Fishing rights discourses in Norway:
Indigenous Versus Non-indigenous Voices[1]

Siri Ulfsdatter Søreng
Norwegian College of Fishery Science University of Tromsø, Norway / Northern Research Institute Alta, Norway
siris@fifo.no

Abstract Who is and who should be entitled to fishing rights? This is an important question in global fisheries management discourses. Privatisation of fishing rights together with an increased emphasis on indigenous rights, are among the most important factors that have put rights on the agenda. This paper reports on a dispute on indigenous rights that appeared in the Norwegian media in 2006 between Sami and non-Sami small-scale fishing interests. Both interests groups are struggling to regain fishing rights lost due to recently introduced resource management schemes, with the goal of securing the future of small-scale fisheries and coastal and fjord settlements. Despite sharing some of the same objectives, disputes in the media seem to have driven them apart. Why did this happen, and what can be done to prevent further separation and perhaps repair the rift?

Introduction

North Norway has traditionally been a fisheries dependent region, and fisheries are still an important industry even though the numbers of employees and vessels have dropped a great deal in recent years due to national and global fisheries development. North Norway is also a core area for Sami settlement. The Sami are an indigenous people living on the coast and inland.[2] Even though they enjoy full citizenship in the national society, their *de facto* position is that of an ethnic minority (Eidheim 1971:7). From about 1850 the Sami were exposed to extensive 'norwegianizing' (Minde 1999; Jentoft et al. 2003; Minde 2005; Minde et al. 2008). On the coast and in the fjords, intermarriages between Norwegians, Finnish immigrants and Sami, in addition to the state-driven assimilation policy, have over the last two centuries blurred ethnic boundaries. Sami revitalization along the coast and in the fjords is however in progress, and people are now recognising their 'Saminess'. The Sami are thus a dispersed and also culturally divided ethnic group, divided between the inland settlements, where Sami culture has maintained its strength, and the more assimilated coastal settlements.

The Norwegian Sami have been fighting a long battle to gain rights to land and water in the areas they inhabit. Through the passage of the Finnmark Act[3] in 2005 Norway's Parliament finally recognised the Sami right to manage the land in the northernmost part of Norway, Finnmark County, which is a core area of Sami habitation. As the act stopped at the shoreline and left the rights to marine resources unsettled, the government was asked to clarify this issue during the

passage of the bill through parliament. In June 2006 the Department of Fisheries and Coastal Affairs appointed a committee to investigate Sami and other rights to fish in the sea off Finnmark. The committee has held public meetings in every coastal municipality in Finnmark and consulted with communities about their fishing practices and opinions. It has sought, in other words, the shared interests of indigenous and non-indigenous parties. However, recurrent media reports speak of local disagreement and incompatible interests regarding indigenous rights. This paper will explore such debates about implementing Sami fishing rights in North-Norway.

The idea for this paper was prompted by a number of letters published by a North-Norwegian newspaper, *Nordlys*, over a three-month period in the beginning of 2006. They told the story of two kinds of fishing rights struggles: one initiated by a non-Sami action group calling itself 'People's Right to the Fisheries Commons', which consists of a group of north Norwegian coastal fishers, and the other by the Sami Parliament. In the letters, several individuals advocated for the Sami Parliament's rights struggle, while the action group advocated for its own rights struggle. As the debate evolved in the media, it became clear that the two parties were not only struggling for fishing rights, but also against each other.

Small-scale fishers whose rights were reallocated under privatisation of the fisheries are implicated in both fishing rights initiatives. The introduction of the vessel quota regulation in the cod fishery in 1990 led to fishing rights being concentrated in fewer hands, at the expense of small-scale fishers, not least those of Sami origin, who often combine small-scale fishing with other sources of income. The cod fishery is the most important fishery for north Norwegian inshore fishers. Many fishers have lost their fishing rights due to the closure of the fisheries commons.[4] The goal of both groups is to regain fishing rights for small-scale fishers. They have had little impact on the fishing rights discourse of recent years in Norway or the allocation of fishing rights, and have failed to obtain their goal. A reasonable question is whether they would have had more success by collaborating.

The public debate in the newspapers revealed fundamental differences between the two rights claims, suggesting that shared interests and goals are not enough in themselves to facilitate consensual problem solving. If this assumption is correct, it needs to be understood. Under what conditions would the two groups be likely to collaborate in pursuit of a common goal? This paper calls attention to some challenges fisheries management could face in postcolonial societies, where indigenous rights are being re-established in an ethnically mixed population.

This article will set out the background to the newspaper dispute – the clash between Norwegian fisheries management policy and Sami and other small scale fishers. The fishing rights dispute between Sami stakeholders and the group of small scale fishers will be followed as it evolved in the newspaper before discussing similarities and differences in the parties' argumentation. Challenges in achieving consensus on the fishing right issue between Sami and non-Sami stakeholders are discussed. To begin, however, the analytical framework for this paper will be presented.

Analytical Framework

Fishing rights is the discursive field of this paper. More precisely, this paper is concerned with how stakeholders argue when claiming fishing rights for coastal and fjord fishers, and how their arguments come into conflict with each other. In the analysis of the discursive field, Foucault (1972) argues: '...we must grasp the statement in the exact specificity of its occurrence; determine its conditions of existence, fix at least its limits, establish its correlations with other statements that may be connected with it, and show what other forms of statements that it excludes' (Foucault 1972:30–31). The right question to ask of such an analysis, according to Foucault, is: what is this specific existence that emerges from what is said? (Foucault 1972:31) This paper investigates what emerged from a debate over small-scale fishing rights that appeared in a north Norwegian newspaper. I will explore the ways stakeholders, through the newspaper, strove to obtain discursive hegemony: how they sought support for their perceptions of rights and the kind of strategies they used in promoting them. The analytical framework for this newspaper discourse analysis is twofold: stakeholders' verbal action in claiming rights (fishing rights as persuasion) and national and global influence on rights (liquid fishing rights).

Fishing Rights as Persuasion

Rose (1994) holds that rights are not necessarily about claims to things as such. Like Hohfeld (1913), she argues that rights generally are about the claims and obligations, or 'jural relations', that people have vis-à-vis other people. Rights are in this manner embedded in interpersonal relations. Rose, who focuses on property rights, argues that property is equal to persuasion since it makes property available to action. She holds that:

> Different peoples see the signals of the surroundings through very different imaginative lenses, and they put those signals together in different property stories; they persuade themselves that the things they see can yield the security of entitlement, whatever that may entail, and then they act on the visible signals as if the signified entitlements were permanent, solid, objective. And to some degree they are – so long as everyone, or most everyone, is persuaded (Rose 1994:296).

This means that *who* is persuading, and *what* they persuade depends on *how* they see property – which, of course, is contextually dependent. These conditions are important for both *why* people come to the point of persuading, and *how* they are persuaded – that is, what kinds of strategies they use to persuade others about their views.

Claiming property rights is thus in many ways a verbal action, where people's stories and narratives matter. According to Rose, stories and narratives, '... aim at making the audience understand property relationships – and the social relationships that underlie them – by watching in the mind's eye the changes that occur in the shape and configuration of ownership and control' (Rose 1994: 289).

Different stakeholders present different stories about property – with some stories and stakeholders gaining more influence than others. An example of an influential story is what Rose (1994) refers to as a scarcity story. A well-known pessimistic version of the scarcity story is Hardin's (1968) 'The tragedy of the commons', where conflicts keep on without resolving themselves into a happy property relationship (Rose 1994:289). This narrative is contested by communitarian approaches, such as Ostrom's (1990), which generated stories about the successful evolution of common property regimes among persons who collectively use and manage resources. These two approaches – the liberal and the communitarian – both argue for the values of freedom of choice, and the security offered by belonging. According to Bauman: '... each does it, explicitly or implicitly, by upgrading one of the two values and downgrading the other' (Bauman 2004:78).

