



Masters Thesis in Indigenous Studies

“A Fishery Zone in Finnmark?”



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Foreword

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Chapter 1

1.0 Topic

The participation of Norwegian Sami fishers in northern fisheries can be traced more than one thousand years back. Fish was a natural resource which the Sami people in Norway used in their culture and way of life. This has, however, changed through time. According to Otto Jebens, the question concerning the position of the Coastal - Sami has been left behind when working on fulfilling the obligations towards the Norwegian Sami, which the Norwegian government is committed to through International Law.¹

The changes which have occurred concerning fisheries in the later years, have had quite an impact on parts of the population in Finnmark County in Norway. Some might say it has been partly damaging for those which has based their livelihood on combined use of resources, especially for those who have combined fishery at sea with agriculture. This change has not only affected the Coastal – Sami. Norwegian fishers have been struck by the changes as well. Caused by unfortunate decisions aiming at industry regulations based on general restrictions concerning fishery in the sea, individual fishers have lost their fishery quotas and thereby a significant part of their livelihood.²

Sami fishery rights have turned out to be an important topic of discussion today. The Sami peoples' interests concerning fishery rights was, for example, looked into by the Sami Fishery Commission in the middle of the 1990's. The issue of a Sami fishery zone was given special attention in the report by this commission. The suggestion of a Sami- or a regional fishery zone is something which has been brought up for discussion on several occasions. It was recently brought to attention in the report by the Coast- and Fishery Commission in the beginning of 2008.

As a result of the adoption of the Finnmark Act in 2005, where Sami (and others') rights to fishing were not taken into account, the discussion of Sami fishery rights in Finnmark was brought to a new level. A demand for legal decisions for measures supportive of the Coastal –

¹ Jebens, Otto (2007): "The Sea – Sami and Other Ethnic Norwegian Fisher's Right to Sea – Fishery in Finnmark", in: Lov og Rett – 2007 – Nr. 05 p.259 (my translation)

² Ibid p.259

Sami was raised by the Sami, however, this demand did not have the desired effect. The Norwegian parliament decided to request an evaluation from the government on Sami and others' right to fishery in the sea outside Finnmark. This was to be done as soon as possible.³ In February 2008 the Coast- and Fishery Commission published a report on fishery rights for Sami and others in the sea outside Finnmark.

This thesis will focus on Sami fishery rights in Finnmark, more specifically on the arguments made by the Sami Fishery Commission, in their report finished in 1997, concerning the issue of a "Sami Fishery Zone" versus the arguments made by the Coast- and Fishery Commission, in their report published in February 2008, concerning the issue of a "Finnmark Zone". Even though the issue of a fishery zone is brought to attention and discussed in both these reports, their recommendations ended up being quite different. While the Sami Fishery Commission decided not to recommend a Sami fishery zone, the Coast- and Fishery Commission did decide to recommend what they called a "Finnmark Zone".

In this thesis the reports' different arguments for or against a Sami fishery zone/ Finnmark zone in Finnmark will be emphasized.

This brings me to the overarching research question of this thesis, the main research question of this thesis will be presented later in this chapter.

- What are the different arguments concerning a fishery zone in Finnmark based upon in the different reports from the Sámi Fishery Commission and the Coast- and Fishery Commission?

1.1 Background

To be able to discuss the issue of a fishery zone in Finnmark, it is first of all necessary to give a historical outline of the fishery in the sea outside Finnmark. It is important to see if there has been given a right to fishery through usage or legislation, or the both combined, which still is

³ Jebens, Otto (2007): "The Sea – Sami and Other Ethnic Norwegian Fisher's Right to Sea – Fishery in Finnmark", in: Lov og Rett – 2007 – Nr. 05 p.259-260 (my translation)

valid or can be valid inside certain areas.⁴ It is important to give an outline of the settlement and culture of the Coastal Sami in Finnmark to be able to discuss the basis of their right to fishery. The following historical outline describes among other things, a brief history of the Sami in relation to fishery, the increase and decrease of population in Finnmark, the importance of fishery in order to secure the development of the Coastal Sámi culture, and the Coastal Sámi's vulnerable position due to governmental regulations concerning fishery.

The traditional Sámi settlement area extends into four countries involving Norway, Sweden, Finland and Russia. The Sámi people inhabited these areas long before the establishment of state boundaries, and they are therefore recognized as an indigenous people in Norway.⁵

According to population census, digitalized by RHD⁶, the Register of Historical Data, there were 2359 non-Norwegian fishermen in Finnmark, in 1900. These fishermen were either Sámi, Finn, Kven or mixed.⁷ By taking into account the data registries done by RHD, concerning how many Sámi (and other) fishermen there were in Finnmark in 1900, we can see that fishery at that time, was a natural resource which many Sámi (and others) traditionally used as a way of living.

Elisabeth Einarsbøl says that the Coastal Sámi have fished along the coast and fjords outside Finnmark since before the 10th Century.⁸ A settlement of Norwegians came from the south in the 13th and 14th centuries due to an emerging European market and increased prices.⁹ The Norwegian settlement in the north, especially in Finnmark, did however decrease in the 1500s, says Hersoug. This was due to the falling prices and natural fluctuations/changes. The Sámi population did, on the other hand, increase at that point of time. The reason for their increase was because of their ability to combine various forms of employment and use of natural resources.¹⁰

⁴ Smith, Carsten (2008): "Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5"

<http://www.galdu.org/web/index.php?odas=2556&giella1=nor> (accessed June 5. 2008) (my translation)

⁵ The Ministry of Local Government and Regional Development, Norway the official site in the United States <http://www.norway.org/facts/sami/sami/sami.htm> (accessed on November 2. 2008)

⁶ The Register of Historical Data (Registreringsentral for Historiske Data) (my translation)

⁷ Ibid

⁸ Einarsbøl, Elisabeth (2005): "Some Views on Coastal Saami Rights in Saltwater Areas", In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

⁹ Hersoug, Bjørn, *Closing the Commons, Norwegian Fisheries From Open Access to Private Property*, 2005:193

¹⁰ Ibid p.193

In the administrative capital of Denmark/Norway, Copenhagen, the king was concerned with this kind of development. He therefore decided to give the population in Finnmark special privileges regarding fisheries. This involved restrictions (from the early 1700s) placed on migrating fishers in order to protect the fishing grounds and the catch for the local population. According to Hersoug, the dominating doctrine of the time was “closeness guarantees rights”, which means that the local population had what one may call preferential access to nearby fishing grounds.¹¹

A change occurred in 1830, when a new law on fisheries removed most of the restrictions on fishing in Finnmark, and the population again increased. The reason was partly because of open access resources and partly as a result of increased prices, which according to Hersoug, was this time due to the extensive Pomor trade. For the Sámi people, who were used to local preferential access, this expansion did not come without problems. By the turn of the century, the Sámi fisheries, compared to the Norwegians who had money available for modernization, were falling behind. When Finnmark and the northern part of Troms were burned down during the last phase of World War Two, Sámi fishers had to start almost from scratch, and they were not part of the modernization drive which were dominating both the offshore and the coastal fisheries at the time.¹²

Modernization was, however, not the only reason for the marginalization of Sámi fishers, the Norwegianization policy, the assimilation and discrimination of the Sámi people is partly to blame for this as well.¹³ From the mid 19th century the Norwegian policy towards the minorities in the north (the Sámi and the Kven) can be described as consistent assimilation.¹⁴ The Sámi were considered inferior to the majority population. The authorities’ efforts to make the Sami (and the Kven) drop their language, change the basic values of their culture and change their national identity, was extensive, long lasting and determined. It appears relatively certain that the Norwegianization policy succeeded in reaching its goals in the “transitional districts” (in the Coastal Sami districts), at any rate concerning change of language, and partly a change of identity.¹⁵ When the Norwegianization policy was reduced during the 1950’s, the Norwegianization appeared to be a completed process in the fjords and

¹¹ Hersoug, Bjørn, *Closing the Commons, Norwegian Fisheries From Open Access to Private Property*, 2005 p.193

¹² Ibid p.193

¹³ Ibid

¹⁴ Ibid p.194

¹⁵ Minde, Henry, “Assimilation of the Sami – Implementation and Consequences”, in *Acta Borealia*, 2003:2.

coastal areas in west Finnmark and northern Troms. The registrations in the summary of which inhabitants who are allowed to vote at the Sámi election (Samemantallet) in 2005, did, however, show that Sámi identity to a certain degree have been revitalized in these areas.¹⁶

As the amount of Norwegian and other fishers increased, the authorities gradually started to regulate the fisheries further in the north.¹⁷ The regulations have appeared to have had a huge impact on the Sámi traditional fishing, especially in the last 50 years. Like other fishermen – farmers¹⁸ who lived along the northern coast, most Sámi fishers in Norway had their outcome from use of resources, which included fishing, farming and sometimes construction work when available. Due to modernization both in farming and fishing, “multi-sectoral” fishers, such as these, were gradually marginalized during the 1970s and 1980s.

1.1.1 The Effects of Government Regulations on Fishery

After WWII there was a big change in Norwegian fishery policies. The national authorities, with their aim of higher profitability, directed structural changes in forms of bigger boats and year-round fishing. In 1990 the change from largely open-access fisheries to increased government regulations had a particular impact on the Sámi fisheries; the quota-regulation of vessels was introduced. The quota-regulation had a system of vessel quotas and maximum quotas which had certain requirements involving the need to land a certain amount of fish during one of the three preceding years. If the requirements of obtaining a vessel quota were not fulfilled, the choice was no other than to participate in the much less favorable quota system. As a result of this, any realistic chance of participating in the fisheries equal to other fishermen were taken away from the Coastal Sámi.¹⁹

During the last ten - fifteen years , the government has made several decisions which both principally and practically have taken the livelihood from several people who have carried out

¹⁶ Eypörsson, Einar *Sjøsamene og kampen om fjordressursene* 2008:20-21 (my translation)

¹⁷ Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

¹⁸ They operated as “peasant households”; the husband fished locally and seasonally, and was away for large parts of the year, while the wife was occupied with farming on a modest scale. See Nilsen, Ragnar (2003): “From Norwegianization to Coastal Sami Uprising”, in *Indigenous Peoples; Resource Management and Global Rights*, p.170

¹⁹ Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

fishery with smaller vessels in local and traditional fishing areas. In Northern Norway's ten thousand years history, this is brand new, and many of those effected by it are Coastal Sámi. This means, according to the Sámi Right Commission II, that for the first time in history, there has also been made official regulations which denies people's usage and indigenous based rights to live off of the resources which the settlement and culture has always been based upon.²⁰

1.1.2 Fishery – a Sámi Tradition

Even though there has been a clear decrease of participation in fisheries during the last decades, saltwater fishery is, according to the Sámi Rights Commission, still an important industry in Finnmark county, as it is in the counties Nordland and Troms as well. A distinctive feature of the fishery in the three northernmost counties in Norway (Nordland, Troms and Finnmark), is that private fishery with relatively small vessels has been carried out to a larger extent in these areas compared to other parts of the country. This is something which is of influence to the composition of today's Fishing Fleet because the amount of vessels less than ten meters is larger in these areas than in many other parts of the country.²¹ The seven meter vessels (small fishing boats) is important as a way for the Sámi people to be able to keep and practice their culture, traditions and way of life.

The Sámi is an indigenous people, which in itself is, according to The Sámi Right Commission II, a basis for giving them rights. Harvesting from the resources of the sea has been one of the primary industries for the Sámi people for many years, and the income from the fishery has been an important part of the economic basis for the Coastal – Sámi culture.²²

²⁰ The Sami Right Commission II, NOU 2007: 13, The New Sami Right, Resource – Crisis and Regulation Measures, p.2 (my translation)

²¹ Ibid p.1

²² Ibid

1.1.3 Sami Fishery Rights – Rights through international conventions

Norway is built on the territory of two peoples; the Norwegians and the Sami.²³ The Sami were the majority people in Finnmark in the beginning of the 1800's. During the 1800's and further into the 1900's the Sami's fundamental cultural position was weakened. The Norwegianization policy, as mentioned, was an important factor here, and the Coastal Sami in particular, suffered severely because of it. The situation for the Coastal Sami culture is, at the time being, quite critical. This is a question of being or not being, says Smith.²⁴

The right to fishery is built on the use of the sea through centuries, but for the Sami this right has a much more obvious and recent foundation based on international conventions. Both the UN's convention on civil and political rights (ICCPR) and the ILO convention no.169 is of importance for the right to fishery in the sea outside Finnmark.²⁵

Based on article 27 of the UN's convention on civil and political rights (the ICCPR) the authorities are responsible for making sure that the minorities are able to develop their culture. This convention has been incorporated into Norwegian domestic law through the adoption of the Norwegian Human Rights in 1999. In several of its articles the ILO convention No. 169 gives indigenous peoples a right to participation on issues concerning exploitation of natural resources. Paragraph §110a of the Norwegian Constitution supports the international regulations of protection.²⁶

Certain measures have been made over time in order to fulfill the authorities' commitments towards the Coastal Sámi. However, these measures have not been sufficient when it comes to executing cultural protection, says Smith.²⁷ According to the ILO convention no.169 and article 27 of the ICCPR the Sámi in Norway are, as an indigenous people, legally protected. The authorities are legally required to make sure the Sámi have the necessary economical and physical conditions in order to secure and develop their culture. This involves legal demands, from the Sámi point of view, concerning the use of natural resources. For the Coastal Sámi this is of importance, as it causes the right to fishery in the sea and thereby provides a basis

²³ Smith, Carsten "Overlevering av Kystfiskeutvalgets utredning NOU 2008: 5" p.3 (my translation)

²⁴ Ibid p.3

²⁵ Ibid p.3

²⁶ Ibid p.3

²⁷ Ibid p.3

for settlement. The Sámi, as an indigenous people, are entitled to special measures if such measures are necessary in order to secure and develop Sámi culture.²⁸

1.1.4 The Sami Fishery Commission

In the beginning of the 1990's the Ministry of Fisheries appointed a Sámi Fishery Commission, which were to look into Norwegian Sámi interests concerning fisheries. The Commission confirmed, in their report published in 1997, that the Norwegian Sámi people fished in the sea-, coastal-, and fjord areas and that the income of these fisheries was an important factor and a basis for the Norwegian Sámi people's economy. The Commission also confirmed that fishery was a part of the Norwegian Sámi traditional culture and way of life.²⁹

What is of special relevance for this thesis is the issue of a Sámi fishery zone. This issue was discussed in the Sámi Fishery Commission's report. The commission argued that if this kind of zone was to be established, it was in order to, among other things, be a symbol of value, a supportive argument in the general debate concerning indigenous peoples' rights, and would also be of possible significance in order to secure the Sámi culture and development. The Sámi Fishery Commission did not, however, recommend that a Sámi Fishery Zone was to be established. After having discussed the issue in their report, the commission came to the conclusion that the establishment of such a zone would cause more damage than positive results. This conclusion was, among other things, based on the commission's fear that an establishment of a Sámi Fishery Zone, in some relations, could be seen as special treatment for some at the expense of others. The commission was afraid to suggest measures which contained ethnic segregation. It is worth mentioning here, that there were disagreements within the commission as to whether the suggestion of such a zone was to be recommended or not. I will look further into this issue later in this thesis.

²⁸ Smith, Carsten "Overlevering av Kystfiskeutvalgets utredning NOU 2008: 5" p.3 (my translation)

²⁹ The Sea Resource Law Commission; NOU 2005: 10, Law on Administration of Wild Living Marine Resources, The Law on Sea Resources. <http://www.regjeringen.no/nb/dep/fkd/dok/NOUer/2005/NOU-2005-10/5.html?id=390994> (accessed November 24. 2008). (my translation)

1.1.5 The Coast- and Fishery Commission

The fact that fishery, as a Sámi traditional way of life, was not taken into account in the Finnmark Act, means that the Sámi people's rights to traditional use of natural resources, in this case fishery, in relation to international law (ILO 169 and ICCPR art.27), has still not been quite fulfilled. The Norwegian Parliament therefore requested the government to review the rights of the Sámi people (and others) in Norway to fish in the sea outside Finnmark, and to submit a report about this matter to the Norwegian Parliament. By request from the government, the Ministry of Fisheries appointed a commission called the Coast- and Fishery Commission, which were to look into to this issue.

The final report from the Coast- and Fishery Commission was published on February 18. 2008. The commission has several suggested measures concerning the right to fishery in the sea outside Finnmark, which involves a recommended coast- and fishery zone in Finnmark, called the "Finnmark Zone". I will look further into the coast- and fishery commission's suggested measures later in this thesis, where the issue of a "Finnmark Zone" in particular will be given special attention.

1.1.6 Research topic

As mentioned earlier in this chapter, the focus of this thesis includes the different arguments concerning a fishery zone in Finnmark based on the reports by the Sámi Fishery Commission and the Coast- and Fishery Commission. The International Conventions, article 27 of the ICCPR and the ILO convention no.169 are of special relevance for the topic of this thesis, and will therefore be emphasized further. In addition to these international conventions, theory by Will Kymlicka and Chandran Kukathas are considered important for the theoretical foundation of this thesis, and will be used in the part of discussion as well.

This brings me to the evolved main research question of this thesis;

“First; Do the Sámi, as an indigenous people and as a minority, have rights to special measures, based on International Law, in relation to saltwater fishery rights in Finnmark, in order to secure and develop their culture?

Secondly; To what extent is ethnicity taken into account in the reports by the Sami Fishery Commission and the Coast- and Fishery Commission in relation to the discussion of a fishery zone in Finnmark?”

In the following, the methodology of this theses will be put forward.

1.2 Methodology:

1.2.1 Type of research:

This thesis is within the field of qualitative research, which involves collecting consistent knowledge about a certain phenomenon and interpret this information. When collecting data for a qualitative research, the results are not presented as a form of table says Ottar Hellevik, but as a quotation, and not as numbers, but as texts.³⁰

1.2.2 Methods of data collection:

This thesis is mainly based on the method of analyzing already existing data. In addition I attended public meetings held by the Coast- and Fishery Commission in Båtsfjord and Berlevåg in June 2007, where methods of observation and informal conversations were used.

