

DRAFT CONFERENCE PAPER.

DO NOT CITE WITHOUT AUTHOR'S PERMISSION

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

Scott Forrest, Arctic Centre/University of Lapland, International Relations

DRAFT: 25/02/2005

for presentation at International Studies Association Annual Conference, Honolulu, Hawaii, March 1-5, 2005

Abstract

Indigenous rights have gained considerable prominence in international fora over the last decades, and are now being institutionalized 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 symbolized by the ratification process of International Labour Organization convention 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 an theoretical device in cases where norms have strong moral- or value-based appeal, but are weak in term of the clarity of their operationalization.

Introduction

Over the last half-century, indigenous rights have gone from being virtually absent from the international discourse to a prominent international movement, internalized in the international system through the participation of indigenous peoples in international fora and an emerging body of international law. For scholars of international relations interested in how the system changes, constructivist approaches to the dynamics of norm change are the most useful for understanding phenomena such as the emergence of new actors. Constructivist models of norm change describe two key dynamics: how new norms emerge and come to be accepted in the international system, and how international norms are then adopted by actors (states) and the influence they have on their behaviour.

In this paper I examine the factors affecting the adoption of the international norm of indigenous self-determination in Finland. Finland, like its Nordic neighbours Norway and Sweden, has been engaged in a decades long process of renegotiating its relationship with its indigenous Sami minority. This process has played out on the domestic level, tackling issues of the status of the Sami language,

the reindeer herding as a traditional livelihood, and apparatuses for representation and decision making. At the same time, the debate continued at the international level as the Sami organized themselves internationally through the Sami Council and joined forces with other indigenous peoples to bring their cases to the international arena in fora like the UN Economic and Social Council, the International Labour Organization, 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 analyzing the factors influencing Finland's adoption of the norm of indigenous self-determination, I will use Convention No. 169 of the International Labour Organization (ILO 169) as a barometer of that norm, and the discourse around Finland's ratification of the Convention as the source of analysis. Let me stress up front that, for reasons that we shall see later, 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. It also significantly aids empirical study of the adoption of norms by actors, as one can look to the statements and justifications made by states as to why or why they don't ratify the convention. ILO 169 is currently the only instrument of international law that specifically relates to the rights of indigenous people (Tirronen 2001). 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/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 present a timeline in which different processes are compartmentalized into different phases. A norm emerges from below, is adopted and championed by a group of actors, the norm is internalized 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 internalized at the international system, and what happens when these different phases are muddled and overlap instead of neatly following one another in lock-step? In this paper I examine norm change and internalization in a highly complex and contested landscape, and see how well existing models of normative change suit such a case. In doing so, I begin to develop the concept of still-born, or 'corrupted' norms, which may hold some added explanatory value for the existing theoretical models.

As a basis for my analysis I follow the models of norm dynamics described by Finnemore & Sikkink, Risopp-Nickelson, and Franck, which will be outlined briefly below. The adoption of any norm by an

actor (state) in a structure (the international system) is effected by a various of both local-level and system level factors. While most of my 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 also consider the process by which a norm is first articulated and institutionalized in the international system. Much of the difficulty Finland has 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 fora 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 supporting 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—resolving Sami land rights issues in Lapland. Countering these positive impulses for Finland to accept indigenous rights and self-determination are numerous clangs of normative dissonance, both internationally and domestically, where the emerging norm conflicts with competing norms already well internalized, 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 I will refer to as the ‘standard of civilization,’ after Gong (Gong 1984). The second norm is the principle of universalism, which is a fundamental aspect of liberal human rights since 1948. Finally, lack of clarity in Sami identity questions poses a significant local factor that mitigates against the resolution of land ownership questions that are seen as a necessary precursor to ratifying ILO 169 in Finland.

Models of norm dynamics and political change

The work of Finnemore and Sikkink, Risse and Sikkink, Risopp-Nickelson, and Franck are used as the basis for this analysis—particularly their treatment of which qualities of a norm are indicators of its potential influence in world politics (Franck 1992; Finnemore and Sikkink 1998; Risse and Sikkink 1999; Risopp-Nickelson 2004). 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.

The intrinsic characteristics of the norm (which can be further broken down) and the normative environment into which the norm is introduced are the most relevant for our discussion. With regard

to their so-called intrinsic characteristics, it is suggested that, “norms that are clear and specific, rather than ambiguous and complex, and those that have been around for awhile, surviving numerous challenges, are more likely to be effective” (Finnemore and Sikkink 1998). Franck likewise suggests that “rule legitimacy – i.e. the belief that a rule ought to be obeyed - is contingent upon four factors: determinacy, symbolic value, coherence and adherence” (Risopp-Nickelson). The first factor, first factor, determinacy (the clarity of a rule) is intrinsic, while the other three all relate to a norm’s congruence in relation to other existing norms.

