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# Indigenous self-determination in Finland: a case study in normative change

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ABSTRACT. Indigenous rights have gained considerable prominence in international forums over the last few decades, and are now being institutionalised through emerging norms within the international system. This paper examines the factors affecting the adoption of the norm of self-determination for indigenous peoples in the Finnish case using current constructivist models of normative change. Explanations for Finland's difficulty in adopting this norm, as symbolised by the ratification process of International Labour Organization Convention No. 169, are found in both the international normative context in which it emerged and in domestic factors within Finland itself. The concept of a 'corrupt' norm is introduced as a theoretical device in cases where norms have strong moral- or value-based appeal, but are weak in terms of the clarity of how they will work. This is an INDIPO project paper (Tennberg 2006)

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## Introduction

Over the last half-century, indigenous rights have moved from being virtually absent from international discourse to being a prominent international movement, internalised in the international system through the participation of indigenous peoples in international forums and in an emerging body of international law. For scholars of international relations interested in how the system changes, constructivist approaches, which see the international system as an interaction between mutually constituted actors and structures, are particularly useful for understanding the emergence of new actors and behaviour-shaping regimes (Kratochwil and Ruggie 1986; Wendt 1992; Onuf 1994; Hopf 1998; Ruggie 1998). There is now a strong body of constructivist theory and empirical case studies that describes how the rules which govern state behaviour (norms) emerge and are internalised into the international system and the domestic structures of states (Franck 1990; Finnemore 1993; Florini 1996; Katzenstein 1996; Finnemore and Sikkink 1998; Checkel 1999; Hurd 1999; Risse and Sikkink 1999).

In this paper the factors affecting the adoption of the international norm of indigenous self-determination in Finland are examined. Like its nordic neighbours, Norway and Sweden, Finland has been engaged in a process, that has lasted decades, of renegotiating its relationship with its indigenous Sami minority. This process has been on the domestic level, tackling such issues as the status of the Sami language, reindeer herding as a traditional livelihood, and apparatuses for representation and decision-making. At the same time, the debate has continued at the international level as the Sami organised themselves internationally through the Sami Council and joined forces with other indigenous peoples to bring their cases to the international arena in forums like the United Nations Economic and Social Council (ECOSOC), the International Labour Organization (ILO), and the Arctic Council. In this dual process, a set of principles regarding the collective rights of indigenous peoples has emerged at the international level.

For the purpose of analysing the factors influencing Finland's adoption of the norm of indigenous self-determination, the International Labour Organization (ILO) Convention No. 169 'Concerning Indigenous and Tribal Peoples in Independent Countries' will be used as a barometer of that norm, and the discourse around Finland's ratification of the convention as the source of analysis. The convention, adopted in 1989, replaced an earlier ILO convention entitled the 'Indigenous and Tribal Populations Convention', which was primarily concerned with protecting indigenous labourers from exploitation and abuse. By the 1980s the existing convention was seen as outdated, reflecting an underlying assimilationist agenda and in need of comprehensive revision. ILO 169 recognises the human rights of indigenous 'peoples' (as opposed to referring to 'populations,' as in the earlier convention), and outlines the responsibilities of states to protect and promote those rights. The starting point of ILO 169 is the protection and preservation of indigenous cultures from direct harm by the state, in essence guaranteeing their right to exist and to determine the course of their own development within respective national contexts. In addition to cultural rights, the convention also includes provisions that recognise indigenous ownership over land traditionally occupied

by them, protection of natural resources, as well as requirements for consultation on issues that affect them (International Labour Organization 1989; Joona 2003).

It should be stated immediately, for reasons that will be seen later, that ILO 169 explicitly does not include a commitment to self-determination for indigenous peoples. Nevertheless, it is a significant symbolic demonstration of a state's general acceptance of the norm. Indeed the absence of precise rules and definitions in ILO 169 and many other similar instruments and continued misunderstanding surrounding the concept of self-determination only serve to underscore the importance of norms in the soft-law arenas of international law and international relations. Using ILO 169 as a proxy for the norm of self-determination also assists empirical study of the adoption of norms by actors, as one can look to the statements and justifications made by states concerning why they do or do not ratify the convention. ILO 169 is currently the only instrument of international law that specifically relates to the rights of indigenous peoples (Joona 2003). Thus, the debate over its ratification in countries such as Finland is the area where actors (states and indigenous peoples) reveal areas of friction or 'dissonance' between their interests, identities, and among other competing or incompatible norms.

What becomes clear from this particular case is that the models used to understand normative change, and most of the existing case studies from the area of human rights regimes, paint a much clearer picture than always exists in reality. Models of normative change (best exemplified by that of Finnemore and Sikkink 1998) present a timeline in which different processes are compartmentalised into different phases. A norm emerges from below, is adopted and championed by a group of actors, the norm is internalised into sets of praxis and practice, and the converts then use certain behaviours to influence other less cooperative members of the international community to follow the rule. But what happens when the norm is never fully developed or internalised in the international system, and what happens when these different phases are muddied and overlap instead of neatly following one another? In this paper, norm change and internalisation in a highly complex and contested landscape is examined, with the aim of ascertaining how well existing models of normative change suit such a case. In doing this, the concept of stillborn, or 'corrupted' norms is developed, and this may provide some added explanatory value to the existing theoretical models.