In Norway, some stakeholder groups contest the liberal principle that dominates the national fisheries management discourse. An individual's success in persuading others, one may argue, depends on their power as stakeholders to influence the dominant management discourse. Mitchell et al. (1997) identify three stakeholder attributes: legitimacy, power and urgency. Those individuals in possession of all three attributes are called definite stakeholders; those who possess two attributes are called expectant stakeholders, while those who possess only one are called latent stakeholders. According to this perspective, people's ability to change fisheries management would depend on their assets as stakeholders. Both stakeholder groups presented in this paper – the Sami and the non-Sami – are striving to be accepted as definitive stakeholders in the national fisheries management discourse. For the time being, however, both seem to be latent stakeholders as they have not had, at least until now, any crucial influence. They are, in fact, in danger more of losing their stakes.

Liquid Fishing Rights

The stakeholder groups presented in this paper and the dominant national fisheries management discourses tell different stories about (property) rights. The stakeholder story is more contextually dependent, given the importance of belonging to a local community and being in proximity to marine resources. These values are excluded from the dominant fisheries management discourse. If one assumes that economy is embedded in social relations (Polanyi 1957) one may also assume, as Granovetter and Swedberg (1992) argue, that economic actions are a result of social patterns. Global forces, however, undermine the social embeddedness of economic actions; this occurs at the expense of local communities that lose control over economic activities (Giddens 1994). Globalization therefore has the ability to change social patterns in profound ways. This, of course, also affects Norwegian fisheries: liberal processes like privatisation and transferability encourage the separation of fisheries from local communities, resulting in a loss of control of the fisheries by local communities. The two stakeholder groups discussed in this paper are making an effort to regain lost local control and counter the power of increasing global forces.

Bauman (2004:5) perceives globalization – or 'liquid modernity' – as a radical and irreversible change which has affected state structures, working condi-

tions, interstate relations, collective subjectivity, cultural production, daily life and relations between the self and the other. The principal moving force behind modernity has been the accelerating 'liquefaction' of social frameworks and institutions (Bauman 2004:51). Bauman argues that we are now passing from the 'solid' to the 'fluid' phase of modernity. It is fluid because things cannot keep their shape for long. This also affects the concept of identity, as society has made social, cultural and sexual identities uncertain and transient (Bauman 2004:6). Bauman holds that identity is a hotly contested concept; whenever the word 'identity' is heard, there is surely a battle going on: 'A battlefield is identity's natural home' (Bauman 2004:77). According to him identity comes to life only in the tumult of battle and falls asleep when the battle dies down.

The fluidity of social frameworks and institutions are important assumptions to bring into the analysis of the discursive field of fishing rights. It may be assumed that this fluidity also affects coastal people; by experiencing the loss of fishing rights, coastal people may also feel that they are losing some of their identity. Their effort to regain control over fisheries can be perceived as an effort to 'firm up' processes that today seem to liquefy fishing rights. This may be conceptualized as the 'politics of identity', which speaks the language of those who have been marginalized by globalization (Bauman 2004:7) Efforts to 'firm up' what has been liquefied is, of course, contested by other individuals who disagree for various reasons. Individuals could for instance disagree about the goal of *why* to firm up. Or they could disagree about the means of *how* to do the firming up. For some groups, claiming rights is an ongoing process of redefining oneself and of the invention and reinvention of one's own history – it could be a response to disembedding processes. This is an assumption made by many individuals involved in postcolonial studies (Bauman 2004:7), and could well be the situation for the Sami rights struggle. It could also be the situation for the non-indigenous inhabitants of coasts and fjords. In either case identity is an important part of the rights struggle.

According to Haraway (1991) identity is a political construction. Together with categories like sex, class, race or sexuality they must be understood as outputs of a political process. These categories are practices; at the same time as they include some ideas, they exclude others (Haraway 1991; Aasdal et al. 1998:39). Likewise, concepts such as small-scale fisher, coastal fisher, fjord fisher, and even Sami fisher, could be understood as political concepts which accentuate certain similarities and differences between inhabitants of the coasts and fjords. As Gulliver (1979) argues that people can use norms and rules as instruments to obtain own goals, they may also use different political concepts to mobilize their ideas.

Haraway (1991) asks how people can mobilize for collective action and change if all that is held in common are constructive identities and differences (Aasdal et al. 1998:39). If this is so, how can non-indigenous and indigenous coastal and fjord dwellers collaborate to regain fishing rights? In spite of the stakeholder groups wanting to regain control of local fisheries, a media dispute highlighted their disagreement on how to proceed. To understand this situation, and to make suggestions about how collaboration might be facilitated, it is important to focus on the kinds of stories these stakeholders tell and the narratives they create about

fishing rights. In other words, it is of interest to examine how people seek support for their perceptions of rights, and what kind of strategies they have in promoting these rights – or, as Rose (1994) is concerned with, how people make up their own minds about property, and the narratives, stories, and rhetorical devices they use in persuading others to do the same. Based on this analytical framework, the following areas are investigated: the dialectic between the dominant fisheries discourse and stakeholders' objections to it; dissension in the rights discourse between the stakeholders as it appeared in the newspapers; and the narratives that were being created.

The Dominant Fisheries Discourse and Stakeholder's Objections To It

Norwegian Fisheries Management Policy

In Norway, marine fishing is in principle free for all citizens of the country. This rule is based on the Roman law of *Mare Liberum*. The principle was introduced in the eighteenth and nineteenth centuries partly to accommodate a more effective and mobile fishing fleet, and was supported by the nation through legislation which gave every Norwegian citizen the right to fish. In practice, however, Norwegian fisheries have increasingly become more closed in nature (Hersoug 2005).

In 1990 the Norwegian government introduced the vessel quota system to regulate cod fisheries. The system was based on a particular perception of how fishers behave and how their behaviour creates problems, much in conformity with Hardin's 'tragedy of the commons' (1968). In the 'tragedy of the commons' model people are regarded as individual rational actors who, when at liberty to act, seek to maximize their own interests at the expense of common interests. The quota system was introduced in response to a critical decline of the cod stock (Jentoft 1993).[5] Prior to 1990, there was a 'maximum quota system' for cod fisheries north of the sixty-second parallel.[6] Under this system small-scale fishing vessels, which harvested with conventional gears close to the coast and in fjords, were regarded as one group. The vessel quota system regulated fishers individually for the first time (Karlsen 1998). Whereas the maximum quota system allowed fishers access, but gave no guarantee of a catch, the vessel quota system gave a limited number of boat-owners a guaranteed right to catch a certain amount of fish.

The vessel quota system had especially negative effects on small-scale fishers working in the fjords and along the coast, including fishers in Sami areas. Almost no small-scale fishers in the fjords were eligible for a vessel quota in the first allocation, and many gave up fishing.[7] The government intended the vessel quota system to be a temporary measure until the fish stock recovered, but it has remained in effect as a useful vehicle for controlling fishing. Since 1990, the quota system has gradually been consolidated and privatization of harvesting rights to marine resources has continued (Eythórsson 2003; Hersoug 2005). The trend towards privatization has led to stakeholder protests and actions to regain lost rights. Many of these protests and initiatives are from north Norway, which traditionally has been a fisheries dependent region. Fisheries are still an important

industry despite job losses and declining fishing fleets brought about by national and global fisheries development. North Norway is also a Sami stronghold.

