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The Divided Sámi: Indigenous Peoples' Pursuit of Arctic Cross-Border Peace and Sustainability

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Abstract

The divide of the Sámi people due to the unfolding tensions along the EU's external borders with Russia and lack of cooperation in the Arctic are significant barriers to sustainable peace and justice. This issue is undermining the Sámi's cultural integrity and demands urgent action to recognise Sámi rights and foster cross-border cooperation.

This article examines the division across the Sápmi – the traditional lands of Sámi people, focusing on the international legal framework that establishes cross-border rights for Indigenous peoples, with an emphasis on the EU-Russian frontier. The ongoing geopolitical tensions have heightened the importance of these rights for peace and sustainability in the Arctic.

The paper aims to highlight this divide and explore the potential violations of cross-border rights due to the geopolitical split. In light of the uncertain future of Arctic cooperation, a unified approach to protecting these rights is essential to mitigate geopolitical risk and foster a sustainable future.

Keywords

Arctic – cross-border rights – Sámi – Finland – Russia – Norway – Sweden – Indigenous

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1 Background

The Arctic is one of the most critical regions of geopolitical and environmental significance. It has pronounced cross-border issues related to collective identity, public health, and management of natural resources and languages.[1] The survival of Arctic exceptionalism announced by Mikhail Gorbachev[2] is increasingly threatened. It is a currently contested[3] normative concept that prescribes the Arctic as a unique 'zone of peace'.[4] The decline of exceptionalism not only undermines peace and sustainable development in the region but also challenges several UN Sustainable Development Goals,[5] particularly SDG 16, which addresses the need to promote peace. Ethically defendable and just ways of achieving those goals are essential in light of the ongoing injustice against Indigenous peoples. The Sámi people suffer continuous deprivation of full enjoyment of cross-border rights guaranteed by international law. The numerous sanctions against Russia in response to the situation in Ukraine have resulted in difficulty for Indigenous Sámi from Russia to participate in the Arctic governance, limited travel between countries, restricted payment through the SWIFT system, communication challenges, and general mistrust between those living in different countries.[6]

The Arctic region is currently grappling with a multitude of threats. Climate change, militarisation, environmental degradation and a resource race are all posing significant challenges. Meanwhile, it is also going through geopolitical turbulence due to the spill-over effects of conflicts in the South. This is an especially sensitive subject for the Indigenous Sámi people, as their ancestral lands are stretched across the borders of Norway, Sweden, Finland, and Russia.

1 UN Economic and Social Council (14th Session) 'Cross-border issues, including recognition of the right of Indigenous peoples to trade in goods and services across borders and militarized areas' (17 February 2015) E/C.19/2015/9, para 3.

2 Mikhail Gorbachev, *Murmansk Speech: Presentation of the Order of Lenin and the Gold Star to the City of Murmansk* (translated October 1, 1987, Novosti Press Agency, 1987), 23–31.

3 Matthias Finger, Lassi Heininen, 'Contemporary Arctic Meets World Politics: Rethinking Arctic Exceptionalism in the Age of Uncertainty' in Matthias Finger, Lassi Heininen (eds), *The Global Arctic Handbook*, (Springer, 2019), 155–156.

4 Pavel Devyatkin, 'Arctic exceptionalism: a narrative of cooperation and conflict from Gorbachev to Medvedev and Putin' (2023) 2 The Polar Journal 13, 336–357.

5 United Nations, 'The 17 Sustainable Development Goals', <https://sdgs.un.org/goals> accessed 23 December 2024.

6 UN Human Rights Council (54th Session) 'Study of the Expert Mechanism on the Rights of Indigenous Peoples. The impact of militarization on the rights of Indigenous Peoples' (8 August 2023) A/HRC/54/52, 55.

They inhabit the Arctic area of Sámi Homeland – Sápmi.[7] The Sámi region extends west and south in a crescent 1,500 kilometres long from the northern shores of the Kola Peninsula to Trondheim, Röros and Idre.[8] The number of ethnic Sámi is approximately 100,000.[9]

There are different degrees of recognition and rights for the Sámi within these countries, but they have continued to retain a certain level of cooperation through the Sámi Council, a non-governmental organisation and a forum for Indigenous cooperation and paradiplomacy.

The Sámi Council,[10] a well-known and established Indigenous peoples' organisation, has been working tirelessly on many platforms nationally, internationally, and regionally. They bring the voice of the Sámi and their traditional knowledge to a number of negotiations on Sámi issues and general Indigenous issues. For nearly 70 years, they have been bringing Indigenous and Sámi diplomacy to the world stage, adding value to the negotiations among states and peoples. This complex history of interaction across the borders of four states underscores the remarkable resilience of the Sámi people in the face of colonisation processes, external pressures and changes. The Sámi Council, in its recent official message

> ardently advocates for a world where peaceful coexistence is the norm, grounded in a mutual respect and a shared commitment to the principles enshrined in the UN Universal Declaration of Human Rights and other key instruments of international law.[11]

Despite being wounded people themselves and their languages categorised as endangered, the Sámi people demonstrate exceptional resilience and promote peace.

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7 The name Sápmi is commonly understood as "Sámi", "People" or "Sámiland", the word Sámi translates as "people", Lars-Nila Lasko, 'Sámi political Organisation in Sweden', in Frank Horn (ed) *Economic, social and cultural rights of the Sámi: International and national Aspects* (University of Lapland, 1998).

8 Frank Horn (ed), *Linguistic rights of minorities = Droits linguistiques des minorités* (Rovaniemi, Juridica Lapponica, 1994), 55.

