

RIGHTS TO TRADITIONAL USE OF RESOURCES IN CONFLICT WITH LEGISLATION: A CASE STUDY OF POMOR FISHING VILLAGES ON THE WHITE SEA COAST

Introduction

There is nowadays global concern about fish resources and the sustainability of fishery, due to the fact that the resources are diminishing while fishery has become a large-scale industry (Loder 2005). The Convention on Biological Diversity (1992) urges governments to regulate the amount and means of fishery in order to preserve supplies of fish and other renewable biological resources for future generations. With the industrialization of fishery, traditional fishing has diminished. The Russian legislature has started to modernize fishery, leading to more extensive use of fish resources and diminishing the traditional use of fish. The tendency is similar to what has happened on the Canadian, U.S. and European coasts, as well as elsewhere, to a great extent with huge, efficient trawlers pushing local fishermen out of their own fishing areas (Ostrom 1990). However, there are still small communities that depend on traditional fishery. The Pomors of the White Sea coast are an example of people who still get their livelihood from the exploitation of natural resources and fishing with traditional methods. Their traditional use of natural resources has kept these communities alive for centuries, even through the Soviet times (Kulyasova and Kulyasov 2009). Now, however, new market economy legislation and the increasing number of other users of the resources threaten their traditional way of life.

The drafters of the new Russian federal law on fishery seem to have adopted the widespread idea of the “tragedy of the commons”, which was presented in Garrett Hardin’s famous article in 1968. According to Hardin, rationally behaving people always tend to maximize their own gains, and when it comes to common resources there is no limit to self-interest without state intervention or some other outside coercion to limit it (Hardin 1968). The Nobel laureate Elinor Ostrom’s empirical research on the commons, however,

shows that self-organized governance of the commons can also function effectively. She presents empirical evidence of both successful and unsuccessful self-governance (Ostrom 1990). Traditional fishery does not necessarily imply that people can fish anywhere as much as they want to, but sets rules on the division of resources, taking into consideration the need to preserve them for future generations. Pomor fishing on the coasts of the Onega Peninsula seems to fill the criteria which Ostrom gives for effective governance of the commons with self-organization and rules that are accepted by all users (Ostrom 1990). Fish were abundant on the coasts of the Onega Peninsula before newcomers introduced more effective fishing based on new state-created rules that conflict with the traditional rules. Self-organization no longer functions if all users do not respect it.

Legal sociologists have studied co-existence and conflict between nation state regulation and local rules ever since Eugen Ehrlich's empirical research on different ethnic groups' legal institutions in the Duchy of Bukowina in Austria during the era of great codifications by nation states. Ehrlich argued that the "living law" which people apply in their legal relationships is what matters most (Ehrlich 1967). This kind of co-existence of several legal systems, which legal sociologists call legal pluralism, was also typical of British colonies, where local rules were allowed to co-exist with British law in order to avoid conflicts with the local people (Michaels 2005).

The co-existence of traditional rules and state laws has been and still is typical of the legal regime under which indigenous peoples live. For instance, in Finnish Lapland, some state authorities are reported to have ignored national legislation up till the 1960s whenever traditional fishing conflicted with state regulations (Joona 2011). Typically, legal centralism and the sovereignty of the state have gradually taken over, and traditional rules have been interpreted as having lost their significance, unless they have been adopted into nation state legislation. Yet, the indigenous population has continued to follow its traditional rules, such as the division of fishing and berry picking areas between indigenous families, and has every now and then demanded that they be officially accepted, as well (Joona 2011).

In the Nordic countries the requirements of ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples have put pressure on states to regulate the rights of indigenous populations to land and natural resources. This demand is based on the idea that international law and its regulations on hu-

man rights are worldwide principles that are above the laws of individual states (Anaya 1994). The special regulation concerning fishery in Upper Lapland in the fishery law of Finland and the exclusion of the region of Finnmark from the national fishery law in Norway are examples of the adoption of the principles of the ILO Convention in nation state legislation (Joonas 2011; Ravna 2011).

In Russia the sovereignty of the state is a strongly established doctrine. The Leninist doctrine of the state as the sole creator of legal rules (Lenin 1974) is still strong, even though it has led to double standards for many groups in the multi-national population of Russia and unrecognized legal pluralism in practice. The 1993 Constitution of the Russian Federation introduced a totally new principle declaring that the principles of international law are above those of Russian legislation, and in case of conflict the international principles prevail (Articles 15.3). The rights of indigenous peoples are recognised, in principle, in federal legislation. The Law on the Guarantees of the Rights of Indigenous and Small Peoples grants “small and indigenous” peoples rights concerning traditional fishing and/or hunting (39.4.1999 N-82-FZ). The groups which have received the status of indigenous peoples are peoples in the North and in Siberia whose population does not exceed 50,000 people (17.4.2006 N536p). Other ethnic groups have no special rights outside of general legislation. The Pomors have not officially been recognized as an indigenous people or even a separate ethnic group in Russia. Therefore, the traditional legal regime of the Pomors is unprotected, and the local fishermen are poachers in the eyes of the state legal regime.

