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Ethnicity and Fisheries Management

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3.1 Introduction

This paper discusses issues arising from application of *ethnic rights* in fisheries management, using data from the present debate in Norwegian fisheries management on the establishment of a Saami Fisheries Zone. The *Saami* is a Fennoskandian ethnic group, and the Saami Parliament - their politically representative institution - have recently proposed a semi-independent fisheries management system administered by the parliament. Concretely, they demand that part of the Norwegian quota of Norwegian-Atlantic cod is transferred to the Saami Parliament, which then manages the quota. In addition, the Saami Parliament acquires sovereignty over a specified ocean area outside the coast of Nordland, Troms and Finnmark, where the quota can be caught.

Some representatives in the Saami Parliament translate their concept of ethnic rights into demands of ethnically based property rights, by defining the ethnicity in relation to historical use of territories. The argument is that the maintenance of the Saami ethnicity rests on property rights, and that loss of these rights imply recession of their culture and ethnic identity. This paper analyzes some of the problems coming out of the demand for property rights over ocean areas, especially problems part of transforming common property to private property as well problems arising from using ethnically based arguments for acquiring property rights. I start with an historical section, arguing that Saami fisheries history coincides with Norwegian fisheries history. Secondly, I present some of the later developments of ethnic rights in Norway, focussing on the establishment and political role of the Saami Parliament. Thirdly, I review and discuss the debate on a Saami Fisheries Zone, for then to discuss theoretical issues posed by the debate on a Saami Fisheries Zone. Data was collected while the author served as the secretary for a committee called *The Saami Fisheries Committe*, a committee established by The Norwegian Department of Fisheries for researching Saami questions in Norwegian fisheries management in general and a Saami Fisheries Zone in particular.

3.2 Saami fisheries history in Norway: Some current issues ?

Before I discuss management issues related to on ethnic rights, elements of a Saami fisheries history is presented. Since claims of ethnic property rights are based on historical use, and Saami ethnicity is claimed being dependent on ownership of the territories being used, the focus is put on Saami use of ocean areas. However, the history of Saami use of ocean - territories is dependent on other political events and processes, particularly in the cases when government intervention has altered the use. Thus, I include other factors having an effect on Saami use of sea territories. Further, Saami fisheries history is hard to separate from Norwegian fisheries history. Consequently, elements of both histories

are present in the following analysis.

The Saami population is scattered all over the Scandinavian peninsula, together with two other ethnic groups having a history in the region: Norwegians and Kvæns (Naturalized Finns). However, the main area of settlement of the Saami population covers areas in Finland, Sweden and Norway north of 62° north, often referred to as *Fennoskandia*. Settlement of Saami fishermen along the coast of Northern Norway probably stem as far back as year 0. These settlements are mainly found in Finnmark county. Norwegian settlements came about 1000 years later, when the Vikings started to settle along the coastline (Holmsen, 1977). The Vikings lived from farming and fishing, of course with regional differences in adaptations. While Saami settlements generally were located on the inside of the fjords, the Norwegians settled farther out on the coast. This is probably due to differences in adaption to the environment: The Saami combined fisheries with hunting, gathering, and farming, while the Norwegian population lived from fishing, farming and trade. Thus, the Saami adaptation involved a subsistence economy, while the Norwegian adaptation involved a barter economy (Pedersen, 1995).

The Saami people is mostly known throughout the world for their reindeer pastoralism, which also remain the most "traditional" adaptation of the Saami to the Fennoskandian environment. However, the current adaptation to reindeer pastoralism, where semi-domesticated reindeers are driven back and forth in cycles over the year between different grazing-lands, is relatively new. Some sources date this adaptation back to about 1500 (Minde, 1995, Pedersen, 1995). Before the reindeers were domesticated, or rather semi-domesticated, the Saami would hunt for the reindeers. Currently, only a small portion of the Saami live from reindeers pastoralism (2-3 %). Fishing and farming are also traditional Saami adaptations, in the sense that they have been performed among the Saami for several hundreds of years.

On the national level, the area in question, currently called Finnmark, has been part of territorial disputes between several different nations through history. Before 1600, Russia, Denmark - Norway (Which at that time was a union) and Sweden collected taxes from all settlers in the area. In 1613, Denmark - Norway managed to get the sole jurisdiction over the coastline of Finnmark, while both Denmark - Norway and Sweden collected taxes in the inland. This situation lasted until 1751, when the border between Norway and Finland was established in a settlement between Denmark - Norway and Sweden - Finland (Which was a union until 1809). However, the present border between Russia and Norway was not established before 1826, when the border was defined in an agreement between Sweden - Norway (Since 1814 Norway was in a union with Sweden) and the Russian Tsar. However, the chaos of nations and territories was not brought to a final end until 1905, when

Norway became a sovereign state (Pedersen, 1995).

During the years 1200 -1600, all settlers in the area had to pay taxes to governmental tax-collectors which travelled around in the area. While some authors have described the taxation as imposing severe hardship on the both the Saami and Norwegian population in the area, it seems reasonable to assume that taxation must have been infrequent and to some extent random because settlers must have been hard to find at times. Communities, defined as permanent settlements, is a rather modern phenomenon, and it seems reasonable to assume that most of the population in Finnmark have migrated between different areas. Especially seems this as a plausible assumption in the case of the Saami population, which to some extent migrated after prey. Therefore, there seems to be a tendency to exaggerate the hardship imposed on the northern population during these times. Except for taxation, none of the forms of government intervention we know today interfered in the daily lives of those living from the sea until about 1600.