The two stakeholder groups that objected in *Nordlys* to the dominant fisheries discourse are described below. The first group comprises individuals advocating for the Sami Parliament's right struggle and the second a group of small boat fishers calling itself 'People's Right to the Fisheries Commons'.[8]

The Sami Parliament's Objection

Established in 1989, the Sami Parliament is political tool for strengthening the Sami's political position and contributing toward just treatment of the Sami people.[9] The fishing rights issue is an important matter for the Sami Parliament. The quota system's consequences for Sami fishers had repercussions for the Sami Parliament's review of fishing rights. Parliament criticized the design of the quota system and the principles employed in determining quota entitlement. The Parliament argued that the Sami, who they described as small-scale fishers using basic tackle from a stationary position close to the shore and combining fishing with small-scale farming, had not been heard. In 1990, the Ministry of Fisheries and Coastal Affairs engaged law professor Carsten Smith to examine the legal commitments of the government to the Sami with regard to fisheries management. This was the first investigation into Sami fishing rights.

Smith's (1990) report, which referred to national and international law, maintained that the nation-state has a legal duty to ensure the survival of Sami culture. Since fisheries are an essential part of the material basis of Sami culture, such action should include fisheries. These conclusions were made in accordance with Article 27 of the UN Convention on Civil and Political Rights, which concerns minority populations. Smith did not make any assumptions whether Sami culture was in risk of disappearing or not but, *if* it was, Smith argued that *positive discrimination* is required to secure the material basis of Sami culture. Smith argued: 'When positive discrimination is essential in order to protect the Sami minority culture, the interests of other citizens must necessarily yield' (Smith 1990:524).[10] In Smith's view, Norwegian and international law affirmed the government's duty to implement positive discrimination when deemed essential to sustain indigenous culture, and to provide for social readjustment and justice. Smith also believed, however, that positive discrimination should be arranged on a *collective* rather than individual basis, arguing that there would be fewer conflicts if privileges followed geographical areas rather than differences in ethnic origin. Further investigations in the 1990s into the rights issue supported this view. These reports all argued for a more open and co-managed fishery within certain territories, also referred to as *Sami fisheries zones* or indigenous zones, without discriminating against other ethnic groups.[11] The establishment of Sami fisheries zones was the Sami Parliament's goal in its efforts to ensure the resources needed for Sami coastal communities to survive. None of the recommendations were implemented, however.

Throughout the 1990s, the Sami rights struggle was established within the global discourse on indigenous peoples' rights, and access to local fishing resources was disputed on a more general foundation as well as on the basis of

historical user rights. These arguments were levelled not only with a grounding in the Norwegian constitution[12] but also in international law and, especially, the International Labour Convention (ILO) no. 169.[13] Norway, as one of the first countries to ratify the Convention in 1990, is obliged to follow it. The Convention states that indigenous people have the right to conserve and develop their unique culture on a permanent basis, to decide priorities and directions for their own development, and to be consulted and participate when initiatives that could affect their lives and lifestyles are being decided and carried out. The convention has distinct provisions for the respect of indigenous people's traditional values, institutions and common laws. It stresses areas and territories significant for indigenous people's lives. The convention has been an important component in bringing forth the Finnmark Act, which gave the Sami the right to co-manage the land in Finnmark County.[14] With the adoption of the Finnmark Act in 2005, the Norwegian Parliament demanded that the government carry out a Sami fishing rights inquiry in Finnmark. As Parliament had requested, the government appointed in June 2006 a 'Coastal Fisheries Committee for Finnmark' to investigate *Sami and other rights* to fish in the sea off the coast of Finnmark.[15]

'People's Right To the Fisheries Commons' Objection

Calling itself 'People's Right to the Fisheries Commons' (PRFC), an action group of small scale fishers and other supporters have voiced their objection to the dominant fisheries discourse.[16] The PRFC's action started in the middle of the 1990s, claiming that the implementation of the vessel quota regulation in the cod fishery in 1990 and following division of the inshore fishing fleet in two groups (one group with vessel quota and one without) is illegal and unjust.[17] While group one is a closed group where the vessels have quota rights, group two is an open group where the vessels are regulated by the maximum quota.[18] The consequence is that fishers in group two face a more unsteady income than fishers in group one.[19] The PRFC thus argues that the introduction of the vessel-quota system led to the 'closing of the commons', which established the basis for, and led to, the development of purchasing and selling quotas: 'The result is that the fleet is facing economic difficulties and they [the fishers] call for more fish quota ...'[20] The action group argues that the fisheries need fewer capital intensive vessels instead of more fish quota. They propose ensuring the economic viability of coastal communities by removing the system of transferable quotas and letting naturally adapted cost-effective vessels do the harvesting. This strategy, the PRFC claims, would be in accordance with the policy of the Norwegian Parliament, which on several occasions has reiterated Norwegian people's collective ownership of fish resources. The leader of the action groups says: 'The coastal people have always had open access to the sea. No one doubted that the fish was owned by the people in common. It didn't become private until it was pulled out of the sea.'[21]

The action group has taken legal action, claiming that the Fisheries and Coastal Ministry is running an illegal management system because it excludes bona fide fishers from making a living. The PRFC encourages fishers who feel illegally excluded from the fisheries to fight the state in court by pleading common usage, customary law and other relevant legislation. The action group feels that a

precedent in the fishers' favour would bring about general access whereby every Norwegian fisher defined as an economically active fisher would be given full fishing rights. On their homepage, the PRFC declares, 'We have no guarantee of winning in the courtroom, but we have to try it as we have no other alternative. The easiest way out would be if a majority of our national politicians decided that there shall be open access to people's property, that is the fish in the sea.' [22] So far the PRFC has not gained ground in a lawsuit. The first case they supported was tested before the court in 1995, but lost in the county court. In 2005 another case that was tested before the court on behalf of two fishers who claimed to be victims of the division of vessels in two groups. This case was also lost in the county court. The PRFC leader, however, was not surprised by the loss as the state usually wins test cases in lower courts.[23] The action group has not given up and is planning to try a new case before the court.[24] The PRFC's leader, Svein Johansen, says: 'Do we surrender? Not at all! Not until we'll test it before the European Court of Human Rights'[25] The PRFC thus expects a long-lasting fight in both Norwegian and International law courts.

Johansen is a small-boat fisher from the north of Norway and has been a frontline fighter for small-scale fishers' rights for a long time. He has put a lot of effort in raising money for the court cases, and has succeeded in gaining financial support from public authorities and labour unions among others. Johansen is also active in the media, especially newspapers, advocating for small-scale fishers rights and the survival of coastal communities.

The struggles of the Sami Parliament and the action group (PRFC) presented above both seek to regain more local control over the fisheries. They are fighting for the existence of coastal and fjord fisheries, almost all of which are small-scale and allow coastal and fjord communities to survive. They both want a kind of property or usage right to protect these small-scale coastal fisheries from the effects of privatization and to ensure access to marine and coastal resources.[26] In spite of this shared vision, different opinions on property rights became apparent in an early 2006 regional newspaper debate.

The Newspaper as Arena for Dissension

For about three months at the beginning of 2006 representatives of the Sami stakeholders and of the Norwegian small-scale fishers debated in the pages of the regional newspaper *Nordlys*. Certain principal differences between the two struggles soon became clear. The following section describes the opposing views.

The debate started with a January 2006 piece on Sami fishing rights written by two social scientists[27] in which they pointed out that the long-lasting legal discussion on Sami fishing rights, including the impending investigation of Sami fishing rights in Finnmark, was redundant; they stated the issue had been examined already several times, and mentioned among other things the 1990 Smith report. These scientists condemned the fisheries authorities for not having met the obligations of the report. On the contrary, the state has gradually eroded coastal people's right to fish, turning it into a scarce, transferable benefit. And, under such

a regime, there is no guarantee that Sami fishers will be able to keep their fishing rights in their home areas. In fact, the scientists argued, elderly small-scale fishers have been encouraged by the authorities to condemn their vessels and return quotas to the authorities. Newcomers, on the other hand, are compelled to pay a high price for fishing rights and find it difficult to combine fishing with other occupations. Instead of additional legal deliberations about Sami fishing rights, the researchers wanted to see politicians take action to reverse these negative trends and keep fishing rights in fishery-dependent coastal societies. By talking about coastal communities in general, the scientists may have meant indigenous and non-indigenous coastal people – not just the Sami and their rights campaign.