1.2.3 Research Based on Documents

When doing research on existing data the scientist can, according to Hellevik, choose between two main sources of data. One can either base the research on data collected especially for this purpose. Data which would not have existed if this research had not taken place. This type of research is often done using observation, interviews and such. The other source of data

³⁰ Hellevik, Ottar (1999) *Research Methods in Sociology and Political Science* p.110 (my translation)

collection involves the type of data which would have existed whether or not this research had taken place.³¹

This thesis involves both types of data collection mentioned above. I will look into the type of data collection based on observation later in this part of the chapter, where my experience attending two of the local meetings held by the Coast- and Fishery Commission, will be put forward. Data collection based on documents has been the main source used in this thesis, and will therefore be emphasized in the following.

In other cases the scientist can use data which already exists in a more refined form. A special type of existing data is the kind already collected, refined and maybe analyzed by other researchers. Besides getting access to data which other scientists already have collected, it may also occur that a scientist use the results from analysis based on research done by other scientists, as a basis for their own analysis. This is, according to Hellevik, called secondary analysis of the original data. Secondary data is for example used when one wishes to put the results from different researches into coherence.³²

As I experienced throughout the summer and the beginning of the fall 2007, that doing research on indigenous peoples in a current political climate was far more challenging than I thought it would be. The topic of my thesis is a quite sensitive issue, and it therefore makes it difficult to collect information about it. I therefore had to use documents as the main sources of data collection in order to be able to do this research and write this thesis.

Taking the research topic of this thesis into perspective, one can see that there are two main documents which this thesis is based upon. These documents involves the report from the Sámi Fishery Commission finished in 1997 and the report from the Coast- and Fishery Commission published in February 2008. The reports are based on material which the commissions have collected, refined, and analyzed. These documents are quite comprehensive and provides an extensive insight into the issues put forward by the Ministry of Fisheries. The composition of the commissions ensures that the final documents are compromises between different interests in regards to the issue at stake.

³¹ Hellevik, Ottar (1999) *Research Methods in Sociology and Political Science* p.100(my translation)

³² Ibid p.101

Like most sources used in relation to the work on this thesis, the reports by the Sámi Fishery Commission and the Coast- and Fishery commission were written in Norwegian. Since this thesis is written in English it is therefore important to mention that I have had to translate the relevant Norwegian sources into English in order to be able to use them in this thesis. This has been quite challenging, especially when it comes to translation of different legal concepts. This problem also seemed to occur when translating concepts in relation to fishery.

1.2.4 Controversial Topic

Doing research on indigenous peoples, in my case the Sámi, appeared to be quite a challenge. The discussion concerning my topic is an on-going process, which makes it difficult to collect data about it. During my fieldwork period it seemed to me as if people wanted to wait until the report from the Coast- and Fishery Commission had been published, before commenting on my topic.³³

There are several reasons why the topic I have chosen to write about is quite controversial. One reason can be concerning natural resources; some people might get more, while others might get less. Another reason might be the case of giving special rights based on ethnicity, which is historically unusual since Norway has been seen as a culturally homogenous country.³⁴

I will now move on to my experience during the public meetings held by the Coast- and Fishery Commission in Båtsfjord and Berlevåg in Finnmark, which I attended in June 2007.

³³ During my fieldwork period I tried to get in touch with people relevant for this research from the Ministry of Fisheries, the Sami parliament and other authorities in relation to issues on fisheries. I was, however, soon aware of the fact that people quickly referred to the Coast- and Fishery Commission's report when asked about this topic, or were just difficult to get in touch with. It was particularly difficult to get a hold of promised material relevant for this research.

³⁴ Ingebritsen, Christine (2006) *Scandinavia In World Politics* (my translation)

1.2.5 Official Meetings by the Coast- and Fishery Commission in Båtsfjord and Berlevåg in June 2007

In June 2007 I went to Båtsfjord and Berlevåg in Finnmark to attend two of the local meetings held by the Coast- and Fishery Commission. A part of the commission's work involved public meetings in all the municipalities in Finnmark where the purpose was to gather information and opinions from local professional groups and environments connected with the fjord and coastal fishery in Finnmark.³⁵ The trip to Båtsfjord and Berlevåg was quite interesting. During these meetings I mainly observed using what James Spradley calls passive observation. "The ethnographer engaged in passive observation is present at the scene of action but does not participate or interact with other people to any great extent." I got to see how the local people in Finnmark react, feel and think about the issue concerning fishery rights.

In Båtsfjord and Berlevåg the population mostly consists of Norwegians, which became rather obvious in the discussions that appeared during the meetings. As far as I know, there were mostly fishermen at the age of 40-60 present at the meetings which had very strong opinions concerning rights to fishery in the coastal areas, more specifically Sami people's rights to fishery compared to theirs, which shows how controversial this topic actually is.

Although the meetings I attended consisted of mostly Norwegian locals, there were however, members from the Sámi parliament present to give the Sámi point of view as well. These meetings gave me the experience of learning about some of Finnmark's local people's opinions concerning saltwater fishery. It also gave me the possibility of meeting the commission myself, talk a little bit with some of the members, hear them present themselves and their work, and answer the questions which some of the locals had in relation to the issue. Even though I was only able to attend two of the official meetings held by the Coast- and Fishery Commission, I consider the experience as both interesting and important for my work.

³⁵ The Coast- and Fishery Commission; NOU 2008: 5; The Right to Fishery in the Sea Outside Finnmark, the Main Outlines From the Coast- and Fishery Commission's Report http://www.regjeringen.no/upload/FKD/Vedlegg/Diverse/2008/Kystfiskeutvalget%20for%20Finnmark/NOU2008_5Kortversjon.pdf (accessed 20.02.2008) (my translation)

1.3 Summary

In this chapter the topic has been explained. The issue concerning Sami fishery rights has turned out to be an important topic of discussion today. The topic of this thesis focus on the arguments made by the Sami Fishery Commission concerning the issue of a “Sami Fishery Zone” versus the arguments made by the Coast- and Fishery Commission concerning the issue of a “Finnmark Zone”, more specifically on how ethnicity is taken into account in the reports by the Sami Fishery Commission and the Coast- and Fishery Commission in relation to the discussion of a fishery zone in Finnmark".

A summary of some of the most important factors in history, and the legal basis and development concerning the Sámi and saltwater fishery has been brought to attention in this chapter, and used as background for the choice and relevance of the research questions of this thesis. Further, the methodology of this thesis has been explained. This thesis is mainly based on two documents, but the legal framework involving legal rights based on both national and international law is of importance as well and will be looked further into in chapter two. The data collection for this research involved the use of secondary sources. Two public meetings held by the Coast- and Fishery Commission in Båtsfjord and Berlevåg in June 2007 was also attended, where methods of observation and informal conversations were used. The challenge of doing research on indigenous peoples is an issue which also has been discussed in this chapter. This issue is of importance for this thesis because it is a way of explaining the problem of collecting data about a controversial topic.

Chapter two will include two parts; the legal framework of this thesis will be presented in the first part, and in part two theoretical aspects will be put forward, where Will Kymlicka will be the main theorist used in relation to indigenous and minority rights relevant to this thesis. Chapter three and four involves a presentation of the reports from the Sámi Fishery Commission and the Coast- and Fishery Commission, where the suggested measures concerning a “Sámi Fishery Zone” and a “Finnmark Zone” will be given special attention. The fifth chapter of this thesis involves an analysis where the arguments presented by the commissions in their reports concerning establishment of a fishery zone in Finnmark will be discussed. The issue of Sámi rights to special measures, based on international law, in order to secure and develop their culture, and the issue of to what extent ethnicity has been taken into

account in the commissions' reports will be given special attention. This thesis will finish with a chapter involving some concluding remarks.

Chapter 2

2.0 Introduction

During the 1800's international knowledge about indigenous rights had been developed, which, among other things, caused a demand for their traditional exploitation of land areas to be protected by the authorities. This protection could not be ignored by stating land areas to be *terra nullius* (herreløse). In the beginning of the 20th century, this knowledge had such an effect on different states' practice, creating the possibility to recognize it as an expression for international legal rights to usage.³⁶

The Lappekodusillen of 1751 was the first international legal instrument for the Sámi, and is therefore worth mentioning in this relation.³⁷ The Lappekodusillen was created as a result of the demands raised in relation to the division of borders in 1751 to clarify the legal situation for the Sami living in the area of Finnmark. During the 1700's the Sámi area was divided between the Nordic states and Russia. In 1751 Norway (then a part of Denmark) and Sweden (which Finland then was a part of) expanded their state borders to areas which had not fully been included by any of these countries territorial jurisdiction, and thereby established sovereignty over these areas, at the same time as the borders between Norway and Sweden was agreed upon. This especially concerned the area now characterized as Inner Finnmark, with adjacent areas.³⁸

Norway has ratified several international conventions, treaties and declarations which are of importance for minorities in general and for indigenous peoples legal situation in particular. It is, however, not possible to mention all international legal rights of importance in this context. The main attention is therefore brought to the international conventions most important in relation to the research questions of this thesis and will be presented further later in this chapter.

³⁶ The Sami Rights Commission II; NOU 2007: 13, The New Sami Right; chapter 5 p.2 (my translation)

³⁷ Skogvang, Susann Funderud 2002, *Samereitt – Om samenes rett til en fortid, nåtid og framtid* p.36 (my translation)

³⁸ NOU 1997: 5 Background Material for the Sami Rights Commission; Indigenous Rights to Land Based on International Law; chapter 5 (my translation)

This chapter consists of two parts. The first part includes the legal framework of this thesis. During the last decades the Sámi legal position has changed. In this context the Sámi rights to natural resources is in focus. The main issue of this thesis discusses what the arguments concerning a fishery zone in Finnmark are based upon in the different reports by the Sámi Fishery Commission and the Coast- and Fishery Commission. More specifically; Do the Sami, as an indigenous people and as a minority, have rights to special measures, based on international law, in relation to saltwater fishery rights in Finnmark, in order to secure and develop their culture, and to what extent has ethnicity been taken into account in the reports by the Sami Fishery Commission and the Coast- and Fishery Commission in relation to the issue of a fishery zone in Finnmark. As the issue of a fishery zone initially is based on indigenous rights, *rights* to saltwater fishery in Finnmark based on international conventions are of severe importance for this thesis, and will therefore be looked further into in the first part of this chapter.

In the discussion about Sámi rights to natural resources, there are different legal rights involved. In the following the international conventions of importance for the indigenous people (Sámi) in Norway will be explained. Thereafter the development of Indigenous (Sámi) rights to fishery in Norway will be presented. Continuing, the international conventions of protection for the Sámi rights to natural resources will be introduced, where the Coastal Sámi rights to fishery will be given special attention. The international conventions concerning Sámi rights includes the UN's Convention on Civil and Political Rights and the ILO Convention No.169 on Indigenous and Tribal Peoples. In addition to these two conventions, §110a of the Norwegian Constitution will be put forward as well.

The second part of this chapter involves theoretical aspects in relation to the research question of this thesis. The main theorist which will be used in this context is Will Kymlicka. His theory on minority rights and equality will be emphasized. Chandran Kukathas approach will be used in order to give a different aspect and create a contrast with Kymlicka's point of view.

2.1 The International Covenant on Civil and Political Rights, Article 27

The Sami have rights as an ethnic minority through Norway's ratification of the International Covenant on Civil and Political Rights of 16 December 1966. The ICCPR is a United Nations treaty, based on the Universal Declaration of Human Rights, which was established by the UN in December 1966 and entered into force in Norway on March 23, 1976.³⁹ Article 27 of the ICCPR is a precursor to the ILO No. 169, it provides protection against restrictions on the practice of culture.⁴⁰

The ICCPR article 27 has been incorporated into Norwegian domestic law through the adoption of the Norwegian Human Rights Act of May 21, 1999 no.30. The Covenant is very important for the legal status of the Sami. Article 27 of the ICCPR provides the Sami material protection (both economically and physically) to enjoy their culture.⁴¹

Article 27 of the ICCPR states that:

*“In those countries in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities, shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”*⁴²

According to Skogvang, this decision does not give special protection to indigenous peoples, but a general protection concerning all ethnic, religious and linguistic minorities.⁴³

The discussion concerning which rights the Coastal Sami have (in relation to saltwater fishery) under art. 27 of the ICCPR is based on Carsten Smith's evaluation, presented in the journal *Lov og rett* 1990 p.507. In his evaluation, published not long time after Norway had ratified the ILO Convention No. 169, Smith argued in favour of considering Sami fisheries as a traditional economical activity, which as such, is covered by the traditional cultural protection provisions of the ICCPR article 27. The arguments are based on the following

³⁹ The Ministry on Foreign Policy; The UN's Convention on Civil and Political Rights (ICCPR) <http://www.regjeringen.no/nb/dep/ud/dok/veiledninger/2004/iccpr.html?id=88149> (accessed November 24, 2008). (my translation)

⁴⁰ Einarsbøl, Elisabeth (2005): "Some Views on Coastal Saami Rights in Saltwater Areas", In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

⁴¹ Ibid p.32 (my translation)

⁴² The UN's Convention on Civil and Political Rights (ICCPR) in: Utenriksdepartementet: <http://www.regjeringen.no/nb/dep/ud/dok/veiledninger/2004/FNs-konvensjon-om-sivile-og-politiske-rettigheter-ICCPR.html?id=88149> (accessed April 12, 2007).

⁴³ Skogvang, Susann Funderud (2002): *Samerett, Om samenes rett til en fortid, nåtid og framtid* p.40 (my translation)

elements area; “Firstly the fact that Saami culture is closely linked to nature, and secondly that Saami culture is in a precarious situation.”⁴⁴

According to the Sámi Rights Commission, whether the coast- and fjord fishery has been, and still is, an essential element in the Sámi cultural practise, is as decisive as article 27 of the ICCPR is of importance for the coast- and fjord fishery in Coastal Sámi areas. Looking at the existing historical material, one can see that the coast- and fjord fishery have had this kind of status throughout history. The Sami have lived off fishery in combination with other industries, in the fjords and along the coast of Norway for generations. This has been the case up until our time. Undoubtedly, home based coast- and fjord fishery in Coastal Sami areas is still of great importance, and it should therefore be considered an essential element of the Sami culture.⁴⁵

One can not argue against the fact that fishery today does not have the same importance for the Coastal Sami population’s livelihood as it did before. Concerning the evaluation of whether the fishery is protected by article 27 of the ICCPR, can not only be based upon how profitable the fishery is. It is also necessary to look at the cultural aspects in relation to fishery, and see that those who participate in the fishery are actually making sure that the Sami culture is maintained, even though it is carried out in a different way than before and that other tools are being used. Historical usage shows that article 27 of the ICCPR not only protects indigenous peoples’ traditional livelihood, but also modern ways of practising traditional industry. Sami fishers’ use of modern tools will therefore not, in itself, disqualify them from being protected by article 27.⁴⁶

Article 27 of the ICCPR provides individual rights. Sami fishers, participating in trawl – fishery and other fishery with active tools, can therefore not take away the protection that those who are maintaining the traditional Coastal Sami home based fishery and who are carrying out fishery with smaller vessels and using passive tools, are required to have.⁴⁷

⁴⁴ Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. p.36 (my translation)

⁴⁵ The Sami Rights Commission II, NOU 2007: 13, The New Sami Right, The Sami Rights Commission’s Evaluation of International Law, Article 27 of the ICCPR; Is Coast- and Fjord Fishery in Sea – Sami Areas Protected by this Provision?, p.14-15 (my translation)

⁴⁶ Ibid p.15

⁴⁷ Ibid p.15

Article 27 of the ICCPR does not give protection to indigenous peoples and minorities against every interference with their cultural rights. It only gives protection when the interference is of such an extent to those exposed to it, that it can be seen as a negation of their right to practise their culture. The state is committed, through article 27 of the ICCPR, not to carry out measures which will cause a negation of indigenous peoples' right to practice their culture, and to make sure that private individuals does not carry out measures which will have such an effect. The Sami Rights Commission II therefore assumes that fishery regulations which result in substantial limitations involving a larger or smaller group of coast- and fjord fishers in Coastal Sami areas, or which involves that these groups are excluded from carrying out fishery, can be a violation of article 27 of the ICCPR.⁴⁸

Smith establishes that the ICCPR article 27 provides a claim for positive measures concerning the Sámi.⁴⁹ The Human Rights Committee states that the authorities have certain commitments to organize the conditions in the best way possible through positive supportive measures. This in order to make sure that individuals belonging to indigenous groups has an actual opportunity to exploit their cultural rights. The state can therefore, based on article 27 of the ICCPR and §110a of the Norwegian Constitution, be committed to introduce certain measures in order to maintain the fishery in Coastal Sámi areas. As an example here, fishery being protected against industrial fishing through different regulation measures, is suggested.⁵⁰ Based on article 27 of the ICCPR, does the Sami have the right to be included in positive measures in order to maintain their traditional fishery in Coastal Sami areas in Finnmark?