During the 1600's, high prices and good access to fish, caused mobile and large boats from the south (Nordland and Troms counties) to harvest part of the year in Finnmark. It is held by one historian that this was the first time the Saami population, which still was settled in the fjords, had to fish on the same territories as the Norwegians (Pedersen, 1995). However, there are two main arguments against this claim. First, the area was already settled by Norwegians hundreds of years before 1600, and to assume that there were no contact between these groups on the harvesting grounds seems unlikely, since the distances from the coastline to the fjords are rather short in most places. In many cases, one can see from the inside of the fiord to the coastal areas on the outside. Secondly, the technology of the time was unlikely to permit Norwegian coastal fisheries in the sense we know this fishery today. Consequently, the weather forced fishing wherever the sea was the most calm, which is inside the fjords, where the Saami fishermen also had their harvesting grounds. Contact and sharing of fishing grounds have probably existed back to the time of Norwegian settlement in the region, that is around year 1000.

However, the time around 1600 brought social change to all settlers in the northern region, since large scale fishing and trade of fish became institutionalized, manifested as the establishment of permanent merchant services such as buyers of fish and retail sales. This new bourgeoisie came from the south, mostly Bergen, where exporters of fish bought fish from North-Norway and exported it to Germany. Local buyers served as agents for these big exporters. The buyers imposed severe hardship on the population of the north, both Norwegian and Saami. By constantly overcharging for services and goods, they put the fishermen in debt. By threatening to deprive all possessions of the fishermen's families, they forced the fishermen to sell all their catch to

them, usually at prices far below market price. This structure of repression and economic hegemony lasted for several hundred years, creating class-divisions in the region.

The poverty in the coastal and fjordal regions in Finnmark at about 1700 was the cause of the establishment of the first fisheries management institutions. In this management system, fishermen from other counties were only allowed limited catches. In some fjords, fishermen from other counties were banned (Pedersen, 1995). This management system must be understood as an effort of social policy, where allocation of resources was seen as a way of giving the population of the north social support. However, all these restrictions on harvest by fishermen from other regions were eliminated in 1830, when harvest became free for everybody. After 1830, none of the management schemes in the coastal and fjordal fisheries of Finnmark have favored local fishermen. During the period 1700-1800, the vessels fishing outside Finnmark consisted of smaller vessels, and primary tools were handline, longline and gillnet. Most of the boats were equipped with oars and sail, and nothing was automated. Consequently, being a fisherman was a hard and risky occupation, inflicting severe physical hardship on the men that spent most of their life fishing. The only advantage was that everybody "was in the same boat": Most fishermen had similar equipment and similar social status and was exposed to the same dangers.

In the fisheries literature, some authors have argued that many small - scale fisheries are managed by informal institutions forming limited access systems by posing territorial claims over certain sea - areas. Whether this was the case in the fisheries of this period is unclear. Some authors (Eythorsson, 1991; Pedersen, 1995) hold that such systems have existed in the Finnmark fisheries as well. However, these hypotheses have never been documented, and it seems unlikely that such systems have existed. This is unlikely because the coastal and fjordal fishermen of the north always have been highly mobile due to the fact that they base their harvest on species being highly mobile. Thus, territorial possessions would certainly make it difficult for these fishermen to fish in such different places as they are known to have done, since the fishermen would have to pass territorial obstacles wherever they went. Such obstacles are, to my knowledge, not documented to have existed anywhere in the region, rather, the history of the fisheries in the region shows several traditions of visiting remote fishing grounds at specific times of the year.

Around 1900, the industrial revolution started to affect the fisheries of North - Norway. Basically, parts of the fleet was modernized by fishermen buying larger, motorized vessels. At the same time, new and more efficient tools - such as trawl and seine - was introduced in the fishery. In 1897, a "Fisheries Law for Finnmark County" passed legislation, allowing for local, municipal authorities to propose closing of

sea areas for harvest during parts of the season. The proposition was then handled in the central governmental agencies, which reached a decision. Closures applied particularly during the spawning season, when fish stocks were vulnerable to overharvest. Such closures would especially come in handy when foreign trawlers and seiners virtually emptied the fjords for cod and saithe, leaving nothing to the local fishermen. However, almost none of the local claims for temporary closures and preservation were put into formal action by the central authorities. In sum, a conflict between different user - groups was established, a conflict which have remained until this day.

However, the turn of this century brought another and important element to Saami history. This event was the *assimilation* policy followed by the Norwegian government towards the Saami since the beginning of this century until the 1950 - 60's. The assimilation policy had as its goal that the Saami people should be "Norwegianized" by coercing the Saami people to adapt to Norwegian culture, traditions and economy, becoming as "Norwegian" as possible. The instrument used in this policy was mainly the public services, and specifically the educational system. All children attending schools - which was mandatory - during the period learned Norwegian, while all communication in Saami - whether formal or informal - was banned. In addition, all public services assumed that the client spoke Norwegian, because all civil servants only were permitted to speak Norwegian.

While there can be no doubt that the assimilation policy followed by the Norwegian government in this period altered the lives of many Saami families, the extent to which it altered their lives have been discussed. Several authors (Eidheim, 1994 [1969]; Thuen, 1980, 1984; Minde, 1980, 1984; Høgmo, 1984; Jernsletten, 1984; Bjørklund, 1984; Bjørklund and Brantenberg, 1984) hold that the effect of the assimilation policy on Saami culture was devastating, virtually abolishing all ethnically based institutions in Saami social and cultural life. Identical positions are also present in contemporary Saami political rhetoric, being one of the cornerstones for demanding compensation from the Norwegian state (Sametinget, 1994).