As a basis for this analysis the models of norm dynamics originated by authors such as Franck (1990), Finnemore (1993), Checkel (1999), Florini (1996) and Finnemore and Sikkink (1998), are followed and this analysis is outlined briefly below. The adoption of any norm by an actor (state) in a structure (the international system) is effected by a variety of both unit and system level factors. While most of the analysis focuses on the later half of the stages of norm development (where international norms are adopted by states), it is important in this case to consider the process by which a norm is first articulated and institutionalised in the international system. Much of the difficulty Finland has had with ratifying ILO 169 (and thereby symbolically accepting the norm of indigenous self-determination in some form) stems from problems with the norm's development at the international level, while others stem from domestic factors particular to Finland. These domestic and international factors are, of course, closely linked.

It appears from its representations in international forums on issues of racism and human rights that Finland is motivated to accept the principle of self-determination and collective rights for indigenous peoples on the basis that it wishes to maintain its identity in the international community as a progressive liberal nordic state, and support for indigenous rights is generally consistent with its own prevailing norms. At the same time, Finland seeks to resolve a longstanding source of conflict and controversy domestically in the resolution of Sami land rights issues in Lapland. Countering these positive impulses for Finland to accept indigenous rights and self-determination are numerous elements of normative dissonance, both internationally and domestically, where the emerging norm conflicts with competing norms already well internalised, as well as structural factors that complicate its application. This analysis will focus mainly on two competing norms and one domestic structural factor that are countering the adoption of indigenous self-determination in Finland. The first is a hidden cultural bias entrenched in the norm of state sovereignty that will be referred to as the 'standard of civilisation,' after Gong (1984). The second norm is the principle of universality, which is a fundamental aspect of liberal human rights since 1948 (United Nations 1948). Finally, the lack of clarity in Sami identity questions poses a significant local factor that militates against the resolution of land ownership questions that are seen as a necessary precursor to the ratification of ILO 169 in Finland.

## Models of norm dynamics and political change

In seeking to discover the explanatory factors for Finland's difficulty in adopting the norm of indigenous self-determination, existing analyses that seek to classify the qualities of a norm that help determine its potential influence in world politics are examined (Franck 1990; Florini 1996; Checkel 1997; Finnemore and Sikkink 1998; Hurd 1999). One of the strengths of these models is that they provide a ready-made (yet developing) rubric by which to gauge the potential success of a new international norm.

Many of these factors relate to intrinsic characteristics of the norm, while others are exogenous, looking primarily at how the norm fits within a contested framework of other norms, regimes, and identities. Additionally, a number of authors interested in how a norm moves from the international level to become institutionalised within national-level normative and legal structures have inserted domestic structural factors as an 'intervening variable',

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such as the structure of decision-making authority and the pattern of state-societal relations (Cortell and Davis 1996; Checkel 1997: 477–8). A norm's consistency with a country's national identity is also considered an important determinant of its domestic application (Wendt 1994; Finnemore 1996; Checkel 1999).

The prominence or salience of any given norm at the international level is largely a product of its legitimacy or, 'the normative belief by an actor that a rule or institution ought to be obeyed' (Hurd 1999: 381). As Franck explains, legitimacy itself 'is contingent upon four factors: determinacy, symbolic value, coherence and adherence' (Risopp-Nickelson 2004: 16). While determinacy is considered to be a characteristic of the norm itself, the other three all relate to a norm's congruence in relation to other existing norms and regimes that affect its acceptance internationally.

Determinacy, 'the extent to which the standard is clear to those who are expected to adhere to it and falls within the bounds of justice and reason' is usually taken as a less important factor than coherence in explaining norm emergence and adoption (Florini 1996: 376). Clarity and lack of ambiguity are not only important for gaining support for a new norm, but are critical for the eventual effectiveness and authority of the institutions that develop around it (Cortell and Davis 1996; Finnemore and Sikkink 1998; Coleman and Gabler 2002). As this case study shows, a norm's lack of determinacy can still be a crippling factor for the emergence of a norm and its adoption domestically.

Nearly all these authors offer their own concepts that describe how the degree to which the new norm fits within existing normative frameworks, 'in other words, norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest' (Finnemore and Sikkink 1998: 897). Franck likewise describes the concept of coherence as a measure of the relationship of the rule to 'principles previously employed to solve similar problems', and to 'a lattice of principles in use to resolve different problems' (quoted in Florini 1996: 376). This concept has alternatively been described as adjacency (Finnemore and Sikkink 1998), logic of appropriateness (March and Olsen 1989), and the absence of normative dissonance (Risopp-Nickelson 2004).

