from dealing with - the advisory opinion from 1975 of the International Court of Justice concerning Western Sahara. This case dealt with the question of whether the right to self-determination was applicable to the nomadic tribes in Western Sahara. The situation here in many ways resembles that of the Sámi. The nomadic tribes of Western Sahara lived in the area between the kingdom of Morocco and what was later to become the state of Mauretania with extensive traditional communication with both Morocco and the Mauretanian entity. The nature of these legal ties was, however, such that neither state could claim sovereignty. According to the International Court of Justice, the indigenous people, the nomadic tribes of Western Sahara, did have a right to claim full self-determination. Here we see firstly, the rejection of such arguments of international law that are based on territorial contiguity and thereby on territorial integrity; secondly, the rejection of the requirement for de-colonisation to include only overseas areas; there is no "blue water" separating Western Sahara from Morocco or Mauretania.

With reference to international legal theory the report of the Sámi Rights Committee quotes a review by Mr. Aureliu Cristescu on the right to self-determination. The review was prepared for the UN Sub-commission for the Prevention of Discrimination and the Protection of Minorities. Mr. Cristescu discusses the meaning of the term "people", drawing from the UN debates three elements which should not be ignored. Firstly, the term "people" designates a social unit with a clear identity and characteristics of its own. Secondly, it implies a relationship with a territory, even if the people in question had been "wrongfully expelled from it and artificially replaced by another population". Both criteria could be applied to the Sámi situation and the colonial relationship there. The third element mentioned by Mr. Cristescu is the one to which the report by the Sámi

Rights Committee attached most importance: the concept of a people should not be confused with that of ethnic, linguistic, or religious minorities, whose existence and rights are mentioned and acknowledged in Article 27 of the Human Rights Convention.

There is, therefore, in the preparatory works on the wording of the provision itself, as well as in both practice and theory of international law support for a broader interpretation of the right to self-determination which takes into account the situation of indigenous peoples.

Finally, I shall examine, whether it is possible to find support in recent international material for the suggested principle of a two-way obligation. Here I shall specifically draw the attention to the "conclusions and recommendations" of the so-called Cobo Report, which is a review by a special rapporteur to the UN Human Rights Commission on the problem of discrimination against indigenous peoples. In both the conclusions and the recommendations Mr. Cobo touches upon the matter of the right to self-determination and political rights.

It is evident from his report that during his work he became very much involved with the concept of self-determination, and he therefore suggests the appointment of a special rapporteur to deal more closely with this question. In general he states that

"selfdetermination, in its many forms, must be recognized as the basic precondition for the enjoyment by indigenous peoples of their fundamental rights and the determination of their own future" (Paragraph 580).

Paragraph 581 states: "It must also be recognized that the right to selfdeterminaion exists at various levels and includes economic, social, cultural and political factors.

In essence, it constitutes the exercise of free choice by indigenous peoples, who must, to a large extent, create the specific content of this principle, in both its internal and external expressions, which do not necessarily include the right to secede from the state in which they live and to set themselves up as sovereign entities."

In effect, a two-way obligation to acknowledge the sovereignty or the right to self-determination of indigenous peoples, which does not necessarily lead to secession and thereby to violation of territorial integrity.

The Cobo Report was discussed at a meeting in August 1984 in the Sub-commission for the Prevention of Discrimination and the Protection of Minorities. The Sub-commission decided in its resolution 1984/35 that the report would be sent to the Human Rights Commission, and that the conclusions and recommendations were to be publicised as widely as possible. According to the Sub-commission the principles and recommendations of the report provide "a suitable source" for the continuing work of international bodies on the development of international rules on the legal position of indigenous peoples. The Cobo Report thereby gained official status and confirmation within the UN system.

Finally, regarding this controversial issue of the combination of a right to self-determination for indigenous peoples and territorial integrity, it may be useful to draw attention to a meeting of experts arranged by UNESCO in Kautokeino in 1983. The meeting of experts was made up of international lawyers, anthropologists, linguists and others. Among the conclusions and recommendations of this meeting was the resolution that an indigenous population living within a sovereign state which grossly denies the fundamental right of such groups to have their cultural identity and free development respected and in particular,

if there is no securing of full respect for human rights for all, without distinction as to race, sex, language or religion, that population is entitled to resort to all available democratic means to bring about respect for its rights. If such means are not available, or prove unsuccessful, the indigenous population is entitled, as a last resort, to separate from the state where it lives and to decide freely whether they want to constitute a separate entity with international status, or to live in a state where its basic human rights and fundamental freedoms will be fully respected.

There are thus elements in recent international documents and deliberations that specifically consider international matters in relation to indigenous peoples, which have moved the grey zone a little further than conservative dogma of international law had done before. In this way there is a chance that indigenous peoples may actually become full members of the international community.

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Self-determination is a fundamental right of indigenous peoples. Although frequently discussed from a theoretical basis, it is less often discussed from a practical and applied perspective. This document looks at self-determination from the position of the indigenous peoples of Sámiland, Greenland and northern Canada and how they can fully express this right. The answers provided vary according to the conditions in each country, but all share a deep concern that indigenous self-determination be recognised both nationally and internationally.