9 Henrik Magga Ole and Tove Skutnabb-Kangas, 'The Saami Languages: the present and the future' (2001) 25 Cultural Survival Quarterly, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/finland/saami-languages-present-and-future> accessed 23 December 2024.

10 Saami Council <https://www.saamicouncil.net/en/home> accessed 23 December 2024.

11 Saami Council. Statement from the Saami Council <https://www.saamicouncil.net/news-archive/statement-from-the-saami-council-a-free-palestine> accessed 23 December 2024.

2 The EU-Russian Border as a Boundary for Intracultural Indigenous Connections

Through the process of colonisation, Indigenous peoples were turned 'into 'migrants' by drawing international borders through their homeland'.[12] Consequently, the Sámi people continue facing multiple cultural, political, and economic challenges in borderland contexts.[13] This situation is not unique,[14] as other examples of colonised Indigenous peoples divided by borders can be found: the Amazighs in North Africa, the Mapuche at the Chile-Argentina border,[15] Indigenous peoples across the US-Mexico border,[16] the Maya-Mam across the Guatemala-Mexico border[17] etc. Unfortunately, the states often overlook the complex challenges these Indigenous peoples face.[18]

Since time immemorial, the Sámi people have established a deep connection between their cultural identity and their lands in Sápmi. This connection has been enhanced 'by the level of social and cultural (linguistic) well-being, as well as by extent of knowledge of markers and symbols which strongly connect a region's identity with the people's regional identity'.[19] It is impossible to reconstruct Indigenous homelands and fit ancestral territories within the

12 UN Human Rights Council (12th session) 'Study of the Expert Mechanism on the Rights of Indigenous Peoples. Indigenous peoples' rights in the context of borders, migration and displacement' (18 September 2019) A/HRC/EMRIP/2019/2/Rev.1, para. 5, Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (2006) 4 Journal of genocide research 8, 387–409.

13 Rachel Rose Starks, Jen McCormack and Stephen Cornell, *Native Nations and U.S. Borders: Challenges to Indigenous Culture, Citizenship and Security* (Tucson, Arizona, University of Arizona, 2011), 80.

14 Sarah Maddison, 'Indigenous Peoples and Colonial Borders: Sovereignty, Nationhood, Identity, and Activism' in Nancy A. Naples and Jennifer Bickham Mendez (eds), *Border Politics: Social Movements, Collective Identities, and Globalization* (New York, New York University Press, 2015), 153–176.

15 Sarah D. Warren, 'A Nation Divided: Building the Cross-Border Mapuche Nation in Chile and Argentina' (2013) 45 Journal of Latin American Studies 2, 235–264; J. A. Gardner and S. D. Warren (2024) 'Indigenous borders: contesting the nation-state, belonging and racialization' 19 Latin American and Caribbean Ethnic Studies 1, 1–6.

16 Jeffrey M. Schulze, *Are We Not Foreigners Here? Indigenous Nationalism in the U.S.-Mexico Borderlands* (University of North Carolina Press, 2018).

17 Hernández Castillo and R. Aída, *Sur profundo: identidades indígenas en la frontera Chiapas-Guatemala* (Mexico: Publicaciones de la Casa Chata, 2012).

18 A/HRC/EMRIP/2019/2/Rev.1, *supra* note 12.

19 Anssi Paasi, 1996, 'Regional identity and regional migration: Birth places and dwelling places of the Finns' (1996) 4 Terra 108, 210–233.

state borders.[20] The same happened with the Sámi Homeland, which stretches across the territories of four states.

Drawing international borders through Sámi Homeland reflects the doctrine of discovery and perpetuates the legacy of colonisation.[21] This unjust division, which is now exacerbated by the border restrictions between the European Union (EU) and Russia in both Norway and Finland, can be attributed primarily to the unfolding armed conflict in Ukraine and concerns from the Finnish side over instrumentalised migration.

The Sápmi was originally inhabited by the Sámi people before Denmark/Norway, Sweden, and Russia colonised it.[22] The division of Sápmi among several countries has led to various problems related to transboundary livelihood, as the Sámi people have traditionally depended on reindeer herding.[23] In the past, reindeer moved across different Sápmi pastures, as 'migratory animals are not constrained by international borders'.[24] However, it may not ever be possible to fully revive this transboundary practice.[25] The artificial split goes against the nomadic way of life and the nature of reindeer-herding that Sámi traditionally rely on to sustain themselves.[26]

The historical example of the Treaty between Sweden (including Finland) and Denmark (including Norway) regulating cross-border reindeer herding rights is the Lapp Codicil (Lappekodicillen). It regulated the migration of reindeer and nomadic Sámi across the borders, guaranteeing the Sámi complete neutrality in case of military conflict between Sweden and Denmark. This treaty did not survive into the twentieth century due to reindeer overgrazing certain lands.[27]

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20 J. A. Gardner and S. D. Warren (2024) 'Indigenous borders: contesting the nation-state, belonging and racialization', 19 Latin American and Caribbean Ethnic Studies 1, 1–6.

21 Tonya Gonella Frichner, Special Rapporteur of the UN Permanent Forum on Indigenous Issues, 'Preliminary Study of the Impact on Indigenous Peoples of the International Legal Construct Known as the Doctrine of Discovery', (February 4, 2010), E/C.19/2010/13.

22 T. Joona and J. Joona, J. 'The Complex Relationship between Forest Sámi and the Finnish State' in Corine Wood-Donnelly and Johanna Ohlsson (eds) *Arctic Justice: Environment, Society and Governance* (The Policy Press, 2023).