This, however, was not the interpretation of the spokesperson for PRFC who replied a few days later under the headline *'Sami fishing rights or ethnic equality?'*.[28] The spokesperson took the scientists to task for arguing that the Sami, by virtue of their ethnicity, are entitled to certain economic rights which had been taken from them by the Norwegian state. Furthermore, the author imputed to the researchers the belief that this is favourable treatment of the Sami. The spokesperson begged to disagree. Today, he wrote, Sami and the ethnic majority are treated no differently by the government in terms of fishery policy. If people are excluded it is because their vessels do not entitle them to a cod quota; the policy affects fishers regardless of their ethnicity. He does admit, however, that the effects for the Sami are probably worse because the fjord fisheries in Sami areas were particularly hard hit. But, he stressed, this is due to geography, not ethnicity. The author was therefore against Sami fishing privileges on the basis of ethnicity for fear of fomenting ethnic conflict. He argued that equality before the law is embedded in the Norwegian management system and applies to all irrespective of ethnicity. In fact, he argued, to give Sami an exclusive right on the basis of ethnicity would be tantamount to a 'racist policy'. The exclusion from full fishing rights that some Norwegian and Sami fishers are facing today should not be rectified by giving exclusive rights to Sami fishers – rights which, he said, are 'probably not proven'. Nevertheless, such rights should be re-established through the fisheries commons, which is founded on a collective right for all Norwegian citizens regardless of ethnicity. The spokesperson therefore argued for a free-for-all principle, under cover of the term 'fisheries commons'. Several people responded to his letter; some were in support of his views while others were in disagreement.

One such objection came from a fjord fisher who is also a north Norwegian local politician.[29] Under the headline '*Ethnic equality – Sami fishing rights'*, he stated as a fact that Sami have historical, cultural and legal fishing rights which are founded not only on international agreements and conventions, but on the Norwegian Constitution. The challenge, he argued, is to find ways forward which embrace obligations. He accused the authorities of having done as little as possible to act on these obligations. He also said that he was surprised that there is not more of a focus on finding out whether Sami interests suffer more from the fishery arrangements than the rest of the population in coastal areas, especially when it comes to language, culture and general quality of life.

The social scientists who started the discussion also answered the PRFC.[30] They stressed that they were not arguing for a discriminatory policy or a superior

status for the Sami, although they feel they are being accused by the PRFC spokesperson of doing so. On the contrary, they stressed that the Sami Parliament has consistently rejected ethnic discrimination when it comes to fishing rights. According to the Sami Parliament, the same fishing rights should be enjoyed by all within the fishery zones. The researchers also commented that the argument over Sami rights seem to have become couched less in policy terms than in legal ones – which, they believe, could lead to ethnic discrimination in the worst case. This is true because if a new Sami rights investigation concludes that the Sami under international law have a legal claim to fishing rights if they prove prescriptive rights and immemorial usage, fishing rights could become a matter of individual status. Then every Sami fisher would need to prove their status as Sami, and prove their forefathers' fishing activities. This process could result in hostility, the researchers fear; they argued that the Sami fishing rights issue must be solved politically rather than legally. Fishing rights for north Norwegian coastal societies should be politically feasible, based on international law and Norway's Sami obligations. The social scientists argued in this manner that the Sami fishing rights struggle would benefit both Sami and non-Sami interests.

PRFC's response appeared a few days later.[31] The author failed to see how Sami fishing zones could be established without being ethnically discriminating, and suspected that beneath the scientific 'verbiage' the researchers were actually promoting ethnicity-based privileges. He repeated that Sami fishing zones would undermine the equality principle on which Norwegian constitutional government rests. If the goal is to ensure the survival of coastal communities in north Norway, then establishing Sami fishing privileges or Sami fishing zones is a mistake. While it could compensate historical injustices against the Sami, it would not repair the injustice of the government's fishery policy to the majority of ethnic Norwegians. The author proceeded to question whether the Sami can lay claim to indigenous people's status under the definition of the term in ILO Convention No. 169. If they cannot, the legal basis of Sami fishing rights is also in question. In the end of his response, the PRFC spokesman blamed the debate over Sami fishing rights for having sapped attention and energy from the PRFC's campaign, and he stressed that the re-establishment of a fishery common would affect the whole population of north Norway positively. In a sense, the way the PRFC argues in this response, the non-indigenous fishing rights struggle can be regarded as a campaign for Sami fishing rights as well.

The PRFC respondent's questioning of the Sami's status as an indigenous people provoked the response of many people. One of the social scientists[32] who started the dispute answered that he chose not to comment on it because he finds it too outrageous. Instead, he sets out what a Sami fishing zone could mean in practice: it would have to have a certain size to have any meaning; it should not be restricted to areas where Sami people are in the majority; and it should be regulated for the equal benefit of all who fish in the zone. He stressed that there is no contradiction between a Sami fishing zone and an open yet regulated common, which the PRFC is advocating.

The spokesperson for PRFC was consequently provoked, and answered the social scientist under the heading '*Do we want a Norwegian Yugoslavia?*'[33] In this

letter, he used the terms 'ethnic Sami fishers' and 'ethnic Norwegian fishers'. He finds it absurd that the scientist argues for a Sami fisheries zone not limited to areas where Sami people are the majority. In his opinion, it would be very unfair if the Sami Parliament was to manage a fishery zone where the majority of the population is ethnic Norwegian. The challenges for both non-indigenous fishers and indigenous fishers, he repeated, can be overcome by the solution pursued by his own organisation – i.e. re-open the fishery commons and grant access to ethnic Norwegian fishers and ethnic Sami fishers currently excluded by privatisation of the fishing resources. In closing he said that he assumes that the parties agree on the need for equality and peace between the ethnicities, and that they all want to avoid a '*Norwegian Yugoslavia*', but he doubts (again) whether the Sami' have a claim to indigenous status under ILO Convention's No. 169 definition of the term.

For the Sami stakeholders, this issue was too important to leave unanswered. A Member of the Sami Parliament wrote a letter to the newspaper[34] in which he stressed his support for PRFC insofar as it is fighting against the privatization of the fisheries commons. He also said, however, that the Norwegian Parliament cannot ignore some of the Sami fishing rights. The question of Sami rights is also about the fact that the Norwegian state is established on a territory that belongs to both the Sami and Norwegian people. In accordance with international law, both have a right to self-determination. The situation today, he stressed, is that the Norwegian people and fishers have self-determination through the Norwegian Parliament, while Sami fishers as a people have no self-determination. The MP therefore accused PRFC of confusing *'rights for individuals'* with *'rights of peoples'*.

In his response, the PRFC spokesperson told the Sami MP[35] that there is no justice in introducing privileges for Sami fishers based on ethnicity because Norwegian fisheries policy has harmed both Norwegian and Sami fishers. The parties should unite in opposition to the government's abuse of power and privatisation of the fishery resources. So far, he adds, he has not received support from any central Sami politicians, *'only ethnic buzz about Sami privileges'*.

Other advocates of Sami fisheries rights entered the discussion without bringing anything new. Letters were written in support of PRFC and its scepticism regarding the legitimacy of the Sami's status as an indigenous people. These letters seemed to have a harsher tone, brandishing words like 'propaganda' and 'racism', and phrases like 'to dig one's own grave', 'mixing fantasy and reality', 'crusades against Sami fishing rights'. The efforts of both parties to build a bridge between them and put up a common front against Norway's fisheries management policy did not succeed.