While the quality of determinacy or clarity is often treated in the literature as separate from the other relational qualities, it can itself be easily understood from the perspective of normative congruence/dissonance. For what is clarity other than a high degree of agreement about what something means? If a norm means one thing to actor A and another thing to actor B, it can be said that the norm has a low level of clarity or determinacy. What differentiates determinacy from other qualities of normative dissonance is that the dissonance in this case is between the understandings by different actors of a concept, not between the understandings by one actor of different concepts. Also, determinacy seems to be used in the literature to apply more to the operational/behavioural components of norms than their broader constitutive values. That is, determinacy is used to evaluate how easily a norm is to apply rather than why it ought to be followed.

The relative importance of these factors varies considerably depending on what stage of the norm's emergence we examine. Finnemore and Sikkink (1998), for example, have developed a very persuasive three-phase 'life cycle' of norm emergence (leading to a tipping point), norm cascade and internalisation, while Florini (1996) uses an elaborate biological analogy of norm evolution. While these models each have their limitations, they are still very useful guides for empirical case studies of norm dynamics so long as one does not adhere to them too dogmatically. For example, according to Finnemore's and Sikkink's standards, the norm of indigenous self-determination has not yet reached 'tipping point' as ILO 169 has only been ratified by 17 states and, arguably, has no influential norm leaders among them pushing for adoption by others. Yet, this infancy has not stopped those countries that have ratified it, and those, like Finland, aiming to ratify it, from modifying behaviours to try to conform to the new norm, and institutionalising it in domestic law and institutions.

Both authors stress the importance of norm entrepreneurs (or norm leaders) as agents of normative change in the international system (Florini 1996; Finnemore and Sikkink 1998). While these models still describe states as the primary norm entrepreneurs, they nevertheless allow for non-state agents or institutions to assume that role (Kingsbury 1998; Coleman and Gabler 2002), as well as the possibility of disaggregating the state to consider domestic agents within the national decision-making apparatus (Cortell and Davis 1996; Florini 1996). Unlike many emergent normative frameworks, indigenous self-determination is not a product of state leadership. Rather, a well organized international network of organisations of indigenous peoples have themselves been able to influence the development of an international regime through the International Labour Organization and other international institutions. The leading role of indigenous organisations in this process is itself evidence of another related international norm: the legitimacy granted to indigenous peoples as international actors.

This paper uses these existing contributions to the theory of normative change to seek to understand the challenges faced by Finland in its attempts to ratify ILO 169, and in doing so aims to contribute to the further development of this important scholarship. In particular, this empirical study helps to illustrate the limitations of models that try to constrain all norms to a particular trajectory. This case also bolsters constructivist explanations of state behaviour, as Finland's attempts to support indigenous self-determination can only be explained in terms of its normative legitimacy, rather than being based on coercion or self-interest (Florini 1996; Hurd 1999).

The basic reasoning of the paper is that; (1) indigenous peoples were excluded from consideration as sovereign

entities during both colonisation and decolonisation due to a cultural 'standard of civilisation' embedded within the international system; (2) their ambiguous status as non-sovereign peoples under international law produced further tension over the common understanding of the right of self-determination; (3) a particular norm within this human rights framework, universality, can be seen either as consistent or dissonant with indigenous rights depending on whether indigenous rights are seen as a special exception or a rectification of existing inequality; (4) the resulting norm of indigenous self-determination that has emerged can be described as 'corrupted' because of this normative dissonance and lack of clarity (determinacy); (5) Finland is motivated to conform to the norm that has emerged because it sees it as consistent with its identity as liberal state, and because the norm is consistent with an existing normative framework of human rights; (6) domestic normative and structural issues in Finland negatively influence the likelihood of it adopting the norm.

## State sovereignty and the 'standard of civilisation'

State sovereignty is the most fundamental constitutive norm of the international system, 'arguably the foundational principle on which the rest of international relations is founded' (Hurd 1999: 400). In its traditional understanding, the principle of sovereignty gives states a monopoly on political power and the legitimate use of violence within their given territory and also makes them the only legitimate actors that constitute the structure of the international system. The norm of traditional state sovereignty and the structure that it underpins have understandably resisted granting self-determination to indigenous peoples because it would threaten the territorial integrity (a principal component of sovereignty) of states, and grant legitimacy as international actors to a unit other than states. That the emerging norm of indigenous self-determination has such a high level of dissonance with this most fundamental normative framework represents the gravest threat to its success, as rules with this kind of constitutive weight and which are so deeply embedded in the systems that they define, are the hardest to change (Onuf 1994).