23 Tone Bleie, 'Reconciling Witchcraft and Hor Cosmopolitanism: Boundary Restorative Violence and the Spatial Temporality of Ancestral Transboundary Practices' in Sheryl Lightfoot and Elsa Stamatopoulou (eds) *Indigenous Peoples and Borders* (Durham and London, 2024), 41.

24 S. Kirchner, 'Cross-Border Forms of Animal Use by Indigenous Peoples'(2017) *AJIL Unbound*, 402–407.

25 *Ibid.*

26 See Jérémie Gilbert, *Nomadic Peoples and Human Rights* (New York, Routledge, 2014); Patrik Lantto, 'Borders, citizenship and change: the case of the Sámi people, 1751–2008' (2010) 14 Citizenship Studies 5, 543–556.

27 *Ibid.*

2.1 *Finland*

The Sápmi territories were divided between Finland and the USSR by the 1920 Treaty of Tartu without respect to the Sámi Homeland's natural borders or consultation with Sámi people. Since the end of the Cold War, significant efforts have been made to rebuild the Sámi identity,[28] revitalise their languages, and establish robust paradiplomatic connections within their homeland. The split across Indigenous homelands is damaging for Sámi people as a whole as they see themselves as borderless 'one people residing across national borders'.[29] However, it is especially detrimental for the Skolt Sámi, who live in both Finland and Russia, and their language is spoken across both countries. Today, the majority of Skolt Sámi speakers live in the municipality of Inari in Finland. According to estimates, there are around 300 native speakers of Skolt[30] in Finland. Skolt Sámi are one of forty-seven officially recognised Indigenous peoples in Russia. An estimated 1,550 Sámi persons are living in the Murmansk oblast of Russia, directly bordering Finland.[31]

Globalisation and the recent creation of a harder border between Russia on one side and Norway and Finland on the EU side affected Sámi people culturally and economically, dividing them into two parts.[32] The longest of the Sápmi internal borders with Russia, Finland-Russian 1,340-kilometer land border, has been designated as NATO's North-Eastern flank since Finland's accession to NATO. Border crossings in Finland are regulated by the Border Guard Act.[33] In its session on 4 April 2024, the Finnish Government decided that 'Finland's eastern border would remain closed until further notice.'[34]

28 I. Seurujärvi-Kari 'We are no longer prepared to be silent: The making of Sámi Indigenous identity in an international context' (2010) 35 Suomen Antropologi: Journal of the Finnish Anthropological Society 4, 5–25.

29 Preamble, Draft Nordic Sámi Convention, <https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf> accessed 23 December 2024.

30 Saamelaiset Suomessa <https://www.samediggi.fi/saamelaiset-info/> accessed 23 December 2024.

31 All-Russian population census 2021, <https://rosstat.gov.ru/vpn_popul> accessed 23 December 2024.

32 Olga Davydova-Minguet and Pirjo Pöllänen, 'Desires for past and future in border-crossings on the Finnish–Russian border' in Tuija Pulkkinen and Elissa Helms (eds) *Borders of desire* (Manchester University Press, 2023), 144–161.

33 Border Guard Act (578/2005), <https://www.finlex.fi/en/laki/kaannokset/2005/en20050578.pdf> accessed 23 December 2024.

34 Situation at Finland's Eastern Border, <https://valtioneuvosto.fi/en/situation-at-finlands-eastern-border> accessed 23 December 2024.

In the Finnish-Russian border area, migration of reindeer herding is regulated by a bilateral treaty made between Finland and the Soviet Union.[35] Due to the nature of reindeer migration patterns, there appear to be no significant tensions between the two countries regarding reindeer migration. However, there is a concern about the ongoing construction of a fence on the border, as it may disturb the migration of wild animals.[36]

2.2 *Norway*

The Norwegian-Russian 195.7-kilometer land border is nearly seven times shorter than the Finnish one, but it is also important for the Sámi, particularly for their reindeer herding routes.[37] Even though reindeer can still cross the border, the Norwegian side is reconstructing a dilapidated fence due to the latest cross-border conflict involving Norwegian Sámi reindeer herders and Pasvik park authorities.[38] The Norwegian-Finnish reindeer fence was erected on 18 March 1952 under a Convention intended to prevent reindeer from crossing the border.[39]

In 1977, Norway and Russia signed a bilateral legal agreement[40] which states that if domestic reindeer cross the border, they must be returned to their country of origin, and any damages caused must be compensated (Article 8). This agreement has been in effect for many years without any issues. However, due to recent tensions between the two countries and the imposition of sanctions on Russia, there is now a financial claim of USD 4.4 million associated with

35 Agreement No. 5443 between Finland and the Union of Soviet Socialist Republics (with Protocol and annexes) concerning the regime of the Finnish-Soviet State Frontier and the procedure for the settlement of frontier incidents (23 June 1960), <https://treaties.un.org/doc/Publication/UNTS/Volume%20379/volume-379-I-5443-English.pdf> accessed 23 December 2024.

36 Environmental specialists: Proposed border fence will affect Finland's bear, wolf populations, <https://yle.fi/a/3-12682034> accessed 23 December 2024.

37 Norwegian Ministry of Foreign Affairs, Norway is tightening its restrictive measures against Russia, <https://www.regjeringen.no/en/aktuelt/norway-is-tightening-its-restrictive-measures-against-russia/id2996416/> accessed 23 December 2024.