Labor became increasingly specialized in the modernization process at the turn of this century. Individuals or groups of fishermen invested in larger vessels, only living of income from all-year fishing. This new adaptation was also present among Saami fishermen, who either invested in vessels themselves or became crew on these boats. Some captains offered contracts with a permanent income, which at that time was seen as an attractive opportunity (Pedersen, 1995). However, it appears as loans and financial capital for new vessels was harder to access for Saami fishermen, due to racial tendencies among those managing the capital: Public institutions and private banks (Eythorsson, 1991). The explanation was also that the Saami language represented a

barrier towards presenting arguments for getting loans. Besides, the weak organizational influence among the Saami caused this group to have less priority in public policy, since recommendation from local authorities was needed to get loans for new vessels. The result was that industrial fishing became a less significant economic adaptation among the Saami than among the Norwegians in Finnmark.

The Second World War had a tremendous impact of the infrastructure of Finnmark county. At the end of the war, the Germans were chased towards the south by Russian forces. During this evacuation, the Germans burned all houses, public building, bridges, etc. in Finnmark and the northern part of Troms county. In short: The whole infrastructure of the region was destroyed, leaving only a small fraction intact when WWII was over. Of course, this event, together with the evacuation of people in the region during the war, caused severe changes in the settlement patterns of the north.

During the post - war period, a program for rebuilding Finnmark and Troms counties was discussed. While matters relating to ethnic diversity in settlement patterns were overlooked in the program, future fisheries policy was mentioned (Stenberg Hansen, 1993). However, the plan - called "The London Plan" - was never effectuated. In spite of this, the overarching policy during the rebuilding of Finnmark consisted in centralization of settlements, where the government provided capital for building houses and industries in central areas. But the people of the region held on to their traditional adaptation, and moved back to the smaller places they came from, continuing to live from small - scale fishing and farming (Stenberg Hansen, 1993; Solhaug, 1977).

In the public policy regarding the Saami population in Finnmark, the 1950's represented a change. In 1956, the government appointed a committee to elucidate questions pertaining to the Saami population in the Northern Norway, and the committee delivered their report in 1959. The committee pointed at the need for protecting the sea - areas traditionally used by the Saami from overharvest by larger, industrial vessels. However, a follow-up was never implemented by the Norwegian government, and none of the recommendations of the committee were effectuated. Considering the fact that larger vessels during the 1950's became a significant factor in the total fleet of Norwegian fishing vessels, the lack of regulation of these vessels became a political as well as an ecological problem. Large vessels from the south were more efficient than the local vessels, thus making it hard for the fjordal fishermen to earn decent incomes.

From the 1960's and up to the present, Saami fisheries are influenced by the same process as other small-scale fishermen are: An increasing conflict between different user - groups. The economic policies during the 1950's and 60's resulted in increased emphasis on industrial fishing,

giving this user-group increased fishing rights. This resulted in several protests from small-scale fishermen, who, through their organization "The Norwegian Fishermen's Organization", filed several protests against what they perceived as robbery of "their" local stocks (Pedersen, 1995). As mentioned, the conflict remains up to this day, and the government has not been successful at resolving the conflict. However, some positive efforts have had an effect. Fishing by trawl is illegal inside the continental shelf, and its illegal to use seine for fishing cod inside the fjords. Inside some fjords, it is still legal to fish saithe and herring during times of the year using seine. Bycatches of cod are in some cases significant, causing protests from local, small - scale fishermen. It appears as ethnic issues are absent from these cases, as they are user-group conflicts and individuals of both Norwegian and Saami heritage are present on both sides.

It is hard to separate the current status of Saami fisheries from the status of other fishermen in the region. Using the "Fisherman's register", a register of all individuals in Norway having fisheries as their occupation, I have compared Saami regions with Norwegian regions. The register is divided into two categories: Category A includes those having fisheries as a part - time occupation, Category B includes those having fisheries as a full - time occupation. First, I selected two counties in Norway for the comparison, Troms and Finnmark. This seems plausible, since these are the counties where the majority of Saami settlements are found. Second, I defined "Saami regions" as regions receiving economic support from a fund established by the Norwegian state, but managed by the Saami parliament. This fund is called "The Saami fund for economic development", and only persons in regions defined as Saami are eligible for receiving support from the fund. "Saami regions" are defined by the Saami parliament, and are simply areas where a significant portion of the population is Saami¹.

The total number of registered fishermen in Norway has decreased during the last ten years. The decrease in the number of full-time fishermen is especially evident towards the end of the eighties, where a crisis in the cod-stock occurred. Into the 1990's, the stock of Norwegian - Atlantic Cod has increased , but the number of fishermen still declines. The main reason for this is a new management program enforced after 1990. This program limits entry and participation in the cod fishery based on previous fishing experience before the implementation of the system.

¹ The following municipalities are wholly or partly included in the district eligible for support from The Saami fund for Economic Development: Skånland, Lavangen, Kåfjord og Kvænangen municipalities in Troms county; Kautokeino, Kvalsund, Måsøy, Porsanger, Karasjok, Lebesby, Gamvik, Tana og Nesseby municipalities in Finnmark county. Because some municipalities are inland, these are excluded from the analysis

The number of full-time fishermen has declined steadily the past years. This development is evident in both Saami and Norwegian areas, both having an almost proportional reduction in the number of fishermen. Saami and Norwegian areas have collectively had a reduction in the number of fishermen of 16,6 % in the period 1988 - 1993. Norwegian areas has had a reduction of 16,6 % in the period, while Saami areas has had a reduction of 17,1 % in the same period. This difference is too small to claim that there has been a substantially different development in the number of full-time fishermen in Saami regions compared to Norwegian areas: Both areas have had their number of fishermen significantly reduced.

However, list A shows another development. Towards the end of the eighties, the number of part-time fishermen decreased in both Saami and Norwegian areas, however, at the beginning of this nineties, the number of part-time fishermen has increased in Saami areas, while decreased in Norwegian areas. Saami areas have had an increase in the number of fishermen of 23,7 % in the period 1988-1993, while Norwegian areas have had a reduction of 16,8 % in the same period. This is a significant difference, and allows concluding that there is a significantly different development in the number of part-time fishermen in Saami areas compared to Norwegian areas.

