JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING INDIGENOUS PEOPLES: RETROSPECT AND PROSPECTS

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I. INTRODUCTION

The development of international law relating to indigenous peoples has been rapid, in particular if one considers advances at the universal level since the 1980s. In 1989 the International Labour Organization (ILO) adopted the Convention on Indigenous and Tribal Peoples in Independent Countries (No. 169, hereinafter ‘the ILO Convention’),2 which replaced its largely assimilationist predecessor, the 1957 ILO Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries.3 Although not granting indigenous peoples self-determination, the 1989 Convention guarantees them many rights related to political participation, land, and the like, and is built on the idea of the importance of indigenous cultures. Even more important has been the adoption by the UN General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter ‘the UN Declaration’) in September 2007, for this was the culmination of over 20 years of direct negotiations between states and indigenous

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peoples and identifies a comprehensive set of rights for improving their situation.

This brisk evolution has brought not only new standards, but also cooperative bodies between indigenous peoples and states, as well as monitoring mechanisms to ensure that standards are observed. Of prime importance is the UN Permanent Forum on Indigenous Issues (UNPFII), which has eight members from both indigenous and state constituencies, with the chair selected from the indigenous peoples. The UNPFII is complemented by the expert mechanism on indigenous peoples and the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. Funding bodies, such as the World Bank, have also adopted strong guidelines on how they give loans to development projects that have an impact on traditional indigenous lands.

These universal developments have largely been reflected at the regional human rights level as well, in particular in the American and African human rights systems. Yet, this observation does not apply to the strongest of regional human rights systems, the European one, which consists of the European Convention on Human Rights (ECHR) and its Protocols and the complaints mechanism of the European Court of Human Rights (ECtHR, or ‘the Court’). The ECtHR enjoys a strong normative influence on its 47 states parties, given that the Court’s judgments are legally binding on those states. The Court can hear complaints concerning various northern indigenous peoples: the Inuit from Danish Greenland, the Saami in Norway, Finland, Sweden and Russia, as well as numerous other indigenous peoples in the Russian Federation.

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7 See <www.hri.org/docs/ECHR50.html>, (accessed on 1 October 2010).
8 There are two recent overviews of the indigenous situation in Russia, the first submitted by the Russian Association of Indigenous Peoples of the North (RAIPON) together with the International Work Group of Indigenous Affairs (IWGIA) for Proposed questions to the Government of Russian Federation Regarding Economic Social and Cultural Rights of