38 N.V. Polikarpova, 'Why Norwegian deer entered the Russian reserve, and what to do about it', <https://goarctic.ru/priroda/pochemu-norvezhskie-oleni-zashli-v-rossiyskiy-zapovednik-i-chto-s-etim-delat/> accessed 23 December 2024.

39 JG. Elbo, 'The Norwegian-Finnish reindeer fence' (1954) 7 Polar Record 47, 73–74.

40 Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the Kingdom of Norway "On the mutual return of reindeer crossing the state border" (11 February 1977), <https://www.fao.org/faolex/> accessed 23 December 2024.

reindeer crossing the border and damaging lichen on the Russian ecologically protected area – Pasvik Park.[41]

2.3 *The Provisional Nordic Sámi Convention*

The Nordic Sámi Convention (NSC) represents a significant effort by the Sámi people and Nordic states to establish a comprehensive regional framework for Sámi rights across Norway, Sweden, and Finland. While the NSC aims to enhance Sámi rights across national borders, it paradoxically excludes the Sámi in Russia. Notably, this question was the subject of a heated debate during negotiations. It has been suggested that Sámi individuals who are Russian nationals and reside in one of the three Nordic countries can still be covered by the NSC.[42] This emphasises the challenges of negotiating under geopolitical pressure across borders.

The lengthy negotiation process began in the late 1990s with an ambitious dream "to (re)gain their right to self-determination".[43] While the NSC aims to bolster Sámi self-determination, cultural preservation, and environmental stewardship, its adoption remains uncertain due to varying levels of commitment from the Nordic countries, particularly Finland and Sweden's hesitance regarding ILO Convention No. 169.

This evolving landscape highlights the complex interplay of regional aspirations and national policies, reflecting both a commitment to Sámi rights and the obstacles that still lie ahead. Although the NSC may not be adopted imminently, its ongoing discourse illustrates the persistent advocacy for Sámi cross-border identity.

3 International Legal Framework for Indigenous Participation in Peace and Sustainability

Various international organisations are increasingly recognising Indigenous transboundary nomadic traditions, even though the cross-border rights of

41 A. Chichkin, 'Russia-Norway: now reindeer are also "fueling" Russophobia?..', <https://rosreporter.ru/rossiya-norvegiya-teper-i-oleni-podogrevayut-rusofobiyu/> accessed 23 December 2024.

42 T. Koivurova, T. "The Draft Nordic Saami Convention: Nations Working Together" (2008) 10 International Community Law Review 3, 284.

43 T. Koivurova, "From High Hopes to Disillusionment: Indigenous Peoples' Struggle to (Re) Gain Their Right to Self-Determination" (2008) 15 *International Journal on Minority and Group Rights* 1, 1–26.

Sámi people are limited by the sovereignty of the state territory.[44] The cross-border rights of Indigenous peoples are limited by Article 1 of the International Covenant on Civil and Political Rights, the right to self-determination. James Anaya stated in his seminal work that self-determination has a remedial effect.[45] However, the right to self-determination belonging to Indigenous peoples, expressed in Article 3 of the UNDRIP, is a right to be exercised by Indigenous peoples "as distinct peoples" within the borders of the sovereign state.[46] Therefore, self-determination is still a derivative right limited by the state's geographical sovereignty.[47]

The 2019 Study[48] 'On Indigenous Peoples' rights in the context of borders, migration, and displacement' of the UN Expert Mechanism on the Rights of Indigenous Peoples provides a comprehensive overview of the three main areas of significance of borders for Indigenous peoples: (1) the legal framework which consists of provisions of international law relevant to Indigenous peoples' cross-border rights, (2) reasons and factors behind the migration of Indigenous peoples, and (3) challenges following migration.[49]

However, states are challenging the cooperation and maintenance of social, economic, and cultural relations across borders. This is especially true in the current geopolitical climate of heightened tensions in the Arctic region. The conflict in Ukraine has led to militarisation in the High North of Europe and Russia, making borders less porous and causing unfortunate divisions within Sámi people. The following four international agreements contain the core provisions regulating the cross-border rights of Indigenous peoples in relation to peace and sustainability.

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44 See Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge University Press, 1995; Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (University of Pennsylvania press, 1990); Christian Tomuschat (ed), *Modern Law of Self-Determination* (Martinus Nijhoff Publishers, 1993).

45 James S. Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2004), 83.

46 Robert T. Coulter, 'The Law of Self-Determination and the United Nations Declaration on the Rights of Indigenous Peoples' (2010) 1 UCLA Journal of International Law and Foreign Affairs 15, 1–27 at 5.

47 R. Shrinkhal, '"Indigenous sovereignty" and right to self-determination in international law: a critical appraisal' (2021) 17 *AlterNative: An International Journal of Indigenous Peoples* 1, 71–82.

48 A/HRC/54/52, *supra* note 6.

49 A/HRC/EMRIP/2019/2/Rev.1., *supra* note 12.

3.1 *International Covenant on Civil and Political Rights* (ICCPR), *Article 27, 1954*

The International Covenant on Civil and Political Rights was ratified by Russia, Finland, Sweden, and Norway. Therefore, Article 27 has been fundamental to the Indigenous rights of Sámi, especially because Norway is the only country that ratified the ILO 169. Article 27 reads in conjunction with Article 1, the right to self-determination.[50] When it is combined with the provision of Article 12, it 'reinforces the view that the specificities of Indigenous Peoples' way of life and culture often require some level of mobility, for which there may be multiple reasons'.[51]

Most importantly, Article 27 generated several cases[52] originating from Sámi Homeland, with the latest Fosen case from Northern Norway.[53] According to Article 27 ICCPR, minorities, including Indigenous peoples, 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 use their own language.

