

## **INDIGENOUS RIGHTS VS. MINORITY RIGHTS. THE CASE OF THE NORWEGIAN SAMI**

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### **ABSTRACT:**

*ONE OF THE MOST IMPORTANT AND CONTROVERSIAL SECTORS OF SECURITY, ACCORDING TO THE COPENHAGEN SCHOOL, IS THE SOCIETAL SECURITY, WHERE THE REFERENCE OBJECT IS IDENTITY, WHICH BRINGS TOGETHER A GROUP OF INDIVIDUALS BASED ON CERTAIN CHARACTERISTICS. THUS, MINORITIES AND INDIGENOUS PEOPLES HAVE DEVELOPED A COLLECTIVE CONSCIOUSNESS AND BEGAN TO REJECT THE ASSIMILATION PROCESS IN FAVOR OF IDENTITY CONSOLIDATION AND CULTURAL PRESERVATION. THEREFORE, MULTICULTURAL STATES HAVE A DIFFICULT TASK, THAT OF ENSURING EQUALITY OF CITIZENS WITHOUT IMPEDING, IN ANY WAY, THE DISTINCTIVE CHARACTER OF MINORITIES OR INDIGENOUS PEOPLES INHABITING THEIR COUNTRY.*

*THIS IS THE CASE OF NORWAY, SUPPORTER OF CULTURAL PLURALISM, WHICH INTENDS TO ACCOMMODATE THE PROVISIONS OF THE INTERNATIONAL CONVENTIONS IN THE NATIONAL SYSTEM, IN ORDER TO CAPITALIZE THE POTENTIAL OF THE SAMI POPULATION, A COMPLETE AND COMPLEX CULTURE, PART OF THE NATIONAL HERITAGE. BUT THE SAMI ARE A MINORITY AND AN INDIGENOUS PEOPLE AT THE SAME TIME, HENCE THE CONTROVERSY CREATED AS MINORITY AND INDIGENOUS RIGHTS ARE SIMILAR, BUT NOT IDENTICAL.*

*THE PURPOSE OF THIS ARTICLE IS TO POINT OUT THE DIFFERENCES BETWEEN INDIGENOUS AND MINORITY RIGHTS, FOCUSING ON HOW THE NORWEGIAN STATE HAS CHOSEN TO ADDRESS THE STATUS OF ITS SAMI POPULATION.*

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**KEYWORDS:** MINORITY, INDIGENOUS PEOPLE, IDENTITY, MINORITY AND INDIGENOUS RIGHTS, SAMI PEOPLE.

### **INTRODUCTION**

Regarding security studies, the Copenhagen School proposed a new approach aiming to extend the security agenda from the military dimension and the state-centered traditionalist vision, towards non-military aspects such as political, economic, societal and environmental issues. The most discussed aspect of this framework of analysis is the societal security, where the reference object is not the state, but collective identity. Consequently, the security of a society can be compromised by anything that compromises its identity.<sup>2</sup>

Barry Buzan believes that “ethnic, nationalist or religious threats may be more dangerous for the stability of a state than external threats, because they affect common identity and cultural patterns. Therefore, the clash of civilizational identities is one of the key

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<sup>2</sup>Branka Panić, *Societal Security- security and identity*, (Western Balkans Security Observer, No. 13, April-June 2009), 31.

issues on the agenda of societal security. A foreign influx could lead to alterations of the ethnic, cultural, religious or linguistic composition of the majority population and may jeopardize the ability to reproduce itself as a society in the old style.”<sup>3</sup> In these circumstances, the state tends to ensure its integrity by limiting the access and by accentuating the differences. But minorities and indigenous peoples have begun to develop a collective consciousness that leads them to oppose the assimilation of the majority population, fighting for identity strengthening, cultural preservation and recognition of their distinct character.