Any investigation into the origins of why certain nations are accorded sovereignty and not others quickly encounters the concept of 'civilisation.' At its most benign, the concept of civilisation has been employed within international relations as to apply to those nations that can be expected to follow the rules of the international system. At worst, civilisation is a racially-motivated Eurocentric concept that has been used to deny sovereignty and self-rule to non-Europeans because of different appearance and culture. Gong (1984), Tilley (1998), Salter (2002) and others describe how the 'standard of civilisation' has been employed throughout the process of colonialism to deny sovereignty to non-European peoples. As Kymlicka puts it, '. . . stateless nations were contenders but losers in the process of European state formation, whereas indigenous peoples were entirely isolated from that process until very recently, and so retained a premodern way of life until well into this century (Kymlicka 1999: 285). While nearly all non-European nations were initially denied sovereignty by colonisation and found themselves under the tutelage of European colonial states, indigenous peoples were subsumed into other states and put on a path of assimilation into modern societies.

This application of the standard of civilisation may explain why international law has granted self-determination and sovereignty to former colonies, but not to indigenous peoples, in the period of post-war decolonisation. At the time when the normative framework of state sovereignty that had emerged in Europe was being diffused (in other words, imposed) across the rest of the globe through the forces of colonialism it carried with it this cultural measure of civilisation. This principle has become internalised as part of the international system such that it remains as a hidden norm that continues to create a double-standard that determines which peoples are considered deserving of the right of self-determination.

## The shifting norm of 'self-determination'

As the norm of self-determination is examined in this paper, the meanings behind that norm deserve closer examination. ILO 169 does not refer to self-determination, so it is necessary to look elsewhere for the source of the meaning of self-determination in international law and international relations. Article 1 of the 1966 International Covenant on Civil and Political Rights is the main instrument of international law that guarantees self-determination, stating, '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' (United Nations 1966). The problem with the traditional interpretation of Article 1 is that self-determination has included the right to full sovereignty as an independent state (Kymlicka 1999). Practically the entire debate around the issue of self-determination for indigenous peoples has involved finding a compromise definition (or version) of self-determination that does not include the option of secession.

ILO 169 and other instruments such as the UN Draft Declaration on Indigenous Rights represent attempts towards this compromise, and demonstrate that the shifting of the norm of self-determination does not include the right to form one's own state. On the other hand, instruments of international law with origins in human rights law rather than in political rights (such as article 27 of the International Covenant on Civil and Political Rights) are considered insufficient by indigenous peoples as they only protect individual freedoms, or protect groups from outright repression and genocide (Kymlicka 1999). Internal self-determination has emerged as a concept covering political and cultural rights that give indigenous peoples some form of autonomy within the state in which they live, and includes rights to control their

own lands, culture, education, economy and to determine their own future, but without the right of outright secession.

With a lack of resolution on this key issue of whether or not the current understanding of self-determination includes the right of independence, and further ambiguity on what else it might mean in practice has compromised the determinacy of the norm of indigenous self-determination, and thus decreased its likelihood of acceptance and internalisation at the international level. States continue to view self-determination and sovereignty as including territorial independence, and perceive indigenous aspirations towards them as a threat toward the stability of their national interests and the principles of the international system. This is typified by the American stance. Before a true shift in the understanding of self-determination takes place (where secession is not subject to negotiation), the norm of indigenous self-determination will continue to be at odds with the foundation norm of sovereignty and face strong resistance to its adoption.

## Universality vs. universality

The period since the 1948 Universal Declaration of Human Rights represents a tangible normative shift in international relations in which standards of ethical and moral behaviour for states have become embedded in an extensive body of international law and internalised in the behaviour of states towards their citizens (and one another) (Risse and Sikkink 1999). The mobilisation of indigenous peoples around the globe seeking recognition of their rights can be seen as part of this greater process of developing a normative framework for human rights. The persuasive behaviour of indigenous peoples took place in an environment where states (particularly western liberal welfare states like Finland) were receptive to changing attitudes about the treatment of minorities. These states were sensitive to criticism that their behaviour towards their own minorities was inconsistent with their promotion of the same principles abroad. In these senses, the principle of indigenous self-government and collective rights was consistent with the normative framework of human rights, and thus likely to be successful in western liberal states.

However, one fundamental aspect of the human rights framework can be seen as dissonant with indigenous rights and self-determination. The centrality of the principle of universality, that the rules apply to all people everywhere, is demonstrated by the first word in the title of the 1948 Universal Declaration of Human Rights and its first article: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' (United Nations 1948). Universality has also been noted as one of five principles that are central to world culture and thus norms that are generally congruent with these principles are more likely to be adopted (Finnemore and Sikkink 1998: 907). The universality principle also makes it difficult for individual states to adopt norms of indigenous rights since they run counter to the parallel principle of equality before the law in most liberal democratic states.