In this article we first explain who the Pomors are. Secondly, we outline the development of the official rules concerning fishery in Russia. We then describe the conflict between nation state law and local practice based on interviews in Pomor villages. Finally we try to find solutions to the conflict by drawing comparative examples from the neighbouring countries, Finland and Norway, which are struggling to comply with the ILO Convention on the Rights of Indigenous Peoples.

The method is empirical, covering eleven fishing communities in the Mezen district (see Map 12.1) of the Onega Peninsula on the White Sea Coast. The research was carried out in 2004–2011 through interviews with the local population, participatory observation and focus groups. Literature on the history of the Pomors is provided for information on the social and economic development as well as the origins and exercise of traditional rights. Legislation is studied together with legal commentaries to describe the official legal regime.



Map 12.1 The Mezen District *Source: Arctic Centre*

The information concerning the enforcement of legislation is based mostly on interviews with the Pomors.

The Pomors and their communities

The people who have lived on the Western coast of the White Sea from the 11th and 12th centuries onwards and who traditionally got their livelihood from fishery are called Pomors; the area is called Pomorie. The first inhabitants of Pomorie were Finno-Ugric people, who assimilated with people who came from Novgorod to the north during the 10th to 12th centuries. As a result of this assimilation, the original Finno-Ugric language died out. In 1471 Pomorie, together with Novgorod, joined the Muscovite State. In the 15th and 16th centuries not only people living on the West coast of Onega, but also people living near Lake Onega, the Onega River, the Northern Dvina River, Mezen, Pecho-

ra, Kama, and Vyatka as far as the Ural Mountains were called Pomors. Later in the 20th century “Pomor” started to mean any inhabitant of the Russian North (White Sea basin). Yet, in the narrower definition, Pomors are people who live on the White Sea Coast and get their living from fishery (Bulatov 1999, 5–6).

Historians have differing opinions on whether Pomors are a separate ethnic group or a sub-ethnic group of Russians. Bernshtam, a famous Soviet ethnographer, regards them as a sub-ethnic group of Russians, although she considers them to have a special Pomor identity (Bernshtam 1983). Kotlyakov, on the other hand, finds features of a separate nation, because of a long period of autonomy under Novgorod, and regards them as a separate people in the Slavic family in the same way as Ukrainians and Belarusians (Koltyakov 1997, 136). Similarly, Bulatov also regards the Pomors as a separate people, because he detects almost all the signs of a nation, such as their own territory, their own northern culture and psychological features, and their own Northern Russian language, which has largely disappeared but can still be found in local dialects and sayings (Bulatov 1999, 9). Ethnically, the Pomors can be described either as an indigenous people or a sub-ethnic group of the Russians.

Pomor traders travelled to both the West and the East. Typically, they had a reverent attitude towards the sea, which gave them their livelihood. Literacy was quite well developed among the people, because reading, writing and calculating were needed in trading (Bernshtam 1983). They had their own fishing culture, their own methods and tackle, such as long lines, nets and seines, which often require the cooperation of a group of people to use. Traditional Pomor songs, rituals, and dialect almost disappeared during the Soviet period, but Pomor fishery, traditional resource use, traditional building style and other everyday practices continued to exist among the people living in the remote coastal areas of the White Sea.

Earlier the Pomors owned their fishing boats privately, but the Soviet State forced them to live in fishing kolkhozes, which were a form of collective farms. Although private property was abolished, the Pomor communities continued to live in quite a traditional way, since whole communities were incorporated into the kolkhoz system. The captain of the fleet was the kolkhoz leader and every inhabitant participated in fishery. The collective farm shared the income from fishery and supported the village, which had its own school, library and house of culture (Kulyasova and Kulyasov 2008).

In the fishing kolkhozes the Pomors also farmed and utilized the forests, although farming was never as profitable as fishery. The modernization of fishery

started in the 1950s and 1960s. Kolkhozes bought bigger trawlers and modernized their equipment. However, the Pomors did not abandon their own traditional fishery, but continued to practice it for their own livelihood in the coastal area and in rivers and lakes. The 1970s and 1980s were quite a good time for fishery, which supported the villages considerably well, although their fishing quotas were diminished because of international agreements. Most Pomor trawlers, however, could not go far out on the ocean, focusing on fishing within the territorial waters of Russia. The 1990s were an even better period, because the Pomors started to cooperate with Norwegians and sell fish abroad. President Yeltsin's decree in December 1992 allowing fishing entities to keep 90% of the currency which they earned from exports reanimated the pre-revolution cooperation with Norwegians (Kulyasova and Kulyasov 2009; Riabova and Ivanova 2009).

The Pomor communities have continued to be considerably self-sustained and self-organized. The communities consist of about 300 inhabitants, and have their own schools and libraries, but the roads to the outside world are poor. Many villages cannot be entered in spring or autumn, and ice-roads are used in winter. Isolation has forced the communities to become self-organized and self-sustaining. Social relationships are important and continue to exist with people who have moved away from the village for study or work (Kulyasova and Kulyasov 2009).