There is no cross-border element in Article 27; however, most of the transboundary activities, performed by Indigenous peoples, are falling under the scope of this provision. Therefore, there is a prospect that Sámi people would be advised to use the mechanism of individual communications with the UN Human Rights Committee, combined with simultaneous submission to both the treaty body and relevant Special Procedures.[54]

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50 James Anaya, Human Rights Council, 'Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People', (July 15, 2009) A/HRC/12/34.

51 Tone Bleie, Sheryl Lightfoot, and Elsa Stamatopoulou, 'Introduction', in Sheryl Lightfoot, and Elsa Stamatopoulou (eds) *Indigenous Peoples and Borders*, (Duke University Press, 2024), 21.

52 *Länsman et al v Finland* [1992] CCPR/C/52D/511/1992; *Äärelä and Näkkäläjärvi v Finland* [1997] CCPR/C/73/D/779/1997; *Tiina Sanila-Aikio v. Finland* [2015] CCPR/C/124/D/2668/2015; Käkkäläjärvi et al. v. Finland [2017] CCPR/C/124/D/2950/2017.

53 Supreme Court of Norway [2021] HR-2021-1975-S; see Ø. Ravna, 'The Fosen Case and the Protection of Sámi Culture in Norway Pursuant to Article 27 ICCPR' (2022) 30 International Journal on Minority and Group Rights 1, 156–175.

54 Andrea Bear Nicholas, Lorena Fontaine, Amos Key Jr, and Karihwakéron Tim Thompson, 'Using the UN human Rights treaty system to defend LHRs' in Tove Skutnabb-Kangas, Robert Phillipson, and John Wiley (eds) *The handbook of linguistic human rights* (John Wiley & Sons, Incorporated, 2023), 250.

3.2 *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007*

Although UNDRIP is non-binding, it has been widely accepted and endorsed by countries globally. It has become a collection of principles that influence legal policies and frameworks and develop customary international law. The 2019 Study[55] of the UN Expert Mechanism on the Rights of Indigenous Peoples has a comprehensive analysis of the provisions of the UNDRIP regulating cross-border and border-related rights of Indigenous peoples. It emphasises the importance of the right of Indigenous peoples to self-determination (Articles 3–5). It is a fundamental right for Indigenous peoples.[56] Operative Articles 7(2) and 30 establish that Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples. Demilitarisation is implied here as 'the Declaration is meant to be read as a whole'.[57] The Indigenous motto 'nothing about us without us' is being put into action with the implementation of Articles 18 and 19, which specify the rights of Indigenous peoples to participate in decision-making processes that affect them and to consult through their representative institutions. Belonging to Indigenous communities is implied beyond national borders. Article 9 states:

> the Indigenous peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Cooperation and the right to maintain contacts across borders are directly regulated by Article 36, which requires peace as a prerequisite:

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with Indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

55 A/HRC/EMRIP/2019/2/Rev.1, *supra* note 12.
56 A/HRC/12/34, *supra* note 54.
57 A/HRC/54/52, *supra* note 6, para 7.

UNDRIP contains a common reference to the 'divided communities' that live 'across the borders', specifically mentioning five main spheres of cooperation: spiritual, cultural, political, economic and social. It is a fundamental provision and a reference point for the creation of a comprehensive framework of cross-border Indigenous rights, linking all three major rights of the UNDRIP: the right to self-determination; the right to lands, territories, and resources; and the cultural rights of Indigenous peoples.[58]

Moreover, Article 36.2 states that states should consult and cooperate with Indigenous peoples to ensure the implementation of this right. The right to cross-border cooperation 'presupposes the right to freedom of movement, an intrinsic part of the lives and cultures of some Indigenous Peoples'.[59] This provision underlines the status of Indigenous peoples as custodians of the lands and strengthens their participatory rights.

As demonstrated above, cross-border rights of Indigenous peoples are present in nearly every article of the UNDRIP as they are immediately linked to self-determination. They include a whole range of other rights, such as the right to a nationality (Article 6), the right not to be subjected to forced assimilation or destruction of their culture (Article 8), the right not to be forcibly removed from their lands or territories (Article 10), the right to practice and revitalise cultural traditions and customs (Article 11), the right to the protection of and access to religious and cultural sites (Article 12) to maintain and strengthen their relationship with the land (Article 25), the right to the lands, territories and resources (Article 26), the participatory rights (Article 27), the free, prior, and informed consent rights (Article 32), the right to enjoy economic, social, cultural, and labour rights (Articles 17, 20, 21, 23, and 44); the right to restitution and compensation (Article 28), the right to determine their own identity (Article 33).

In contrast to Finland, Sweden and Norway, who voted in favour of UNDRIP, the Russian Federation abstained from voting. The reason for this was mainly Article 3 of the Declaration, which broadly interprets the right to self-determination of Indigenous peoples. The UNDRIP is seen by the Ministry of Regional Development of the Russian Federation as a controversial document, suggesting, according to Alexander Sirchenko, Deputy Director of the Department of International Relations, 'the ultra-liberal concept of Indigenous peoples, which has a number of provisions that are objectionable to the multinational Russian Federation, where almost all peoples can be classified as Indigenous.'[60]

58 Tone Bleie, Sheryl Lightfoot, and Elsa Stamatopoulou, supra note 55, 19.

59 A/HRC/54/52, *supra* note 6, para 51.

60 Minutes of the Parliamentary Hearings 'Russian and international aspects of legal regulation and the status of Indigenous minorities of the North, Siberia and Far East of the Russian Federation', held on 27 February 2007.