### **INTERNATIONAL ORGANIZATIONS, MINORITIES AND INDIGENOUS PEOPLES**

Multicultural states and international organizations have been put before a difficult situation, which is to find solutions to integrate minorities and indigenous peoples in the majority society, to ensure equality, without obstructing in any way the identity of the group. But protection is not only about integration, it also includes their access to resources and traditional territories, to social services, cultural heritage, confessional freedom, education in the mother tongue etc. In order to protect minorities, the states and the international organizations have tried to reach a consensus through numerous conventions and agreements to facilitate this mission.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, which came into force in 1953, is the first document that refers directly to minorities in Article 14: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."<sup>4</sup>

The International Covenant on Civil and Political Rights, adopted in 1966 by the UN General Assembly and entered into force in 1976 supports the principle of self-determination in Article 1, which states that all people must have access to resources and the right to choose their political, economic, social and cultural status. Article 27 of the same Convention mentions that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."<sup>5</sup>

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination entered into force in 1969, states that racial discrimination refers to: "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."<sup>6</sup>

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in 1992 stipulates that: "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities

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<sup>3</sup>Barry Buzan, *New Patterns of Global Security in the Twenty-First Century*, (International Affairs (Royal Institute of International Affairs 1944-), Vol. 67, No.3, Jul., 1991), 447.

<sup>4</sup>"Convention for the Protection of Human Rights and Fundamental Freedoms", Article 14, accessed June 10, 2015, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>5</sup>"International Covenant on Civil and Political Rights", Article 27, accessed June 10, 2015, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

<sup>6</sup>"International Convention on the Elimination of All Forms of Racial Discrimination", 21 December 1965, United Nations, Treaty Series, vol.660: 195, accessed June 9, 2015, <http://www.refworld.org/docid/3ae6b3940.html>.

within their respective territories and shall encourage conditions for the promotion of that identity.”<sup>7</sup>Moreover, "Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”<sup>8</sup>The involvement in the political, economic, social and cultural life means the integration and development of the entire community, and the instruction in the mother tongue must be a major interest for the state.

The International Labour Organization is responsible for the Indigenous and Tribal Peoples Convention (No.169) of 1989, applicable to "peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”(Art. 1.1. (b))<sup>9</sup> According to the Convention, the state must ensure indigenous rights, respecting the principle of equality in diversity, valuing the identity, traditions and cultural heritage. The indigenous peoples "shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.” (Art.7.1)<sup>10</sup>One of the issues of concern for indigenous peoples is the access to traditional lands and the right of possession and use, as a means of subsistence. Under the Convention, they cannot be evacuated. The relocation is possible only in special situations, with the necessary compensations. Traditional activities, such as hunting or fishing, are part of cultural preservation. Also, providing education in their mother tongue is the responsibility of the state.

The UN Declaration on Indigenous Peoples, adopted in 2007, supports the right to self-determination of indigenous peoples: "By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>11</sup>Indigenous peoples can benefit from their own political, social, economic and cultural institutions, but can also participate in the public life of the state. Indigenous peoples will preserve their traditions and customs, will have religious freedom and access to education in their mother tongue. They have the right of possession and use of resources and lands traditionally occupied by them.

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Being a complex concept that involves a variety of different cases and situations, the term minority has not been easy to define. The most representative is the definition of

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<sup>7</sup>“Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, Article 1, accessed June 9, 2015, <http://www.un.org/documents/ga/res/47/a47r135.htm>.

<sup>8</sup>“Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, Article 2, accessed June 9, 2015, <http://www.un.org/documents/ga/res/47/a47r135.htm>.

<sup>9</sup>*Understanding the Indigenous and Tribal People Convention, 1989 (No. 169) - Handbook for ILO Tripartite Constituents*, Programme to Promote ILO Convention No. 169 (PRO 169) and International Labour Standards Department, February 2013, 32.

<sup>10</sup>*Understanding the Indigenous and Tribal People Convention, 1989 (No. 169) - Handbook for ILO Tripartite Constituents*, Programme to Promote ILO Convention No. 169 (PRO 169) and International Labour Standards Department, February 2013, 35.