Discussion

After about twelve weeks, the media debate fizzled out. No solutions on which all parties could agree had been found to the challenges facing coastal and fjordal small-scale fisheries. The researchers wrote the first letter as a comment on the Ministry of Fisheries and Coastal Affair's failings in the area of Sami fishing

rights, and urged the government to take its Sami responsibilities seriously. This is not a radical view. Many individuals have advocated the same in local, regional and national media. The authors probably did not expect to be criticized in the way they were by the PRFC.

Quite early in the media debate it became clear that the dispute was between two stakeholder groups struggling to gain fishing rights: one initiated by the Sami Parliament, the other initiated by small-scale fishers. Both struggles feed into a wider discussion on fishing rights, that is the debate over the allocation of marine resources in general. The rights struggle initiated by the small-scale fishers is part of a broader fishing industry discourse which questions the structuring of the fishing industry, in which small-scale fishers are important participants. In addition to being a general political claim on the allocation of fishing rights, the Sami fishing rights struggle also adheres to a Sami political discourse on indigenous people's rights to land and water. This discourse embraces a wider constituency, including academics, Sami politicians and Sami organizations.

The media debate is an example of different interest groups trying to persuade each other about their views on property (Rose 1994). But as the debate developed in the media, the rights struggles seemed to move further and further apart. In the end the disagreement boiled down to whether the Sami as indigenous people are entitled to exclusive fishery privileges, based on a reading of the definition of 'indigenous people' set out in ILO no. 169. This disagreement probably grew out of the prior discussion concerning the Finnmark Act,[36] which was at its most heated in the spring 2005 when it involved national, regional and local media. One of the most contentious issues then was the identity of the first people to settle in Finnmark – were they Norwegians or Sami? In other words, just like the fishing rights discourse, opponents of the Finnmark Act asked whether the Sami are entitled to 'indigenous' status. By extension, of course, the opponents also questioned the foundation of the Finnmark Act. This new disagreement about fishing rights simply reinvigorated a rights debate that had been going on months earlier. It probably also served to raise the temperature of the new debate on fishing rights, and may explain why this kind of public confrontation between Sami and non-Sami fishing interests had not occurred earlier. Many of those who questioned the Sami's indigenous status during the Finnmark Act debate turned out in support of the 'People's Rights to the Fisheries Commons' (PRFC) when the same question was raised with reference to fishing rights. In a sense, it was same arguments all over again – arguments which tend to resurface every time Sami rights to land and water are brought up.

The Sami rights discourse does seem to have changed since 1997, when Jentoft and Karlsen wrote that: 'The natural right of Saami, as they are set in the UN declaration of civil and political rights and in the ILO convention on indigenous peoples, are generally not disputed in Norway today' (Jentoft and Karlsen 1997:160). Currently in Norway, Sami rights are challenged publicly and privately. As the newspaper dispute revealed, there are people who doubt whether the Sami, as indigenous people, are entitled to rights in accordance with national and international law. This is actually quite interesting since the government recognises the Sami as an indigenous people, an indication that there may be more sup-

port or sympathy for Sami rights at the national level than at the local level. The government is in dialogue with the Sami Parliament about the fishing rights issue – which indicates, as Eythórsson (2003) stresses, that the Sami are considered important stakeholders. Yet their claims to fishing rights seem to be regarded as illegitimate or improper by local interests. This is much as Jentoft and Karlsen predicted in 1997: 'It is one thing to accept in principle the obligations that rest upon the Norwegian authorities according to international law; it is quite another to achieve grassroots support when these obligations are to be met and implemented in practice' (Jentoft and Karlsen 1997:158).

The north Norwegian fishing rights discourse appears to exemplify Ehrenfeld's (1993) thesis: 'As rights proliferate, conflicts multiply' (Ehrenfeld 1993:129). As argued by Jentoft (2000), it is not surprising to see this conflict happening in such a fisheries dependent region as north Norway. As the vessel quota regulations require fishing rights to be allocated to individuals, Norwegian fishers are not on an equal footing; some are more privileged than others (Jentoft and Karlsen 1997:159). Since this is the principle the PRFC is challenging in court, the PRFC could hardly be expected to agree to exclusive indigenous fishing rights, even with the assurances of Sami Parliament that all fishing interests in the relevant fishery zone(s) would be treated fairly. If the PRFC did support this position, it probably would have to change the basis of its legal argument. What the PRFC wants is the courts to sanction the free-for-all principle (*allemannsrett* – lit.: all men's rights) or Mare Liberum to be sanctioned by the court. However, the action group calls itself 'People's Right to the Fisheries Commons'. In Norwegian law, a common (*allmenning* – lit.: all men's property), is either an area with a long history of public usage, constituting in effect a right of public usage, or a tract of land where private property rights pertain, vested in particular individuals/organisation in the local community (Norwegian Official Report 1993:3; Jentoft and Karlsen 1997:157). The PRFC wants the free-for-all principle to apply to all Norwegian fishers in coastal and fjord waters which they consider to be property held in common. They are not fighting for the right to own the marine resources, which they believe belong to the Norwegian people, but for the right to *extract* the resources. This kind of local control over marine resources would, in their opinion, be a fair and just arrangement for all small-scale fishers independent of ethnicity.

The institutionalisation of collectively owned property and of usage rights ('*allmenning*') – in this case the Sami fishery zone – is a departure from the basic principle of Mare Liberum ('*allemannsrett*') (Jentoft and Karlsen 1997:159). It is not fully clear what kind of property rights principle the Sami fishing rights struggle rests on. In his 1990 report, Smith warns against applying the principle of positive discrimination to individuals. It should apply rather to communities and geographical areas – and as such would support the idea of collective property rights, as expressed by the Norwegian term '*allmenning*'. The Sami Parliament wants a greater level of input in fisheries management, i.e. the devolution of power from the government to regional policy makers, making it easier for the people who depend on the resources to affect management policy. The Sami Parliament has made it clear that they are acting in the best interests of all people in the region, independent of ethnicity. Parliament seems therefore to be using Sami indigenous-

ness as a means of securing local control over marine resources – and of undoing the injustice inflicted by years of assimilation policy from above, and injustices done to both Sami and non-Sami fishers under the vessel quota system.

According to Jentoft (2000), rather than looking at the vessel quota system from a property rights perspective, the Sami Parliament has seen it from a 'natural rights' perspective within the realm of human rights, that is the Sami's rights to enjoy fully their cultural heritage, as this is codified in international law. From a philosophical perceptive Cohen (1982) argues that natural rights go deeper than current law. Jentoft holds that natural rights

> ... ask, for instance, what gives people a right to be owners of property. Dependency constitutes a legitimate basis for such a right. The argument would be that what people rely upon for their survival and way of life cannot be taken away from them without violating the natural rights that they enjoy as individuals and as a group (Jentoft 2000:79-80).

Natural rights linked to fishing rights are not unique to the Sami (Jentoft 2000; Davis and Jentoft 2001; Davis & Wagner 2006), a fact which the spokesperson for the PRFC upholds in the media dispute. Importantly, he believes that Sami are entitled to fishing rights, but also that all coast and fjord dwellers are entitled to the same rights by virtue of being dependent on the same marine resources. He therefore believes that establishing a Sami collective property to undo the state's injustice against the Sami, is to replace one injustice with another. In this way, Johnston (1995) argues, collective rights could be regarded as inherently dangerous and oppressive, even more than individual rights (Johnston 1995 quoted in Jentoft and Karlsen 1997: 162). This seems to be the case here; some of the non-indigenous fishers are upset that the Sami may gain exclusive rights as a collective. Therefore, in the north Norwegian fishing rights discourse, ethnic tension is revealed when geographic fisheries zones and Sami fishing rights are brought up.