A radical worsening of the socio-economic situation has taken place during the last few years due to the loss of fishing rights. Although fishing kolkhozes have survived in all the villages we studied, they have lost their role as the fundamental socio-economic institution. The main reason for this development is that most of the kolkhozes were taken over by a single commercial player. The goal of acquiring more fishing quotas for industrial fishery and later selling them for a profit was the reason for this merger, which was initiated by federal policy (Kulyasova and Kulyasov 2009).

Because of the functioning of this one effective commercial organisation, only a couple of independent fishing kolkhozes have survived in the Arkhangelsk region. Others lost their independence or were driven near bankruptcy. As a result, many kolkhoz members who were active earlier lost their jobs in the kolkhoz and consequently their power of decision in meetings of kolkhoz members. This led to a decrease in the production of the kolkhozes in the villages. Most of the village population lost their jobs. Consequently, fishing for household use in rivers and lakes started to be more important for their survival.

The development of official fishing rights

Even if the Pomors consider (traditional) fishing on the White Sea as having been free from time immemorial, fish as a resource has formally belonged to the state ever since Tsar Peter the Great's decree of 1704, in which he declared that all the fish belonged to him personally (Bekyashshev et al 2007). In 1876 Pomors were given special rights to build ships and fish freely in the Arkhangelsk Governorate. The right was limited to two sea-going ships or five river ships per peasant, and the governor had the right to control the enforcement of the law (Bekyashshev et al 2007). Evidently, the Pomors were following their own traditional rules, which the state formally granted to them through the special law. The high number of ships per peasant shows that Pomor fishing activities were substantial in the 19th century. Richer peasants hired poorer ones to work for them. The traditional regime and the formal state regime co-existed quite peacefully probably because there was no real competition for the abundant fish resources.

The collective farms (fishery kolkhozes) introduced by the Soviet state preserved the traditional structures, since whole communities were transferred under the collective farm structure. During the Soviet times the fishing collective farms had an advantageous tax situation. Until the 1970s there were no quotas for fishing. The kolkhozes had to fill the state plan with a certain amount of fish, but it was accepted that this plan was not up to date. Therefore they were allowed to fish as much as they could. The traditional regime continued to exist under the auspices of the Soviet structures (Kulyasov and Kulyasova 2009).

The official and traditional regimes clashed following the collapse of the Soviet Union and the introduction of a market economy. The management of natural resources underwent a radical transformation. The former federal bodies were dismantled and the ministry that was responsible for fishery was abolished, as well as the Federal State Committee for Fishery. A great number of small private fishing companies emerged from the ruins of huge state companies. The total number of catches dropped, and the Russian fleet began to fish mainly inside the Russian economic zone (Riabova and Ivanova 2009, 86).

On the Onega Peninsula the fishing kolkhozes continued to exist. Even earlier they had focused on coastal areas and the domestic economic zone. Although export was now supported and new markets opened, the Russian rouble was devaluated, and soon there was no money for fuel and the repair of ships. Furthermore, the new Russian Federation introduced auctions for the

exploitation of natural resources, including fishing rights. The fishing collectives faced problems when they were forced to buy quotas for fishing and pay taxes. They did not have the necessary financial resources to buy enough quotas, pay taxes and keep their ships in good condition. The fishing collectives suffered, and many of them went bankrupt. Some were transformed into private companies, but some decided to continue as fishing collectives. Finally one commercial player took over most of them.

However, the period of selling fishing quotas by auction did not last long. From 2004 onwards, the quotas were divided according to the so-called “historical principle”, meaning that the average amount of fishery of the kolkhozes was calculated for the next five years, based on earlier catches, and the five year quota that was obtained in this way was then prolonged to ten years. In this way each kolkhoz obtained a certain amount of quotas based on its own special circumstances (Kulyasova and Kulyasov 2009).

The Federal law on Fishery and Preserving Aquatic Biological Resources (26.11.2004 N 171) was not enacted until 2004. The disputes during the drafting process mostly concerned the division of powers between the Federation and the regions. The Constitution of the Russian Federation declares that natural resources are under the joint jurisdiction of the Federation and its regions (Art. 72). The Constitution also declares that natural resources are to be used for the benefit of those who live in the areas (Art. 9). The Law on Fishery ended in victory for the Federation as far as the interpretation of the concept of joint jurisdiction is concerned. During President Putin’s first presidential term, all natural resources became federal by means of new or revised federal legislation. The rights of the regions to make decision concerning the use of natural resources were diminished on the grounds of equality between the regions and the fight against corruption, which was detected at the regional level, but ignored at the federal level. The regions, which still tried to claim management of coastal fishing for themselves, were only allowed to give advisory opinions on coastal fishery (Riabova and Ivanova 2009).

The aims of the Law on Fishery are preserving biological resources on the one hand and increasing industrial fishery and the amount of catches on the other. According to the Law on Fishery and Biological Resources, fish resources belong to the Federation (Art. 10), which establishes fishing quotas and gives permission to fish for industrial purposes. The responsible authority is the Federal State Agency of Fishery (Rosrybolovstvo), which works under

the Federal Ministry of Agriculture and its Decree on Quotas. The fishing quotas are based on the evaluations of PINRO, the state maritime research organization. Quotas for industrial fishery are issued for a five-year period. The subject of the Federation (the region) can issue a fishing permit for industrial use for a new entrepreneur for the first three years of activity. The latter regulation was disputed during the drafting process: those who opposed the right of the region to give additional fishing rights referred to the potential overuse of resources and wanted to give control completely to the federal organs (Il'yasov et al. 2007, 146). Along with the quotas, fishing organizations and fishermen also get permits to fish for industrial purposes from the Federal State Agency of Fishery.