This difference may have different explanations. One explanation is that fishermen in Saami regions leaving a career as a full-time fishermen instead enroll as part-time fishermen, thus only reducing their effort as fishermen, while fishermen in Norwegian regions either fish full - time or they do something else. Traditional Saami economic adaptations have usually been based on the individual being involved in several industries at the same time. One traditional Saami adaptation has consisted in part-time farming and part-time fishing, but other combinations have appeared over the past twenty years, for example part-time fishing combined with part-time public servant. In sum, Saami adaptations usually rest on involvement in several industries, where the individual alters industry and degree of involvement after ecological and economic conjunctures. Norwegians are more apt to have full-time employment; either they are full-time fishermen or they don't fish at all.

The increase in part - time fishermen in Saami districts may also be due to an effect of the "Saami Fund for Economic Development". Because part - time fishermen in these areas have better access to capital, it is easier for fishermen in Saami regions to continue their fishing operation. Besides, since 1994 part-time fishermen in Finnmark and the northern part of Troms county are guaranteed a minimum catch, which is not the case with part-time fishermen in other regions. In sum, the explanation is probably an interaction between the three factors.

In the rest of this section, I will look at some recent developments in the treatment of ethnic issues in Norway, focussing on the Saami politics of property rights. The debate on Saami property rights escalated at the end of the 1970's, when the government decided to build a dam in Finnmark county at location being in conflict with areas used for keeping reindeers. This conflict was later referred to as the Alta-Kautokeino. The Saami argued that the dam would intersect with areas used for reindeer herding, and that the construction would have a severe impact on the biology of the area. However, the Norwegian government held on to the location, claiming that the ecological consequences were few, and that the reindeer owners had other places they could keep their reindeers. As a result of this conflict, the right to use inland properties in Finnmark county was brought into the national public debate. Some Saami activists starved themselves in front of the Norwegian parliament and other attempted to physically obstruct the construction of the dam, also receiving support from several Norwegian organizations and individuals. Large police forces were brought to the area to remove the activists, who came from the whole country.

Following this event, two significant political processes started. First, a national committee was appointed by the Norwegian government for researching and documenting some of the issues arising from the Alta - Kautokeino conflict. The committee, called the *Saami Rights Committee*, was authorized to document the substance and extent of Saami land ownership claims in Finnmark county as well as other indigenous and traditional rights among the Saami. These rights should be translated into a form comparable to Norwegian law on areas pertaining to land ownership, thus making comparisons and implementations possible. The committee was appointed in 1980, and is still in operation.

Second, as a result of the turmoil caused by the Alta - Kautokeino conflict, but also as a result of some preliminary conclusions from The Saami Rights Committee, the establishment of a Saami parliamentaric institution for treating political and administrative issues for the group. During the years after the Alta-Kautokeino conflict, it became increasingly clear to the Norwegian government that international law on the area prescribed establishment of autonomous political institutions for ethnic groups (Especially Article no. 27 in UN's Convention on Civil and Political Rights and ILO convention no. 169 from 1966). The Saami parliament, located in Karasjok in inland Finnmark, was opened by the Norwegian King, H.M. King Olav at October 9th, 1989.

Following the election-cycles of the Norwegian parliament, The Saami parliament is elected every fourth year. The jurisdiction of the Saami parliament is manifested in Law no. 56 of June 12th, 1987: *The Saami Law*, where § 2.1 says that:

"The Saami parliament has as its working area all cases which, on

the premisses of the parliament, can be considered as having relevance to the Saami people.

The Saami parliament can by its own initiative make statements on all cases within its own working area. It can by own initiative make proposals to public authorities and private institutions etc. The Saami parliament can form a quorum when this follows from other provision in the law, or is otherwise established"[My translation].

The jurisdiction of the Saami parliament is limited to *consultative power*, making recommendations on cases pertaining to Saami interests, such as new laws and regulations proposed by the Norwegian parliament. However, the parliament can also give statements to decisions or propositions coming from private institutions or companies. However, the proposer is not obligated to ask for a statement from the Saami parliament, but § 2.2 in the Saami Law encourage other public authorities to ask the Saami Parliament for a statement before decisions are reached. This encouragement is being followed by other public authorities, as the Saami Parliament has grown into a significant factor in the Norwegian political and administrative discourse.

The last, but not least, factor regulating the Saami parliament, is eligibility for being represented in the Saami Parliament. This factor is important because it regulates who can be elected to the parliament as well as who can vote for representatives to the parliament. Criteria for eligibility are found in the "Sametingsplan" (Plan of the Saami Parliament) for the period 1994 - 1997, and says that the voter must have turned 18 years or more in the year of the election and declared that he or she:

- *Understand themselves as Saami.*
- *Have Saami as native language, or that at least one of the parents or grandparents have (or have had) Saami as a native language* (Saami Parliament, 9 [My translation]).

Fulfilling these criteria means that the voter is eligible for enrollment in the Saami Census, which is a public list over eligible voters in the district. After being enrolled in this census, the individual can vote.