<sup>11</sup>“United Nations Declaration on the Rights of Indigenous Peoples”, accessed June 10, 2015, [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

Francesco Capotorti, outlining the basic features as: "a group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, physical or historical characteristics, a religion or a language different from those of the rest of the population."<sup>12</sup>

Regarding the European legal instruments, Recommendation 1201 of the Council of Europe, defines a national minority as: "a group of persons in a state who:

- a) Reside in that state and are citizens thereof
- b) Maintain sustainable and strong links with that country
- c) Have distinctive ethnic, cultural, religious and linguistic characteristics
- d) Are a representative group, even if less numerous than the rest of the population of that state or of a region of that state
- e) Are motivated by the preservation of their common identity, including culture, traditions, religion and language."<sup>13</sup>

Minority rights in a state, like majority rights, are based on fundamental human rights, such as equality and non-discrimination. But these are not enough to guarantee minority protection. There is a need for a set of special rights, that may differ from case to case, focusing on the interests of each group.

Concerning the term of indigenous people, the representative definition is that of Jose R. Martinez Cobo<sup>14</sup> offered in Study on the Problem of Discrimination against Indigenous Populations, which states the following: "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

- Occupation of ancestral lands, or at least of part of them
- Common ancestry with the original occupants of these lands
- Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.)
- Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language)
- Residence in certain parts of the country, or in certain regions of the world
- Other relevant factors."<sup>15</sup>

Often, confusion may arise between the rights of indigenous peoples and minorities because many of these features are common to both. The differences consist in the close relationship that indigenous peoples have with their traditional land and ancestral activities, which minorities do not have and that minority rights are usually individual, while the rights of indigenous peoples are collective. On one hand, minorities tend to integrate, to be part of

<sup>12</sup>Francesco Capotorti, *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc E/CN.4/Sub.2/384/Rev.1 (1979).

<sup>13</sup>Kinga Gál (Ed.), *Minority Governance in Europe*, (European Centre for Minority Issues, Open Society Institute, 2002), 15.

<sup>14</sup>Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN.

<sup>15</sup><http://indigenouspeoples.nl/indigenous-peoples/definition-indigenous>, accessed June 8, 2015.

the majority community, to be actively involved in the social life, even if they seek to preserve their identity at the same time. On the other hand, indigenous peoples tend to maintain their own society and way of life in parallel with that of the majority.

The Sami people of Norway is recognized as a minority and as indigenous people because it has its own culture, language, way of life and its traditional connection with the land and natural resources, fulfilling the conditions within both categories.

In Norway, the official documents regulating the minorities policy and the status of the indigenous Sami are those of the major international organizations: Convention on Civil and Political Rights, ILO Convention no.169 and the national legislation: Sami Act, Constitution of the Kingdom of Norway, Finnmark Act and Education Act.

The Constitution of the Kingdom of Norway of May 17, 1814, provides in Article 110a that: "It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life."<sup>16</sup>

The Sami Act adopted on June 12, 1987 calls for "a recognition that the Royal Kingdom of Norway is established on the territory of two peoples, the Norwegian and the Saami, and that the Saami have thus lived within and by the present Norwegian state borders as long as Norway has existed as a State. This fact distinguishes the Saami from other minority groups in this country."<sup>17</sup> Furthermore, "The purpose of the Act is to enable the Sami people in Norway to safeguard and develop their language, culture and way of life. The Sami people are to have their own nation-wide Sameting (Parliament) elected by and among the Sami population. The particular expenses incurred by county municipalities and municipalities in connection with elections to the Sameting are to be covered by the State. Sami and Norwegian are languages of equal worth. They shall be accorded equal status."<sup>18</sup> The law regulates the role of the Sami Parliament, the main institutional body representing the Sami, namely to protect the interests of the Sami population in all fields and to manage the allocated funds.