While the idea of creating a special set of rights that applies only to a particular subset of people can be seen as contrary to the general principle of universal rights (that apply to all people in all cases), another perspective argues that not granting rights to indigenous peoples that other peoples already have is itself a violation of the principle of universality. Trask argues that, 'A simple comparison of the four documents leads to the inescapable conclusion that some States and at least one specialized agency of the UN (the ILO) are intent upon violating the fundamental and guiding principle of international human rights law – that human rights are universal' (Trask 2002: 1). This conclusion is reached because while documents of international law including ILO 169 and the Draft United Nations Declaration of the Rights of Indigenous Peoples refer to indigenous 'peoples', they do so in ways that effectively exclude them from having the right of self-determination accorded to peoples under the International Covenant on Civil and Political Rights. Both ILO 169 and Article 3 of the Draft United Nations Declaration of the Rights of Indigenous Peoples contain language that refers to indigenous 'peoples' while denying self-determination from that meaning (United Nations 1966; United Nations 1989).

## A corrupted norm

Due to its conflict, or dissonance, with competing fundamental norms of state sovereignty and universality, the norm that has emerged in the international system is not one of full self-determination for indigenous peoples, but a significantly diluted version of that. The right of self-determination for indigenous peoples is not explicitly recognized in ILO 169 or in any other piece of international law currently in force. In order to move the process of ratification and to secure some general agreement on the rights of indigenous peoples, it appears that the key actors involved are prepared to ignore fundamental differences of interpretation in precisely what self-determination means, or to whom it applies. Based on this view, one could reach the conclusion that the norm of indigenous self-determination has either failed or, at least, has not yet succeeded in becoming accepted by the international system. However, another point of view is possible.

It is argued that ILO 169 still symbolically represents the norm of self-determination even if it does not explicitly and indisputably recognise it. The reason for this is that both sets of actors (state and Sami) continue to treat the convention as if it recognised self-determination. In a constructivist sense, the meaning of what the convention represents can be more powerful than what it actually guarantees under international law. The debate over the ratification of ILO 169 in countries like Finland is the battleground where issues of the right of an indigenous

people to determine its own future are considered. Furthermore, the convention requires that states take action to 'secure the language and culture as well as improve the social and economic status' of indigenous peoples (International Labour Organization 1989). In this way, the convention can be interpreted as carrying similar *de facto* consequences for indigenous peoples without actually recognizing *de jure* self-determination, as it requires states to satisfy many of the conditions bound-up within the current norm of (internal) self-determination for indigenous peoples. So much emphasis and importance is placed on the ratification of ILO 169 by liberal western states with indigenous peoples, that ratification can be understood as tacit recognition of the norm of self-determination. Within the realm of norms and ideas, this symbolic value can be just as important in shaping behaviours and identities.

The norm represented by ILO 169 that fought its conflict with sovereignty, the standard of civilisation, and various understandings of universality has emerged so weak, in terms of Franck's measure of determinacy that it could be understood as corrupt (or at least severely compromised). In the process of campaigning for the acceptance of the idea of self-determination for indigenous peoples, the concept has undergone significant transformation in its development. These transformations have been due to attempts to universalise a general concept of indigenous identity to different peoples across the world with diverse cultures, political histories, and power relationships with states. The norm has also undergone significant change as it has been negotiated in the international arena between norm entrepreneurs and states, and been contested by the competing normative frameworks covered earlier.

This lack of determinacy means that the norm has not become well internalised by the structures of the international system, which makes it particularly difficult for states to adopt. Evidence that the idea of indigenous self-determination has not been fully internalised by the international system may be seen in the tremendous difficulty in gaining acceptance for the Draft Declaration on the Rights of Indigenous Peoples, which explicitly states in Article 3 that, 'indigenous peoples have the right to self determination' but further qualifies that with the interpretation that, 'this means they can freely determine their political status and identity and pursue their own economic, social and cultural development' (United Nations 1994).

The main reason the norm is referred to as corrupt is because it is still unclear whether ratifying ILO 169 (or even adopting the Draft Declaration on the Rights of Indigenous Peoples) actually confers the right of self-determination, and, if it does, it is still unknown what that right actually means in practice. Secondly, it is not at all clear in all cases to whom the rules apply. There is no uncontested international definition of indigenous (though there is evidence of an emerging normative consensus), and tying a set of rights to an indigenous identity will only increase the problem of determining who should be considered as part of this category.

This case provides an opportunity to test this idea of a corrupted norm, and to evaluate what theoretical value it may hold for advancing models of normative change in international relations. At this stage, a corrupted norm would seem to be one that is deterministically weak, but still supported 'in principle.' That is, despite conflicts with competing norms that might have resulted in the weak determinacy in the first place, the norm still has relatively strong coherence with dominant normative frameworks because it represents the 'right thing to do' even if it is difficult to know how to do it. The difficulty of codifying a certain moral attitude into a set of rules that change behaviour is essentially what corrupts norms. Thus, corrupted norms are marked by low behavioural determinacy, but sufficiently strong moral persuasiveness. The weak determinacy of the norm at the international level only compounds the difficulty of ratification by states such as Finland, which face their own challenges of conflicts with local norms and domestic structural issues such as land rights and problems of ethnic identity.