3.3 Saami Property Rights and The Saami Fisheries Zone

Parties within the Saami Parliament have claimed that the Saami, represented by the Saami Parliament, should have the property right to terrestrial resources in Finnmark county. This claim is based on historical rights, where the Saami claim that since they used the terrestrial resources of Finnmark before the formation of the Norwegian

state, they should be the owners of these territories also. Juridically, this claim is heavily based on a law from 1751, called Lappekodisillen. This law came as product of the agreement between Denmark - Norway and Sweden - Finland in 1751, when the borders between these countries were established. This particular law grant the Saami the rights to use areas in Finnmark and adjacent areas in Finland and Sweden for keeping their reindeers, independent of national borders. It is clear that this law, also called the Magna Carta of the Saami people, grant Saami reindeer pastoralists the right to use the areas mentioned, but there is a debate whether this imply that they own these areas. A solution to this problem has come from the mentioned Saami Rights Committee. The solution seems to include de-centralization of the management of the commons by granting the administration in each municipality, instead of the state, the right to manage their corresponding commons.

The Saami parliament has proposed that the parliament should have the responsibility of managing the commons of the Finnmark county, based proposal on historical and juridical rights. Strong reactions have come from Norwegians claiming that they also have a history of using common property resources in Finnmark. As shown in the historical section, the Saami have utilized the terrestrial resources of Finnmark for as long as 2000 - 3000 years. Norwegians have used terrestrial resources for about 1000 years. However, Norwegians have rarely used the inland areas for any commercial purposes, and the inland has mainly been used by Saami reindeer pastoralists. Norwegian settlements tend to have been scattered along the coastline, since fishing have been the cornerstone in the Norwegian economy. Therefore, at least involvment of the Saami parliament in the management of the inland terrestrial resources, at least those areas historically used for reindeer herding, seems legitimate. Arguably, the long history of Saami reindeer pastoralism should call for some form of property right for this group, or at least some form of protection of their interest in these territories. However, new historical evidence may support other conclusions, and cooperation between local municipalities and the Saami Parliament may prove to be the best solution.

As an extension of the debate on terrestrial common property, a debate on the ownership status of marine common property has occurred. Members of the Saami Parliament have claimed ethnically based property rights over ocean areas based on historical use and the law documents reviewed above. While the debate on marine resources is an extension of the terrestrial debate, the crisis in the Norwegian - Atlantic cod stock in 1990 certainly triggered and fueled this debate. During the resource crisis, where catches og Norwegian - Atlantic Cod declined drastically, the Saami Parliament formed the following resolution:

"The disastrous resource situation in the Barents sea, with an explicitly negative development in the cod-stock, has created a

serious threat to the primary economic fundamental of several local communities along the coast of North-Norway. [...] The number of trawlers must be reduced, but a complete reduction in the number of trawlers is unrealistic, because so many local communities are dependent on landings from trawlers. [...] The fresh-fish trawlers have a future to the extent that they can contribute to even out seasonal variations in landings. [...] Factory freezer trawlers must leave the Barents-sea. Today's resource-situation does not allow for catch by vessels with on-board processing, because on-shore processing must be given priority. [...] Transport of raw fish out of [Finnmark] for processing elsewhere must be brought to an end as soon as possible. The key to increased profit and employment within fisheries lies in increased and refined processing of the raw material. To accomplish such a goal, one needs competence within the industry, especially for finding markets for new products. Both within the industry and the export branch one must turn from being focussed on production to being focussed on a more complete market-orientation." (Transcripts from the full plenary discussion at the Saami parliament of 30.10. - 01.02.1990, my translation)

By the occurrence of the resource crisis, the Saami parliament was given a good opportunity to defend their interests. Causes and solutions to the cod-crisis was discussed, and latent conflicts between different user-groups came to a climax during these discussions. Spokesmen of the fisheries of North-Norway accused fishermen from South-Norway for "stealing" the fish from the North, while fishermen from South-Norway claimed the right to the resources due to their common property status. The Saami Parliament took an indirect position in this conflict by insisting that the trawler fleet should be reduced, and that quotas should be re-prioritized in favor of increased catches by the smaller traditional coastal and fiord vessels in North-Norway. However, no claims of property rights were made by the Saami Parliament at this time.

These issues were part of a debate on the social allocation of marine resource in Norway, and the Saami Parliament was on the side of those claiming that North-Norway should be given priority in times of low catches, since this region had historical rights to catches, and that many regions in the north are *Fisheries Dependent Regions*. The introduction of the concept *Fisheries Dependent Regions* came as part of a new management system implemented by the Department of Fisheries in 1990. This management system limited and reduced both catches and entry for the coastal and fjordal fisheries of Norway. While a similar management system had been present among trawlers and seiners for several years, this was the first time coastal and fjordal fishermen were managed at an individual level in Norway.

As mentioned, the recently established Saami Parliament was thrown

into the debate, first taking a stance on the side of the rest of the region. However, since 1990 and until today (1995) a change has occurred in this policy. While the demands of the Saami Parliament earlier were focused on the best of the region, they presently focus on the best of their own ethnic group. This change may be called a transformation from a moral to an ethic debate (Habermas, 199x), that is, a debate changing from "what is best for everybody (The whole region)" to a discussion of "what is best for us (The Saami as one of many groups in the region)".

After the establishment of the Saami Parliament in 1989, the parties represented have proposed different solution to what they perceive as the *ethnic* element in Norways fisheries. The problem for these parties appears to be that the management regime present in Norway discriminates Saami fishermen, not fulfilling the obligations that Norway has agreed on by signing international conventions regarding the rights of indigenous people. In 1990, The Norwegian Department of Fisheries commissioned a report from an expert on Saami rights in fisheries. In the report, the expert wrote that the conventions in question obligate the states signing to safeguard indigenous cultures, and contribute to conserve their cultures on the premises of the indigenous people in question. They also state that indigenous people have the right to use their historic homelands, and that they should have a say in the management of these territories. Finally, the conventions provide for positive discrimination, that is, in questions pertaining to the social distribution of goods, indigenous people have the right to these goods if these goods are part of their ethnic heritage and important to the survival of their heritage (Smith, 1990).