The Law on Fishery also recognizes a new fishing category called "coastal fishing" (Art. 20), which means fishing by small and medium-sized enterprises not only in coastal areas, but also in territorial waters, the continental shelf, the Russian economic zone, and even on the high seas. The main feature of coastal fishing is that it is driven by small enterprises such as the fishing kolkhozes of the Omega Peninsula. The concept was included in the law in order to recognize the importance of small-scale fishery in Russia (Il'yasov et al. 2005, 105). However, the distinction between industrial fishing and small-scale industrial fishing is unclear. The Federal Ministry of Agriculture has been given the authority to issue special norms on benefits or exceptions for small-scale fishing, but so far it has not exercised this power (Il'yasov et al. 2005, 107). Therefore coastal fishing does not have a special status with special subsidies; this new category of fishing only constitutes an option for special treatment in the future. The regions, which are allowed to give advice concerning coastal fishery, have an opportunity to influence federal fishery management in this respect as well. Special benefits at the regional level are also possible. However, it looks as if the Ministry wants to support large-scale fishing above all.

The Pomors have to compete with both industrial fishing in their traditional fishing areas and with increasing recreational and sport fishing for touristic purposes. The Federal Law on Fishery considers tourism as an important developing branch of business, especially in the countryside (Bekyashev 2007). Sport and recreational fishing is either free of charge for all Russian citizens or subject to a fee, depending on what equipment is used and at what scale the fishing is done. In principle, only angling is free. Tourist enterprises buy permits and sell them to tourists, including foreigners. Free fishing by ordinary citizens

goes back to Soviet times and can sometimes be carried out more or less professionally (Il'yasov et al. 2005).

The re-distribution and formation of new fishing areas has recently become one of the key issues in the Arkhangelsk region for both coastal fishing and fishing in rivers and lakes. Some of the earlier kolkhoz fishing areas remained in the hands of the kolhozes, while some have been transferred through auctions to new users. However, regional organs – specifically the Committee of Fishery of the Arkhangelsk Region – started actively to form new fishing areas, which were approved by the Federation, and sold them by auction. In this way some fishing areas which were traditionally used by the local population have ended up in new hands. For instance, the former fishing areas of the kolkhoz on the river banks near the village of Letnaya Zolotitsa on the Onega Peninsula were given to a tourism company, which built a tourist centre near the village. As a result, the local population was supposed to turn to the tourism company buy a legal permit to fish.

The kolkhozes are concerned about the village populations and try to provide them with an opportunity to fish. They can, for instance, give them a permit to fish in their industrial fishing areas. However, fishing areas can be established either for industrial fishery, in which case the local population is not allowed to fish for their own household needs, or for recreational fishery, in which case the kolkhoz is not allowed to fish for industrial purposes. It is not profitable for the kolkhoz to own fishing areas only for recreational use. Therefore, violations of the law become inevitable (Interview with a representative of a kolkhoz 2011).

Traditional fishing has been included in the law (Art. 25) only as a special right of indigenous peoples that are included on the list of small indigenous peoples with populations of less than 50,000 people. They have the right to fish for their traditional livelihood, but this does not include large-scale commercial fishing. The federal agency of fishery also sets limits on how much each indigenous group can fish. However, the indigenous groups do not have to participate in the auction of quotas. As mentioned above, the Pomors are not included on the list of indigenous peoples

The monitoring of biological resources is the task of Rosrybolovstvo and PINRO, the agency which collects and analyses information on the state of biological resources. The control of legal fishing is the duty of Roshoznadzor, the organ that controls natural resources (Art. 43.2). The customs authorities seem to take care of the control of fishing permits in coastal territorial seas, such as

the White Sea, as well. The penalty for poaching is generally a fine and the loss of one's fishing permit, as well as confiscation of the catch and the tackle. The fine can be as high as 300,000 roubles, and a prison sentence of up to 2 years can be imposed (Bekyashsev 2007). In Russia there is both criminal as well as administrative liability, the latter of which is based on the Law on Administrative Breaches of Rights (20.12.2001 N 195-FZ). The administrative regime includes fines, confiscation and the loss of one's permit as penalties. The fine can extend to a maximum of 50 times the minimum monthly salary.⁸⁸ Penalties for administrative liability are easy for the authorities to collect, because they do not have to take the case to court unless the citizen insists. Therefore, the organs that control fishery prefer to deal with poaching through administrative measures.