2.2 The ILO No. 169

The ILO Convention No.169 is the most important international legal instrument for the addressed issue, and gives the strongest international protection for the worlds indigenous

⁴⁸ The Sami Rights Commission II, NOU 2007:13, The New Sami Right, The Sami Rights Commission's Evaluation of International Law, Article 27 of the ICCPR; Is the Coast- and Fjord Fishery in Sea – Sami Areas Protected by this Provision?, p.17 (my translation)

⁴⁹ Einarsbøl, Elisabeth (2005): "Some Views on Coastal Saami Rights in Saltwater Areas", In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. p.36 (my translation)

⁵⁰ The Sami Rights Commission II, NOU 2007: 13, The New Sami Right, The Sami Rights Commission's Evaluation of International Law, Article 27 of the ICCPR; Is the Coast- and Fjord Fishery in Sea – Sami Areas Protected by this Provision?, p.17 (my translation)

peoples and their position.⁵¹ Norway was one of the first countries to ratify this convention (in June 1990). By September 2007 this convention had been ratified by 18 states. The ILO thereby has relatively limited support internationally. There are, however, still several countries considering ratification of this convention, like Sweden and Finland for instance.⁵²

The ILO believes that poverty anywhere is a danger to prosperity everywhere.⁵³ The ILO No.169 is a revision of the ILO convention No.107 Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries. This Convention was signed in 1957 and entered into force in 1959. It was closed to further ratifications when ILO No.169 entered into force in 1991. At the time of the ILO negotiations of a revised and new convention on indigenous peoples in 1988 and 1989, the Norwegian policy must be understood not only in the light of the Alta affair⁵⁴, but also in connection with the particular foreign policy in the 1980's, and with more universal processes of how the states redefine their preferences.⁵⁵

“Norway stood out as a pioneering nation in the development of human rights, and placed great emphasis on maintaining international obligations. We have seen that the Alta affair contributed to Foreign Office taking upon itself an active and enterprising role in the indigenous peoples’ issue, which had just been placed on the agenda of the UN system. Here, Norway was able to play its role of bridge – builder in relations between weak groups in developing countries and rich western states.”⁵⁶

In terms of obligations under international law, Norway has the duty to recognize Sami rights under the human rights convention ILO nr.169 on Indigenous and Tribal Peoples, ratified on June 20. 1990. The ILO 169 contains, among other things, provisions on indigenous peoples’ rights to natural resources.⁵⁷

⁵¹ Skogvang, Susann Funderud (2002): *Samerett, Om samenes rett til en fortid, nåtid og framtid* 37 (my translation)

⁵² The Sami Rights Commission II, NOU 2007:13, The New Sami Right; chapter 5 p.34 (my translation)

⁵³ “What is the ILO” in: A guide to the ILO Convention No. 169

⁵⁴ The damming of the Alta-Kautokeino river system which became a watershed in Sami political history. For more information see: <http://www.austlii.edu.au/au/journals/AILR/2002/1.html#Heading112> (accessed November 28. 2008)

⁵⁵ Minde, Henry 2003, “The Challenge of Indigenism” In *Indigenous Peoples, Resource Management and Global Rights* p.99

⁵⁶ Ibid p.99

⁵⁷ Einarbøl, Elisabeth (2005): “Some Views on Coastal Sami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

The International Labor Organization (ILO) aims to improve living and working conditions for people all over the world without discrimination related to race, gender or social origin. The ILO was created in 1919 as an international organization working in collaboration with the League of Nations to improve working conditions, achieve social justice, and promote higher standards of living. In 1946 the ILO became the first standard-setting specialized agency of the United Nations system. The primary tasks of the ILO involves;

*“the adoption of international labor standards, technical cooperation to assist developing countries, and standard-setting and technical cooperation through research, training, education, and publications.”*⁵⁸

The ILO No.169 consists of a large amount of articles. In relation to the research questions of this thesis there are some articles more important than others in this context. In the following, the articles from ILO 169 of most importance for this thesis will be put forward.

2.2.1 Article 14 and 15 of the ILO No. 169

Article 14 and 15 are the most relevant in this matter (and to some extent article 6 and 7 are of importance as well), I will therefore mainly focus on these articles.

Article 14 paragraph 1 of the ILO 169 states that:

*“The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the rights of the peoples concerned, to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.”*⁵⁹

Article 14 paragraph 1 distinguishes between lands indigenous peoples “traditionally occupy” and lands not exclusively occupied by them, but to which they traditionally have had access for their subsistence and traditional activities.⁶⁰ In the ILO Convention No.169 Manual it is

⁵⁸ A Century of Nobel Peace Prize Laureates, Indiana University Center for the Study of Global Change, USA <http://www.indiana.edu/~nobel/united.php?lid=34>

⁵⁹ ILO 169

⁶⁰ Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

stated that “lands which they traditionally occupied” means that these are lands where indigenous peoples have lived over time, and which they have used and managed according to their traditional practices.⁶¹

Article 15 goes further than to just talk about lands. Article 15 deals with natural resources pertaining to land which indigenous peoples have rights under Article 14. Article 15 establishes that these rights, including the right to participate in use, management and conservation of the resources in question, shall be especially safeguarded.⁶²

According to James S. Anaya, ILO Convention No.169 adds that indigenous peoples “shall not be removed from the lands which they occupy” unless under prescribed conditions and where necessary as an “exceptional measure”. When the grounds for relocation no longer exist, they “shall have the right to return to their traditional lands” and when return is not possible “these peoples shall be provided in all possible cases with lands of quality an legal status at least equal to that of the lands previously occupied by them.”⁶³

Elisabeth Einarsbøl says that it is important to distinguish between art. 14 on the one hand, and art. 15 on the other, regarding the understanding of rights of ownership and the use to sea areas, and the right of management. The concept “lands” does not have the same content in article 14 and 15. While article 14 concerns the rights of indigenous peoples to own and possess, and also to use the areas they traditionally have occupied and had access to, article 15 (and 16) diminishes the extent to which governments may regulate those same areas.⁶⁴

Concerning the question as to whether saltwater areas are covered by article 14 of the ILO No. 169, it is, according to Einarsbøl, important to distinguish between rights of ownership and rights of use. It is believed that it is difficult for indigenous people to have rights of ownership to saltwater areas under international law when the issue is not clearly regulated. Especially since rights in saltwater areas under domestic law are not held by the population as private ownership rights, but as public rights.⁶⁵

⁶¹ ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A MANUAL:31

⁶² Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

⁶³ Anaya James S. 2004. *Indigenous Peoples in International Law* p.143

⁶⁴ Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

⁶⁵ Ibid

Skogvang says saltwater areas are normally not regulated under what is called private ownership. Under domestic law, private ownership ends not further out than at two meters deep, to what is called “marebakke”. Outside these borderlines/shorelines, use of saltwater areas are based on public rights. According to Skogvang, the second population group therefore states that indigenous people, which includes the Sami, does not have private special rights, meaning not rights to ownership or use of saltwater areas, under the ILO No.169 article 14.⁶⁶ However, Einarsbøl says the existence of rights based on immemorial usage can not be excluded, and that the practice of exclusive fishing places shows the existence of the belief of rights of ownership and usage of sea areas.⁶⁷

According to Smith saltwater areas can not be considered covered in the ILO Convention No. 169.⁶⁸ However, taking the developments during the last few decades into account, it can be argued that this kind of interpretation of the ILO No. 169 is not as certain as it used to be.⁶⁹ Looking at other cultures around the world one can see that there are different opinions about rights in saltwater areas. On the west coast of USA for example, some indigenous people have achieved special rights in saltwater areas. This concerns quota-rights which they have received based on ethnicity for indigenous peoples in the states of Washington and Alaska.⁷⁰

The ILO Convention No. 169 specifies that indigenous and tribal peoples have rights to the natural resources of their territories, which is the most radical aspect of this convention.⁷¹ They have the right to participate in the use, management, protection and conservation of these resources, and they have the right to be consulted before natural resources on their lands are explored or exploited. Indigenous and tribal peoples also have the right to studies on the effects of such exploration and exploitation, and the right to benefit in the profits made from

⁶⁶ Skogvang, Susann Funderud 2002, *Samerett – Om samenes rett til en fortid, nåtid og framtid* p.83 (my translation)

⁶⁷ Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

⁶⁸ Smith, Carsten, Lov og Rett 1990 p 507 *Om samenes rett til naturressurser – særlig ved fiskerireguleringer*. (my translation)

⁶⁹ Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. (my translation)

⁷⁰ Skogvang, Susann Funderud 2002, *Samerett – Om samenes rett til en fortid, nåtid og framtid* p.83-84 (my translation)

⁷¹ Weigård, Jarle (2008) “Is There a Special Justification for Indigenous Rights?” In: *Indigenous Peoples, Self – Determination, Knowledge, Indigeneity* p.178

any exploitation and use of natural resources. They also have the right to be compensated by the government for any damages caused by such activities.⁷²

Skogvang says it is worth mentioning that the same considerations which speaks in favour of rivers and lakes being included under the conception “lands” in article 14 of ILO No. 169, also speaks in favour of saltwater areas being included as well. In order for indigenous people to be able to continue and develop their livelihood and culture, it is important that their use of saltwater areas is legally acknowledged and protected. Even though the Sami has not been the only ones living off fjord fisheries as a part of their livelihood, it is with no doubt that this type of fishing is a Sami tradition and way of life. Therefore it is not clear that indigenous peoples can not have rights in saltwater areas.⁷³

2.2.2 Article 6 and 7 of ILO 169

In addition to article 14 and 15 it is important to add two articles which concerns the right to consultation and participation, namely article 6 and 7 of the ILO Convention No.169. One of the major problems facing indigenous and tribal peoples, is that they often may have little or no say in how, when or why measures which have or will have a direct effect on their lives are decided or put into practice.⁷⁴ The Sami Parliament does have a consultation agreement with the Norwegian authorities which was established in 2005. This agreement concerns all types of legal issues and administrative measures that can have an effect on Sami interests.⁷⁵ The Sami Rights Commission II has taken the consultation process further, and promotes in NOU 2007: 13 more detailed rules on consultation and issues of discussion concerning measures considered carried out which would have an effect on the natural foundation in traditional Sámi areas in Norway. The promotion leads up to Sámi participation in decision processes on issues which could have an effect on Sámi rights and interests in accordance with article 6, 7 and 15 of the ILO Convention No.169. An overarching goal in this case, is to

⁷² ILO Convention on Indigenous and Tribal Peoples, 1989 (No.169): A MANUAL:37

⁷³ Skogvang, Susann Funderud 2002, *Samerett – Om samenes rett til en fortid, nåtid og framtid* p.84 (my translation)

⁷⁴ ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A MANUAL:21

⁷⁵ Olli, Egil “Independent Sami Policy” The Sami Parliament
<http://www.sametinget.no/Artikkel.aspx?AId=2198&back=1&Mid1=1&> (accessed on November 2. 2008)

avoid measures which can disagree with the demands and protection of International law concerning Sámi material culture.⁷⁶

2.3 The Norwegian Constitution § 110a

In relation to the discussion about saltwater fishery rights in Finnmark, article 110a of the Norwegian Constitution is worth mentioning in this context as well. It was added to the Norwegian Constitution in 1988 and deals with the responsibilities concerning the Sami people. Article 110a states that “It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop their language, culture and way of life.”⁷⁷ This provision directly concerns the Sami as a people.

Article 110a, as a paragraph in the Norwegian Constitution, confirms a legal, political and moral binding, made by the Norwegian state to the Sami people. The decision is built on a suggestion made by the Sami Rights Commission (Samerettsutvalget) in NOU 1984:18, based on their interpretation of article 27 of the ICCPR. One of the main reasons behind this decision, was to make right for all the wrong-doing towards the Sami people in the past. With this paragraph in the Norwegian Constitution, all former assimilation politics were to be left behind for good. At the same time, this paragraph confirms that the authorities have to make an effort in doing what is necessary for the future development of the Sami peoples’ language, culture and social life.⁷⁸

According to Einarsbøl, the provision of the Constitution in this context, will be of significance as a supportive argument concerning the interpretation of legal rules that are of importance for the Coastal Sami rights to marine resources.⁷⁹

⁷⁶ The Sami Rights Commission II; NOU 2007: 13, The New Sami Right (my translation)

⁷⁷ The Norwegian Constitution (my translation)

⁷⁸ Skogvang, Susann Funderud 2002, *Samerett – Om samenes rett til en fortid, nåtid og framtid* p.93 (my translation)

⁷⁹ Einarsbøl, Elisabeth (2005): “Some Views on Coastal Saami Rights in Saltwater Areas”, In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. p.24 (my translation)

2.4 Theoretical aspects of Indigenous Peoples Rights

One of those who have contributed to the literature on the relationship between the cultural minorities and majorities, is Will Kymlicka. I have therefore chosen to use him as the main theorist in this thesis. Will Kymlicka is a theorist firmly placed in the tradition of egalitarian liberalism. In relation to minority rights, his basic arguments is “that membership in a cultural community is a type of good that everyone needs and that everyone has a right to demand.”⁸⁰

In relation to Kymlicka’s emphasis on equality and the needs aspects for justice, it would be difficult to justify why the Sámi should have special rights compared to other minority groups in Norway. It does, however, seem that a large part of the Norwegian population accepts that the Sámi should have a special status.⁸¹ This might be due to the Norwegianization policy, and explained that way. Nevertheless, a large part of the population find it reasonable that the Sámi have their own parliament, without the Kven, the Gypsies/Romani people or the Pakistani immigrants having claims to the same sort of treatment. Is there a reason for such sentiments?⁸² To what extent is Will Kymlicka’s theory suited as a basis for the special treatment of the Sámi compared to other minorities in this country?

Chandran Kukathas criticises Kymlicka who argues for a liberalism which gives special weight to claims for cultural membership. Kukathas states that even though we are right to be concerned about the cultural health of minority communities, this does not mean we should introduce collective rights to amend the situation. Kukathas idea of liberalism, which differ from Kymlicka’s, is that it is the theory best suited to protect minority rights because it puts the rights of the individual at the forefront. This way it limits the power that any majority might exercise over any minority. Kukathas believes that liberalism in itself is good enough to look after the rights of minorities. The individual is thereby the centre of attention and that should be enough. This way the majority can not have power over the minority, it is rather individual against individual.⁸³

⁸⁰ Weigård, Jarle (2008) “Is There a Special Justification for Indigenous Rights?” In: *Indigenous Peoples, Self-Determination, Knowledge, Indigeneity* p.180

⁸¹ Ibid p.185-186

⁸² Ibid p.185-186

⁸³ Kukathas, Chandran: “Are There Any Cultural Rights?” In *Political Theory*20 (No.1/1992)

Kukathas objects to the matter of giving special rights to cultural minorities above other disadvantaged groups. Kukathas says about Kymlicka; “His conclusion is that “only if we ground collective rights in unequal circumstances can we distinguish the legitimacy of Aboriginal rights from the illegitimacy of attempts of assorted racial, religious, class, or gender groups to gain special status for their preferred goals and practices.””⁸⁴ According to Kukathas, he has tried to play down concern for group rights by describing cultural communities as having their legitimate basis in individual freedom of association, while Kymlicka wishes to emphasize group interests and sees them as having their basis in liberal concerns about choice and equality.⁸⁵

Kymlicka argues that some minority cultures may need protection from the economic or political decisions of the majority culture if they are to provide this context of individual choice, which is the range of options passed down to us by our language and culture, for their members. While special rights of different kinds might seem discriminatory at first glance, since they allocate individual rights and political powers differentially on the basis of ethnicity, Kymlicka says they are in fact consistent with liberal principles of equality.⁸⁶ In this discussion, the question of whether the Sami should receive special treatment in relation to saltwater fishery rights in Finnmark based on their ethnicity, is a very good example to use. If one were to look at Kukathas theory, or critic, the Sami and the Norwegians should be treated equally and individually. Whereas if one were to look at the theory by Kymlicka, the Sami should be treated as a minority group, and therefore may need special rights in order to help rectify the specific disadvantages they face as a minority group. Which theory is better suited to explain the establishment of a Fishery zone outside Finnmark, Kukhatas or Kymlicka?

In a democratic society, Kymlicka says the majority nations will always have its language and societal culture supported, and will have the legislative power to protect its interests in culture – affecting decisions. Kymlicka then asks the question as to whether fairness requires that the same benefits and opportunities should be given to national minorities. His answer to this question is yes.⁸⁷

⁸⁴ Kukathas, Chandran: “Are There Any Cultural Rights?” In *Political Theory* 20 (No.1/1992)p.119

⁸⁵ Ibid p.119

⁸⁶ Kymlicka, Will: “The Rights of Minority Cultures, Reply to Kukathas” In *Political Theory* 20 (No.1/1992), p.140

⁸⁷ Kymlicka, Will (1995) *Multicultural Citizenship* p.113

“Hence group – differentiated self – government rights compensate for unequal circumstances which put the members of minority cultures at a systematic disadvantage in the cultural market – place, regardless of their personal choices in life. This one of many areas in which true equality requires not identical treatment, but rather differential treatment in order to accommodate differential needs.”⁸⁸

According to Weigård, the limitations and weaknesses of ILO 169 are two – sided from an indigenous point of view. As mentioned earlier, only 18 countries have ratified the convention so far, which thereby restricts its universal significance. It does not, however, raise the issue of political autonomy for indigenous populations and the acknowledgement of their status as colonized peoples. Even so, this convention has played a major role in the Sámi demands for indigenous rights, and for the Norwegian authorities to accept (in principle) these demands.⁸⁹

In relation to why indigenous peoples should be singled out as a group entitled to stronger special rights than national minorities, respect for ownership also lies at the heart of this argument. They are those who first came to an area and took the land and its resources into possession or use for their own purposes. It is reasonable to assume that through a long and continuous use of land, they have developed (collective) ownership of it. However, this has not always been legally acknowledged, as their form of possession has not necessarily been the same as the Western idea of the case, and thereby has not easily fit into the Western legal concept of private property rights to land. These are circumstances which Weigård says often distinguish the situation of indigenous peoples from that of other cultural and ethnic minorities.⁹⁰

In the same way someone can appropriate a piece of land by taking care of it and cultivating it, one can, by harvesting from the gifts of nature or processing the things one finds there, take them into their possession and make use of them for their own welfare. Locke says such actions give them exclusive property rights that nobody else can question. By mixing one’s labour with the resources of nature, one becomes the deserved owners of these things.⁹¹

Norway has ratified the Council of Europe’s Framework Convention for the Protection of National Minorities of February 1. 1995. The Sámi Council has, however, expressed that the

⁸⁸ Kymlicka, Will (1995) *Multicultural Citizenship* p.113

⁸⁹ Weigård, Jarle (2008) “Is There a Special Justification for Indigenous Rights?” In: *Indigenous Peoples, Self – Determination, Knowledge, Indigeneity* p.178

⁹⁰ *Ibid* p.187

⁹¹ *Ibid* p.186

Sámi does not want to be included in the Norwegian minority politics and thereby this convention, because the Sámi as an indigenous people have better rights through the ILO Convention No.169.⁹² Even though the Sámi Council has expressed that the Sámi does not want to be included in the Norwegian minority politics, they still are a national minority in Norway. Kymlicka's most important argument for minority rights is based on equality considerations;

“If we really want to treat people as equals we must take into account that they are different and want to remain different, and then try to make it possible for cultural groups to keep their uniqueness. Because circumstances give people unequal opportunities to hold on to the cultural characteristics that make them different, real treatment as equals implies that the state seemingly must treat its citizens unequally and give some groups rights that do not apply to others.”⁹³

The topic of this thesis involves what the different arguments concerning a fishery zone in Finnmark are based upon in the different reports by the Sámi Fishery Commission and the Coast- and Fishery Commission, and what effect the international conventions article 27 of the ICCPR and the ILO 169 have on this issue. The issue of the international conventions concerns only the Sámi as an indigenous people and as a minority. It is, however, not only the Sámi who are affected by the regulations on the coast- and fjord fishery in the sea outside Finnmark. There are other local people living in this area, who also have been living off fisheries as a livelihood alone or combined with other industry for many years, but who are not protected by those international conventions.