Encouraged by the Smith report, parties within the Saami Parliament started to form a fisheries policy that would fit the juridical framework shown above, assuming that the premises of the report was correct. The Department of Fisheries initiated a committee to research different practical management solutions that would fulfil the obligations implied in the international conventions signed by the government, called *The Saami Fisheries Committee*. Parallell to this committee, the Saami parliament appointed a committee on their own to work on the same questions, calling the project *Saami Fisheries towards the year 2000: A plan for accomplishing a Saami Fisheries Zone*. While the committee appointed by the Department of Fisheries still work on their report, the committee appointed by the Saami Parliament has delivered its report. The content in their report and some other data constitute the data for the debate of a Saami Fisheries Zone, which I will turn to now.

First, it should be noted that representatives within the Saami Parliament are split in their fisheries policy. Some parties do not demand a Saami Fisheries Zone, and have proposed other solutions. However, I will focus on the claims made by those demanding a Saami Fisheries Zone, since the demand for this zone is interesting in a

management- and commons perspective. Definitions of the zone have varied, and even the committee appointed by the Saami Parliament have avoided to define exactly what they mean by the zone. However, the largest party in the Saami Parliament, NSR (The Federation of Norwegian Saamis) have, in their program (Storslett, 1995), carried a motion with the following definition of a Saami Fisheries Zone:

Ocean areas outside Nordland, Troms and Finnmark must be included in a Saami Fisheries Zone. The zone must have an extension of at least 12 nautical miles from the coastline. The Saami Parliament must get the political and administrative responsibility for the exploitation of resources within the Saami Fisheries Zone (Storslett, 1995 [My translation]).

In essence, The Saami Fisheries Zone implies that the Saami parliament takes possession over all ocean areas stretching from the coastline to 12 n.m. outside the continental shelf in Nordland, Troms and Finnmark counties, having the sole jurisdiction over the area. Within this area, the Saami Parliament will decide eligibility for participation and harvest. Another essential element is that all active tools (E.g. trawl and seine) will be banned, and only tools which the Saami Parliament defines as "traditional" can be used within the zone. Currently, the ocean areas in question are managed by the Norwegian state as a common property resource, as all other ocean areas in Norway, but the fraction claim that the Saami people have the historic right to the area. It is further suggested that the Saami Parliament should have a quota of 40.000 tons, or 11 % in 1994, transferred from the national quota (Storslett, 1995). This represents a value of somewhere between 400 - 500 million Norwegian Kroner. The "Saami" quota will then be redistributed within the fisheries zone by the Saami Parliament.

The demand of this zone is, according to the proposers, warranted in ILO-convention no. 169 and article no. 27 in United Nations Convention on Civil and Political Rights. In the report it is argued that the zone will fulfill the obligations of Norwegian state towards the Saami as an ethnic group, and that the zone will improve the current management scheme of the small-scale cod fisheries in the region. The proposers of the Saami Fisheries Zone claim that the zone, in addition to provide for the ethnic rights of the Saami to be taken care of, also demands of a regional, decentralized management system. A decentralized management system has been proposed from other, non-ethnic, interest group in the fisheries of the region, among those are representatives from several municipalities and fishermen's organizations.

3.4 Discussion

I will start the discussion by pointing at some of the differences between "normal" Norwegian fisheries management and a Saami Fisheries Zone.

In the normal Norwegian fisheries management system, the government is finally responsible for all management systems implemented in fisheries. In practice, the Fisheries Minister makes all decision, but reporting these to the rest of the government. Marine resources are perceived as common - property which the government should manage for the best of the nation. All management systems find their constitutional rationale in the system of representation part of the Norwegian parliamentary system, where the people elect individuals for representation of the collective will. Of course, this is only the ideal, and other channels of influence are available. However, this does not change the constitutional right of the government to protect all common - properties in the interest of the people.

In the case of management of private properties, things get more complicated. Since the property is private, the owner has the sole jurisdiction over the property, and both management and use is the concern of the owner. Other, outside entities - such as persons, groups or the government - can't interfere with the management of private properties. Usually, issues of compulsory acquisition are present in cases where outside entities interfere in the management of private properties, involving compensation and other legal issues. Compulsory acquisition becomes specially relevant in cases where the government take over private properties, such as building a road over someones garden. However, in cases where the government interferes with the management of private properties, different form of compensation are involved, because the right to use the property is interfered with. Thus, influence from outside sources on someones private property mainly occur at two different levels, (A) taking over the property, in which the owner is compensated for the loss of the property, or (B), interference with the management of the property, in which case the use - right to property must be compensated for. Especially in case (B) things get complicated, because the definition of "use" may be unclear.

The Saami Fisheries Zone will, according to the writers of the report, involve a delegation of management rights and responsibilities to the Saami Parliament. Management responsibility is lifted out of the present constitutional position and into the hands of an ethnically based parlamentaric institution. However, if the Saami Parliament only worked as a delegate on behalf of the Norwegian Parliament, the constitutional status of the ocean area in question is unchanged, but that is not the content of the Saami Fisheries Zone. The Saami Fisheries Zone is planned to be the sole jurisdiction of the Saami Parliament, but the parliament will delegate the daily operation of the management to a Saami Fisheries Directorate, just as The Norwegian Department of Fisheries delegates the daily operation of fisheries management to the Norwegian Fisheries Directorate (Storslett, 1995). Consequently, we are not talking about delegation, but possession - and therefore running into the problems of transforming the status of common property to private

property, as I outlined above. Whether we want to call the Saami Fisheries Zone *Ethnic property*, *Indigenous property* or *Private property* is a semantical question: The consequences facing the Saami Fisheries Zone are exactly similar to those faced when changing the status of common property to private property. Therefore I have chosen to call the zone a case of private property.