Criticism of the Declaration has also pointed to the connection between the international concept of Indigenous peoples and the colonial past of the New World, which is seen as unsuitable to the Russian legal reality. The colonial dimension was evident in the case of the trans-oceanic expansion of European empire States, whereas in the Russian context, it is not so clear. Even though governments across the world have adopted the Declaration, the implementation of Article 36 remains weak.[61] The hopes for its revival still remain high as UNDRIP is supported by a robust body of international human rights instruments.

3.3 *International Labour Organization Convention No. 169 (ILO 169), 1989*

ILO 169 is a legally binding international instrument that deals with the rights of Indigenous peoples in general and their participatory rights in particular. It requires states to consult with Indigenous peoples on the matters directly affecting them.

Articles 13 to 19 are the crux of the ILO 169 Convention, as the land is 'indispensable for the continuation of Indigenous cultures'.[62] The key Article that pertains to the issue of the Sámi people being divided by national borders is Article 32 of ILO 169:

> Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between Indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

The participatory rights of Indigenous peoples are clearly reflected in paragraph 1 of Article 7 of ILO 169 which states that:

> The peoples concerned 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,

61 Sarah Maddison, 'Indigenous Peoples and Colonial Borders: Sovereignty, Nationhood, Identity, and Activism' in Nancy A. Naples and Jennifer Bickham Mendez (eds) *Border Politics: Social Movements, Collective Identities, and Globalization*, (New York: New York University, 2015), 153–176.

62 L. Swepston. 'Economic, social and cultural rights under the 1989 ILO Convention' in F. Horn (ed.) *Economic, social and cultural rights of the Sámi: International and national Aspects* (University of Lapland, 1998), 43.

> social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

Although the legal framework of the ILO 169 was ratified before modern challenges existed, it has the scope to adapt to the current realities. It is essential to include the perspectives and expertise of Indigenous and tribal peoples in decision-making processes to tackle global issues like environmental conservation, peace, and mitigating the impacts of climate change. Unfortunately, Russia, Finland, and Sweden have not ratified this convention, and the Sámi people in Norway are unable to rely on Article 32 despite their country ratifying this instrument.

3.4 *Convention on Elimination of All Forms of Racial Discrimination (CERD), 1965*

The International Convention on the Elimination of All Forms of Racial Discrimination effectively regulates the equality and non-discrimination of Indigenous peoples, with a special focus on Indigenous peoples through various mechanisms. Ratified by all three countries, the mechanisms of CERD are relevant to the situation of the split Sámi in relation to discrimination against them.

The post-Cold War UN Resolution 47/120 of 18 December 1992 entitled 'An agenda for peace: preventive diplomacy and related matters', emphasised the need to intensify efforts to strengthen the United Nations' role in preventive diplomacy, peacemaking, peacekeeping and peacebuilding.[63] However, the most relevant to the cross-border Indigenous rights is the CERD early warning and early urgent measures procedure.[64]

The impact of discrimination on the Sámi people has not been assessed yet, but there is a chance for them to use a strategy that was previously considered by the UN Committee on the Elimination of Racial Discrimination in 2017 in a similar situation involving the expansion of the US-Mexico border.[65] If the

63 On the same note, the Expert Mechanism issued an Advice N 16: 'States should consider Indigenous Peoples as partners and allies in conflict prevention, peacebuilding and peacekeeping, as well as maintaining a human rights agenda in any peace and security discussions. Indigenous Peoples should be involved in deliberations about peace and security at all levels', A/HRC/54/52, *supra* note 6, para. 25.

64 UN General Assembly, CERD Working Paper, A/48/18, Annex III, <https://www2.ohchr.org/english/bodies/cerd/docs/A_48_18_Annex_III_English.pdf> accessed 23 December 2024.

65 EWUA – Action Letter, CERD, CERD/92/EWUAP/GH/SK/ks.

borders between Russia and Norway/Finland remain closed, and the existing structural problems lead to a conflict, this protection mechanism could be effective for the Sámi people.

One important element of the early warning and early action procedure is already fulfilled, which is encroachment on traditional lands of Indigenous peoples.[66] For the cross-border Sámi community on the Finnish-Russian and Norwegian-Russian border, fulfilment of as many as possible of other criteria for initiating this procedure is necessary. They are (1) inadequate implementation or enforcement mechanisms, including the lack of recourse procedures;[67] (2) the presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organisations, notably by elected or other officials;[68] and (3) the current situation of the significant and persistent pattern of racial discrimination evidenced in social and economic indicators.[69]

3.5 *Convention on Biological Diversity (CBD) – 1992*

The CBD, while focused on the conservation of biological diversity, recognises the importance of Indigenous peoples' knowledge and practices. It has a solid potential to be the primary 'hard law' treaty-based framework regulating Sámi's pursuit of Arctic peace, environmental justice, and transboundary biodiversity conservation. This legal instrument, along with various initiatives and working groups, has a key role in connecting peace, sustainability and Indigenous peoples as custodians of the lands.

The 'Peace and Biodiversity Dialogue Initiative',[70] established within the CBD mechanism in 2014, emphasises the resilience of human systems that are seen holistically and inseparably from the concepts of biodiversity and peace. The initiative promotes the creation of transboundary conservation areas. This is also in line with Principle 25 of the Rio Declaration on Environment and Development: 'Peace, development and environmental protection are interdependent and indivisible.'