The role of the Pomor Movement

The difficult economic situation during the post-Soviet period awakened the interest of the leadership of the kolkhozes in the newly emerged Pomor Movement. The perestroika and glasnost policies of the last years of the Soviet Union generated a nationwide revival of national and ethnic identities. The Pomor Movement was initiated in the 1980s among city dwellers who became interested in the dying Pomor culture. The village populations were not interested in the movement at first; for them the Pomor identity was quite natural and was part of the way of life in the fishing villages. The fishing kolkhozes, however, were interested in the movement for economic reasons. The Pomor Movement wanted the Pomors to be granted the status of an indigenous people, since fishing continued to be free for indigenous peoples in support of their own livelihood. However, the Pomors did not receive the status of an indigenous people. Their attempt to get on the list of indigenous peoples was rejected in 2007 based on the specialist opinions of the Kunstkamera of St. Petersburg and the Institute of Ethnology and Anthropology of the Russian Academy of Sciences, which regarded Pomors as Russians (The Pomor Movement website). One reason for the negative decision is the double identity of Pomors. Many urbanized inhabitants of the region consider themselves to be Pomors, but since they no longer earn a living from traditional resources, they do not see any point in demanding a special status, but

⁸⁸ The minimum salary is 4611 roubles a month according to the Law on Minimum Salary 19.6.2000 N 82.

instead regard themselves as Russians. Pomor ethnicity, however, was recognized in the population census of 2002. According to the census, 6571 people identified themselves as Pomor, 6295 of them in the Arkhangelsk region (The Russian Population Census). In the census of 2010 only 3113 people registered themselves as Pomors (The Pomor Movement website). The Pomor Movement claims that in the Arkhangelsk region people who worked for the population census agreed not to give people a chance to register their Pomor ethnicity even though it was an option. Therefore, those who wanted to register themselves as Pomors had to insist on it (The Pomor Movement website; Kulyasova and Kulyasov 2009; Interview with the leader of the Pomor Movement 2011).

Another strategy of the Pomor Movement is to disseminate information concerning ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples among the population. Russia has not ratified the Convention, although the official opinion is that the rights of indigenous peoples are guaranteed by legislation. The status of indigenous people has, however, been limited to only 40 small groups that have a population of less than 50,000. Although the Pomor have not been able to get on the list of Indigenous and Small Peoples and their special ethnicity has been rejected, they were recognized as an indigenous people in the FSC certification of the company Onegales, which agreed to give them an opportunity to utilize their own forests (Kulyasova and Kulyasov 2008).

In the next chapter we will describe the conflict concerning fishing rights and its socio-economic effects on Pomor fishing communities based on the empirical information described above.

Traditional practices of fishery or poaching?

In this chapter we give examples from Pomor villages in the Mezen Rayon of the Onega Peninsula in the Arkhangelsk region in order to understand how Pomors fish and what their conception of poaching is. Even nowadays people in the Onega Peninsula fish for their own household use with traditional tackle, including special seines and fyke nets and other kinds of nets and lines. Furthermore, they also engage in fishing under the ice with seines and fyke nets as well as special kinds of angling for navaga fish.

This more extensive traditional fishing is permitted only with a permit and only in industrial fishing areas. However, the fishing tackle is laid on coast-

al strips and in the mouths of rivers flowing into the sea. In the villages of the Mezen Rayon, where the research was conducted, catching of fish occurs mainly in rivers and at the point where rivers flow into the sea. The fishermen use the kinds of nets they have traditionally used, although neither federal nor regional legislation recognizes these traditional features of fishery.

However, it is very difficult to engage in these fishing practices legally: “All our people feel the pressure of these restrictive decrees and regulations on local fishery. It is the stumbling block. If everything is forbidden, you need to take a closer look and find ways to get around it...” (Interview 17, employee in a kolkhoz office, Mezen Rayon 2010). In the present circumstances people engage in silent protests, which the whole community accepts, because the restrictions violate their values: “We are northern people, not fighters, but when a person cannot accept a law deep in his heart, he would rather try to find possibilities to break the law” (Interview 18, the vice-leader of a kolkhoz, Mezen Rayon).

As a result the local population developed its own special conception of poaching: “At the present time I have not met any real poachers, and I have lived here more than 50 years. In our understanding a poacher is a person who destroys fish, destroys nature, and fishes and sells the fish for his own enrichment. You are supposed to fish to eat and to feed your family” (Interview 17, employee in a kolkhoz office, Mezen Rayon 2010). Therefore, local people who use traditional fishing methods do not regard themselves as poachers.

The following examples show how people have become poachers in the eyes of the nation state law because of the collision of legislation and traditional rules. The first example is from the mouth of the Kuloi River, which, according to the present legislation, is regarded as a protected spawning river where only angling is allowed. The river mouth naturally contains salt water, because the tidal current brings seawater there. The local population fish in May during the high tide with seines, because other kinds of fishing are impossible: “the population does not travel anywhere, they lay down the seine and catch here from 50 to 100 kilograms of fish, which is enough that they don’t have to fish any more for a long time. In the village they sell the fish to *babushkas* (old ladies) for 15 roubles a kilogram, and that is all” (Interview 15, head of local administration, Mezen Rayon 2010). This practice makes all the informants we interviewed, as well as the people in the villages, poachers.