This is where Kymlicka's argument for minority rights based on equality considerations apply, as it has been stated from both Sámi and others point of view that the local people in Finnmark, including the Sámi, should be treated equally.

“Group – differentiated rights -such as territorial autonomy, veto powers, guaranteed representation in central institutions, land claims, and language rights- can help rectify this disadvantage, by alleviating the vulnerability of minority cultures to majority decisions. These external protections ensure that members of the minority have the same opportunity to live and work in their own culture as members of the majority.”⁹⁴

⁹² Skogvang, Susann Funderud 2002, *Samerett – Om samenes rett til en fortid, nåtid og framtid* p.38 (my translation)

⁹³ Weigård, Jarle (2008) “Is There a Special Justification for Indigenous Rights?” In: *Indigenous Peoples, Self-Determination, Knowledge, Indigeneity* p.181

⁹⁴ Kymlicka, Will *Multicultural Citizenship* 1995 p.109

Based on their indignity, their historical, traditional and cultural background, it may be concluded that the Sami have rights based on international law, to be treated unequally with other inhabitants in Finnmark in relation to natural resources like fishery. This might, however, not be the wanted case for any parts as it would create inequality where equality has been fought for in many years, partly as a result of to the Norwegianization policy. In this case, based on Kymlicka's argument, should the Norwegian authorities give special rights to the indigenous people (the Sámi) in relation to fishery rights in Finnmark?

The special situation of indigenous peoples appears to be that their rights can be justified from both a position of weakness and a position of strength. Their culture is vulnerable and will therefore often have a stronger need for extra protection than the cultures of most other groups. However, their historical connection to their territories gives them a strong basis for claims of control over these territories, which is rooted in legal principles already accepted as valid for other peoples. The combination of these two argumentative strategies are, according to Weigård, the best justification for the special status of indigenous peoples in international law.⁹⁵

2.5 Summary

In the first part of this chapter the legal framework of this thesis has been presented.

There are different legal rights involved in the discussion about Sami rights to natural resources. In this chapter the international conventions of protection for Sami rights to natural resources have been presented. In this context, the Coastal Sami rights to fishery have been given special attention. The international conventions concerning Sami rights involves the UN's (International) Convention on Civil and Political rights and the ILO Convention No.169 on indigenous and tribal peoples. In addition to these two conventions, §110a of the Norwegian Constitution has been put forward in this chapter as well.

⁹⁵ Weigård, Jarle (2008) "Is There a Special Justification for Indigenous Rights?" In: *Indigenous Peoples, Self-Determination, Knowledge, Indigeneity* p.190

Historical usage of the sea through fishery is not only a part of the common history for all of Finnmark's coastal population, it is also a decisive element in order to explain the Coastal Sami's right to fishery based on International Law. International Law provides protection of the cultural foundation caused by the Coastal Sami fishery in fjord- and coastal waters through centuries.⁹⁶

Based on the Norwegian Constitution, International Law and the Human Rights Law of 1999, the Sami have the right to be able to secure and develop their culture. The decisions in International Law most important in this matter, concerns article 27 of the ICCPR and article 15 of the ILO Convention No.169. §110a of the Norwegian Constitution states the same principles established in International Law.⁹⁷ The Sami have the right to participate in the decisions concerning exploitation of natural resources, involving fishery. This right is based on article 27 of the ICCPR and the ILO Convention No.169 article 6, 7 and 15.⁹⁸

The Sami have rights to special measures in relation to the rest of the population if such measures are necessary in order to secure and develop their culture. There are no legal rights in either national or international law which concerns the Sami rights to fishery in particular. Their legal position in this case therefore have to be carried out through their common right to natural resources and protection of industry. Fishery in fjord- and coastal areas have been one of the primary industries for the Coastal Sami society. This kind of fishery is a traditional Sami exploitation of resources which still is important for their cultural foundation. The cultural concept in article 27 of the ICCPR is not static but dynamic. Based on the practice by the UN's Human Rights Committee, the Sami fjord- and coastal fishery should be protected even with the use of modern technology.⁹⁹

The international conventions; article 27 of the ICCPR and ILO Convention No.169 will be brought to attention again in chapter five, where the arguments for and/or against a fishery zone in Finnmark will be analyzed in relation to the topic of this thesis.

⁹⁶ The Coast- and Fishery Commission; NOU 2008: 5; The Right to Fishery in the Sea Outside Finnmark p.280 (my translation)

⁹⁷ Ibid p.281

⁹⁸ Ibid p.282

⁹⁹ Ibid p.281

In the second part of this chapter, theoretical aspects of indigenous rights in relation to the research questions of this theses have been presented. The main theorist used in this context has been Will Kymlicka. His theory on minority rights and equality has been emphasized. Chandran Kukathas' approach has been used in order to give a different aspect and create a contrast with Kymlicka's point of view. This has been done in order to propose theoretical questions of relevance for this thesis. The questions will be brought back to attention in chapter five of this thesis, where the discussion and analysis will take place. The theories by Kymlicka and Kukathas on group rights versus individual rights will then be compared and discussed in relation to the topic of this thesis.

In the following chapters the reports by the Sami Fishery Commission and the Coast- and Fishery Commission will be presented. Thereafter the chapter of discussion and analysis will be brought to attention, and finally, the concluding remarks of this thesis will be presented.

Chapter 3

3.0 Presentation of the Sami Fishery Commission's Report

This chapter contains a presentation of the Sámi Fishery Commission's report, which is one of the two documents this thesis is based upon. The background, composition and mandate will first be presented. Thereafter the main issues which the Sámi Fishery Commission concentrate on in their report will be put forward. Following, the issue of a Sami fishery zone will be given special attention.

3.1 The Sami Fishery Commission's Report

Based on Carsten Smith's evaluation from 1990, mentioned earlier in this thesis, the Ministry of Fisheries decided to establish a commission in 1993, called the Sámi Fishery Commission, in order to go through Sami interests concerning fishery. This commission was appointed on demand from The Sámi Parliament. In the statement regarding St. meld. Nr. 58 (1991-92), the Sámi Parliament validated for themselves and the Ministry of Fisheries to take initiative to appoint a fast working commission in order to establish the authorities' legal duty towards the Sámi.¹⁰⁰

According to Smith, the authorities were obliged through international law (based on art. 27 of the ICCPR), to carry out special measures concerning the Coastal Sámi fishery. That was if those kind of measures would be necessary in order to secure and develop the Coastal Sámi culture. Smith's evaluation did not, however, give any clear suggestions to what measures the authorities would be obliged to carry out.¹⁰¹ Besides stating that there had to be a threat against coast- and fjord fishery in Coastal Sami areas, Smith did not go into detail as to exactly when and how the authorities' obligations were to apply. This means that those who

¹⁰⁰ The Coast- and Fishery Commission, NOU 2008: 5, The Right to Fishery in the Sea Outside Finnmark, the Sami Fishery Commission, Background for Appointing the Commission and Its' Mandate, p.42 (my translation)

¹⁰¹ The Sami Right Commission II, NOU 2007: 13, The New Sami Right, The Sami Fishery Commission, Background and Mandate of the Investigation, p.7 (my translation)

carry out this type of fishery are in danger of being prevented of their right to develop their culture based on article 27 of the ICCPR.¹⁰²

The Ministry of Fisheries carried out a few measures in retrospect of Smith's evaluation. This was done in order to strengthen the situation concerning the coast- and fjord fishery in Coastal Sámi areas. However, the few measures carried out did not make much difference, it did not improve the situation for the Coastal Sámi fishers. Demands were therefore made, by the Sámi people, that a commission should be appointed in order to go through Sámi interests concerning fishery in relation to national and international legal commitments towards the Sami as an indigenous people.¹⁰³ At the same time the commission was to give an explanation of the economic and social effects on Sami coast areas as a result of the later years regulations.

The Commission was given the following mandate by the Ministry of Fisheries;

1. Report the central Sami interests concerning fisheries.
2. Give a short outline on how these interests have been managed so far (in time).
3. Describe the Sami demands concerning future fishery policy.
4. Give an outline of the legal rights, both in national and international law, of importance for the Sami legal position in this matter.
5. Explain and suggest how the authorities, at its best, can look out for the interests of the Sami people in fjords and coastal areas in a fishery regulated coherence. Hereby discuss different perspectives on how to create a possible Sami Fishery Zone.
6. Suggest what is relevant on how to secure Sami sea fishery.¹⁰⁴

The Commission was, in the beginning, chaired by then political advisor and later Minister of Fisheries Otto Gregussen, and later by the County Chief of Fisheries in Troms, Gunnar Trulssen. The commission consisted of members from the Ministry of Municipalities (1), the

¹⁰² The Coast- and Fishery Commission, NOU 2008: 5, The Right to Fishery in the Sea Outside Finnmark, the Sami Fishery Commission, Background for Appointing the Commission and Its given Mandate, p.42 (my translation)

¹⁰³ The Sami Rights Commission II, NOU 2007: 13, The New Sami Right; The Sami Fishery Commission, Background and Mandate for the Investigation, p.7 (my translation)

¹⁰⁴ The Sami Fishery Commission's Report 1997 p.5-6 (my translation)

Ministry of Fisheries (2), the Sámi Parliament (4), the three northern county municipalities (1) and one member from the Norwegian Fishermen's Union.¹⁰⁵

The topics which the Sámi Fishery Commission put forward in their report (finished April 10. 1997) mainly concerned documenting Coastal Sámi activity based on history. The commission also concentrated on clarifying legal matters in relation to ethnic minorities both on a national and international level. They explained actual national regulations and the effect that these have had on the cultural and material foundation of the Coastal Sami minority. All this lead up to what the commission called a strategy, where they suggested concrete measures on how to solve the topics they discussed.¹⁰⁶ In short; the commission looked into the legal matters concerning fishery in Sámi coastal- and fjord areas, and proposed suggestions in order to protect and safeguard the right to carry out fishing activities in those areas.¹⁰⁷

Only a few of the suggested measures have been followed up, and the commission's report has not been published either, not as a NOU or in any other way.¹⁰⁸ The report shows a lot of disagreements between the members of the commission. Therefore their suggestions on measures are not as clear as they ideally should have been. On numerous questions the commission are divided on key issues.

3.2 The Sámi Fishery Commission's most Important Measures

In the following, a short summary of the most important measures suggested by the Sámi Fishery Commission will be presented;

¹⁰⁵ The Coast- and Fishery Commission; NOU 2008: 5, the Right to Fishery in the Sea Outside Finnmark, Background for Appointing the Commission and Its Mandate, p.43 (my translation)

¹⁰⁶ The Sami Fishery Commission's Report 1997:8 (my translation)

¹⁰⁷ The Sami Rights Commission II, NOU 2007: 17, The New Sami Right; The Sami Right Commission, Background and Mandate for the Investigation, p.7 (my translation)

¹⁰⁸ The Coast- and Fishery Commission; NOU 2008: 5, the Right to Fishery in the Sea Outside Finnmark, the Sami Fishery Commission, the Background for the Appointed Commission and It's given Mandate, p.43 (my translation)

3.2.1 Suggestions on Regulation Measures

Concerning regulation – politics, the Sámi Fishery Commission had the following suggestions on measures; Unrestricted fishery for vessels less than 7 meters at the longest length (there were however disagreements on this issue in the Commission; two of the members voted for 15 meters as the longest). Unrestricted fishery for vessels less than 7 meters in length were to apply to fishers from Finnmark, Northern Troms (including the following municipalities; Kvænangen, Kåfjord, Storfjord, Nordreisa, Lyngen, Skjervøy and Karlsøy), and other areas in Nordland and Troms which were or were to be, involved in the Sámi Development Fund's measure area. This geographical area is the same as the suggested measure-area.

The Sámi Fishery Commission suggested that the unrestricted fishery for vessels less than 7 meters could be put under restrictions based on consideration of the fish population (one of the members suggested this type of restriction for vessels between 7 and 15 meters).¹⁰⁹ However, in case of such restrictions, combined use of resources were to be considered strongly. The Commission suggested further that there should not be any demand for acquisition - concession concerning obtaining vessels less than 7 meters inside the suggested measure area, and that this restriction were to involve both fulltime and part-time fishers.¹¹⁰

The commission suggested that the quota-division should be turned to the advantage for the smaller vessels, so that these could be allotted a larger amount of the total quota than what they were allowed at that time. It was also suggested that it should be allowed to transfer vessel-quota during sale of vessels inside the areas of Nordland, Troms and Finnmark, and that the same principal regulations should count for other species, as it did for cod, except for species that were protected by special protected restrictions.¹¹¹

The Sámi Fishery Commission recommended that Sámi interests, primarily located in Northern Nordland, Troms and Finnmark, should be more involved in administrative decisions of local, regional and national meaning. While referring to the Sami Parliament in relation to national fishery regulations on the same level as the organizations in the fishery

¹⁰⁹ The Sami Fishery Commission's Report 1997:155 (my translation)

¹¹⁰ The Coast- and Fishery Commission; NOU 2008: 5, The Right to Fishery in the Sea Outside Finnmark, the Sami Fishery Commission; Suggestions on Regulation Measures, p.44 (my translation).

¹¹¹ Ibid p.44

industry, the commission pointed out that the Sámi participation on regional and local level was not well developed.¹¹²

Irrespective of how the fishery administration would be organized in the future and if the institutions would have decision-making or advisory authority, Sámi representation and contribution had to be secured and maintained. The Sámi Fishery Commission promoted further, in their report, that in relation to the planning of the coast- zone, it would be important to maintain Sámi interests, and that the Sámi parliament and Sámi organizations had to be consulted and taken into account during the planning processes.¹¹³

While evaluating how the advisory committee concerning local regulations worked, the Sámi Fishery Commission suggested that the composition of the committees had to be changed in order to increase representation of the local Sámi interests. It was also suggested that decisions, to a larger extent, had to be made on a local level instead of going from participant to local regulation – committee, and then to the fishery administration agency before a final decision were to be made by the Ministry of Fisheries. The commission also suggested that a representative from the Sámi parliament should be appointed to the Fishery Industry's Common Competence Board.¹¹⁴

3.2.2 Suggestions on Other Measures

In addition to the measures already mentioned, the Sámi Fishery Commission suggested several other measures as well. Among other things, they suggested to strengthen recruitment to fishery.¹¹⁵

Having presented some of the most important measures suggested by the commission, I will now move on to the suggested measures which are of significant relevance for my research topic. In the following, a presentation of the suggestions of a Sámi measure area, made by the

¹¹² The Sami Rights Commission II; NOU 2007: 13, The New Sami Right, The Sami Fishery Commission, Administration Measures, p.8

¹¹³ Ibid p.9

¹¹⁴ Ibid p.9

¹¹⁵ Ibid p.9

Sámi Fishery Commission, and their arguments for and against a Sámi Fishery Zone will be given.

3.2.3 Suggestions on a Sámi Measure Area and a Sámi Fishery Zone

The Sámi Fishery Commission suggested a special Sámi Measure Area. This Measure Area included Finnmark county, Northern Troms (Kvænangen, Kåfjord, Storfjord, Nordreisa, Lyngen, Skjervøy and Karlsøy municipality), and also other municipalities in Nordland and Troms which would be included in the Sámi Development Fund on a smaller or larger level. The measures suggested in this area in order to improve the conditions for the Coastal Sámi fishery, were not to be defined based on ethnicity, but defined by area and thereby include all fishers settled in this area, as long as they fulfilled the more concrete and vessel – based conditions which were included in the suggestions.¹¹⁶

In relation to the mandate the commission was supposed to discuss the establishment of a Sámi fishery zone in particular. The commission had difficulties concerning their work towards taking a stand on this issue. They found it problematic to get a clear understanding of the term “fishery zone”. There have, however, been statements made, which have given them the opportunity to get an insight on the issue. The commission’s discussion is based on these statements.¹¹⁷ Among others, the following statement by the Sámi parliament is of importance. In their statement, in 33/92 “Uttalelse til Strukturmeldingen”, the Sámi parliament expressed a wish for a Sámi fishery zone in northern Nordland, Troms and Finnmark.¹¹⁸ By establishing this kind of zone, the specific content of this arrangement should, according to the Sámi parliament involve the following;

There should be worked out an arrangement where the fishery should be allowed only with conventional tools. All types of vessel tools, not and snurrevad¹¹⁹ should be prohibited. No matter the size of the fishers’ boats, each fisher should have a secured personal quota. This quota should be large enough to be a basis for livelihood. This should be combined with a vessel quota arrangement. Those who live off fishery as

¹¹⁶ The Sami Rights Commission II, NOU 2007: 13, The New Sami Right, The Sami Fishery Commission, Sami Measure Area, the Sami Fishery Zone, p.7 (my translation)

¹¹⁷ The Sami Fishery Commission’s Report 1997:164 (my translation)

¹¹⁸ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark, chapter 4, p.43 (my translation)

¹¹⁹ Active fishing tools used for fishery in shallow waters

*industry or combined with other industry should also be secured a quota basis. This quota basis should provide them with a proper income from fishery.*¹²⁰

Among the different parties represented in the Sámi parliament, there were some which had developed a term of a Sámi fishery zone. The definition was not consistent and made it difficult to predict the exact future content of the term. Therefore, the commission could not take a stand on this issue when it was based on individual opinions. By compressing the Sámi parliaments statement, the Sámi Fishery Commission says the zone appears to be a combined arrangement for protection and quotas for northern Nordland, Troms and Finnmark.¹²¹

According to the Sámi Fishery Commission there are both arguments speaking for and against the establishment of a Sámi fishery zone. In the following, these arguments will be presented;

3.2.4 Arguments for Establishment of a Sámi Fishery Zone

If a Sámi Fishery Zone was to be established, with a defined content, both concerning the right to fish and when it comes to administration capability; this would in itself, according to the Sámi Fishery Commission, lead to a stronger binding towards these measures than if it concerned a series of single measures. Single measures would be easier to change later, one by one. In the general debate concerning indigenous peoples' rights, the symbolic value of the establishment of such a zone would be possible to use internationally as well. It would be of support towards other indigenous peoples and their rights if one were to be able to refer to Norway as a country which has established a Sámi (Indigenous) fishery zone of its own.¹²²

A Sámi fishery zone would also be of possible significance in relation to maintaining the Sámi culture. The Sami parliament said it is of significant meaning to maintain the settlement in the traditional Sámi areas as they are the cultural reference – areas for the Sámi population. According to the Sámi Fishery Commission, the establishment of a Sámi fishery zone would contain a strong indication of this kind of reference area, and would be of prominent

¹²⁰ The Sami Fishery Commission's Report, 1997 p.164 (my translation)

¹²¹ Ibid p.164

¹²² Ibid p.165

acknowledgement of indigenous peoples' rights, with the positive consequences this might have in itself.¹²³

3.2.5 Arguments against Establishment of a Sámi Fishery Zone

The Sámi Fishery Commission did not want to suggest measures based on ethnicity. Their suggestions would be geographically limited. The establishment of a Sámi Fishery Zone would thereby not be in accordance with the actual content of the zone.¹²⁴

Under some circumstances the establishment of a Sámi Fishery Zone would seem unfortunate because it might be seen as special treatment for some at the expense of others. This kind of understanding could happen if one does not put an effort into recognizing the content and background of such a zone. The establishment of a Sámi Fishery Zone would therefore be unfortunate concerning the following work to secure indigenous peoples' rights and the Sámi culture.¹²⁵

The establishment of a Sámi Fishery Zone would, in itself, not necessarily secure that the resources would be accessible for the Sámi population. Different species often move in and out of areas, and fishery outside the area would probably affect the access to harvest inside the area. Environmental influence would have an affect on the possibility to fish in the zone, as well.¹²⁶

3.2.6 Evaluation of a Sámi Fishery Zone in sum

The members of the Sámi Fishery Commission did not agree on the issue of a Sámi fishery zone. The majority did not recommend establishment of the zone. The commission stated that there was a lack of specific definition in the suggestions made by the Sámi parliament concerning which sea areas that were to be included in the zone. If the use of vessel-tools, not and snurrevad would be prohibited inside the shorelines, the demands which the Sámi

¹²³ The Sami Fishery Commission' Report 1997 p.165 (my translation)

¹²⁴ Ibid p.165-166

¹²⁵ Ibid p.165-166

¹²⁶ Ibid p.165-166

parliament suggested were already partly fulfilled. The reason for that was because fishery with vessels was already prohibited inside the shorelines.