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). This concept has alternatively described as adjacency (Finnemore and Sikkink 1998), ‘logic of appropriateness’ (March and Olsen 1989), congruence, symbolic value/coherence/adherence (Franck 1990), and ‘normative dissonance’ (Risopp-Nickelson 2004). For the purpose of this paper, I will follow Risopp-Nickelson’s concept of normative dissonance, building as it does on the work of the other authors, but also employ Franck’s concept of determinacy, or clarity, to some extent.

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 intersubjective meaning, and thus low clarity or determinacy. What differentiates determinacy from other qualities of normative dissonance is that the dissonance in this case is between different actors understandings of a concept, not between an actors understanding 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 basic reasoning of my paper is that, (1) the principle of indigenous self-government has not become internalized in the international system because of cultural bias inherent in the way the concept of state sovereignty has been developed; (2) the resulting norm that has emerged has been ‘corrupted’ because of this dissonance and lacks clarity (determinacy); (3) 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; (4) a particular norm within this human rights framework, universality, can be seen either as consistent or

dissonant with indigenous rights; and (5) domestic normative and structural issues in Finland negatively influence the likelihood of it adopting the norm.

State sovereignty and the ‘standard of civilization’

State sovereignty is, quite simply, the most fundamental constitutive norm of the international system. It is the principle of sovereignty that 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 structure of the international system. This norm and the structure that it underpins have understandably resisted granting self-determination to indigenous peoples because it would a) threaten the territorial integrity (a principal component of sovereignty) of the states, and b) 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.

Yet, peoples other than indigenous peoples have been accorded self-determination and recognition as independent states in the period of decolonization that followed the founding of the United Nations in 1945, the adoption of the Universal Declaration of Human Rights in 1948, and the International Covenant on Civil and Political Rights in 1966, which stated “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). What then accounts for this difference?

The manner in which indigenous peoples were incorporated into the international system reveals evidence of a systemic prejudice against cultures that were markedly different than those found in Europe. 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 cultural measure of ‘civilization.’ Non-European nations were initially denied sovereignty by colonization and ruled directly by European imperial states. This standard of civilization (and inversely the idea of others as barbaric) was applied consciously and specifically in this period to create a hierarchy of societies which were considered capable of self-rule, those that lay outside the realm of the civilized world, and those that needed to be assimilated into modern societies. Mark Salter has developed a framework in which societies were welcomed as civilized, excluded as barbaric, or idealized as savage (Salter 2002). According to the norms of the time, indigenous peoples, whose societies were predominantly hunting and gathering and lacked stratified political structures at the time of colonization, were barely considered part of the realm of humanity,

and never were not even considered capable of self-rule. This principle has become internalized as part of the international system such that it remains as a hidden norm that continues to create a double-standard for which peoples should have the right of self-determination. State sovereignty and maintaining territorial integrity are the common justifications from states why international laws recognize indigenous ‘peoples’ while carrying an asterisk that precludes the right to self-determination.

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 internalized in the behaviour of states towards their citizens (and one another) (Risse and Sikkink 1999). The mobilization of indigenous peoples around the globe seeking recognition of their rights must be seen as part of this greater process of developing a normative framework for human rights. The modes of persuasion by what Finnemore and Sikkink call ‘norm entrepreneurs’ (that is indigenous peoples and their representative organizations) and the language of rights precisely follow that used earlier in achieving individual human rights and the principle of self-determination that lead to decolonization in this period (Finnemore and Sikkink 1998). Moreover, the persuasive behaviour of indigenous peoples took place in an environment where states – particularly western liberal states were receptive to changing attitudes about the treatment of minorities. It is no accident that the initial leaders of the international indigenous movement – the Sami, Aborigine, Maori Inuit, and North American Indians, all came from western liberal industrialized states that saw themselves as standard bearers of the ethical principles of human rights. These states—in particular Canada and Nordic states such as Finland – 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 especially 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 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 which are generally congruent with

them are more likely to be adopted (Finnemore and Sikkink 1998). The universality principle also makes it difficult for individual states to adopt norms of indigenous rights since they run counter to parallel the parallel principle of equality before the law in most liberal democratic states.

The idea of creating a special set of rights that applies only to a particular subset of people can be seen as contrary to that general principle. In this sense, the promotion of indigenous rights and self-determination was dissonant with a foundational principle of the human rights framework just as it was dissonant with the foundational principle of state sovereignty. For the norm to be successful, its supporters would have to convince states why the principle of universality should be compromised.

One could make the argument that deviating from this principle is necessary in order to redress past injustices, based on the idea applying equal rules for two groups in an unequal power relationship that was brought about by centuries-long practices of unequal treatment only preserves that inequality. This argument, while logical, still raises fears that a new form of inequality will take its place and only further entrench ethnic divisions within states. This question can also turn on how one understands the principle of universality. Indigenous peoples have been somewhat successful in arguing that the states themselves are not upholding the principle of universality in their treatment of the issue of self-determination.