## Finland's domestic normative context

Before examining the difficulties that Finland has experienced in ratifying ILO 169, and how these might be understood as parts of the dynamic of norm formation, it is worth considering why Finland wants to ratify the convention. A constructivist viewpoint would highlight Finland's own identity as a modern liberal western state. Part of this western liberal identity, and particularly for nordic states (although Finland tends to be more pragmatic than its neighbours Sweden and Norway), is a self-image as a promoter of human rights throughout the world. Finland was host to the conventions that lead to the Helsinki Accords that created a new human rights framework in Europe and carry the name of its capital city. Finland is also a signatory to the Framework Convention for the Protection of National Minorities, and its commitment to this framework demonstrates the importance of human rights in its view of itself. In particular, Finland sees its actions in the area of the rights of indigenous people as a priority area of its human rights policy (evidenced by the primary attention given to Sami issue in reports such as the Second Periodic Report under this framework) (Finland 2004). The Finnish Ministry of Foreign Affairs has explicitly recognised the importance of indigenous rights in the Finnish context because they would have direct effects on the interpretation of indigenous rights internationally (Salmi 2002).

All of these representations are evidence that Finland has a domestic normative framework that is generally consistent with the principle of granting self-determination to indigenous peoples. This framework includes a belief in a broad range of liberal values such as self-determination (mostly in the sense of decolonialism), human rights (mostly in the individual, rather than collective sense), and increasingly sustainable development (constraining

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negative environmental development and resource exploitation behaviour). Many aspects of its representation of itself are consistent with the concept of self-determination for indigenous peoples. A more realist-materialist view of Finland's motivations could see a goal of settling Sami land ownership questions in Lapland as a priority in order to remove obstacles to developing economic opportunities for tourism, forestry and other industries.

Likewise, there are both ideational (normative) and practical considerations that militate against Finland adopting the norm of indigenous self-determination. In terms of normative dissonance, Finland's constitution and legal system are based on a principle of equality, which parallels the norm of universality in the international human rights framework. The special committees that have studied Sami issues in Finland with a view to ratifying ILO 169 have repeatedly cited this principle of equality as a factor limiting the application of indigenous rights domestically. The Vihervuori report tried to balance the equality principle with the competing interest of adopting the norm of recognising indigenous rights represented by ILO 169 by claiming that the proposals were designed to secure Sami traditional livelihoods both for the Sami and other local peoples (Salmi 2002). These normative justifications could also be viewed from a materialist perspective that Finland still promotes the economic interests of industry and the majority population over the rights of its indigenous people. Clearly the tightrope of balancing such conflicting interests and norms can demand agile solutions.

## Ratification process in Finland

With these constraints and motivations, Finland has proceeded over the last fifteen years to address core issues in its relationship with its indigenous Sami minority in order to remove obstacles (as it sees them) to ratifying ILO 169. As it has described the situation, Finland seeks to secure the rights of the Sami to develop their culture and livelihood (thereby complying with ILO 169), while at the same time taking local conditions and the need for their development into account (thereby maintaining congruence with domestic norms and structures) (Salmi 2002).

The first special parliamentary committee that was created in the post-1948 environment of human rights and decolonisation submitted its report in 1952, and proposed a specific Sami law that would cover issues of language, political representation, and the reindeer-herding livelihood. None of its recommendations were implemented. Twenty years later another committee reached similar conclusions, but the only significant recommendation to be implemented was the creation of a representative political body for the Sami. Though often referred to as the Sami Parliament, between 1973 and 1995 the Sami political representative body was more accurately termed the 'The Delegation for Sami Affairs' and had much less formal structure and mandate than the Sami Parliament established in 1995 (Salmi 2002).

Following the adoption of ILO 169 in 1989, efforts in Finland to comply with the emerging standards for the treatment of indigenous peoples quickened considerably. The Advisory Board for Sami Affairs proposed the creation of a new Lapp Village system (Joona 2003). During its period as a grand duchy of the Russian Empire from 1809 to 1917, Finland's land ownership system became disorganised, and many records were lost. Establishing Sami land ownership rights and resolving disputes became the overriding considerations in resolving Sami rights issues, and is considered by both Finland and the Sami Parliament as the main obstacle in the way of ILO 169's ratification.

A law passed in 1995 established the new Sami Parliament, creating a more formalised structure for Sami political representation. However, in doing this the act controversially widened the definition of who is considered Sami. In the Sami view, this wider definition was the result of a technical oversight and the Sami Parliament demanded that the old definition from the Sami Language Act (based on a person, their parent or grandparent having Sami as their first language) be used. The new definition added the criteria, 'that he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp', thus extending Sami membership to anyone with ancestors on the so-called 'Lapp registers' (Finland 1995).