Some skepticism concerning prohibition of the use of not and snurrevad inside the zone was expressed. This because, based on the view of the majority of the commission, it might affect the economical fundament of many coast- and fjord societies along the coast, and also many Sámi fishers. If the Sámi parliament meant a sea area stretching further out, to for example larger parts of the Barents Sea, the commission disagreed with that statement because it would affect many fjord- and coast societies dependent on fishery with those kind of tools. However, the commission found it difficult to take position in relation to the Sámi parliaments statement because the zone's geographical area was not defined.¹²⁷

The second issue demanded by the Sámi parliament, concerned establishment of quota arrangements to the extent of securing a sustainable economy of the Fleet. The commission agreed with the suggestion mentioned and also with the demand for adjustments concerning practice of combined use of resources.¹²⁸

The main arguments for the establishment of a Sámi fishery zone was based on being able to have better control with access to fishery, the use of certain kind of tools and quota-allotments in the coast-areas. The majority of the commission thought these questions could be solved through development of arrangements which would grant application for people in a closer geographical area. If one for example were to ban the use of certain kinds of active tools inside 12 nautical miles from the shoreline, over a larger area of the sea, this would cause dramatic consequences for some of the smaller vessels which practice traditional fishery with such tools inside this borderline. This kind of prohibition would also affect many Sámi fishers.¹²⁹

A prohibition of use of such tools could be difficult to argue, based on biological evaluations. However, inside smaller local areas, the use of such kind of tools could have unfortunate biological effects. The limitation of using certain kind of tools (active tools) should, according to the commission, be decided on a local level and not be prohibited inside a larger area or

¹²⁷ The Sami Fishery Commission's Report 1997 p.166 (my translation)

¹²⁸ Ibid p.166

¹²⁹ Ibid p.166

zone. Concerning access to fishery, it was suggested from the Sámi point of view, that shutting out fishers settled outside the zone's measure area, was never the purpose. Therefore, it was not decisive for suggesting the term zone or not.¹³⁰

If the authorities wanted to take special considerations in relation to quota allotments for fishers in Sámi areas, it could be done inside a measure area. According to the commission it was not necessary to establish a Sámi fishery zone in order to improve the possibilities to fish for people settled in Sámi areas.¹³¹

The purpose of the commission's report was to put forward which measures, including changes on law and regulations, that was necessary in order to make sure the authorities' commitments towards the Sámi people were looked after. This falls under the demand for positive discrimination of minority groups based on article 27 of the ICCPR, and is in this case a necessary demand for special arrangements for the Sámi or for Sámi areas.¹³²

Concerning legal protection of Sámi fishery, the commission says traditional fishery in Sámi areas have sufficient protection based on the commitments the authorities are bound by through the Norwegian constitution, seen in relation to the commitments the state enjoin through international law. This statement is based on the acknowledgement by the Ministry of Fisheries concerning legal commitments of Sámi fishery industry. This acknowledgement was put forward after Carsten Smith's evaluation was published, and limits the authorities' ability to freely decide which regulation measures to be carried out concerning fishery in these areas. Thereby the authorities would be committed to show consideration in relation to the special rights of Sámi Law in this situation.¹³³

The commission stated that the authorities' commitments towards the Sámi people concerning positive discrimination of indigenous peoples, could be very well taken care of through establishment of a measure area suggested by the commission. This measure area would guarantee the Sámi people several economical advantages compared to the Norwegian settlement outside this area.¹³⁴

¹³⁰ The Sami Fishery Commission's Report 1997 p.167 (my translation)

¹³¹ Ibid p.167

¹³² Ibid p.71

¹³³ Ibid p.83

¹³⁴ Ibid p.167

Based on how it was described by, among others, the Sámi parliament, the Sámi Fishery Commission did not find basis for recommending the establishment of a Sámi fishery zone. For that time being it was too unclear what was meant by the term “Sámi Fishery Zone”, and the commission could not take a stand on a measure which did not have a clear enough content.¹³⁵

The minority of the Sámi Fishery Commission, consisting of the members Alf Nystad, Ragnhild Sandøy and Reidar Solberg, which were all appointed by the Sami parliament, recommended that a Sámi Fishery Zone should be established. They based this recommendation on the idea that the measure area which the commission unanimous agreed upon, could count as a Sámi Fishery Zone, and that a more clear content of the Sámi Fishery Zone could be built up over time.¹³⁶

3.3 Summary

In this chapter the Sami Fishery Commission’s report has been presented. Based on Carsten Smith’s evaluation of the legal commitments the authorities are bound by towards the Sámi population concerning regulations on fishery, the Sámi Fishery Commission was appointed at the request of the Ministry of Fisheries in 1993. The Ministry of Fisheries carried out a few measures in retrospect of Smith’s evaluation. This was done in order to strengthen the situation concerning the coast- and fjord fishery in Coastal Sámi areas. However, the few measures carried out, did not make much difference. Demands were therefore made, by the Sámi parliament, that a commission should be appointed in order to go through Sámi interests concerning fishery in relation to national and international legal commitments towards the Sami as an indigenous people. At the same time the commission was to give an explanation of the economic and social effects on Sami coast areas as a result of the later years regulations.

The main topics that the commission put forward in their report mainly concerned documenting Coastal Sámi activity based on history. Legal matters in relation to ethnic

¹³⁵ The Sami Fishery Commission’s Report 1997 p.167 (my translation)

¹³⁶ The Sami Rights Commission II, NOU 2007: 13, The New Sami Right, The Sami Fishery Commission, Sami Measure Ares, Sami Fishery Zone, p.8 (my translation)

minorities both on a national and international level were clarified. They explained actual national regulations and the effect that these have had on the cultural and material foundation of the Coastal Sami minority. All this leads up to what the commission called a strategy, where they suggested concrete measures on how to solve the topics they discussed.

The issue of significance for this thesis are the measures suggested in relation to a Sámi fishery zone. The majority of the Sámi Fishery Commission did not, however, recommend establishment of a Sámi Fishery Zone. They found it difficult to recommend it because it was not clarified/specified by the Sámi parliament what the content of this zone involved. In their report the commission explained that they could not take a stand on the issue of a Sámi fishery zone when it still did not have a clear content.¹³⁷

There were, however, disagreements within the commission concerning this decision. The minority of the commission, which were all appointed by the Sami parliament, recommended that a Sámi Fishery Zone should be established. They based this recommendation on the possibility that the measure area, which was suggested and agreed upon by the commission, could count as a Sámi Fishery Zone, and that a more clear content of the zone could be built up over time.

In sum the Sámi Fishery Commission's conclusions in relation to the mandate they were given concerning a Sámi fishery zone was that the majority of the commission did not recommend it. The conclusion was thereby negative in relation to the mandate. This might be a possible reason for its non – publication.

In the following chapters the Coast- and Fishery Commission's report will be presented first. Thereafter the discussion will take place, where an analysis of my research questions will be put forward. Finally, the concluding remarks of this thesis will be given.

¹³⁷ The Sami Fishery Commission's Report 1997 p.167 (my translation)

Chapter 4

4.0 Presentation of The Coast- and Fishery Commission's Report



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In this chapter the Coast- and Fishery Commission's report will be presented. This report is the second of the two documents which this thesis is based upon. The background, composition and mandate will be put forward first. Thereafter the main issues will be presented. The issue of a Sami fishery zone will be given special attention.

¹³⁸ NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark, the Main Outlines From the Coast- and Fishery Commission's Report
http://www.regjeringen.no/upload/FKD/Vedlegg/Diverse/2008/Kystfiskeutvalget%20for%20Finnmark/NOU2008_5Kortversjon.pdf (accessed 20.02.2008) (my translation)

4.1 The Coast- and Fishery Commission's Report

In 1990 Carsten Smith concluded his evaluation, mentioned earlier, saying the authorities' commitments to protect the material foundation of the Sámi culture also had to involve the Coastal Sámi coast- and fjord fishery. The Sámi Rights Commission investigated this further and promoted in NOU 1997: 34, suggestions on unrestricted fishery for smaller vessels and administration on a local level. The Sámi Rights Commission's suggestions concerning fishery administry have not been carried out, and was not taken into account in the proposed Finnmark Act published in 2005.¹³⁹

Carsten Smith says the right to fishery is built on the use of the sea through centuries. For the Sami, however, this right to fishery have a more recent and distinct foundation based on international conventions. Both the ICCPR and the ILO convention No.169 are of importance in relation to fishery. According to Smith, the High Court has stated that the Sami qualifies under both these conventions and are therefore protected by the rights these conventions gives ethnic minorities and indigenous peoples.¹⁴⁰

Certain measures have been made over time in order to fulfill the authorities commitments towards the Coastal Sámi. However, these measures have not been sufficient when it comes to executing cultural protection. The authorities' legal duty concerns the material cultural foundation, which means, according to Smith, that the Sámi have the right to the necessary economical and physical conditions in order to secure and develop their culture. This involves a legal demand, from Sámi point of view, to exploitation of natural resources. For the Coastal Sámi this involves a right to fishery in the sea, which provides a basis for settlement.¹⁴¹

Smith says the Sámi are required special measures in relation to others if these kind of measures are necessary in order to secure and develop their culture. The Sámi will thereby be able to require a larger part of the established harvest – amount than other fishers, either by exemption of regulations, improved quota – arrangements or a special right to fishery in certain areas.¹⁴²

¹³⁹ The Sami Rights Commission II, NOU 2007: 13, The New Sami Right, The Parliament's decisions on the Evaluation on Fishery Rights, The Evaluation on Fishery Rights Outside Finnmark, p.9 (my translation)

¹⁴⁰ Smith, Carsten "Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5" p.3 (my translation)

¹⁴¹ Ibid p.3

¹⁴² Ibid p.3

In 2006 the Norwegian Parliament requested that the government reviewed the rights of the Sami people and others to fish in the sea outside Finnmark, and submit a report about this matter to the Norwegian Parliament. In order to do so, by instructions from the government, the Ministry of Fisheries appointed a commission, called The Coast- and Fishery Commission (Kystfiskeutvalget).¹⁴³

This commission was given the following mandate;

“On principal grounds, review Sami people and others’ right to fish in the sea outside Finnmark. In particular, to take a closer look at the Sami and others right to saltwater fisheries in fjords and coastal areas in Finnmark.”

The commission was chaired by Carsten Smith, former chief of justice of the Supreme Court, from Oslo. The other members of the commission consisted of the following; former Minister of Fisheries, now Pensioner Bjarne A. Mørk-Eidem from Oslo, District Stipendiary Magistrate Ingrid Røstad Fløtten from Vardø, Professor Bjørn Hersoug from Tromsø, Fisherman Bjørn Mathisen from Havøysund, Associate Professor Anita Maurstad from Tromsø, Director Audhild Scanche from Kautokeino, Judge of the Supreme Court Jens Edvin A. Skoghøy from Son, and PhD Susann Funderud Skogvang from Tromsø.

The final report was published on February 18. 2008.¹⁴⁴

The Coast- and Fishery Commission was supposed to look into the matter concerning the right to fishery, despite the authorities’ regulations on fisheries. The commission was given a mandate which obliged them to carry out a historical review of the Sámi and others’ fishery activities in Finnmark, and to give a presentation of the commitments which the authorities are obliged to through Norwegian law, including legal rights based on historical usage.¹⁴⁵

¹⁴³ The Ministry of Fisheries;
http://www.regjeringen.no/nb/dep/fkd/dok/rapporter_planer/Rapporter/2006/Mandat-Utredning-om-samers-og-andres-rett-til-fiske-i-havet-utenfor-Finnmark-.html?id=106554&epslanguage=NO (accessed November 24. 2008). (my translation)

¹⁴⁴ The Ministry of Fisheries
<http://www.regjeringen.no/nb/dep/fkd/presseenter/pressemeldinger/2008/Presseinvitasjon---Avgivelse-av-innstill.html?id=499691> (accessed November 24. 2008). (my translation)

¹⁴⁵ Smith, Carsten “Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5” p.1 (my translation)

Smith says the Coast- and Fishery Commission was also supposed to give an outline of the relevant issues in relation to the ILO Convention No.169 and the UN Convention on Civil and Political Rights (the ICCPR). This mandate leads to an opportunity to “a right to fishery” which is based on history and international law, and will also be “a right to fishery” *not* based on Norwegian authorities’ permissions or previous regulations.¹⁴⁶

In the following the main issues presented in the Coast- and Fishery Commission’s report will be given.

4.2 Main Issues in the Coast- and Fishery Commission’s Evaluations and Suggestions:

The Commission proposes possible changes in law, and other measures which they believe is necessary. The commission also suggests consequences and precedent of current suggested measures. Further, the commission have has evaluated the established administration in relation to national fisheries’ political strategies.¹⁴⁷

4.2.1 The Right to Fishery in the Sea Outside Finnmark

The most important suggestions by the commission are the legal rights connected to the right to fishery in the sea outside Finnmark. These will be presented in the following.

If the Coastal Sami culture is to have a future, the role of the Coastal Sami local societies, concerning fjord- and coastal fishery, has to be strengthened. The Coast- and Fishery Commission therefore suggests that people settled by the fjords and along the coast of Finnmark, based on historical usage and legal rights through international law concerning indigenous peoples and minorities, have the right to participate in fisheries in the sea outside Finnmark.¹⁴⁸ This is the main issue of their evaluation. The commission thinks it is important to establish this legal principle, even if the right to fishery must be limited if such is found

¹⁴⁶ Smith, Carsten “Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5” p.1 (my translation)

¹⁴⁷ NRK Sami Radio: Samisk fiskerirettigheter http://www.nrk.no/kanal/nrk_sami_radio/1.4398419 (accessed January 4. 2008) (my translation)

¹⁴⁸ The Coast- and Fishery Commission; NOU 2008: 5; The Right to Fishery in the Sea Outside Finnmark p.14 (my translation)

necessary in consideration to the natural resources. The right which states this principle consists of requirement of legal demand for people in Finnmark towards the fishery administration.

This right to fishery concerns all ethnic groups. It also concerns the right to fishery for own usage, and to start as an industrial fisher. Further it involves a right as a full-time fisher to catch a certain amount of fish which gives an economical foundation for a household, either as a livelihood alone or combined with other resources. The commission says this is a kind of right an individual fisher has, and it does not require the fisher to buy a quota.¹⁴⁹

The commission thinks the Sami rights to fishery should be stated as area rights, a right for all peoples in a certain area. This is based on the fact that the Sami population is not the only people settled in Finnmark. People living by the fjords and along the coast of Finnmark should be treated as legally equivalent. This kind of arrangement would include the suggested measures to be of positive character for the non – Sami fishers as well. The commission assumes this kind of solution would create less contrast and be more effective. An important factor in this issue is that the Sami parliament have, in this coherence, stated that the coast population of Finnmark should be treated on the same level, and enjoy the rights of the Coastal Sami.¹⁵⁰

This right to fishery involves the commission to answer the question concerning minimum - quota positively. The minimum - quota does not only involve vessels less than ten meters, it concerns all fishers settled in Finnmark county. The commission states that there is a certain right to fishery in the fjords for the people living there, called the fjord right (fjordretten). A regional organ of administration, however, can after closer evaluation allow fishery to be practised by others. Outside the fjords, fishers settled outside the borders of Finnmark county have the right to fish on the same level as fishers settled in Finnmark.¹⁵¹

The small-scale fishery is the traditional practice of fishery by the Coastal Sami. A special right to fjord fishery would strengthen the Coastal Sami areas. A fjord right is, however, built

¹⁴⁹ The Coast- and Fishery Commission; NOU 2008: 5, The Right to Fishery in the Sea Outside Finnmark, the Main Outlines From the Coast- and Fishery Commission's Report http://www.regjeringen.no/upload/FKD/Vedlegg/Diverse/2008/Kystfiskeutvalget%20for%20Finnmark/NOU2008_5Kortversjon.pdf (my translation)

¹⁵⁰ Smith, Carsten "Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5" (my translation)

¹⁵¹ Ibid p.5

on usage practiced by people living there for all-time. The Coastal Sami have originally been the majority in many of those places, but a fjord right has to count for all the people settled there for the time being.¹⁵²

A regional organ of administration should be established, which is to be called the Finnmark Fishery Administration, where the Finnmark county council and the Sami council should have three members each in the board. The administration should define rules on vessel-sizes and tools-usage in the sea as far as four nautical miles outside the shorelines. The Finnmark Fishery Administration should have the authority to receive and hand out quotas and permissions, and carry out other disposals in order to promote the fjord- and coastal fishery in Finnmark. The quotas which are handed out should be for own usage and not be possible to pass over.¹⁵³

This quota division is the second main function for the Finnmark Fishery Administration. This administration is supposed to be a link between the state and the fishers. The commission thinks this function transferring quotas and permissions could be a significant factor for securing and strengthening both Sami- and other coast-culture.¹⁵⁴

According to the commission, the Norwegian state is given a legal responsibility to provide resources in the forms of capital, quotas or fishery permissions to the Finnmark Fishery administration, in order to secure the material foundation of the Coastal Sami culture and other coast – culture in Finnmark. Possible demands for recognition of rights in the fjords and coastal areas in Finnmark should be handled by the Finnmark Commission. This commission is not supposed to take initiative on its own, like it does ashore, but only be used when demands for recognition of rights occur.¹⁵⁵

In addition to the legal suggestion, the commission put forward several single measures which could contribute to strengthening the coast- and fjord fishery and the settlement in Finnmark.¹⁵⁶ These suggestions are, however, not found relevant in relation to the topic of this thesis and will therefore not be given any further attention.