Mililani 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). She reaches this conclusion 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. While states justify to these exceptions through state sovereignty and maintaining territorial integrity, Trask points out that existing international law protects these principles within the understanding of self-government, so denying the right to indigenous peoples amounts to a double-standard (Trask 2002). The hidden cultural bias still deeply embedded in attitudes and practice within international relations, represented by the ‘standard of civilization’, can be seen as a possible explanation for this double-standard.

Corrupted Norm

Due to its conflict, or dissonance, with competing fundamental norms of state sovereignty and universality, the norm that has emerged at 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 any other piece of international law currently in force. In order to move the process of ratification and securing some general agreement on indigenous peoples rights, it appears that the key actors involved are prepared to ignore fundamental differences of interpretation in precisely what self-determination means, or who it applies to. Based on this view, one could make 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. But another point of view is possible.

I would argue that ILO 169 still symbolically represents the norm of self-determination even if it does not explicitly and indisputably recognize it. The reason for this is that both sets of actors continue to treat the Convention as if it recognized self-determination. In the 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 an indigenous peoples right to determine their own future take place. 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 people. In this way, the Convention can be interpreted as carrying similar *de facto* consequences for indigenous people, in fact, without actually recognizing *de jure* self-determination. 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.

However, the norm represented by ILO 169 that fought its conflict with sovereignty, the standard of civilization, 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 generalize/universalize an indigenous identity to different peoples across the world with diverse cultures, political histories, and power relationships with states. It has also undergone significant change as the norm 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 internalized by the structures of the international system, and makes it particularly difficult for states to adopt. Evidence that the idea

of indigenous self-determination has not been fully internalized 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 does explicitly state 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 I refer to the norm 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 to. There is no internationally accepted definition of indigenous (or tribal, as ILO 169 applies to both groups), and tying a set of rights to an indigenous identity will only increase the problematic 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 evaluate what theoretical value it may hold for advancing models of normative change in international relations. At this stage, I would define a corrupted norm as 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 conflict with local norms and domestic structural issues such as land rights and problems of ethnic identity.

Finland’s Domestic Normative Context

Before examining the difficulty 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 so for Nordic states, is a self-image as promoters 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 signator 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 indigenous peoples rights as a priority area of their human rights policy (evidenced by the primary attention given to Sami issue in reports such as the Second Periodic Report under this Framework (Finnish Foreign Ministry 2004). The Finnish Ministry of Foreign Affairs has explicitly recognized that 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 negative environmental, development and resource exploitation behaviour). Many of these parts of its self-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 tourism, forestry and other industry.

Likewise, there are both ideational (normative) and practical considerations that inveigh 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 recognizing indigenous rights represented by ILO 169 by claiming 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 expressed 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 decolonization 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 politically representative 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 their pace considerably. The Advisory Board for Sami Affairs proposed the creation of a new Lapp Village system (Tirronen 2001). Interrupted by its period as a grand duchy of the Russian Empire from 1809 to 1917, Finland’s land system became disorganized, and many records were lost. Establishing Sami land ownership rights and resolving disputes would become the overriding consideration in resolving Sami rights issues, and 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 formalized structure for Sami political representation, but in doing this 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 being having Sami as their first language). In the new definition, the definition of Sami to include descendents of those who had been registered as mountain, forest or fishing “Lapps” in land, tax, or population registers (“että hän on sellaisen henkilön jälkeläinen,

joka on merkitty tunturi-, metsä- tai kalastajalappalaiseksi maa-, veronkanto- tai henkikirjassa”) (Finnish Parliament 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. It also threatened to weaken the representative political body, the Sami Parliament, with fears that non-Sami would take advantage of the wider definition to control the membership for themselves. The new definition also laid the groundwork for a new *lappalainen* ethnic movement. Finnish-speaking Laplanders proclaiming indigenous status by right of land ownership records and livelihoods based on hunting, fishing and herding took advantage of the ambiguity over the Sami definition to claim their own rights to land ownership and usufruct rights.

The Finnish constitution (1990) explicitly states that the Sami are the only indigenous people in Finland, but this has not prevented the Lapps from confusing the issues of ethnicity and land ownership. 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).