The Finnmark Act, adopted in 2005, has as central goal the management of traditional lands and natural resources in the Finnmark district, predominantly inhabited by Sami. The law transfers the lands from the district from the Norwegian state to an agency called the Finnmark Estate. Although the Norwegian State may benefit from its resources, the Sami residents have more rights than those outside the district, through the recognition of their indigenous status and their traditional relationship with the land due to its durable use, as an important part of identity preservation. The Sami Rights Council has the task of dealing with the verification of traditional areas, the proper manage of resources exploitation and the problem of reindeer husbandry. The new reindeer husbandry law, adopted on May 31, 2007, facilitates this activity as being fundamental to the Sami culture and tradition.<sup>19</sup>

The Norwegian state and the Sami people pay particular attention to education in their mother tongue. Thus, the Sami administrative area was created, where the Sami language has a privileged status. The Norwegian Education Act was amended in order to include a special chapter on education in the Sami language. Chapter 6 of this law states that: "In the Sami area, all the pupils of the comprehensive schools have the right to be taught Sami and to learn other subjects through Sami."<sup>20</sup> The main provisions of the Act are the following:

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<sup>16</sup>"The Constitution of the Kingdom of Norway", accessed June 8, 2015, <http://www.constitution.org/cons/norway/dok-bn.html>.

<sup>17</sup>John B. Henriksen, *Saami Parliamentary Co-operation: An Analysis*, (IWGIA, 1999), 36-38.

<sup>18</sup>"The Sami Act", accessed June 8, 2015, [www.regjeringen.no/en/doc/laws/acts/the-sami-act-.html?id=449701](http://www.regjeringen.no/en/doc/laws/acts/the-sami-act-.html?id=449701).

<sup>19</sup>Eva Josefsen, *Norwegian Legislation and Administration-Saami Land Rights*, (Journal of Indigenous Peoples Rights, No.1/2007), 24.

<sup>20</sup>Ulla Aikio-Puoskari, *The Education of the Sami in the Comprehensive Schooling of Three Nordic Countries: Norway, Finland and Sweden*, (Journal of Indigenous Peoples Rights No.2/2005), 7.

- All children have the right to be instructed in Sami in all subjects
- Until the seventh grade, parents decide if their children will be taught in Sami
- From seventh grade, students will decide this for themselves
- Students taught in Sami are exempted from instruction in Norwegian
- Local councils will support the instruction of Sami in their mother tongue for ten compulsory years
- Local councils will facilitate the study of Sami for the children who have Norwegian as their mother tongue.<sup>21</sup>

The Law on the Sami Language, entered into force in 1992, gives it equal status with Norwegian, being recognized as an official language of the state.

## CONCLUSIONS

The changes that occurred in the international system generated a reorientation of security studies from the traditionalist approach, focusing on state and military power, to an enlargement of the areas of concern, such as economic, political, societal and environmental. Societal security brings to the fore the issue of identity as a reference object. Therefore, any threat to the identity of a group is a threat to societal security. The measures to prevent this phenomenon vary from case to case, but it is increasingly evident the tendency of minority groups, be they national or ethnic, to claim the right to cultural preservation and identity consolidation, to be treated equally, without affecting, however, their distinct character. The development of collective consciousness and identity spirit captured the attention of multicultural states and international organizations that have tried to find viable solutions to address these situations by numerous conventions and agreements. The Kingdom of Norway, a strong multicultural state, came in support of its indigenous Sami population by accommodating the provisions of the international conventions in the national legislation. Since the provisions of the Conventions are general and the situations differ from case to case, and so are the needs of minority groups, Norway has met this by introducing special laws aiming directly at the Sami interests. Thus, the Sami people can enjoy all the rights conferred by the citizenship of the state and the special rights for the preservation and development of language, traditions and values, as part of the national heritage.

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<sup>21</sup>David Corson, *Norway's „Sámi Language Act“: Emancipatory Implications for the World's Aboriginal Peoples*, (Language in Society, Vol.24, 4, Dec. 1995), 500-501.

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