¹⁵² Smith, Carsten “Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5” (my translation)

¹⁵³ Ibid p.5

¹⁵⁴ Ibid

¹⁵⁵ Ibid

¹⁵⁶ Ibid

The Coast- and Fishery Commission's suggestions in sum involves a coast-fishery zone for Finnmark, which is to be called the Finnmark Zone.¹⁵⁷ This issue will now be looked further into.

4.2.2 A Coast – Fishery Zone for Finnmark (The Finnmark Zone)

According to the Coast- and Fishery Commission, the idea of a Sami- or a regional fishery zone has been brought up for discussion on several occasions. The establishment of this kind of zone, has, for instance, been discussed in the report from the Sami Rights Commission I, the report from the Sami Fishery Commission, and in the Fishing Catch Report (fiskerimeldinga) from the Sami Parliament. It was also discussed in the report from the Sami Rights Commission II.¹⁵⁸

The Sami Rights Commission II states that it would be a terminological question whether one should describe the “sum” of the single measures that might be introduced in order to strengthen this fishery, and which might be geographically limited to fjord- and coast municipalities in the measure area of the Sami development fund, as a “Sami fishery zone” or an indigenous zone”. From the Sami Rights Commission II's perspective, the concrete content of the measures would be far more important than the term used to describe it. The Coast- and Fishery Commission shares the opinion with the Sami Rights Commission II, saying it is a question of language whether a regional fishery zone should be established or not. A regional or local fishery zone is not a very effective measure if its establishment is not combined with regulation competence and/or economical act inside the zone.¹⁵⁹

In the discussion concerning the establishment of a fishery zone in Sami areas, the concept has often been given different content depending on the participants in the discussion.¹⁶⁰ First of all, a fishery zone can be understood as a limited sea area where certain distinct rules apply

¹⁵⁷ The Coast- and Fishery Commission; NOU 2008: 5, The Right to Fishery in the Sea Outside Finnmark, the Main Outlines From the Coast- and Fishery Commission's Report http://www.regjeringen.no/upload/FKD/Vedlegg/Diverse/2008/Kystfiskeutvalget%20for%20Finnmark/NOU2008_5Kortversjon.pdf (my translation)

¹⁵⁸ The Coast- and Fishery Commission; NOU 2008: 5 Chapter 11 ”The Right to Fishery in the Sea Outside Finnmark” p.403 (my translation)

¹⁵⁹ Ibid p.403

¹⁶⁰ Ibid p.403

in relation to fishery compared to rules to fishery outside the area. The purpose of such rules might be to create more favourable conditions for fishers settled in particular areas, like for example in this case, fishers settled in Finnmark.¹⁶¹

Second, a fishery zone can involve special rights for everybody who practice fishery with a particular size of vessel or a certain kind of tool. An example to illustrate this would be if special rights were given to a certain fishing-fleet-group. The question then would be where the limit concerning vessel-size would go. The practical alternative is a maximum size set at 11 or 15 meters. Today the Coast Fleet between 11 and 15 meters brings ashore a significant amount of the total catch of fish in Finnmark. According to the commission, the zone can also be connected to tools, which means that for example active tools, like snurrevad¹⁶², can be prohibited inside the zone. An alternative can be to set limits on sizes of active tools like snurrevad which are to be allowed in the zone.¹⁶³

A kind of zone already exists in relation to the coastal-cod-protection, where the fjordlines function as external borders for the zone. However, these regulations can be changed on short notice, and they do not give any permanent protection concerning fishery rights for the fishers settled in Finnmark. The problem with the existing coastal-cod-regulations is that as there has been almost no fish left in several of the larger fjords in Finnmark for many years, the ban of other and larger fishing-fleet-groups does not give any actual benefit.¹⁶⁴

In several of the documents mentioned above, the suggestion of a fishery zone in Sami areas has often been connected to local or regional arrangements of administration. The main content of the Coast- and Fishery Commission's suggestion of a fishery zone would therefore be that an administrative body has to be established in order to decide on regulations concerning the use of tools and fishery with vessels of various sizes. It should also have the authority to distribute fishery quotas.¹⁶⁵

¹⁶¹ The Coast- and Fishery Commission; NOU 2008: 5 Chapter 11 "The Right to Fishery in the Sea Outside Finnmark" p.403 (my translation)

¹⁶² An (active) fishing tool used for fishery in shallow waters

¹⁶³ The Coast- and Fishery Commission; NOU 2008: 5 Chapter 11 "The Right to Fishery in the Sea Outside Finnmark" p.404 (my translation)

¹⁶⁴ Ibid p.404

¹⁶⁵ Ibid p.403

An establishment of a fishery zone with a regional organ of administration would, to some extent, not cohere with the national fishery administration. The fishery resources are not divided in different zones in the sea. This consideration speaks in favour of the resources to be administrated by central authorities.¹⁶⁶ Further it could be argued against a “Sami fishery zone” because it could contribute to maintenance of differences between fishers, based on ethnicity and place of settlement.¹⁶⁷

The issue of ethnic neutrality is a difficult legal conception. Legal rights which officially are generally designed, can often cause various effects in relation to different ethnic groups based on cultural differences. The fishery administration have, however, arranged single measures aiming at these areas. Even so, the Sami parliament pointed out as early as 1990, unfortunate effects for the Coastal Sami caused by the state’s fishery regulations.¹⁶⁸

During several of the official meetings, held by the Coast- and Fishery Commission, with the local people in Finnmark, the experience of negative consequences caused by the state’s fishery regulations was often expressed. These negative consequences concerns the issue where fishers, based on former fishery practice and vessel investments, fulfil the quota-limitations to a smaller degree compared to fishers in other areas. If the ongoing arrangements of regulations involves effects such as negative discrimination of the fishers settled in Sami areas, it would strengthen the need for Sami special arrangements. Negative effects is not a condition for positive special treatment, but negative effects would increase the need for positive special measures in the same arena of society and industry. The demand for positive special treatment is supported by the Norwegian constitution §110a, which demands the state to organize the conditions in the best way possible for the Sami to practice their culture.¹⁶⁹

There has often been a conflict between the Sami and others in the debate over Sami rights in Finnmark. The commission says it does not have to be a conflict concerning the issue of the right to fishery, but a field of common interests and cooperation. This right could be a foundation for both increased activity in industry and increased solidarity.¹⁷⁰

¹⁶⁶ The Coast- and Fishery Commission; NOU 2008: 5 Chapter 11 ”The Right to Fishery in the Sea Outside Finnmark” p.403-404 (my translation)

¹⁶⁷ Ibid p.403-404

¹⁶⁸ Ibid p.259

¹⁶⁹ Ibid p.259

¹⁷⁰ Ibid p.375

Another argument in favour of establishment of a fishery zone would be if different measures were assembled into one single zone, as this might give the measures more substance than if they were to be presented more spread - out.¹⁷¹

The Coast- and Fishery Commission finds people settled by the fjords and along the coast of Finnmark, based on historical usage and indigenous peoples and minorities rights through International Law, to have a right to fishery in the sea outside Finnmark.¹⁷²

The Commission thereby suggests an establishment of a self-governing legal subject called the “Finnmark Fishery Administration”. The authority of the suggested Finnmark Fishery Administration concerns the sea-area inside the four nautical miles borderline. This sea-area is what the commission calls the Finnmark zone.¹⁷³ As explained above, the administration should have the authority to decide on regulations concerning tools and vessels, and also have the authority to carry out local protections on particular or all kinds of tools inside the area (the zone) or parts of it.¹⁷⁴ This kind of administration should be able to carry out legal and economical disposals in order to strengthen the small-scale fishery inside the zone, especially by acquiring fishery quotas and distributing these to promote the local based coast- and fjord fishery.¹⁷⁵ The administration should have the authority to hand out fishery quotas, get the authority to buy and pass on quota permissions. This might also involve fishery vessels, and to enter into agreements in order to strengthen establishments ashore.¹⁷⁶

On behalf of the commission, Smith says the combined measures suggested in their report, makes it natural to speak of a fishery zone. The Coast- and Fishery Commission’s legal suggestions thereby include a distinct coast- and fishery zone for Finnmark, the Finnmark zone.¹⁷⁷

¹⁷¹The Coast- and Fishery Commission; NOU 2008: 5 Chapter 11 ”The Right to Fishery in the Sea Outside Finnmark” p.404 (my translation)

¹⁷² Ibid p.370

¹⁷³ Smith, Carsten “Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5” (my translation)

¹⁷⁴ Ibid

¹⁷⁵ The Coast- and Fishery Commission; NOU 2008: 5 “The Right to Fishery in the Sea Outside Finnmark” p.404 (my translation)

¹⁷⁶ Smith, Carsten “Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5” p.10(my translation)

¹⁷⁷ The Coast- and Fishery Commission; NOU 2008: 5 ”The Right to Fishery in the Sea Outside Finnmark” p.404 (my translation)

Different factors have resulted in the current crisis for the Coastal Sami. Among the cultural factors significant for this crisis, has, of course, been the Norwegianization policy, which has been a huge strain on the Coastal Sami in particular. Smith says that the Norwegian authorities now have an opportunity, which is most likely their last chance, to make things right with the Sami people in relation to some of the damages caused by the Norwegianization policy.¹⁷⁸

A key factor in this matter is a significant supply of capital to the Finnmark Fishery Administration. The measures suggested by the commission concerning the regulation of fisheries would be important steps in the right direction.¹⁷⁹

4.3 Summary

This chapter has been a representation of the Coast- and Fishery Commission's report. Certain measures have been made over time in order to fulfill the authorities' commitments towards the Coastal Sámi. However, these measures have not been sufficient when it comes to executing cultural protection. The Sámi have the right to the necessary economical and physical conditions in order to secure and develop their culture. This involves, among other things, exploitation of natural resources. For the Coastal Sámi this involves a right to fishery in the sea, which provides a basis for settlement. The Ministry of Fisheries appointed a commission on June 30th 2006, called The Coast- and Fishery Commission, which were to review the rights of the Sami people and others to fish in the sea outside Finnmark and submit a report on the matter.

In their report the commission, among other things, proposes a suggestion to possible changes in law. The commission also suggests consequences and precedent of current suggested measures. Further, the commission has evaluated the established administration in relation to political strategies concerning national fishery.

The combination of the suggested measures would, according to the Coast- and Fishery Commission, involve a distinct fishery zone. Inside this zone a distinct organ of

¹⁷⁸ Smith, Carsten "Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5" p. 10 (my translation)

¹⁷⁹ Ibid p.10

administration would get the authority to decide on tools- and vessel regulations/sea distribution. This organ would be able to decide on legal and economical disposals aiming at strengthening the small - scale fishery inside the zone, especially by acquisition of fishery quotas and distribution of these in order to promote the local based coast- and fjord fishery.¹⁸⁰

The Coast- and Fishery Commission's legal suggestions thereby involves a coast – fishery zone for Finnmark, called the “Finnmark Zone”.¹⁸¹

Having finished the presentation of the reports, there is now enough data to move on to the discussion, where an analysis of my research questions will take place. Thereafter the concluding remarks of this theses will be put forward.

¹⁸⁰ Smith, Carsten “Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5” p.10

¹⁸¹ Ibid p.10

Chapter 5

5.0 A Fishery Zone In Finnmark?

The main issue of this thesis is to look at the different arguments concerning a fishery zone in Finnmark as they are promoted in the reports by the Sami Fishery Commission and the Coast- and Fishery Commission. In earlier chapters the reports from these two commissions have been presented. In this chapter arguments made by the commissions will be brought to attention again. The arguments for and/or against a fishery zone in Finnmark will be analyzed in relation to the international conventions; article 27 of the ICCPR and ILO Convention NO.169, where the issue of Sami rights to special measures, based on these conventions, in relation to saltwater fishery in Finnmark, will be given special attention. Further, the matter of ethnicity will be discussed in relation to how it has been taken into account in the reports by the commissions concerning the issue of a fishery zone. This issue will also be discussed in relation to political theory where Will Kymlicka will be one of the main theorists used.

5.1 Summary of the Commission's Reports

In the following part of this chapter, the Sámi Fishery Commission and Coast- and Fishery Commission's findings and conclusions concerning a fishery zone in Finnmark will be summed up and put forward.

5.1.1 The Sámi Fishery Commission

The Sámi Fishery Commission was established in 1993 in order to go through Sami interests concerning fishery. Their report was finished on April 10. 1997. The Commission looked into the legal matters in relation to fishery in Sámi coastal- and fjord areas, and proposed suggestions in order to protect and safeguard the right to carry out fishing activities in those

areas.¹⁸² Only a few of the suggested measures have, however, been followed up, and the commission's report has not been published either, not as a NOU or in any other way.¹⁸³

In relation to the mandate given, the Sámi Fishery Commission was supposed to discuss the establishment of a Sámi fishery zone in particular. The Commission's report shows a lot of disagreements between the members of the commission. Their suggestions on measures are therefore not as clear as they ideally should have been. On numerous questions the commission was divided on key issues. The Commission had difficulties concerning their work towards taking a stand on the issue of a Sámi fishery zone.

The majority of the commission did not recommend establishment of a Sámi Fishery Zone. The main reason given was that they found it difficult to recommend establishment of such a zone because it was not specified by the Sámi parliament what the content of this kind of zone involved. In their report the commission explained that they could not take a stand on the issue of a Sámi fishery zone when it still did not have a clear content.¹⁸⁴

There were, however, disagreements within the commission concerning this decision. The minority of the commission, which were all appointed by the Sami parliament, recommended that a Sámi Fishery Zone should be established. They based this recommendation on the possibility that the measure area, which was suggested and agreed upon by the commission, could count for as a Sámi Fishery Zone, and that a more clear content of the zone could be built up over time.¹⁸⁵

The arguments summed up from the report by the Sámi Fishery Commission in relation to the issue of a Sámi Fishery Zone involves the following;

The Sámi Fishery Commission argues in favor of establishment of a Sámi Fishery zone, saying such a zone, with a defined content both concerning the right to fishery and in relation to administration capability, would lead to a stronger binding towards these measures than if

¹⁸² The Sami Rights Commission II, NOU 2007: 17, The New Sami Right; The Sami Right Commission, Background and Mandate for the Investigation, p.7 (my translation)

¹⁸³ The Coast- and Fishery Commission; NOU 2008: 5, the Right to Fishery in the Sea Outside Finnmark, the Sami Fishery Commission, the Background for the Appointed Commission and It's given Mandate, p.43 (my translation)

¹⁸⁴ The Sami Fishery Commission's Report 1997: 167 (my translation)

¹⁸⁵ The Sami Rights Commission II; NOU 2007: 13, Te New Sami Right, The Sami Fishery Commission, Sami Measure Areas, Sami Fishery Zone p.8 (my translation)

they concerned a series of single measures. The establishment of a Sámi Fishery Zone would create a symbolic value which could be possible to use internationally in relation to the general debate concerning indigenous people's rights, as it would be of support towards other indigenous peoples and their rights if one would be able to refer to Norway as a country with an established Sámi (indigenous) fishery zone of its own. The establishment of a Sámi Fishery Zone would also be of possible significance in relation to maintaining the Sámi culture and thereby maintaining the settlement in the traditional Sámi areas.¹⁸⁶

The Sámi Fishery Commission did, however, choose not to recommend establishment of a Sámi Fishery Zone. The Commission argued against the establishment of such a zone by stating, among other things, that this kind of establishment would not necessarily secure the resources to be accessible to the Sámi population, as different species often move in and out of areas, and fishery outside the area might affect the access to harvest inside the area. Environmental influence would have an effect on the possibility to fish inside the zone as well.

An important factor for the topic of this thesis, is that the commission did not want to suggest measures based on ethnicity. As their suggestions would be geographically limited, the establishment of a Sámi Fishery Zone would not be in accordance with the actual content of the zone. The commission thought the establishment of such a zone might seem unfortunate, under some circumstances, as it could be seen as special treatment of some at the expense of others and would therefore be unfortunate in relation to the following work to secure Sámi culture and Indigenous peoples' rights.¹⁸⁷ In sum the Sámi Fishery Commission's conclusions were negative in relation to the mandate. The issue of non recommendation of measures based on ethnicity will be looked further into later in this chapter and compared with arguments made by the Coast- and Fishery Commission.

5.1.2 The Coast- and Fishery Commission

The Coast- and Fishery Commission (Kystfiskeutvalget) was appointed by the Ministry of Fisheries in 2006 in order to review the rights of the Sámi people and others to fish in the sea

¹⁸⁶ The Sami Fishery Commission's Report (1997) p.165 (my translation)

¹⁸⁷ Ibid p.165-166

outside Finnmark.¹⁸⁸ Their report was published on February 18, 2008. This Commission was supposed to look into the matter concerning the right to fishery in Finnmark, despite the authorities' regulations on fisheries. The commission was given a mandate which obliged them to carry out a historical review of the Sámi and others' fishery activities in Finnmark, and to give a presentation of the commitments which the authorities are obliged to through Norwegian law, including legal rights based on historical usage.¹⁸⁹

Smith says the mandate leads to an opportunity to “a right to fishery” which is based on history and international law, and will also be “a right to fishery” *not* based on Norwegian authorities' permissions or previous regulations.¹⁹⁰ The Coast- and Fishery Commission finds people settled by the fjords and along the coast of Finnmark, based on historical usage and indigenous peoples- and minorities rights through International Law, to have a right to fishery in the sea outside Finnmark.¹⁹¹ In their report, the Coast- and Fishery Commission gives an outline of the relevant issues in relation to the ILO Convention No.169 and the UN Convention on Civil and Political Rights (the ICCPR). The Commission proposes, among other things, possible changes in law. The commission also suggests consequences and precedent of current suggested measures.