If the small boat fishers lose in the courtroom, the PRFC have few if any other chances to win their battle. The Sami rights struggle is in a different and perhaps more fortunate situation.[37] If the Sami do not obtain their claims through negotiation with the state, which seems to be their strategy so far, they still have the chance to bring their case before the court, supported by international and national law. Two rulings are interesting in this connection; the 'Kåfjord verdict' from 1985 and the judgement in the International Court of Justice in The Hague in 1951 (Bull 2005). In short, both verdicts recognize local fisheries customs in Norway. In The Hague in 1951, Norway won a dispute with Great Britain over the fishing border by arguing for the peculiar conditions in Norwegian fisheries that did not correspond to the Roman Law of *Mare Liberum*. In 1985, the Norwegian Supreme Court recognized local fjord fisheries custom in the inner part of Kåfjord, a fjord in north Norway.[38] In spite of these rulings, Norwegian government adheres to the principle that fish resources are national property based on the free-for-all principle (*Mare Liberum*), and thus local control over marine resources is hard to obtain. The verdicts from Haag in 1951 and the Norwegian Supreme Court

in 1985 could also support the PRFC's rights struggle, but then they have to change their argumentation away from the principle of *Mare Liberum*.

If the court system must decide on a case-by-case basis whether fishing grounds in Sami areas are to be exempt from the free-for-all rule and granted status as Sami or local community property ('*allmenning*'), it would have to be demonstrated that commons rights exist in traditional and current fishing practices as well in the minds of Sami fishers. This appears to be a situation the Norwegian state strongly wishes to avoid. One reason is that it will be expensive both economically and in terms of time. Another equally important reason is that the Norwegian authorities do not want to lose face internationally as human rights in general and indigenous rights in particular are high profile issues in Norwegian politics. As Norway was the first state to ratify the ILO convention, the international community will notice how the convention is interpreted and implemented in the Norwegian context (Minde 1999:77).

The Minister of Coastal and Fisheries Affairs has put down the 'Coast fisheries committee for Finnmark' to examine the rights to fish of the Sami and others in the ocean off the coast of Finnmark county. The result of the committee's work is of important significance for the next step in the Sami rights struggle.[39] It could also be of great importance for the non-Sami fishers as well, as the committee's mandate is also to investigate rights for others. The examination work could then have great consequence for the allocation of fishing rights in north Norway, and also for the founding principle in Norwegian fisheries management; that fish are a national common property resource. In this manner, as Davis and Jentoft (2001:232) argue, the emergence and affirmation of indigenous people's rights claims have the potential to turn entire fisheries management systems inside out and upside down.

Conclusion

People living along the coast and in the fjords have felt the liquidity of social frameworks and institutions for a long time. According to Bauman (2004), this accelerating fluidity is the main force behind modernity: things cannot keep their shape for long, which leads to radical and profound changes. New regulations and institutional changes are among the factors that have led to fewer small boat fishers, a decline in land-based fisheries industries, and local communities' loss of control over local fisheries. These developments, however, have not been taken lying down. In an effort to reverse these disembedding processes, Sami stakeholders and the action group 'The People's Rights to the Fisheries Common' (PRFC) are attempting to regain control of the marine resources on which they depend. This struggle is just one element of a longer lasting Sami fight for control of land and water in Sami areas. While the PRFC is fighting in court, the Sami rights struggle is led by the Sami Parliament in local, regional, national and international settings. These rights struggles have a common adversary in the Norwegian government which they accuse of violating the basic rights of coastal and fjord settlements.

In spite of their similarities, the public dispute between these stakeholder groups revealed conflicting interests. What started out as an article supporting Sami fishing rights discourse in the newspaper, turned into a dispute between Sami and non-Sami fishing interests. While the non-indigenous fishing interests argued for the principle of *Mare Liberum*, and against rights based on ethnicity, Sami fishing interests wanted exclusive rights in certain areas – so-called Sami fishery zones. Both tried to persuade each other and the public that their solution was the better one. They pointed to the benefits of their own policies and the disadvantages of the opposition's. Thus instead of bringing the fight to their common opponent, the government, they fought each other.

The dispute is largely a consequence of what Bauman (2004) refers to as a 'politics of identity', which may be regarded as effort to re-solidify Processes that seem to have liquefied or undermined small-scale fishers rights. For the Sami, the rights struggle figures in the process of redefining themselves and their history in terms of the injustice perpetrated upon them by the assimilation policy of the Norwegian state. Without increased control over natural resources, their culture would be in danger – which is in violation of ILO Convention 169 and other international human rights legislation. The 2005 Finnmark Act gave the Sami the right to co-manage the land in Finnmark County. They are now struggling to gain the right to marine resources and have a voice in resource allocation. The Sami 'politics of identity' affects non-Sami people as well, as demonstrated by this study. The PRFC argues that to seek redress for past injustices by designating an area of coastal and fjord waters as Sami collective property would be to replace one injustice with another. In other words, it would be undemocratic and unjust for everybody else if the Sami were granted exclusive rights to marine resources. In the newspaper the PRFC criticized the government for its fisheries and indigenous policies. They contested the Sami rights struggle while pursuing their own 'politics of identity' *vis-à-vis* the state and calling for rights to marine resources. PRFC fishing rights struggle thus seem to be in a squeeze between government fishery policy and Sami rights claims – to which the government has apparently warmed of late. The Sami may therefore have emerged from the fight stronger than when they went in.[40] If they are yet to be considered definitive stakeholders, they have at least advanced from latent to expectant stakeholders (Mitchell et al. 1997) and are in a position to lobby governmental policy makers.

The two stakeholder groups approach rights from different angles, and use different narratives to illustrate their points (Rose 2004). The concept of 'indigenous' is important to their argumentation because, the Sami Parliament argue, ILO Convention 169 grants rights to uphold Sami culture, of which fishing is not only a part but also a material basis for. The PRFC ask whether the Sami are more indigenous than other people in the area, and whether they are entitled to exclusive rights to marine resources. The media dispute suggests that some elements of the local community are out of step with attitudes to indigenous peoples' rights in Norway and globally. Indeed, non-Sami interests challenge the very concept of indigenous rights. So even if the government were to translate treaty obligations to the Sami into action, they may find it hard to get public support. As rights are embedded in interpersonal relations (Hohfeld 1913; Rose 1994), the Sami rights

struggle could undermine relations between indigenous and non-indigenous people living in same local communities. This could be challenging if one aims at establishing fishing rights alliances between non-indigenous and indigenous coastal zone peoples, as Davis and Jentoft (2001) propose based on the situation in Canada and Norway. As revealed in this paper, establishing such an alliance is not always straightforward in practice. Cooperation is difficult if one party is constantly questioning the status of the other, which in this case is the raison d'être of the Sami rights struggle. It draws attention away from shared policies for coastal and fjord settlement survival. Rights struggles of any sort depend on public support to succeed. By questioning Sami indigenousness, the non-indigenous interests are likely to undermine public confidence in the legitimacy of the Sami position, and in that their position represents a major obstacle to constructive dialogue. Since Sami indigenousness is nationally and internationally accepted, this particular discussion is probably as fruitless as it is discouraging.

The fishing rights media dispute shows that implementing indigenous rights is challenging as it could bring ethnic tensions to the surface. However, this could also be positive, as the awareness grows of the presence of stakeholders' different perceptions of rights and efforts to (re)gain rights. Bauman (2000) argues for the importance of inclusiveness when there are ongoing struggles to firm up identities – and rights, we may add. An inclusive society must learn to live with cultural plurality (Baumann 2000). There is no single recipe for how to arrange inclusiveness, for instance inclusive natural resource management institutions. Experience from Australia of inclusive local projects and networks in culturally plural societies shows that once conflicts among participants were expressed openly it led to the creation of projects that accounted for differences (Cameron et al. 2004:160). So one should start by recognizing that differences between stakeholders do in fact exist.