In widening the definition, this law further complicated the difficulty of resolving the land rights issue by opening the door to competing and overlapping claims to land and status based on the old registers. Emerging almost simultaneously with the new law was the new 'lappalainen' movement in the form of the Association of Lapp Culture and Traditions [Lappalaiskulttuuri ja –perinneyhdistys]. The term 'lappalainen' is equivalent to the English 'Lapp' that was previously used to describe the Sami, but is now considered inappropriate and outdated. Those now articulating an indigenous identity based on links to ancestors listed in the Lapp registers (in other words, mixed descendents of both Sami and Finns who have now been assimilated into the Finnish majority culture) use the term lappalainen to distinguish themselves from the Sami. The Finnish term lappalainen (and plural lappalaiset) is used in this text instead of the English 'Lapp' to mark its new form of usage and avoid confusion with earlier references to the Sami.

Lacking linguistic and cultural ties to the Sami community, the lappalaiset expressed frustration at their disenfranchisement from land and political rights achieved through Sami political mobilisation. The Association of Lapp Culture and Traditions rejects the idea of special Sami rights and demands equal land and political rights for their members based on land ownership records and traditional livelihoods. The organization's leader, J. Eira clearly calls on principles of universalism by referring to the rights of all citizens: 'Our starting point is that every Finnish citizen will have the freedom to

practise their traditional way of life and use the heritage inherited from their forefathers for that purpose' (*Lapin Kansa* (Rovaniemi) 21 May 1995).

While the leaders of this movement initially claimed to be helping those who had lost their traditional roots to rediscover their heritage (and land use rights and voting power in the Sami parliament in the process), Sami leaders perceived them as non-Sami opportunists seeking to disrupt legitimate Sami political development. In an editorial in *Lapin Kansa*, Sami professor P. Sammallahti accused Eira and his organization of unscrupulous lies concerning the 'most essential aspects' of the discourse on Sami identity, and of portraying themselves as victims when the real victims of 'intolerance, discrimination, pressure, intimidation, threats and lies' are the Sami speaking minority not the majority Finnish population (*Lapin Kansa* (Rovaniemi) 1 March 1996).

The division and uproar in Lapland over this challenge to Sami identity at the time was particularly intense because the lappalainen movement threatened to weaken the representative political body, the Sami Parliament, by taking advantage of the wider definition of Sami to expand voting rights. The significance of these questions as barriers to resolving indigenous rights in Finland is illustrated by the Sami Parliament's view that 'The unresolved nature of the Sami land rights and of rights to livelihood together with the problems relating to the Sami right to cultural autonomy and an ambiguous definition of Sami is about to turn the concept of cultural autonomy for the Sami people against the Sami' (Finnish Sami Parliament 1997). Finland's Justice Minister, K. Häkämies, stated that the disputes in northern Lapland arising from the Sami law were part of the reason for Finland's delay in ratifying ILO 169 (*Lapin Kansa* (Rovaniemi) 13 April 1996).

Perhaps the most serious and significant work to date aimed at resolving the question of land and water rights for the Sami in Finland came with the 1999 report by Justice P. Vihervuori. The Vihervuori report made recommendations including proposals to establish a Land Rights Council and Land Rights Fund for Sami in Lapland. The Council would have had a say in matters related to the use or sale of state land in the Sami homeland area, and would have balanced representation between the Sami Parliament and the municipalities in the region (four representatives of each) (Joona 2003). The report prompted heated comment, criticism, and debate, but none of its main proposals found enough support from the Sami Parliament, the northern municipalities, or the various ministries of the government to go ahead.

In voter registration for the Sami parliament in 1999, 1,128 individuals registered on the basis of being descended from persons listed in Lapp population and land registers. Most of these registrations were rejected by the electoral committee because they did not have Sami language skills. Only 56 were accepted initially, and a further 25 of the 765 who appealed (Finland 2004). The activities of the organisations promoting a separate lappalainen indigenous culture (the Association of Lapp Culture and Traditions and the related United Association of Lapp Villages [Lapinkylien yhteisjärjestö], increased their membership and activities, exacerbating the ethnic divisions in Lapland and further complicating the resolution of land ownership issues. The Institute for Human Rights of the Åbo Akademi University, commenting on the recommendations of the Vihervuori report saw potential for increased ethnic conflict in Lapland, dividing Sami and non-Sami. (Aarnio 2000).

In August 2001, Justice J. Wirilander published his report on the issue of land ownership, which probably raised more questions than it answered. Wirilander took a narrow legal perspective on land ownership, rejecting previous interpretations that implied prior Sami collective land ownership in the homeland area. Generally speaking, the report found no basis for collective Sami ownership of land in historical records, but that there was evidence that supported ownership of specific tax land areas by individual Sami. The report has been used by many to deny Sami historical ownership, and to argue against its application in the future. The report does, however, give some support to strengthening individual ownership rights, which would support indigenous peoples' rights to develop their own culture and traditional livelihoods (Salmi 2002). Overall, the Wirilander report must be seen as a defence of the principles of state sovereignty, seeing territorial land rights only from the perspective of the state and its legal foundations, rejecting or ignoring the legitimacy of forms of tenure that preceded the state and thus denying any recognition of sovereignty, self-determination, or collective territorial rights to the Sami.