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 Pekka 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 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 each) (Tirronen 2001). The report receives prompts heated comment, criticism, and debate, but does none of its main proposals find 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 registered on the basis of being descended from persons listed in Lapp population and land registers. Most of these were rejected by the electoral committee on the ground of not having Sami language skills. Only 56 were accepted initially, and a further 25 of the 765 who appealed (Finnish Foreign Ministry 2004). The activities of the Lapinkylien yhteisjärjestö (United organization of Lapp Villages, author’s translation) and Lappalaiskulttuuri- ja perinneyhdistys (Association of Lapp Culture and Traditions), the organizations

promoting a separate Lappish indigenous culture, 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 Juhani Wirilander published his report on the issue of land ownership, likely raising more questions than it answered. Wirilander takes 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 ownership historically, and argue against its application in the future. The report does, however, give some support to strengthening individual ownership rights, which would support indigenous peoples right 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 has been the Pokka Committee, so named after the Governor of Lapland, who was selected to chair the committee in 2000. Approximately half of the committee was Sami, representing the Sami Parliament and reindeer herders associations. Other members were made up 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, and 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).

The fact that 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 see that these questions will be solved any time soon. As Salmi puts it, the situation is now "a kind of status quo of various kinds

of resistance from multiple parties” (Salmi 2002). 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 still unresolved, 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 the ILO Convention (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 unfairly privileging 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 been internalized at the international level. Instead, the norm is treated by many actors as if it still 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 what I refer to 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 still, 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 organizations) that states feel a moral obligation to adopt the norm in whatever form can be agreed to. The lack of shared understanding between key actors of what self-determination means, what constitutes and 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 so-far 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 know the implications and obligations for applying it in an already complicated domestic situation. Resolving difficult questions of land ownership and the definition of a Sami in Finland are only exacerbated by the lack of clarity about the international norm's implications. A key difference between this norm, and most other human rights norms highlighted in the volume by Risse, Ropp and Sikkink is that it demands positive rather than negative behaviour (Risse, Ropp and Sikkink, 1999). The behaviour required to comply with a convention on land mines ("don't make land mines") is far more straight forward 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 go away anytime soon, nor are the principles of indigenous self-determination and collective rights soon likely to become internalized 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 stuck in neutral.

Works Cited

- Aarnio, E. J. (2000). Maahan, Veteen, Luonnonvaroihin Ja Perinteisiin Elinkeioihin Saamelaisten Kotiseutualueella Littyvää Asiakokonaisuutta Koskeva Ns. Viehervuoren Selvitys: Lausunnonantajien Suhtautuminen Asiaan Ja Selvitysmiehen Keskeisimpiin Ehdotuksiin. F. M. Law-Drafting Department, Finnish Foreign Ministry.
- Finnemore, M. and K. Sikkink (1998). "International Norm Dynamics and Political Change." International Organization **52**(4, International Organization at Fifty: Exploration and Contestation in the Study of World Politics): 887-917.
- Finnish Foreign Ministry (2004). The Second Periodic Report on the Application of the Framework Convention on the Protection of National Minorities (Finland), Finnish Foreign Ministry.
- Finnish Parliament (1995). Laki Saamelaiskäräjistä 17.7.1995/974. **17.7.1995/974**.
- Finnish Sami Parliament (1997). "Land Rights, Linguistic Rights, and Cultural Autonomy for the Finnish Sami People." Indigenous Affairs **4**(33).
- Franck, T. (1990). The Power of Legitimacy among Nations. New York and Oxford, Oxford University Press.
- Franck, T. M. (1992). "The Emerging Right to Democratic Governance." American Journal of International Law **86**(1): 46-91.
- Gong, G. W. (1984). The Standard of 'Civilization' in International Society. Oxford, Clarendon Press.
- March, J. G. and J. P. Olsen (1989). Rediscovering Institutions: The Organizational Basis of Politics. New York, Free Press.
- Risopp-Nickelson, I. (2004). Normative Dissonance, Sovereign in-Equality and the Protection of Human Rights. Annual Meeting of the International Studies Association, Montreal, Canada.
- Risse, T. and K. Sikkink (1999). The Socialization of International Human Rights into Domestic Practices: Introduction. The Power of Human Rights: International Norms and Domestic Change. T. R. S. C. Ropp and K. Sikkink. Cambridge, Cambridge University press. **66**: 1-38.
- Salmi, A. (2002). The Ratification Process of the Ilo Convention No. 169 in Finland: Recent Developments 1999 – 2002, International Work Group for Indigenous Affaris. **2004**.
- Salter, M. B. (2002). Barbarians and Civilization in International Relations. London, Pluto.
- Tirronen, T. (2001). Finland Has Started to Examine Its Possibilities to Ratify the Ilo Convention No. 169 on Indigenous Peoples, University of Lapland, Arctic Centre, The Northern Institute for Environmental and Minority Law. **2005**.
- Trask, M. (2002). Future Perspectives on the Draft Declaration on the Rights of Indigenous Peoples: Human Rights at a Crossroad. World Civil Society Forum, Geneva, Switzerland.
- United Nations (1948). Universal Declaration of Human Rights.
- United Nations (1966). International Covenant on Civil and Political Rights.
- United Nations (1994). Draft United Nations Declaration on the Rights of Indigenous Peoples.