Another example is fishing for flatfish on the seashore: “From the sea to the shore you can see enormous amounts of flatfish. They are just everywhere. If you fish with a seine. Anyway, it [that kind of fishing] will be fined. Officially, you need to have a fishing area” (Interview with the head of local administration, Mezen Rayon 2010). A third example comes from the Onega Peninsula, where pensioners lay a fyke net across the river mouth to fish for their own household purposes. This is illegal, because they are fishing in the industrial fishing area of a kolkhoz without a permit; if the authorities catch them, their fishing tackle will be confiscated (Interview with a retired fisherman, Onega Peninsula 2011). All these examples show that the local people are forced to become poachers.

According to the local interviewees, the authorities’ fight against poaching by the local people has changed during the last few years. The interviewees have noticed that a few years ago the authorities appeared quickly and acted very strictly. When they caught someone fishing illegally, they confiscated all the fishing tackle and sometimes even destroyed it. Strict fines were imposed on local people who were caught fishing illegally. There were many checks, several times a month. During the last two years, however, the control has loosened. The authorities appear, for example, once a month, and they don’t confiscate fishing tackle at all (Five interviews with local fishermen and a representative of a kolkhoz, Onega Peninsula 2011). According to the local interviewees, the reason for the looser control is that there are secret instructions for the authorities to ease up in order to give the local population an opportunity to fish. The truth of this argument may be disputed, but it offers a typical example of how strict Russian legislation is softened by the non-enforcement of it in practice. Because of such enforcement practice, however, the traditional rights remain illegal.

Who is a real poacher in the eyes of the local population? In their opinion, the main violators of the law are the authorities themselves. Practically everyone in the villages of the Onega Peninsula said that the border guard detachment, which also monitors fishing, confiscates fishing tackle from the local population and then fishes with the same tackle right before their eyes. This kind of behaviour by state authorities provokes a negative attitude among the local population towards the state authorities as the worst poachers. It is doubtful that official legislation, which is respected neither by the local population nor by the authorities themselves, can fulfil the aim of preventing the over-harvesting of fish and other biological resources.

Comparative examples of the recognition of traditional fishing rights

The direct change from considerably free fishing rights to state-arranged auctions in the Russian Federation was quite radical. The main justification for the new legislation on the auctioning of fishing quotas was the protection of biological resources (Ilyasov et al. 2005). Another background motivator was the centralization tendency and the assumption that effectiveness and centralization go hand in hand. The Russian federal government seems to believe that formal legislation is the only effective way to control the use of natural resources and that the users of these resources simply have to adjust to rules imposed on them from above. The government seems to ignore problems which arise from various informal institutions, the same way that citizens typically ignore the formal laws and institutions. Traditional fishing rights are recognized only in the framework of the Law on the Guarantees of the Rights of Indigenous and Small Peoples (30.4.1999 N 82-FZ). Self-regulation of local populations is not recognized at all. The participation of local people would be extremely important in such a huge country with a large number of differing local traditions with which the federal centre is not necessarily familiar. Adjustment to local traditions, however, seems to be regarded as ineffective.

The Russian situation is not unique: a similar development took place earlier in the Western countries. Elinor Ostrom has reported on the state taking over the commons in Nova Scotia, Canada, justifying its interference as necessary to prevent “the tragedy of the commons”. The result of state interference, however, has been the ousting of local fishermen from their fishing areas, which have been given to “more effective” commercial newcomers. Traditional rules and self-regulation have been ignored. Ostrom criticizes particularly the belief in one method only, such as only state regulation or only private governance, pointing out that local fishermen have long applied self-regulation in order to control the amount of catches (Ostrom 1990). The head of a fishing kolkhoz sees the situation in Russia as follows: “Once this was not a private traders’ business. [...] But then, in the 1990s private traders appeared everywhere, here and in the Far East. And, of course, they needed to make profits. They most likely also had friends in the government. They were able to lobby for their interests in the Duma. And that was it. They decided to pool everything, and everything was redistributed at our expense.”

Russia's neighbouring countries, Finland and Norway, have quite a similar history of fishery. The indigenous peoples of Lapland have followed their own traditional rules for fishing in lakes and rivers for centuries. Fishing areas have been divided among families, and these rules have been followed in spite of differing national legislation. In Finland fishing rights are connected with land ownership of riverbanks and lakeshores. There are also many common law fishing rights (usufruct) from time immemorial concerning lakes and rivers in the whole country. Otherwise, fishing without a permit is allowed only for local inhabitants and only for angling. For other kinds of fishing, permission from the landowners, who have formed fishing communities, is needed. Even angling is limited to local people in Finland, whereas in Russia all citizens are allowed to angle everywhere. In Russia, only for more extensive kinds of fishing is a permit required.

Contrary to other parts of Finland, where private land ownership prevails, in Finnish Lapland the most prominent landowner is the state, the rights of which are represented by the State Forestry Agency. Hence, land property rights can be compared with the situation in the Russian Federation. There are reports in Finnish Lapland of local police chiefs closing their eyes to violations of state laws that conflict with traditional rights. Local people have been allowed to fish in Lappish rivers and lakes in spite of the official requirement of a permit. As in Russia today, the practice has been varying: some authorities have strictly applied the law of the nation state, while others have ignored it because of their own knowledge of local traditions (Joona 2011).

