

Compatibility of Finnmark Act/Estate with International Law of Self-Determination

S. James Anaya

Mattias Åhren

Self-Determination in International Law

- United Nations Charter
- International Human Rights Covenants
- Decolonization Resolutions
- UN Declaration on the Rights of Indigenous Peoples, Art. 3

“All indigenous peoples have the right to self-determination. By virtue of that rights, they determined their political status and freely pursue their economic, social, and cultural development.”

Essential Meaning of Self-Determination

The right of peoples (socially cohesive and politically conscious groups) to be in control of their own destinies under conditions of equality, and to live within a governing institutional order that is devised accordingly.

For indigenous peoples, the right to maintain control over lands and resources

Sami are an indigenous people

Remedial Component of Self-Determination

- Where historical and continuing violations of self-determination, remedial measures required
 - Decolonization
 - Abolishment of Apartheid
 - Special measures for indigenous peoples
- Finmark Act, a special measure in response to Sami Demands

Finmark regime complaint with Sami Self-Determination?

- Procedural Aspect of Self-Determination
 - Requires full participation in the determination of any measures concerning them (UNDRIP, ILO)
- Substantive Aspect of Self-Determination
 - requires the ongoing exercise of self-governance and secure rights over lands and resources traditionally used and occupied

Adequacy of governance regime?

- Various possible arrangements, including co-governance
- Adequacy dependent on many factors, including rights and interests involved
- If rights over lands or resources particular to a specific indigenous groups, then governance over those lands pertains to that group

To what extent is the Finnmark Act conducive to recognition of Sami land and resource rights and to securing them legally?

- ILO Convention 169 and UNDRIP standards
- If those rights remain unsecure or vulnerable then state is responsible
- State has an affirmative duty to protect indigenous rights to self-determination and related rights of self-Government

State has an affirmative duty to protect indigenous rights to self-determination and related rights of self-Government