The combination of the suggested measures would, according to the Coast- and Fishery Commission, involve a distinct fishery zone. Inside this zone a distinct organ of administration would get the authority to decide on tools- and vessel regulations. This organ would be able to decide on legal and economical disposals aiming at strengthening the small - scale fishery inside the zone, especially by acquisition of fishery quotas and distribution of these in order to promote the locally based coast- and fjord fishery.¹⁹² The Coast- and Fishery Commission's legal suggestions thereby involves a coast – fishery zone for Finnmark, called the “Finnmark Zone”.¹⁹³

¹⁸⁸ The Ministry of Fisheries
http://www.regjeringen.no/nb/dep/fkd/dok/rapporter_planer/Rapporter/2006/Mandat-Utredning-om-samers-og-andres-rett-til-fiske-i-havet-utenfor-Finnmark-.html?id=106554&epslanguage=NO (accessed November 24, 2008). (my translation)

¹⁸⁹ Smith, Carsten “Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5” p.1 (my translation)

¹⁹⁰ Ibid p.1

¹⁹¹ The Coast- and Fishery Commission; NOU 2008: 5 ”The Right to Fishery in the Sea Outside Finnmark” p.370 (my translation)

¹⁹² Smith, Carsten “Overlevering av Kystfiskeutvalgets Utredning NOU 2008: 5” p.10 (my translation)

¹⁹³ Ibidp.10

The Coast- and Fishery Commission finds the people settled by the fjords and along the coast of Finnmark to have the right to fishery. The Commission suggests an establishment of a fishery zone where both the Sami population and others are included. They argue against the establishment of a “Sami Fishery Zone” as it may contribute to the maintenance of differences between fishers based on ethnicity and place of settlement.¹⁹⁴ The Coast and- Fishery Commission decided not to draw lines between ethnic groups in this matter, but instead propose rights to saltwater fishery for everybody settled in the mentioned area. The Commission states that it does not have to be a conflict in relation to the issue of rights to fishery, but rather a field of common interests and cooperation. This right could be a foundation for both increased activity in industry and increased solidarity.¹⁹⁵ The issue of non recommendation of measures based on ethnicity will be looked further into later in this chapter, and compared and discussed with the Sami Fishery Commission’s arguments on the same subject.

A summary of the Sámi Fishery Commission and Coast- and Fishery Commission’s findings and conclusions concerning a fishery zone in Finnmark have now been put forward. It is thereby time to move on to the part of comparison.

5.2 For or Against Establishment of a Fishery Zone

Both commissions were supposed to look into and review the Sami people’s rights to fishery, their conclusions did, however, end up being quite different. While the Sami Fishery Commission decided *not* to recommend a “Sami Fishery Zone”, the Coast- and Fishery Commission *does* suggest a fishery zone in Finnmark, called the “Finnmark zone”, which applies to all people settled in the area. In the following part of this chapter a comparison of the two commission’s reports concerning the issue of a fishery zone will be given. First the commissions statements in relation to rights to fishery based on International Law (ICCPR and ILO 169) and the authorities legal duty in this matter, will be put forward. This is important to mention since the issue of a fishery zone is based on International Law, and because the zone involves the people in Finnmark to be allotted rights which others are

¹⁹⁴ The Coast- and Fishery Commission; NOU 2008: 5 “The Right to Fishery in the Sea Outside Finnmark” chapter 11 p. 403-404 (my translation)

¹⁹⁵ Ibid p.375

excluded from. It is, however, also important to bear in mind that the commissions' reports were written several years apart, and that things obviously have changed, both in law and otherwise, during that time. Further, in this part of the chapter, the commissions arguments concerning establishment of a fishery zone in Finnmark will be compared and discussed. The issue of establishment of a fishery zone in Finnmark in relation to non recommendation of measures based on ethnicity will be given special attention.

5.2.1 The Right to Fishery in Coast- and Fjord Areas in Finnmark

Both the Sami Fishery Commission and the Coast- and Fishery Commission agrees on the issue that the authorities are required to make sure the Sami people are able to maintain, secure and develop their culture. From this it is apparent that the commissions share the issue of international law to be an important foundation in order to state the authorities commitments towards the Sami people and their rights.

According to the Coast- and Fishery Commission, the Norwegian State *does* have a legal duty to give the Sami the opportunity to secure and develop their culture. The fishery in the Coastal Sami fjords and coastal areas is decisive for the settlement in the Sami local society and also in order to maintain the Coastal Sami culture and make sure it continues. This legal duty is based on art.27 of the ICCPR, ILO Convention NO.169, the Norwegian Constitution and the Human Rights Law of 1999. The Coast- and Fishery Commission says these decisions must be interpreted in relation to the Sami peoples' historical position in Norway.¹⁹⁶

The authorities' legal duty concerns the material cultural foundation. This means that the Sami have to be provided with the economical and physical conditions in order to secure and develop their culture. An important factor in recent legal development is the authorities' recognition of this duty. This involves a legal demand from Sami point of view concerning exploitation of natural resources. According to the Coast- and Fishery Commission this results

¹⁹⁶ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.178 (my translation)

in a right to fishery in the sea which provides foundation for settlement for the Coastal Sami.¹⁹⁷

The Sámi Fishery Commission was supposed to suggest measures, including changes in law and regulations, that was necessary in order to make sure the authorities' commitments towards the Sámi people were looked after. This falls under the demand for positive discrimination of minority groups, based on article 27 of the ICCPR, and is in this case a necessary demand for special arrangements for the Sámi or for Sámi areas.¹⁹⁸

The Sámi Fishery Commission stated that the authorities' commitments towards the Sámi people concerning positive discrimination of indigenous peoples, could be very well taken care of through establishment of a measure area which was suggested in their report. This measure area would guarantee the Sámi people several economical advantages compared to the Norwegian settlement outside this area.¹⁹⁹

The Coast- and Fishery Commission says the authorities' legal duty applies to the combined measures for the Sami culture. It also applies to the right to fishery and to rules concerning fishery regulations. An interference can in principle be compensated with positive measures of another kind, but if that should be the case, those measures have to contribute in order to maintain the settlement. The situation today, where Sami culture is severely endangered, every significant interference in Sami industry which threatens settlement in Sami areas, could contribute to a violation of the authorities' duty towards Sami cultural protection. If the fishery regulations should appear to have special negative effect in Sami areas, this would strengthen the Sami requirements and legal demands.²⁰⁰

While the Sami have rights to special measures where it is necessary in order to protect their culture, they will have rights to a larger amount of the fixed catch than other fishers. This means exception from the regulations or better quota arrangements.²⁰¹

¹⁹⁷ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.178 (my translation)

¹⁹⁸ The Sami Fishery Commission's Report 1997 p.71 (my translation)

¹⁹⁹ Ibid p.167

²⁰⁰ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.378-379 (my translation)

²⁰¹ Ibid p.378

The Sami special requirements in relation to fishery regulations based on International Law are to be found in article 27 of the ICCPR. Concerning fishery in Sami coast- and fjord areas, the Sami Fishery Commission looked into the legal matters in this relation, and proposed suggestions in order to protect and safeguard the right to practice fishery in those areas. The Commission says it is the right to exploit the fishery resource which has been given protection through article 27 of the ICCPR.²⁰² This convention requires the authorities to carry out special measures necessary in order to maintain the Sami culture.²⁰³

The Sami Fishery Commission says the evaluation of whether the convention's (ICCPR) decisions are respected has to be relative to the situation of the Sami culture, and can have different results in relation to which sector that is being evaluated. There will in this context be some sectors that are considered as an independent part of the Sami culture. An example would be the practice of traditional fishery, which therefore has a direct protection by article 27 of the ICCPR. At the same time it can be established that certain industries which are being practiced by members of the Sami population group are so important for maintaining the Sami culture that the practice of industry itself is included in the decision, like for example ordinary sea fishery with active tools.²⁰⁴

If the ongoing regulations involves effects such as negative discrimination of the fishers settled in Sami areas, it would strengthen the need for Sami special arrangements. The Coast- and Fishery Commission says negative effects is not a condition for positive special treatment, but negative effects would increase the need for positive special measures in the same arena of society and industry. The demand for positive special treatment is supported by the Norwegian constitution §110a, which demands the state to organize the conditions in the best way possible for the Sami to practice their culture.²⁰⁵

According to the Sami Fishery Commission, the Sami Rights Commission concludes, in NOU 1984: 18, that there is no doubt that article 27 of the ICCPR includes a demand for positive discrimination. They state that this is the main point of this decision. The Sami Rights Commission states further, that a state with an ethnic minority living on their territories, are

²⁰² The Sami Fishery Commission's Report 1997 p.73 (my translation)

²⁰³ Ibid p.78

²⁰⁴ Ibid p.78

²⁰⁵ The Coast- and Fishery Commission; NOU 2008: 5 "The Right to Fishery in the Sea Outside Finnmark" p.259 (my translation)

not fulfilling their commitments in relation to International law unless the state provides special protection of the groups protected by this decision, and if necessary introduce measures involving priorities which puts the indigenous people before other groups.²⁰⁶ The Sami Fishery Commission thereby states that it is made clear that article 27 of the ICCPR demands positive discrimination of minorities, in this case, of necessary requirements for the Sami group or for Sami areas.²⁰⁷

Even though the Sami Fishery Commission agrees on the Coastal Sami rights to special measures in order to secure, maintain and develop their culture, they decide not to suggest any measures based on this right, as those measures thereby would be based on ethnicity where some would get special treatment while others would not. The Coast- and Fishery Commission does not want to suggest any measures based on ethnicity either, despite of the Coastal Sami rights. They do, however, express that the fjord- and coastal fishery in Coastal Sami areas needs to be strengthened both through a legally bound right to fishery and through changes in the present fishery regulations. The Commission decides to include *all* ethnic groups living in the area, and suggests that the right to fishery for the people settled by the fjords and along the coast of Finnmark should be established through a legal principle.²⁰⁸ They suggest, among other things, that;

“People settled by the fjords and along the coast of Finnmark, based on historical usage and the legal rights of International Law on indigenous peoples and minorities, have the right to fishery in the sea outside Finnmark.”²⁰⁹

This shows a contrast between the commissions. Neither of the commissions wants to suggest measures based on ethnicity, but while the Sami Fishery Commission decides not to suggest any measures based on the Coastal Sami's right to special measures, the Coast- and Fishery Commission have chosen to widen their suggestions to include all ethnic groups living by the fjords and along the coast of Finnmark.

²⁰⁶ The Sami Fishery Commission's Report, 1997 p.70 (my translation)

²⁰⁷ Ibid p.71

²⁰⁸ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.382 (my translation)

²⁰⁹ Ibid p.382

Having presented the commissions' statements in relation to rights to fishery based on International Law (ICCPR and ILO 169) and the authorities' legal duty in this matter, it is now time to move on to the issue of establishment of a fishery zone in Finnmark, where the commissions arguments will be compared and discussed. The issue concerning establishment of a fishery zone in Finnmark, in relation to non recommendation of measures based on ethnicity, will be given special attention.

5.2.2 Sami Fishery Zone versus Finnmark Zone

The Sami people's rights, based on International Law and the authorities commitments towards the Sami, concerning their rights, both as a minority and as an indigenous people, to saltwater fishery in Finnmark has now been established. The Sami Fishery Commission was appointed on demand from the Sami Parliament. This Commission was given a mandate where they, among other things, were requested to discuss different perspectives on how to create a Sami Fishery Zone. The Coast- and Fishery Commission, on the other hand, was given a much wider mandate, where they in particular were supposed to take a look at Sami and others' right to saltwater fisheries in fjords- and coastal areas in Finnmark. While the Sami Fishery Commission concludes their report by not recommending a Sami Fishery Zone, the Coast- and Fishery Commission's suggested their measures in sum to involve a coastal fishery zone in Finnmark called the "Finnmark Zone".

Despite the Sami peoples' rights to special measures, in order to be able to secure and develop their culture, based on national and international law, both these commissions have decided not to base their suggestions/conclusions on ethnicity. The Sami Fishery Commission says, in their report, that they did not want to suggest any measures based on ethnicity. Among other things, they argued against establishment of a Sami Fishery Zone, because it might be seen as special treatment for some at the expense of others. The Coast- and Fishery Commission was supposed to look into the Sami people and others' right to saltwater fishery in Finnmark. Their suggestions included all ethnic groups in Finnmark, not just the Sami. This again establishes the contrast between the commissions which has been pointed out in the above, and will now be analyzed further.

In their report the Coast- and Fishery Commission suggests that people settled by the fjords and along the coast of Finnmark should be treated legally equally. By including all of Finnmark's coastal population in the matter of special measures, the measures would be of advantage for the non-Sami fishers as well as the Sami. It must be assumed that these kind of area solutions would create less oppositions and be more effective. The Sami parliament has clearly expressed that they want all of Finnmark's population to be treated equally in this matter, and is therefore an important factor of such a result.²¹⁰ The Coast- and Fishery Commission says it does not have to be a conflict concerning the issue of the right to fishery, but a field of common interests and cooperation. This right could be a foundation for both increased activity in industry and increased solidarity.²¹¹

The Coast- and Fishery Commission says it could be argued against a "Sami fishery zone" because it could contribute to the maintenance of differences between fishers, based on ethnicity and place of settlement.²¹² While the Sami Fishery Commission did not want to suggest a Sami fishery zone because it would be based on ethnicity, the Coast- and Fishery Commission decided to suggest a fishery zone for all of Finnmark's population. They clearly emphasize in their report that their suggestions should count for all ethnic groups living in Finnmark. They did not want there to be a segregation on ethnical grounds or in any other way between the ethnic groups living there. In this way the Sami and the rest of Finnmark's population, living in the fjords and along the coast, could achieve the legal advantages as a consequence of the Sami settlement in the county.²¹³ It is, of course, important to mention in this relation, that these reports were finished several years apart, and that changes during that time might have had an effect on how the different commissions decided to conclude their reports.

According to the Sámi Fishery Commission a Sámi fishery zone would be significant in relation to maintaining the Sámi culture. The Sami parliament said it is important to maintain the settlement in the traditional Sámi areas as they are the cultural reference – areas for the Sámi population. The Sámi Fishery Commission says the establishment of a Sámi fishery zone would contain a strong indication of this kind of reference area, and would be of

²¹⁰ The Coast- and Fishery Commission; NOU 2008: 5 "The Right to Fishery in the Sea Outside Finnmark" p.379 (my translation)

²¹¹ Ibid p.375

²¹² Ibid p.403-404

²¹³ Ibid p.382

prominent acknowledgement of indigenous peoples' rights, with the positive consequences this might have in itself.²¹⁴

Both commissions agree on the issue of the authorities' commitments towards the Sami peoples rights to saltwater fishery, through national and international law, in order to secure, maintain and develop their culture. The conclusions of their reports were, however, different. While the Coast- and Fishery Commission agrees unanimously on the suggestion of establishment of a fishery zone for all ethnic groups in Finnmark, the members of the Sámi Fishery Commission disagreed on the issue of establishment of a Sámi fishery zone. While the majority did not want to recommend establishment of this kind of zone, the minority disagreed and suggested that the measure area, already suggested and agreed upon within the commission, could count as a Sámi fishery zone. The commission decided that they could not take a stand on the issue of establishment of a Sámi fishery zone. They found the definition of the term "Sámi Fishery Zone" to have a lack of specification for that time being, and decided that they could not take a stand on a measure which still did not have a clear content.²¹⁵

A summary of the arguments for or/and against a fishery zone in Finnmark proposed in the reports by the Sámi Fishery Commission and the Coast- and Fishery Commission has now been put forward. A comparison of the two commissions arguments concerning the Sámi's rights, both as an indigenous people and as a minority, through (national and) international law, to special measures in order to secure, maintain and develop their culture and the authorities obligations in this matter has also been presented. Further, a comparison of the commissions arguments in relation to the discussion of a fishery zone in Finnmark has been given, where the arguments concerning the issue of to what extent ethnicity has been taken into account in this matter has been given special attention. It is now time to move on to the discussion.

5.3 The Question of Ethnicity

In the following part of this chapter the different conclusions and suggestions concerning the issue of a fishery zone which the Sami Fishery Commission and the Coast- and Fishery

²¹⁴ The Sami Fishery Commission' Report 1997 p.165 (my translation)

²¹⁵ Ibid p.167

Commission have put forward in their reports will be discussed in relation to international law (ICCPR art.27 and ILO Convention No.169) and theory by Will Kymlicka. More specifically, the issue of how ethnicity has been taken into account in the different reports will be the main topic of discussion. The matter of equality between ethnic groups will be looked into, and who has rights to special treatment and cultural protection will be emphasized and discussed in this chapter as well. Will Kymlicka and Chandran Kukathas will be brought to attention on several occasions throughout this part of the chapter, where their theories on group rights versus individual rights will be compared and discussed in relation to the topic of this thesis.

5.3.1 Wish for Equality

Undoubtedly the Sami fulfill both the objective and the subjective demands that can be raised concerning the term minority. A minority group which qualifies under at least one of the three following alternatives, has the right to be protected under article 27 of the ICCPR; the alternatives concerns groups that are ethnic, religious or linguistic minorities. The Sami qualifies as a minority through two of the three alternatives that are requested; the Sami are both an ethnic and a language minority.²¹⁶ As a minority, the Sami are a subject of rights under the ICCPR article 27, while the authorities are the subject of duties and responsible for following measures in accordance to the provision.²¹⁷

Despite different rights through national and international law which the Sami are protected by, they are, however, not the only ones affected by the regulations on the coast- and fjord fishery in the sea outside Finnmark. There are other local people living in this area, who also have been living off fisheries as a livelihood alone or in combination with other industry for many years, but who are not protected by those international conventions.