Fishing laws have been updated in the Nordic countries because of new EU regulations. The ILO Convention on the Rights of Indigenous Peoples (No. 169) has also put pressure on national legislatures to recognize the rights of the Sami people, the only officially recognized indigenous people in the European Union. The Sami live in Norway, Sweden, Finland and the Kola Peninsula in Russia. The Sami also have the status of indigenous people in Russia and are included on the list of small and indigenous peoples. According to the ILO Convention, the rights of indigenous peoples to natural resources and land should be restored or at least settled in a fair manner. The Nordic countries have tried to find new solutions to align their legislation with the requirements of the Convention. The solutions in Finland and Norway have been quite similar. Unlike northern Norway, Finnish Lapland does not have seacoasts, but fishing in Lake Inari, as well as in smaller lakes and rivers, is important for both the local population and for the purposes of tourism.

In Norway there is traditional fishing in coastal areas as well as in inland waters. Finnmark, the northernmost county of Norway, was excluded from the new national fishery law. The special law, called the Finnmark Act (No. 85/2005), differs considerably from earlier land legislation. It aims at protecting the Sámi culture and has turned land which earlier was owned by the state over to an agency called the Finnmark Estate, which administers land and natural resources. The Estate's board of directors consists of six people: the Sámi Parliament appoints three, and three are selected by the Finnmark County Council (Ravna 2011). Section 21 of the Act states that the Finnmark Estate "shall manage the renewable natural resources on its land in compliance with the purposes of this Act and within the frameworks provided by the Wildlife Act, the Salmonid and Fresh Water Fish Act and other legislation". Section 22 gives to individuals living in the municipalities of Finnmark the right to fish for freshwater fish with nets, to fish for anadromous salmonid with fixed gear in the sea, to gather eggs and down, etc. This special legislation gives the same fishing rights to both the Sami and others, including the Kvens, who do not have the status of an indigenous people, for which they have applied without success. In this respect the Kvens can be compared to the Pomors. They are actually descendants of Finns who moved to the Norwegian sea coast to escape famine in Finland in the 18th and 19th centuries and have lived there from traditional coastal fishing ever since (Saressalo 1996).

Sami rights to land have still not been settled in Finland, which prevents Finland from ratifying the ILO Convention and has produced a great deal of criticism (e.g., Anaya 2012). The recent fishery law, however, regulates fishing in three municipalities of Upper Lapland differently from the rest of the country and quite similarly to the way Norway has regulated fishing in Finnmark. According to Section 12 of the Law on Fishery, all local people living in the three municipalities of Upper Lapland have the right to fish in Lake Inari. The local inhabitants are indigenous Sami, Finns (the majority population), and all other people who live in the area of the three municipalities. This regulation has led to a peculiar situation where a seasonal employee who comes from Southern Finland is allowed to fish without a permit, while an indigenous Sami who lives in a neighbouring municipality does not have the same right (Joonas 2011).

The Sami, as well as Finnish specialists of constitutional law, suggested that this right be extended only to indigenous people, but the Ministry anyhow drafted the law differently, and the Parliament approved the draft (Joonas 2011).

The regulation circumvents the bitterly disputed issue of defining who is a Sami and who is not. The precise population of the Sami is not known, because the Nordic states do not keep a register on ethnicity. The estimated number of Sami varies between 75,000 – 100,000, 45,000 of whom live in Norway, 20,000 in Sweden, 8000 in Finland, and 2000 in Russia (Kulonen et al. 2005). Among the population are some whose Sami ancestors abandoned reindeer herding centuries ago and become farmers and in some cases abandoned the Sami language for Finnish, and some who were historically registered as Lapps only because they practiced reindeer herding. The official definition of the Sami Parliament is thus quite narrow.⁸⁹ There is a large mixed population whose situation can be compared with that of the Pomors, whose status as an indigenous people is likewise disputed.

Local inhabitants of the three municipalities of Upper Lapland (Inari, Utsjoki and Enontekiö) select a negotiation committee which gives an annual statement on fishing rights for outsiders. The state Forestry Agency must comply with these statements. Fishing rights for outsiders are usually granted only for recreational and sports fishing purposes. The arrangement makes self-organized governance of fishery in Lake Inari possible, as well as allowing local disputes to be decided at the local level. Parallel to the free fishing rights of every inhabitant, the local people also have traditional fishing areas, which are divided among families. From time to time, the Sami have tried to have these traditional rights be officially recognized as official rights by the state either through proposals to the Parliament or by taking disputes concerning traditional rights to court. At the legislative level, the locals have not been successful, but courts sometimes recognize traditional rights as rights from time immemorial (Joonas 2011). Such rights can be recognized in the property law of Finland, Sweden and Norway. Even if the rights of the Sami concerning land have not yet been settled in Finland, a trend towards officially recognized self-regulation, which may take local circumstances into consideration, can be seen.