For fisheries management institutions it is important to be conscious of differences in stakeholders' (fishing) rights perceptions – especially in postcolonial societies where indigenous rights are being (re)implemented in an ethnically mixed population. As this paper reveals, the implementation of indigenous rights does not happen without resistance. The content of such resistance, and the rights perceptions it is grounded in, should be further investigated, especially since resistance could represent challenges for co-management arrangements that are instituted in support of indigenous rights.[41] If the task is to create local management legitimacy (Pinkerton and John 2008), this might include institutions that can handle conflicting rights perceptions which arise from ethnic diversity.

Notes

1 This paper is a revised version of a paper presented at the xvth International Congress on Folk Law and Legal Pluralism, Depok, West Java, Indonesia, June 29- July 2, 2006. It has benefited from constructive comments from Svein Jentoft, Einar Eythórsson and Derek Johnson.

2 The Sami are an indigenous people living in Norway, Sweden, Finland and Russia. They are a minority throughout most of the area they inhabit. While reindeer herding is the

traditional employment for the inland Norwegian Sami, small-scale fisheries, often in combination with farming or other activities, is the traditional employment for the coastal Sami. Nowadays many Sami are employed in the general labour market, but parts of the Sami population still gain their livelihood from reindeer herding, agriculture, fishing and wilderness industries.

3 Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark act).

4 This was reported, *inter alia*, by coastal and fjord people at public meetings arranged by a committee put down by the government in 2006 to investigate fishing rights in the northernmost county in Norway, Finnmark (Norwegian Official Report 2008:5). The information that was put forward at these meeting was central in the committee's decision-making.

5 The circumstances were similar to the grave situation that Canada faced in 1992 when the overexploitation of cod resulted in the disappearance of the fish stock, and the government ordered a full stop to industrial cod fishing (Apostle et al 1998).

6 This system was introduced in 1984.

7 For further descriptions, see for example Jentoft and Karlsen 1997, Eythórsson 2003.

8 See Søreng 2007 for a detailed review of the two rights struggles and strategies.

9 The Sami Parliament (in Sami 'Samidiggi') is a democratically elected body with 43 representatives elected from 13 districts every fourth year. Only those listed in the Sami Electoral Register have the right to vote. In order to register, one has to consider oneself as Sami, and have Sami as the language one speaks at home, or at least the language spoken at home by parents, grandparents or great-grand parents. The central government has transferred authority to the Sami Parliament in some areas concerning preservation of Sami cultural heritage, education, language, business and industry, and culture. It controls its own budget and is a mandatory body to be consulted on matters concerning the Sami population (The Sami Parliament's homepage www.samediggi.no, access date June 2008).

10 Quoted and translated into English by Jentoft and Karlsen 1997:152.

11 Eythórsson and Nilsen, *Nordlys*, 18 February 2006. (www.nordlys.no/debatt/ytring/article1961414.ece. Access date: February 2006)

12 In 1988 a new paragraph was appended to the constitution (§ 110 A) relating to the government's obligations to the Sami [my translation]: *'It rests with the national authorities to ensure that the Sami are able to secure and develop their language, culture and social life.'* In Norwegian: *'Det paaligger Statens Myndigheter at lægge forholdene til Rette for at den samiske Folkegruppe kan sikre og utvikle sitt Språk, sin Kultur og sit Samfundsliv.'*

13 The Indigenous and Tribal Peoples Conventions of 1989. (www.fn.no/ilo/ilo_informasjon/aktuelle_tema/urbefolkning/urfolks_rettigheter_tatt_paa_alvor_av_ilo. Access date: March 2006)

14 The act passed through Parliament 8 June 2005, and came into force 1 July 2006. With the passing of this act, the ownership of former state land has been transferred to The *Finnmark Estate*; a private landowner that will administer the land. It is a kind of governance partnership consisting of a board appointed by the Finnmark regional county council and the Sami Parliament. The composition of the board should, in this manner, represent both Sami and non-Sami interests, and hence bring legitimacy to resolutions.

15 The investigation report (Norwegian Official Report 2008:5) was ready in February 2008, after this paper was submitted. See endnote 39.

16 In Norwegian, 'Aksjon Folkets rett til fiskeriallmenningen'.

17 www. fiskeribladetfiskaren.no. Access date: March 1, 2008.

18 Based on annual management advice from The International Council for the Exploration of the Sea (ICES), the total allowable quota (TAC) of the North-East Arctic cod is allocated between Norway, Russia and third party countries. Norway is allocated about 45 percent of the TAC. In Norway's national waters, the offshore fleet is granted roughly 30 percent of the TAC and the inshore fleet approximately 70 percent. The inshore fleet is divided in two groups: one closed group with individual vessel quota rights (group one), and one open group without individual vessel quota rights (group two). Group one is allocated about 90

percent of the inshore fleet's total quota, and group two about 10 percent (2007 numbers. Source: www.fisheries.no, access date June 2008; Norwegian Official Report 2008, 5)

19 For further descriptions see Jentoft and Karlsen 1997; Maurstad 1999.

20 PRFC's homepage (http://infoside.no/fiskeriallmenningen/). Access date March 2006. [my translation]

21 www.nytid.no/arkiv/artikler/20050608/fiskere_gir_ikke_opp_kampen_om_rettighetene/, 11.06.2005. Access date June 2008. [my translation]

22 prfc's homepage (http://infoside.no/fiskeriallmenningen/). Access date March 2006. [my translation]

23 www.nytid.no/arkiv/artikler/20050608/fiskere_gir_ikke_opp_kampen_om_rettighetene/, 11.06.2005. Access date June 2008. [my translation]

24 www.fiskeribladetfiskaren.no, 01.03.2008. Access date June 2008.

25 www.friheten.no/iriks/2006/12/04/rettssikkerhet.html, 12.04.2006. Access date June 2008. [my translation]

26 Søreng 2007 describes the two right struggles in greater detail.

27 *Nordlys*, January 1, 2006

28 *Nordlys*, February 4, 2006

29 *Nordlys*, February 16, 2006

30 *Nordlys*, February 18, 2006

31 *Nordlys*, February 21, 2006

32 *Nordlys*, February 24, 2006

33 *Nordlys*, March 3, 2006

34 *Nordlys*, March 9, 2006

35 *Nordlys*, March 8, 2006

36 The debate happened while the government was consulting with Finnmark county parliament and the Sami Parliament on Finnmark bill in 2003-2005 (for further description of the consultation process, see Josefsen 2008).

37 By looking to experiences in other parts of the world, we could make some assumptions. In Canada, for instance, both negotiations and court decisions have led to government recognition of indigenous management rights – and resulted in local fisheries management arrangements. In Norway today, there are no fisheries arrangements based on indigenous management rights, but there are co-management institutions that regulate local cod fisheries for periods of the year. For further description of such management institution, see i.e. Jentoft and Kristoffersen 1989; Søreng 2006. These old arrangements, which sprang out of user-conflicts between fishers using different gears, allocate fishing grounds between gear groups, and have therefore a functional representation based on membership in certain gear groups.

38 See Bull 2005 for more information on these verdicts.

39 In February 2008 (after this paper was submitted) the committee presented its report (Norwegian Official Report 2008:5): Based on folk law (indigenous rights) and historical use, the committee argued that the inhabitants of coastal and fjord areas in Finnmark should have the right to fish in the sea off the coast of Finnmark, up to four nautical miles beyond the sea boundary ('The Finnmark zone'). The recommendation is a collective right for all people in Finnmark; a territorial right. It proposes the right to: fish for personal consumption; to work as a fisher; and to fish an amount that gives an economic return to a household. This would be a right that every fisher domiciled in Finnmark has with regard to the fishery authorities, and would not require fishers to purchase quotas. Inhabitants of the fjords have a privileged right to fish ('The fjord right'). Outside the fjords, inhabitants of Finnmark have a right to fish, but do not have the same privileged rights towards the fishery authorities as fishers domiciled in Finnmark. The committee recommended the establishment of a regional management board ('The Finnmark fishery management'). The Finnmark county parliament and the Sami Parliament would appoint three members each to the board. The board would decide which vessel sizes and fishing gears are allowed in the Finnmark zone. It would also have the authority to allocate fishing quotas and permissions. These quotas would not be individual and would not be transferable. The state would

have to supply the Finnmark fishery management board with quota or the resources to purchase quota. It is now up to the Norwegian Parliament to decide whether the proposal, which is being heard until December 2008, will be set out in law.