It has been stated from both Sami and others point of view that the local people in Finnmark, including the Sami, should be treated equally. Kymlicka's argument for minority rights based on equality considerations is therefore worth mentioning in this context. He says that if we really want to treat people as equals, we should take into account that people are different and

²¹⁶ Skogvang, Susann Funderud 2002, *Samerett – Om samenes rett til en fortid, nåtid og framtid* p.41 (my translation)

²¹⁷ Einarsbøl, Elisabeth (2005): "Some Views on Coastal Saami Rights in Saltwater Areas", In: *Galdu Cala – Journal of Indigenous Peoples Rights* No. 1/2006. p.35 (my translation)

wants to remain different, and therefore try to make it possible for cultural groups to keep their uniqueness. Because circumstances give people unequal opportunities to hold on to the cultural characteristics which makes them different, Kymlicka thinks real treatment as equals implies that the state seemingly must treat its citizens unequally and give them some group rights that do not apply to others.²¹⁸

Even though the Sami might have rights to be treated unequally with others settled in Finnmark in relation to the issue of natural resources like fishery, that might not be the wanted case for any parts. Such treatment might cause inequality where equality has been fought for for many years.

5.3.2 Rights to Special Treatment

To the degree of positive measures being required in order to secure and develop their culture, the Sami will, according to the Coast- and Fishery Commission, have rights to special measures compared to the rest of the population. This principle is also acknowledged by the Norwegian authorities. A demand for special measures appear to be strongest in the legal area substantial for Sami culture. As mentioned earlier in this thesis, the Coastal Sami culture is severely vulnerable due to the Norwegianization policy. The Coast- and Fishery Commission says this part of the Sami culture is in a critical situation.²¹⁹ The development in the Coastal Sami areas requires the authorities to give the Sami special arrangements.²²⁰

The Sami Fishery Commission also agree in relation to the issue of the Sami having rights to special measures compared to the rest of the population. In their report, the Commission states that article 27 of the ICCPR demands positive discrimination of minorities, which in this case means necessary requirements for the Sami group or for Sami areas.²²¹ Kymlicka says it is important to let people keep their cultural differences in order to treat them as equals. Circumstances causes different opportunities to keep ones cultural uniqueness which makes

²¹⁸ Weigård, Jarle (2008) "Is There a Special Justification for Indigenous Rights?" In: *Indigenous Peoples, Self-Determination, Knowledge, Indigeneity* p 181

²¹⁹ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.378 (my translation)

²²⁰ Ibid p.378

²²¹ The Sami Fishery Commission's Report 1997 p.71 (my translation)

one different from others. Actual equal treatment therefore involves the authorities to treat it's citizens differently and give some rights which would not apply to others.²²²

There has often been a conflict between the Sami and others in the debate over Sami rights in Finnmark.²²³ During the meetings held by the Coast- and Fishery Commission in Båtsfjord and Berlevåg in June 2007, the wish for equal treatment between the Sami and others was emphasized several times. Some of the "others" expressed fear of being treated differently from their neighbours who were Sami. It became quite clear that some of the participants during the meetings feared that there would be made differences between the local people in Finnmark based on ethnicity.²²⁴

5.3.3 The Need for Cultural Protection

Because of indigenous peoples' weak political structure, other cultures have been able to look at indigenous peoples' territories as terra nullius (no mans land), and have therefore more or less –or against larger or smaller degree of resistance- been able to make use of the lands for their own purpose. This has often resulted in indigenous peoples and their territories to be victims of what is called internal colonization from other peoples.²²⁵ In 1997 King Harald expressed that the Norwegian state was founded on the territory of two peoples; the Norwegians and the Sami. This was first of all an official admission of a Norwegian – Sami equality and togetherness within the state which thereby accepts internal Sami self – autonomy, primarily through the Sami Parliament. This is at the same time a way of expressing the acknowledgement of the Sami special position amongst other ethnic minorities in Norway; the Sami are the only ones who can be spoken of as a people with a territory.²²⁶

According to Jarle Weigård, by comparing the conditions of the indigenous population in Norway, the Sámi, with those groups that are "only" recognized as national minorities,²²⁷ it is in no way apparent that the Sámi are the most culturally vulnerable of these groups. However,

²²² Weigård, Jarle "Om det normative grunnlaget for urfolksrettigheter" In: *Finnmarksloven* 2008 p.44

²²³ The Coast- and Fishery Commission; NOU 2008: 5 "The Right to Fishery in the Sea Outside Finnmark" p.375 (my translation)

²²⁴ Ibid p.549

²²⁵ Weigård, Jarle "Om det normative grunnlaget for urfolksrettigheter" In: *Finnmarksloven* 2008 p.49

²²⁶ Ibid p.64

²²⁷ The national minorities includes the Kven, the Firrest Finns, the Romani People, the Gypsies and the Jews

it is not more reasonable that the Sámi are in need of the strongest protection through minority rights. It is more likely that groups like the Kven, the Forrest Finns and the Romani find themselves much closer to a state of cultural extinction than the Sámi. If one were to look at it from a historical perspective, a group like the Romani People has surely experienced even worse treatment like harsh discrimination, prejudice and direct infringement, than the Sámi.²²⁸

5.3.4. Small Scale- versus Industry Fishery

The Coast- and Fishery Commission's initiative to involve both Sámi and others in relation to the suggestion of a fishery zone in Finnmark is an approach to step away from the discussion of indigenous/minority rights versus majority rights, and step into the discussion of small scale fishery versus industry fishery. The commission uses an example from Chile about this in their report. The idea of a coast fishery zone carried out in Chile could, with necessary adjustments, be possible to carry out in Finnmark as well. This means a fishery zone reserved for the coastal fishers/small scale fishers which is defined in relation to vessel size and type of tools. The commission says the point with this example was not to suggest that their system is better (or worse) than the Norwegian system, but that it presents possibilities concerning the issue of a fishery zone which can be taken into further consideration in relation to Norwegian context on this matter.²²⁹

Although the example mentioned above is relevant in relation to the establishment of a fishery zone in Finnmark, it steps away from the focus of this thesis. This example applies to the issue of small scale fishery versus industry fishery, which may be of future discussion if the authorities decide to give the coastal population settled in Finnmark the same rights to fishery in the fjords and coastal areas as suggested by the Coast- and Fishery Commission. The focus of this thesis is, however, about indigenous rights to fishery, and not just mainly about the relation between industry and coastal fishery.

²²⁸ Weigård, Jarle "Is There a Special Justification for Indigenous Rights?" In: *Indigenous Peoples, Self – Determination, Knowledge, Indigeneity* (2008) p.185

²²⁹ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.339 (my translation)

5.3.5 Kymlicka versus Kukathas

As mentioned earlier in this thesis, Kymlicka argues that some minority cultures may need protection from economic or political decisions of the majority culture if they are to provide this context of individual choice, which is the range of options passed down to us by our language and culture, for their members. While special rights of different kinds might seem discriminatory at first glance, since they allocate individual rights and political powers differentially on the basis of ethnicity, Kymlicka argues that they are in fact consistent with liberal principles of equality.²³⁰ In relation to Kymlicka's theory the Sami should be treated as a minority group, and therefore may need special rights in order to help rectify the specific disadvantages they face as a minority group. He argues:

“While these group – differentiated rights for national minorities may seem discriminatory at first glance, since they allocate individual rights and political powers differentially on the basis of group membership, they are in fact consistent with liberal principles of equality. They are indeed required by the view, defended by Rawls and Dworkin, that justice requires removing or compensating for undeserved or “morally arbitrary” disadvantages, particularly if these are “profound and pervasive and present from birth” (Rawls 1971: 96). Were it not for these group – differentiated rights, the members of minority cultures would not have the same ability to live and work in their own language and culture that the members of majority cultures take for granted. This, I argued, can be seen as just as profound and morally arbitrary a disadvantage as the inequalities in race and class that liberals more standardly worry about.”²³¹

On the other hand, according to Kukathas' theory the Sami and Norwegians should be treated equally and individually. Because groups and group identities are so changeable, liberalism tries to take a neutral stand towards their claims and instead only emphasize the interests of the individual. Kukathas says groups and collectives matters only because they are essential for the well – being of the individual.²³² He argues:

“According to liberalism's traditions, minority ways, or difference, are to be tolerated rather than suppressed. By implication, this means that minority cultures are accepted within a liberal society: people are not required to live by values they cannot abide, nor forbidden to live by values they cherish. The fundamental liberal concern, therefore, is to find some way in which those who hold to different values might live

²³⁰ Kymlicka, Will: "The Rights of Minority Cultures, Reply to Kukathas" In *Political Theory* 20 (No.1/1992), p.140

²³¹ Kymlicka, Will *Multicultural Citizenship* 1995 p.126

²³² Kukathas, Chandran "Are There Any Cultural Rights?" In *Political Theory*20 (No.1/1992)

together without coming into conflict."²³³

The issue of establishment of a fishery zone is, to start with, based on indigenous peoples rights and that the zone in itself includes people settled in Finnmark to be allotted rights which others are excluded from. If one, however, were to put the theories by Kymlicka and Kukathas in relation to the topic of this thesis it clearly shows that in relation to the discussion concerning fishery rights in the sea outside Finnmark, Kymlicka's theory is brought to attention several times. Kymlicka's theory may be relevant to use in order to explain the existence of a fishery zone, whereas Kukathas' theory may be possible to use in order to state the difficulties in treating the population settled in the area differently (based on ethnicity). While both commissions speaks of the Sami people's rights, as an indigenous people and as a minority through both national and international law, neither wants to suggest special rights for the Sami in relation to the rest of the local population in Finnmark. The Sami Fishery Commission conclusions were in sum negative to the mandate they were given. They decided not to suggest a Sami Fishery Zone, while the Coast- and Fishery Commission suggested a fishery zone which would include all of Finnmark's coastal population.

The question then would be, if it is right to exclude the Sami from their rights to special measures. Is it right to base their conclusions on Kukathas theory instead of Kymlicka's? Obviously one doesn't want to be discriminatory and suggest that some should get rights while others do not. According to Kukathas people should be treated equally and individually. They should not be treated based on their ethnicity. If one were to look at Kymlicka's perspective, is it really discriminatory to treat people differently if they are in special need of such treatment in order to keep their cultural uniqueness alive? Kymlicka argues that a multicultural state should recognize group differentiated rights, and offer special protections to minority cultures²³⁴, in this case the Sámi.

"...the liberal state should take active steps to ensure that groups have the resources they need to sustain themselves. This means not simply subsidizing their activities but

²³³ Kukathas, Chandran "Theoretical Foundations of Multiculturalism"
http://economics.gmu.edu/pboettke/workshop/fall04/theoretical_foundations.pdf (accessed November 19. 2008)

²³⁴ Ibid

also ensuring that legal and political arrangements do not discriminate against or disadvantage cultural minorities.”²³⁵

It is clearly shown by the different commissions’ reports, which theory may be used in order to explain their conclusions and suggestions. Even though both commission have acknowledged in their reports that the Sami *does* have rights to special measures in order to secure, maintain and develop their culture, Kukathas theory appears to be most relevant in order to defend their conclusions. This is most likely since the commissions wants all ethnic groups in Finnmark to be treated equally, despite the authorities’ commitments towards the Sami people alone.

The Sámi people’s cultural position was severely weakened through the Norwegianization policy. The work on making right for all the things done wrong during that time is still in process, the issue of saltwater fishery rights is a part of this process. As mentioned earlier, the authorities are responsible, through the ICCPR art. 27, to make sure the minorities are able to secure and develop their culture. In several of its articles ILO Convention No.169 gives indigenous peoples a right to participation on issues concerning exploitation of natural resources. The Norwegian Constitution §110a supports the international regulations of protection.²³⁶ Even though there have been certain measures made over time in order to fulfill the authorities commitments towards the Coastal Sámi, these measures have not been sufficient when it comes to executing cultural protection.²³⁷

The Coast- and Fishery Commission finds the people settled by the fjords and along the coast of Finnmark, based on historical usage and the international legal rights concerning indigenous peoples and minorities, to have a right to fishery in the sea outside Finnmark.²³⁸ Kukathas argues:

“...the virtue of the liberal view is that it takes seriously the idea that, when people disagree about what is good and what is right, the issue should not be settled by the

²³⁵ Kukathas, Chandran ”Theoretical Foundations of Multiculturalism” http://economics.gmu.edu/pboettke/workshop/fall04/theoretical_foundations.pdf (accessed November 19. 2008)

²³⁶ Smith, Carsten “Overlevering av Kystfiskeutvalgets utredning NOU 2008: 5” p.3

²³⁷ Ibid p.3

²³⁸ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.370 (my translation)

exercise of power to enforce the dominant view. In the face of disagreement or difference what should be sought is peaceful coexistence.”²³⁹

The commission expresses in their report that there have been many differences between the Sámi and others in relation to the debate about Sámi rights in Finnmark, but there does, however, not have to be a difference concerning the right to fishery. On the contrary, this could be a way to create fellowship of interests and cooperation. This right to fishery could create a foundation for both increased activity in the industry and increased solidarity.²⁴⁰

5.4 Summary

In this chapter the arguments made by the Sami Fishery Commission and the Coast- and Fishery Commission concerning the issue of establishing a fishery zone in the sea outside Finnmark has been discussed. The arguments for and/or against a fishery zone in Finnmark have been analyzed in relation to the international conventions; article 27 of the ICCPR and ILO Convention No.169, where Sami rights to special measures, based on (national and) international law, in relation to saltwater fishery, in order to secure and develop their culture, have been given special attention. Further in this chapter, the matter of ethnicity has been discussed in relation to how and to what extent it has been taken into account in the reports by the commissions concerning the issue of a fishery zone. This issue has also been discussed in relation to theory by Will Kymlicka and Chandran Kukathas. The matter of equality between ethnic groups have been looked into, and who has rights to special treatment and cultural protection have been emphasized and discussed in this chapter as well. Kymlicka and Kukathas have been brought to attention on several occasions throughout the discussion part of this chapter, where their theories on group rights versus individual rights have been compared and discussed in relation to the topic of this thesis.

In the following and final chapter, the concluding remarks of this thesis will be presented.

²³⁹ Kukathas, Chandran ”Theoretical Foundations of Multiculturalism”
http://economics.gmu.edu/pboettke/workshop/fall04/theoretical_foundations.pdf (accessed November 19. 2008)

²⁴⁰The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.375 (my translation)

Chapter 6

6.0 Concluding Remarks

The focus of this thesis has been on the different arguments concerning a fishery zone in Finnmark proposed in the reports by the Sámi Fishery Commission and the Coast- and Fishery Commission. The different conclusions and suggestions concerning the issue of a fishery zone which the commissions have put forward in their reports have been discussed in relation to international law (ICCPR art.27 and ILO Convention No.169) and theory by Will Kymlicka and Chandran Kukathas. The issue of whether the Sami, as an indigenous people and as a minority, have rights to saltwater fishery in Finnmark, based on International Law, in order to secure and develop their culture, and to what extent ethnicity has been taken into account in the different reports, have been the main topics of discussion.

The point of this thesis has been to illustrate how the different commissions' reports have argued for and/or against a fishery zone in Finnmark, especially in relation to the issue of non recommendation of suggestions based on ethnicity. The task has been to find out what made these commissions conclude so differently, and what they have based these conclusions on. The arguments in the commissions' reports concerning a fishery zone in Finnmark are based upon the relation between minority and majority versus individual rights. While Kymlicka's theory is relevant in order to explain the suggestion of a fishery zone, Kukathas' theory can be used in order to explain the difficulties of giving rights based on ethnicity. These theories are usually framed as opposites, while in this case they are used in order to explain different aspects of the same issue. The issue of ethnicity has been used as a foundation for requesting the establishment of a fishery zone in Finnmark. It does, however, appear as if neither commissions have suggested measures strictly based on ethnicity.

Even though the Sami have rights to special measures, based on (national and) international law, it appears as if both commissions have decided that it is not the best way to solve the situation concerning saltwater fishery rights in Finnmark to suggest such measures. It is interesting to see that both commission confirm these rights in their reports, but neither wants to recommend measures which will "give" the Sami these rights. It is of course an important point in this context that the Sami people themselves, expressed by the Sami Parliament,

wants to be treated on the same level as the rest of the population settled in Finnmark²⁴¹, and that they don't want to receive special measures compared to others. As it has been emphasized earlier, the "others" are afraid that the Sami will receive special treatment concerning saltwater fishery rights, and that they will not be included in this. This is obviously a normal reaction, but what about what is legally right?

The Sami Fishery Commission chose not to recommend a Sami fishery zone, partly because they did not want to suggest measures based on ethnicity, and that such a zone would cause special treatment of some at the expense of others. The Coast- and Fishery Commission have chosen to suggest a fishery zone for all ethnic groups living in Finnmark, and they base this suggestion on international law and historical usage. This decision is understandable in relation to the Norwegianization policy and the Sami peoples fight for equality and equal treatment for so many years. If they were to get special treatment now, this fight might have been a waste of time, as they would not be treated equally with the "others" yet again. Although this time they would find themselves on the other side of the latter, being treated with positive measures instead of negative. It is, however, no secret that unequal treatment based on ethnicity in either way, may cause problems within communities where several ethnic groups live together, and may therefore not be the best solution in this relation.

Even though both commissions decisions are understandable, it is still worth asking what would come of this. It has already been emphasized what happened after the Sami Fishery Commission's report was finished, which basically is not much. What is interesting now, is to see what will come of the suggestions proposed by the Coast- and Fishery Commission. In relation to historical usage, the Sami are, as mentioned, not the only ones who have lived off fishery or in combination with other industry in Finnmark for many years. But it is *only* the Sami, as an indigenous people and as a minority, who have protection, through national and international law, to maintain, secure and develop their culture, in which saltwater fishery is involved. The others does not have this protection, even though this kind of fishery has been a part of their culture for quite some time as well.

As mentioned earlier, the Coast- and Fishery Commission was supposed to look into the Sami and others' right to fishery in the sea outside Finnmark, and they have chosen to include both

²⁴¹ The Coast- and Fishery Commission; NOU 2008: 5 The Right to Fishery in the Sea Outside Finnmark p.375 (my translation)

the Sami and others in their suggestions concerning the issue of a fishery zone in this area. It will therefore be very interesting to see what the authorities decide to do in this matter. Will they agree to establish a fishery zone in Finnmark and give the Sami people back their rights to fishery in the fjords and coastal areas, which thereby would involve giving all ethnic groups settled in the coastal areas of Finnmark rights to this kind of fishery, or will they simply choose not to do so. If they would choose to give back these rights, how would the rest of coastal Norway's population, who have lived off fishery for many years as well, react to this kind of decision?

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