THE SAMI PEOPLE IN THE SIGHT OF
SWEDISH LAW

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We have been in court on the issues of the taxed mountains in Jämtland and Härjedalen.

The litigation has been for seven months in the Supreme Court of Sweden. It ended on 6 May 1980. Of course I cannot here take up more than some few important points of the enormous material that has been brought before the Supreme Court during these seven months.

We have been to court in this case for over a year, three months in the Court of First Instance and three months in the Court of Appeal and seven months in the Supreme Court.

We have published seventeen volumes with documentation of historical material, and we have, I might say, created a diplomatarium laponicum with a lot of documents, and this is important because Sweden decided in 1964 to revise the Reindeer Breeding Code of 1928, but it was then said, in the directives for the committee, that the land issues between the Crown of Sweden and the Sami people were not to be looked into. They should remain as they were, which means that the Government of Sweden denied the investigation of the historical material and the history and the legal development for the Sami population in Sweden.

So the Government in Sweden denied this in 1964, and in 1965 we won a case in Norway in the Norwegian Court of Appeal. And then in 1966 we felt ready and prepared to sue the Crown of Sweden over the land and water issues on the taxed mountains.

Now I intend to deal with two questions, one is the border treaty of 1751 between Denmark-Norway and Sweden, which treaty draws the border line dividing Norway from Sweden, and the Additament, or Codicil, that was included in the treaty dated 1751. This Codicil was by Royal Order published in Sweden by Letter of the Court of Appeal, Svea Hovrätt, and the Royal Letter of 6 April 1752 says that this Codicil includes statutes and cases that should be observed by the Swedish court. So the formulation of this Royal Letter is very wide, and it is clear that the Codicil by means of that Royal Letter and the Letter of the Court of Appeal is transformed from international to Swedish law, which is requested in Sweden now.

Sweden does not take a convention as valid in Sweden without a transformation. Now it is interesting to see that in that Codicil the ownership rights of the Sami are acknowledged and the Codicil says expressly that special regards should be taken to the Lapp who pays taxes for his piece of land. The Codicil also institutes a Sami Court. It is said expressly that several cases, legal issues, should be decided by a

* The following text has been reproduced on the basis of a tape-recording of Tomas Cramér's lecture in the Aland seminar.
There was very much work made on this Codicil before it was agreed upon by the political leaders Count von Holstein in Denmark and Count Carl Gustaf Tessin in Sweden. These were men profoundly interested in the theories of Enlightenment, the ideas of Voltaire, the ideas of John Locke, of Samuel von Pufendorff, ideas of the possibility of transforming people by means of education.

And the Lapp-Court, the Sami-Court, is a typical expression of this Enlightenment view of equality between all men. The Border Commissioner doing the agreement and the Codicil on the Swedish side was Colonel Klinckowström. He and the political leader Count Tessin had been in the Berlin of Frederic the Great for the marriage between a Swedish King and a Brandenburg princess. So they knew very much about a Berlin speaking French, as Frederic the Great administered his eastern provinces around Königsberg in east Prussia with French-speaking officials. This was a time with very little nationalistic notions, with a very strong feeling of equality among peoples and cultures.

I think this is, in the Enlightenment, much profounder than this notion coming from Rousseau of the Noble Savage. This is an idea that many people fall into when it comes to the 18th century and the aspects on different kinds of people during the 18th century.

But it is a shallow way of looking into the things, you collar that etiquette Noble Savage on the whole thing and then you dismiss it. Often this Noble Savage-idea was used, speaking in France of the circumstances in America, far away you had that Noble Savage-idea, but when it came to what you might call Home Rule issues, then it was not about the Noble Savage, and this instituting in the Codicil of 1751 of the Sami Court could hardly be taken as an expression for Noble Savage ideas. It seems to me that it is impossible to look upon the Sami Court as some kind of expression for “Noble Savage”.

When is comes to landrights it is very interesting to note that before this Codicil was made, a very prominent Danish jurist, Henrik Stampe, wrote a long essay called “Finmarkens gamle og itzige tillstand og den deraf hengende Sveriges eller Danmarks rettighed dertil”. That is to say the old and present circumstances in Finnmark and the rights of Denmark or Sweden to that land, from the old and present conditions in Finnmark.

What does Henrik Stampe say in his essay?

He was put on working on the issue by Count Holstein, the political leader, and he and Mr. Hielmstjerne were very busy in designing this Codicil.

He argues that the watershed between Sweden and Norway should be the frontier line. And then he says that a very old king in Norway called Harald Hårdefager had united Norway and made the Kingdom of Norway somewhere back in 800. And then he says, how could Harald be the master of these mountain areas where there were no farms, and so he says, the Sami people were there and you must, Henrik Stampe says, look into the legal authorities like Samuel von Pufendorff and Hugo Grotius and their occupation theory in their books in Latin in these issues.

We have translated now the text of Stampe which is partly in Latin and the quotations he makes from Pufendorff and Grotius, and we have also translated parts