40 The Sami rights struggle was the background for the investigation of rights to fish in Finnmark. See endnotes 14 and 39.

41 In Norway, there are public discussions about the legitimacy of the co-management institution (The Finnmark Estate) that was constituted in the 2005 Finnmark Act, which gave Sami the right to co-manage the land in Finnmark County. A similar co-management arrangement is proposed for the Finnmark fishery in Norwegian Official Report 2008:5 (see endnote 14 and 39).

References

Aasdal, K. et al.
1998 *Betatt av Viten. Bruksanvisninger til Donna Haraway*. Oslo: Spartacus Forlag [in Norwegian]

Apostle, R. (Ed.)
1998 *Community, state, and market on the North Atlantic rim: challenges to modernity in the fisheries*. Toronto: University of Toronto Press.

Bauman, Z.
2004 *Identity: conversations with Benedetto Vecchi*. Cambridge: Polity Press.
2000 What it means 'to be excluded': living to stay apart – or together. In: P. Askonas, A. Stewart (Eds.), *Social Inclusion: possibilities and tensions*. Basingstok: Macmillian.

Bull, K.S.
2005 Fishing in salt water – reflections on legal issues. *Kart og plan* 1:9-17. [in Norwegian, Abstract in English]

Cameron, J., M. Mulligan, V. Wheatley
2004 Building a place-responsive society through inclusive local projects and networks. *Local Environment* 9(2):147-161.

Cohen, M.R.
1982 *Law and the Social Order: Essays in Legal Philosophy*. New Brunswick: Transaction Books.

Davis, A., J. Wagner
2006 A right to fish for a living? The case of coastal fishing people's determination of access and participation. *Ocean & Coastal Management* 49:476-497.

Davis, A., S. Jentoft
2001 The challenge and promise of indigenous peoples' fishing rights – form dependency to agency. *Marine policy* 25:223-237.

Ehrenfeld, D.
1993 *Beginning again: People and nature in the New Millennium*. Oxford: Oxford University Press.

Eythórsson, E.
2003 The Coastal Sami: a 'Pariah Caste' of the Norwegian Fisheries? A reflection on ethnicity and power in Norwegian resource management. In: S. Jentoft, H. Minde, R. Nilsen (Eds.), *Indigenous Peoples. Resource Management and Global Rights*. Delft: Eburon Academic Publishers.

Foucault, M.
1972 *The Archaeology of Knowledge and the Discourse on Language*. New York: Pantheon.

Giddens, A.
1994 *The Consequences of Modernity*. Stanford: Polity Press.

Gulliver, P. H.
1979 *Disputes and negotiations: a cross-cultural perspective*. New York: Academic Press.
Granovetter, M., R. Swedberg (Eds.)
1992 *The Sociology of Economic life*. Boulder: Westview Press.
Haraway, D.
1991 *Simians, Cyborgs, and Women. The Reinvention of Nature*. London: Free Association Books.
Hardin, G.
1968 Tragedy of Commons. *Science* 162:1243-1248.
Hersoug, B.
2005 *Closing the commons. Norwegian fisheries from open access to private property*. Delft: Eburon Academic Publishers.
Hohfeld, W.
1913 Some Fundamental Legal Conceptions as Applied in Judicial Reasoning. 23 *Yale L. J*. 16.
Jentoft, S.
1993 Dangling Lines. The fisheries crisis and the future of coastal communities. St. John's, Newfoundland: ISER Books.
2000 Rights to Nature – A Natural Right? Fisheries Management from a Saami Perspective. In: D. Symes (Ed.), *Fisheries Dependent Regions*. Oxford: Fishing News Books.
Jentoft, S., H. Minde, R. Nilsen (Eds.)
2003 *Indigenous Peoples. Resource Management and Global Rights*. Delft: Eburon Academic Publishers.
Jentoft, S., G.R. Karlsen
1997 Saami fisheries, quota management and the rights issue. Proceedings of a seminar held in the Vestman Island in May 1996. *TemaNord* 1997:593.
Jentoft, S., T. Kristoffersen
1989 Fishermen's Co-Management – the Case of the Lofoten Fishery. *Human Organization* 48(4):355-365.
Johnston, D.M.
1995 Native Rights as Collective Rights: A Question for Group Self-Preservation. In: W. Kymlicka (Ed.), *The Rights of Minority Cultures*. Oxford: Oxford Press.
Josefsen, E.
2008 Stat, region og urfolk – Finnmarksloven og politisk makt. In: in H.K. Hernes og N. Oskal (Eds.) *Finnmarksloven*. Oslo: Cappelen Akademisk Forlag [in Norwegian]
Karlsen, G.R.
1998 Økonomiske strategier i fartøyskvotesystemet: Et case fra en kystkommune i Nord Troms. In: B. Sagdahl (Ed.), *Fjordressurser og reguleringspolitikk. En utfordring for kystkommuner*? Oslo: Kommuneforlaget. [in Norwegian]
Maurstad, A.
1999 Sjarkfiske og allmenningens tragedie. In: I. Bjørklund (Ed.), *Norsk ressursforvaltning og samiske rettighetsforhold*. Oslo: Ad Notam Gyldendal. [in Norwegian]
Minde, H.
2005 Assimilation of the Sami – implementation and consequences. *Gáldu Čála -Journal of indigenous rights* 3/2005.
1999 Mot rasediskriminering, for urfolksretter – to sider av same sak? Et historisk perspektiv på samiske rettigheter. In: H. Eidheim (Ed.), *Samer og nordmenn*. Oslo: Cappelens Akademiske Forlag. [in Norwegian]
Minde, H., H. Gaski, S. Jentoft (Eds.)
2008 *Indigenous peoples: self-determination, knowledge, indigeneity*. Delft: Eburon

Mitchell, R.K., B.R. Agle, D.J. Wood
1997 Towards a theory of stakeholder identification: defining the principle of who and what really counts. *Academy of Management Review* 22(4):853–86.
Norwegian Official Reports (NOU)
2008 *NOU 2008:5 Retten til å fiske i havet utenfor Finnmark*. Oslo: Departementenes servicesenter. Informasjonsforvaltning. [in Norwegian]
1993 NOU 1993:34 Rett til og forvaltning av land og vann i Finnmark: Bakgrunnsmateriale for Samerettsutvalget. Oslo: Statens forvaltningstjeneste. [in Norwegian]
Ostrom E.
1990 *Governing The Commons. The Evolution of Institutions for Collective Action*. Cambridge: University Press.
Pinkerton, E., L. John
2008 Creating local management legitimacy. *Marine Policy* 32(4):680-691.
Polanyi, K.
1957 *The great transformation*. Boston: Beacon Press.
Rose, C.
1994 *Property & Persuasion. Essays in the History, Theory, and Rhetoric of Ownership*. Boulder: Westview Press.
Smith, C.
1990 Om samenes rett til naturressurser – særlig fiskerireguleringer", *Lov og rett* 1990:507-534 [in Norwegian]
Søreng, S.U.
2007 Fishing rights struggles in Norway: political or legal strategies? *Journal of Legal Pluralism* 55:187-210.
2006 Moral discourse in fisheries co-management: A case study of the Senja Fishery, northern Norway. *Ocean & Coastal Management* 93-236 (3-4):147-163.