Although the situation in Finnish Upper Lapland and Norwegian Finnmark is not an ideal one and many disputes still need to be resolved, the idea of

89 The definition is connected with language. A Sami is a person who identifies herself as a Sami and who is either a native speaker of Sami or has at least one parent or grandparent who learned Sami as a first language (The Sami Parliament Website). In order to have the right to vote in the elections of the Sami Parliament, one must have an ancestor who was registered as a taxed Lapp (reindeer-herding Sami) in the old tax records.

a committee that applies local decision-making on the use of natural resources in a self-regulating manner can be recommended as a possible solution to the difficult situation of the Pomors. In Pomorie, it should be even easier to solve the problem since the Pomors are not threatening the rights of any (other) indigenous peoples. Their fishery rights could be recognized as rights of the local population, depending on fish resources, without entering into a dispute on whether or not the Pomors are an indigenous people.

Conclusion

Whether they are considered to be an indigenous people or not, it is clear that the Pomors are a group of people who are dependent on traditional fishery. The Pomor Movement has tried to get the status of an indigenous people for the Pomors in order to guarantee them the right to fish at least for their own livelihood. In other words, the Movement is trying to get traditional rights recognized in the legislation of the nation state. The Movement also provides information about the ILO Convention on the Rights of Indigenous Peoples in Pomor villages, referring to international law, which obligates states to respect the rights of indigenous peoples. This may be a difficult way to find justice in the conflict concerning fishing rights because of the double identity of the Pomors and because the name “Pomor” can be used in various ways. Attempts to reinterpret the status of indigenous people can lead to endless disputes concerning ethnicity and the definition of indigenous people. The Pomor Movement could also try to refer to the special economic, social and cultural situation of the Pomors and demand special legislation, examples of which can be found both in the history of Pomorie and in recent legislation in neighbouring countries. The reason for not pursuing this alternative may be that special legislation is not popular in contemporary Russia, where similar rules for everybody are understood as a guarantee of equality.

It seems that stronger commercial players have been able to influence legislation and align their needs with the strong trends towards centralization in the legislation concerning natural resources. Weaker groups have great difficulties being heard both in the federal centre and at the regional level, where short-sighted commercial gains are often preferred to protecting vulnerable local groups that are suffering because of the changing socio-economic environment. There are,

however, some small signs of a gradual acceptance of special regulations to support weaker groups in Russia. The category of small coastal fishing in the Fishery Law is at least a sign that the problem of small entrepreneurs competing with bigger, more resourceful ones has been recognized. Subsidizing small business could be one solution to the problem of the Pomor fishing *kolkhozes*, but it would not solve the crucial problem of traditional fishing for unemployed Pomors' own household purposes and the small-scale selling of fish in the villages.

Self-organization and the possibility to take control of their own living circumstances have been traditional Pomor values for centuries. Official recognition of the self-organization of local people has, however, not been part of Russian values since Soviet times. Self-organization has been driven in areas where state power has not been able to penetrate effectively. Since Soviet times, such self-organization has been regarded as a weakness of the state. The Pomors are not the only example of a community within the Soviet Union which was left alone to live according to their own self-organizational rules.

With democratization, it would be only fair to recognize the existence of traditional legal regimes and legal pluralism in Russia. Recognizing only small indigenous peoples is not a danger to the official system, but recognizing other, usually ethnic, legal regimes, is considered to constitute a threat to the unity of Russia. This is a tragic dilemma for Russia, because the forceful implementation of rules which are considered to be wrong at the local level only leads to passive resistance and may also escalate into active resistance in certain circumstances. In other words, the Russian Federation seems to be too weak to recognize a multiplicity of norms beside nation state legislation. In this respect, however, Russia does not differ very much from other nation states. The easiest way to accept traditional rights is to include them in the legislation of the nation state. In this way, the role of the state as the rule maker is not threatened. Other methods could lead to legal pluralism and considering nation state law as only one set of alternative "laws". Nation states are reluctant to accept such a change (Michaels 2005).

As Elinor Ostrom's studies show, self-regulation does not always work, but, nevertheless, it can be a sustainable solution for settling fishing rights. The Pomors have lived for centuries under a self-regulated regime and have extensive knowledge concerning fish and fishery in their traditional fishing areas. Their fishing methods may not be in accordance with the opinions of Russian specialists of marine biological resources, but they are a small population with a long tradition of living from fishery. Thus, self-regulation would not present

a threat to other actors. However, Ostrom's studies show that self-regulation no longer works when there are many newcomers with commercial interests but no interest in following the local rules concerning self-regulation (Ostrom 1990). Thus, some kind of alternative dispute settlement is needed in order to preserve the rights of local people and their livelihood.

The current situation in the White Sea area indicates that the competition between state legislation and traditional rights is actually leading to the same sad result as the tragedy of the commons – not to the regulated protection of biological resources, as claimed by the Federal Law on Fishery. The situation is also rapidly leading to the human socio-economic tragedy of a group of people who are dependent on natural resources, the governance of which they have been forced to relinquish. Such tragedies are not unique on the international scale. However, the unwillingness of the nation state to try to solve the problem is a sign of a cavalier attitude on the part of the decision-makers towards the weaker groups in society. In the case of the Pomors, they have been driven from being a self-organized group with a centuries-old pride in their culture and their ability to support themselves to losers in the redistribution of fishing rights that has been forced upon them.

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