The latest of these commissions and reports is that of the Pokka Committee, named after the governor of Lapland, who was selected to chair the committee in 2000. Approximately half of the members were Sami, representing the Sami Parliament and reindeer herder associations. Other members came from government ministries and the northern municipalities. The committee's main proposal was the reconfiguration of state land management in the Sami homeland area into a Sami Homeland Wilderness Management District. A Sami Homeland Board would have decision-making powers over major questions of land use, although the state would keep ownership and the Forest and Park Service [Metsähallitus] would continue to administer the land. The recommendations split the committee, with both the Sami Parliament on one hand and the Ministry of Agriculture and the Forest and Park Service on the other, submitting dissenting opinions strongly criticizing the proposals (Salmi 2002).

Because both the Finnish government and the Sami Parliament generally see the resolution of land rights (and attendant questions of ethnic identity) as a necessary prerequisite to complying with the requirements of ILO 169 and permitting its ratification, it does not seem that these questions will be solved in the immediate future. As Salmi puts it, the situation is now, 'a kind of status quo of various kinds of resistance from multiple parties'

(Salmi 2002: 5). Yet Finland continues to face pressure from the international community to resolve its domestic relationship with the Sami and ratify the convention.

While from this perspective it appears that these domestic issues are by far the most significant barrier to adopting ILO 169 (and symbolically the norm of indigenous self-determination), this is only so because Finland chooses to see it this way. Many other countries, including Norway, which has very similar issues of Sami land rights that are still not fully resolved, have ratified ILO 169. It should be noted in this regard that equating the ratification of ILO 169 with the adoption of the norm of indigenous self-government applies only to Finland, and cannot be aggregated as a general rule for other countries. Even the Finnish state itself is not unified in its view of ILO 169. The Ministry of Agriculture and Forestry stated in the comments on the Vihervuori report that they see no reason to ratify it (Aarnio 2000).

These divergent perspectives on what steps are necessary to comply with ILO 169 is further evidence of the weakness of the norm at the international level. To be certain, domestic normative and structural issues in Finland are impeding the ratification of ILO 169, but the lack of certainty about what adopting the norm means or could mean (since it is so open to different interpretations) forces all the domestic actors to be exceedingly careful about what promises they make. The Sami do not want to risk the future of their existence as a people, their culture and livelihoods by taking compromises on their best opportunity to secure their own self-determination. The state is careful not to make any promises that would undermine its sovereignty, or be seen as giving unfair privilege to the demands of a small minority over the rights and interests of the population as a whole. In this situation, no action is preferable to taking a wrong step, and so the continuing deadlock should not be surprising.

## Conclusion

Persistent difficulties in ratifying ILO 169 in countries like Finland, where indigenous issues are a significant domestic and international issue, lead to the conclusion that the norm of self-determination for indigenous peoples has not yet fully coalesced or internalised at the international level. Instead, the norm is treated by many actors as if it exists, but there is such ambiguity over the actual meaning of the norm, or what kinds of behaviour are consistent with it, that it could be considered as a corrupt norm. This 'corruption' has occurred because of normative dissonance with fundamental principles of the international system (state sovereignty) and particular aspects of the human rights framework (universality). Even so, there is enough coherence between indigenous self-determination and the general spirit of the human rights normative framework, and enough effective persuasive action by the norm entrepreneurs (international indigenous peoples organisations) that states feel a moral obligation to adopt the norm in whatever form can be agreed to. The lack of shared understandings between key actors of what self-determination means, what constitutes an indigenous people, and what behaviours are deemed sufficient to comply with the norm as represented by ILO 169, mean that the norm can be said to have weak determinacy.

This weak determinacy causes particular problems for applying the norm in already problematic national contexts, and seems to be the principal explanatory factor in Finland's inability to ratify the convention. General uncertainty about whether ratifying ILO 169 confers self-determination for indigenous peoples, or even the meaning of self-determination, leaves domestic actors unable to know the implications and obligations for applying it in an already complicated domestic situation. Resolving difficult questions of land ownership and the Sami definition in Finland are only exacerbated by the lack of clarity about the international norm's implications. A key difference between this norm, and many other human rights norms highlighted in the volume by Risse, Ropp and Sikkink (1999) is that it demands positive rather than negative behaviour. The behaviour required to comply with a convention against torture ('don't torture anyone') is far more straightforward than a convention that requires a state to take steps to protect the culture and livelihood of an indigenous people.

Unfortunately for Finland and the Sami, this uncertainty is not likely to be resolved, nor are the principles of indigenous self-determination and collective rights likely to become quickly internalised in the international system. Dealing with this uncertainty will perhaps require instead a large amount of trust in the other parties, and a giant leap of faith. Until then, domestic issues of Sami rights in Finland, and its ratification of ILO 169 are likely to remain in limbo.

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