This initiative supports cooperation across borders and is in line with Article 8(j) of the CBD, particularly related to Indigenous peoples.[71] This provision calls

66 A/48/18, *supra* note 68, S. 9(b)(v).
67 *Ibid*, S. 9(b)(ii).
68 *Ibid*, S. 9(b)(iii)
69 *Ibid*, S. 9(b)(iv).
70 Peace and Biodiversity Dialogue Initiative, <https://www.cbd.int/peace>, accessed 23 December 2024.
71 The Convention on Biological Diversity, Working Group Article 8(j) of the CBD, <https://www.cbd.int/convention/wg8j.shtml> accessed 23 December 2024.

for the respect, preservation, and maintenance of knowledge, innovations, and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. In relation to the Arctic region, this CBD initiative is fundamentally compatible with Michail Gorbachev's Murmansk Speech on peaceful cooperation.

4 Promoting Peace and Sustainability Through the Arctic Council Framework

Geopolitical confrontation has affected international cooperation on many levels, including at the Arctic regional level. The Arctic Council, as a soft-law body, has always been a leading intergovernmental forum promoting cooperation in the Arctic since 1996. Six Indigenous organisations are permanent members of the Arctic Council.[72]

However, since February 2022, Arctic cooperation has been challenging, with all meetings of the Council and subsidiary bodies postponed until further notice from 3 March, 2022. It resulted in the Indigenous peoples of Russia being silenced and unable to promote their rights or raise their concerns in this forum. This decision was made by seven member states of the Arctic Council (without Russia). The suspension of meetings has not benefited Indigenous peoples in the Arctic, particularly those from Russia, who have increasingly found their voices suppressed.[73]

As of the writing of this paper, the Arctic Council has resumed the activities of its Working Groups, and the Russian Association of Indigenous Peoples of the North (RAIPON) has an opportunity to participate in the discussions in the virtual format.[74] There remains a strong hope for successful cooperation among Arctic states under the future Danish chairship.

The absence of a forum for cooperation for nearly three years has resulted in a lack of representation and a voice for Indigenous communities, which have historically been marginalised and underrepresented. The argument for procedural injustice towards Indigenous peoples is that they were not consulted

72 About the Arctic Council <https://www.arctic-council.org/about/> accessed 23 December 2024.

73 Barry Scott Zallen, 'The Arctic Council Pause: The importance of Indigenous Participation and the Ottawa Declaration' <https://www.arcticcircle.org/journal/the-importance-of-Indigenous-participation-and-the-ottawa-declaration> accessed 23 December 2024.

74 Arctic Council Advances Resumpion of Project-Level Work <https://arctic-council.org/news/arctic-council-advances-resumption-of-project-level-work/> accessed 23 December 2024.

as Permanent Participants before the boycott of Council meetings. According to the JUSTNORTH project's Policy Brief the Arctic Governance institutions 'can be both facilitators/spaces and barriers for resolving conflicts'.[75] As the Arctic Athabaskan Council Chair, Chief Bill Erasmus, elaborated: '[w]e want to remind all governments that the Arctic Council is the world's only forum where we, as Indigenous People have inclusion at a global level'.[76] The impact of the decision to silence Indigenous peoples without asking their opinion cannot be overstated.

Indigenous peoples' collaboration and initiatives can potentially shape the future of Arctic cooperation and promote peace in the region. They have long advocated through the UN Permanent Forum on Indigenous Issues, and other UN bodies, and worked together as Permanent Participants in the Arctic Council to foster environmental peacebuilding among nations and address pressing issues such as pollution and climate change.[77]

Moreover, the Sámi people living across four countries, share cultural connections, including traditional livelihoods, languages, and worship practices.[78] Their holistic worldview and traditional knowledge are less influenced by political realities but rather by family, religious, and cultural ties between intertwined Indigenous communities of the High North.[79] Therefore, their role as environmental stewards of peace and key actor in Arctic paradiplomacy is hard to overestimate.

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75 A. Stępień, E. Conde, T. Joona & C. Wood-Donnelly, '*JUSTNORTH* Policy Brief 6: Arctic Governance Institutions as Enablers and Barriers of Justice', 2022, <https://justnorth.eu/wp-content/uploads/2023/03/JUSTNORTH_POLICYBRIEF-6_FINAL.pdf.> accessed 23 December 2024.

76 Arctic Athabaskan Council, 'Press Release: Conflict Continues in the Crimean Peninsula, Ukraine', (March 1, 2022), <https://arcticathabaskancouncil.com/conflict-in-the-crimean-peninsula/> accessed 23 December 2024.

77 7th session of the United Nations Permanent Forum on Indigenous Issues, 21.04-2.05.2008, New York, 'Climate change, bio-cultural diversity and livelihoods: the stewardship role of Indigenous peoples and new challenges'.

78 Apart from the Sámi people, there are Karelian people recognised as Indigenous in Russia but not in Finland. They live in a cross-border community between Finland and Russia, see Anneli Sarhimaa, 'Language Endangerment and Linguistic Human Rights of a Cross-Border Minority: Karelian in Russia and Finland' in Tove Skutnabb-Kangas, Robert Phillipson, and John Wiley (eds) *The handbook of linguistic human rights* (John Wiley & Sons, Incorporated, 2023), 517–531.

79 S. Chatwood, Francois Paulette, G. Ross Baker, Astrid M. A. Eriksen, Ketil Lenert Hansen, Heidi Eriksen, Vanessa Hiratsuka, Josée Lavoie, Wendy Lou, Ian Mauro, and et al. 'Indigenous Values and Health Systems Stewardship in Circumpolar Countries', 14 International Journal of Environmental Research and Public Health 12.