The first problem we run into is compensation and fishing rights. Fishermen from areas outside the zone have fished in the zone for hundreds of years, and will have their fishing rights changed in a zone like this. The committee of the Saami Parliament has proposed that other users shall negotiate for quotas within the Saami Fisheries Zone. This will pertain to users living outside the counties comprising the zone, but who have fished in these areas historically. Fishermen living within the zone, but who are not Saami, are secured catches similar to Saami fishermen. Two problems arise out of this solution. First, fishermen from other areas will have to negotiate for quotas in the area, but are left no guarantees that they can maintain previous catches. What standards for "fair quotas" should be applied in these negotiations, and who shall decide these standards? The management system may run into cases where fishermen from outside areas, but having fishing rights in the zone, take the Saami Directorate of Fisheries to court for compensation due to reduced catches. Who are responsible for these compensations, The Saami Parliament or The Norwegian Parliament? This question is not answered in the report made by the Saami Parliament. However, also another problem arise from the proposed structure of representation and quota rights.

Even though non - Saami fishermen living within the zone are secured catches similar to those being Saami, the political system behind the management still remains a problem. Since the Saami Parliament is a political system made entirely to defend the interests of one ethnic group, and not one region, all non - Saami fishermen are cut off from having their interests defended. Granting the Saami Parliament the sole jurisdiction over the ocean area changes the constitutional position of the parliament from *consultative* to *legislative*. Is a Saami Parliament with legislative power representative of the concerned population? The electoral system of the Saami Parliament does not allow non-Saami fishermen to have a say in the decisions made by the Saami Fisheries Directorate. As is known from several countries, excluding fishermen from the management process is likely to create conflict, and in this case the exclusion problem is particularly clear since only one ethnic group reaches decisions on behalf of all other ethnic groups in the region. Latent ethnic conflicts in the population may get fueled, making it even harder for the Saami Parliament to gain recognition and participation in the region among those not being of Saami heritage.

But, is the prospect of problems of court cases, lack of representativity

and ethnic tension enough to dismiss the demand for a Saami Fisheries Zone ? Saami fisheries rights must necessarily be based on the history of Saami fisheries in the area, since the history of use usually is determinative for claiming property rights to an area. First, the form of fishery that was being performed in the region before year 1000, when the first Norwegians settled in the region, can hardly account for the fishery being done in the region today. While reindeer pastoralism is done in the same areas and only by individuals with Saami heritage, the geography and social organization of fishing have changed drastically and parallell to the technological development. The geographical expansion of fisheries came after the Norwegians settled in the area and was a joint enterprise between the two groups. In sum, the notion of a property, which assumes a concept of a delineated and known space, is incompatible in the two histories of ethnic use. The territories proposed transformed to Saami ocean property have had a joint ethnic history for about 1000 years. If the zone should be limited to areas which the Saami used before the Norwegian settled in the area, the zone would be limited to a few feet outside the shoreline. Thus, the territorial demand present in the proposal seems to have a weak historical foundation, causing the demand for the zone to be illegitimate to Norwegian interest-groups. Among others, protests have come from some of the local divisions of The Norwegian Fishermen's Association.

In the prolongation of this argument arises an argument concerning the ethnic composition of the regions in question. Historian Johan I. Borgos writes that:

The number of ethnic Saamis reached a peak around 1800 [...], constituting around 10 % of the population. After 1825 the number of Saamis went down, but at the same time started an assimilation period with interethnic marriages between Saamis and Norwegians. The group of persons with both Saami and Norwegian relatives grew strongly towards the end of 1800's. Today, about 15 - 20 % of the population have both Saami and Norwegian relatives (Borgos, 1995).

It ought to be mentioned that this description is from the Vesterålen area in Nordland, not from Finnmark, where we find the concentration of individuals with Saami heritage. However, I think that the estimate is conservative, because the coastal Saamis were few in proportion to Norwegians in the coastal regions of Finnmark. Settlement patterns show that Norwegians until the last century almost only settled along the coast, while the Saami had settled on both the inland and along the coast (Pedersen, 1995). As a consequence, inter-ethnic marriages have occurred for a long time, creating a population where many have a mixed heritage. The question then becomes, does the Saami parliamentary system have room for this group, that is, is the parliament representative for this group of people with mixed ethnicities ? As shown

over, people are required to be at least 1/4 Saami for being eligible for voting at elections at the Saami Parliament, and the grandparent, which is a grandparent, must have been able to speak Saami. Thus, a large group of people with Saami heritage will be excluded from representation concerning the management of the zone, simply because they aren't Saami enough. This may, in addition to questioning the general representativity of the Saami Parliament for everybody in the region, also generate questions whether the parliament are representative for their own ethnic group.

Racism and ethnic segregation of the Saami have undoubtedly been prevalent in Norway, especially during the assimilation policy at the beginning of this century, a period causing severe damage on Saami culture and heritage. Some of the stereotypes generated by the Norwegian propaganda at the time of the assimilation policy do still have a foothold in the Norwegian population, existing as a form of latent ethnic stereotypes (Thuen, 19xx). A Saami Fisheries Zone may cause some of these stereotypes to reoccur. As one representative of the Saami Parliament said during a committee meeting on the issue:

We should keep in mind that we don't want another period with racism. Saami and Norwegians should coexist peacefully, as we do most places now. The Saami Fisheries Zone may cause the opposite, negating one of the goals of the establishment of the Saami Parliament, braking down ethnic borders [My translation].

The prospect of renewed ethnic frictions has been one cause of moderation among some members of the Saami Parliament. According to this representative, one of the goals of the Saami Parliament is to work for abolishment of ethnic borders, and according to him the zone is likely have the opposite effect. In spite of this, several members of the parliament still insist on establishing a Saami Fisheries Zone. Why it is so important for some fractions within the Saami Parliament to establish a Saami Fisheries Zone. This bring the discussion over to another topic, namely the symbolic aspects of politics.

The symbolic aspect of the fisheries zone is significant. It is also explicitly stated by the committee appointed by the Saami Parliament to research the possibility for establishing it. They say that:

Establishing a Saami Fisheries Zone will [...] have a strong symbolic value. As a symbol, it will have a legitimating function in the population, and it will, in a broader perspective, increase the participation and engagement among people regarding Saami questions (Storslett, 1995 [My translation]).

The idea that the settlers arriving in the early middle ages "colonialized" Northern Norway is prevalent in some of the rhetoric of Saami

politicians. It has been important to emphasize symbols that show that the time of colonialization is past, and that the Saami people is reacquiring territories formerly lost to Norway. In this perspective, the Saami Fisheries Zone and the territories used for reindeer pastoralism is part of one unit, land which rightly belongs to the Saami people, i.e. Saami property. At the same time, the controversial political content of the project serves to rationalize the claim that the areas in question are ethnic properties. Whenever the Norwegian state or other groups or individuals protest against the demand for Fisheries Zone - which has occurred from municipality administrations in coastal Finnmark, representatives from The Norwegian Fishermen's Association and also executives from the Norwegian fisheries management, it serves as proving that the Saami rhetoric has a substance, thus confirming that Norwegian possession of these territories is unjust and illegal. All rejections of the demand are showcases for the rest of the population in Norway, as well as the rest of the world, that the Saami are suppressed. In sum, the symbolic content of this debate is significant, since it serves to put the general constitutional, cultural, economic and social standing of the Saami population in contrast to the Norwegian population and the rest of the world. It must also be emphasized that the fact that protests have occurred from the non-Saami population does not exclude the fact that the Saami demand for a private ocean property is just, and that this demand should be redeemed. It is too early to conclude whether the demand of a Saami Fisheries Zone will be redeemed, since the political process still evolves.

The case of the Saami Fisheries Zone, as well as the history behind it, has several implications for the understanding of the social substance of common properties and their management. Pearse (1994) state that:

...commercial fisheries gravitate towards a kind of Malthusian equilibrium between man and fish, characterized by overexpanding fishing capacity, depressed stocks and low incomes.

Because this process of decline is driven by profit - seeking, it has been the deepest in the potential richest fisheries - those that yield highly valued products, or involve low harvesting costs, or both (Pearse, 1994).

He concludes that:

With each fisherman's share of the catch defined by his quota, closed seasons and other restrictions on fishing and fishing gear could be abolished, allowing more efficient fishing, and fishermen could organize their vessels and fishing activities to harvest their quotas at lowest possible cost. Moreover, if quotas were transferable, transactions would enable fishermen to adjust the scale of their operations for maximum efficiency. [...] By licensing only the established or local fishermen to fish a particular stock,

the government can give them a collective exclusive property right to that resource. Then, if other conditions for success are present, cooperative management is likely to follow (Pearse, 1994).

Pearse is one of many writers arguing that the solution to the tragedy of the commons lies in the transformation of such resources to private properties, individual or collective. At the bottom of the idea lies an ontology of man which assumes that fishermen are entirely strategic in their economic dispositions of resources. Consequently, when common properties become private properties, it is in the economic interest of the fisherman to preserve the stock for yielding maximum profit in the long run. The result coincides with the neoclassic ideal of a perfect market; minimum state intervention based on private property as the frame of reference for individual actions. Consequently, the economic rationality of each individual have unrestricted freedom, fulfilling the goals of this ideology. The idea is that if you change the quality of the material basis of rationality, that is common vs. private property, you also change the outcome of rational behavior. When the property is common, resource depletion is inevitable, but when the property is private, the economic rationality of the individuals owning the property prescribes some form of conservation of the stock.

However, privatizing the commons is controversial. It raises issues of compulsory acquisition, compensation, fair standards for distributing social goods, questions of legitimate ownership, representation and exclusivity. In this case, it also raises ethnic controversies. However, are these problems only faced when the commons are privatized, or are they general problems faced by any management system independent of the property status of the commons? I think the issue of privatization has a tendency to make fisheries management more complicated than it necessarily need to be, because it activates several of the social institutions that fishermen are embedded in. Everybody are embedded in an social, cultural and economic institutions - both formal and informal - , being both a result of the system and one of its builders and maintainers. These institutions are, among other things, generators of norms for behavior towards other individuals and groups. Management systems favouring one group in front of another creates more controversies than those management system which don't, and privatization - at least in this case - tends to favor certain groups in front of other groups.

Generally, I claim that making a management system based on an ethic discourse (what is best for us) creates more problems than creating a management system based on a moral discourse (what is best for everybody). To me is seems like many of the goals of the Saami Fisheries Zone, especially those pertaining to representation and legitimacy, could be solved by creating a management system which applied similar standards of participation and representation for everybody. This could

be done by improving the current management system, which, in spite of its deficiencies, attempt to apply universal standards *within* user - groups. The next step should therefore be to create universal standards *between* user -group, which is the deficiency of the present management system.

Further, it is interesting to note the fact that properties also are social symbols. In the spirit of Veblen (1899) one may say that private property is one of the symbols of *conspicuous consumption*, symbolizing the social standing of the owner relative to others. By transforming the implicit democratic momentum of common - property, namely that everybody has an equal share in the sea, the question of the social distribution of goods become an issue. In this case, the prospect - rational or not - of one ethnic group increasing its wealth and social standing at the cost of other ethnic groups creates a conflict activating old barriers of ethnic segregation but probalby also of class divisions