After three decades, Arctic Governance soft-law mechanisms prove to be less resilient than a cooperative framework based on treaties. Even though soft-law cooperation promised to be more flexible and adaptable,[80] the reality has shown a different picture. The soft-law-based cooperation within the Arctic Council was easily paused. According to T. Koivurova and A. Shibata, 'if the Arctic Council were treaty-based, policy-makers and scholars would have considered it as an Arctic cooperative framework that could continue despite the Russian aggression'.[81] Even though 'it is not necessarily so that hard law is more effective for ensuring implementation than soft law',[82] it is noteworthy that legally binding or treaty-based frameworks are less susceptible to the Western-Russian fallout. The multiple treaties that continue being implemented in the Arctic, according to Timo Koivurova and Akiho Shibata, are the Polar Code 2017, the Svalbard Treaty 1920, and the Central Arctic Ocean Fisheries Agreement (CAOFA) 2021. The three Arctic Council's treaties remain in force, even though their implementation faces challenges.

Cross-border initiatives fostering cross-border collaboration among the Sámi, focusing on peace and sustainable environmental practices, have been based on project work or soft-law Agreements. Unfortunately, it seems evident that the direct consequences of the Russian-Ukrainian armed conflict have more clearly impacted the soft-law-based cooperation in the Arctic.

5 Future Perspectives of Cross-Border Peace and Sustainability Within the Sámi Homeland

Sustainability in the Arctic region of Europe is dependent on the level of cross-border cooperation between Arctic states. As Vladimirova stated, 'cross-border cooperation … [is] essential for the realization of the purposes of nature conservation, and sharing its costs and benefits.'[83] Indigenous Sámi are stakeholders and environmental stewards across the protected nature territories across the borders of four states. By empowering Indigenous

80 H. Nadarajah, 'Fewer treaties, more soft law: what does it mean for the arctic and climate change', Arctic Yearbook, 2020, 1–14.

81 T. Koivurova & A. Shibata, 'After Russia's invasion of Ukraine in 2022: Can we still cooperate with Russia in the Arctic?' 59 Polar Record, 2023, E12.

82 I.F. Soltvedt, 'Soft law, solid implementation? The influence of precision, monitoring and stakeholder involvement on Norwegian implementation of Arctic Council recommendations', 8 Arctic Review on Law and Politics, 2017, 88.

83 V. Vladimirova, 'Regional environmental governance of protected natural territories in the European North: Russia, Finland, and Norway, and the case of Pasvik-Inari Trilateral Park', (2023) Climatic Change 176, 85.

peoples as holders of traditional knowledge, there is a hope of preventing future conflicts in the Arctic, provided that there is a political will to do so. This could be accomplished through three main routes: human rights protection mechanisms, cross-border regional environmental governance, and regional law-making.

The crucial area and the epicentre for environmental governance uniting Russia, Norway and Finland is the Pasvik-Inari Trilateral Park – 'an ambitious project of cross-border nature conservation.'[84] Long-term international cooperation under the motto 'Borders separate – nature unites' dates back to the post-Cold war era.[85] It resulted in securing the official Europarc Certification in 2008.[86] The cooperation developed through the two-level Barents Co-operation, a structure originally established to foster contacts between northern regions of Europe, including North-West Russia; however Russia withdrew from this cooperation in September 2023.[87]

The park consists of five protected natural areas in Norway, Russia and Finland.[88] Conservation projects and research activities, such as ecological restoration and biodiversity monitoring programmes in the Pasvik Nature Reserve, are now on hold.[89] An example of a solution to the problem of divided Sámi could be resuming established cooperation within the Pasvik-Inari Trilateral Park, and the revival of the European Green Belt Initiative[90] created under the patronage of Michail Gorbachev in 2003. It passes through a vast variety of European landscapes, replacing the Iron Curtain.

Numerous international legal instruments protect the rights of Indigenous peoples, which are currently being violated by the EU's enforcement of its external border between Finland and Russia. It is crucial for Arctic countries to strictly comply with the various adopted and ratified instruments. The Indigenous peoples can explore complaint mechanisms within the UN

84 *Ibid.*

85 European Green Belt Initiative, <https://www.europeangreenbelt.org/initiative> accessed 23 December 2024.

86 Europarc Annual Report 2008, <http://www.europarc.org/wp-content/uploads/2015/01/173.pdf> accessed 23 December 2024.

87 Ministry of Foreign Affairs of the Russian Federation, "Foreign Ministry statement on Russia's withdrawal from the Barents Euro-Arctic Council" (18 September 2023), <https://mid.ru/en/foreign_policy/rso/1904899/> accessed 23 December 2024.

88 M. Trusova, 'Pasvik-Inari Trilateral Park -Cooperation in the Arctic' in M. Vasilijević and T. Pezold (eds) *Crossing borders for nature: European examples of transboundary conservation* (IUCN, Gland, Switzerland, 2011).

89 "Pasvik-Inari trilateral park", <https://www.europarc.org/transboundary-cooperation/discover-our-transboundary-areas/pasvik-inari-trilateral-park-finoru/> accessed 23 December 2024.

90 European Green Belt Initiative, *supra* note 91.

system, particularly in light of the 2023 study by the Expert Mechanism on the Rights of Indigenous Peoples, which is dedicated to examining the impact of militarisation on Indigenous peoples' rights.[91]

As a legislative solution, the strengthening of both Indigenous participatory rights and border-crossing rights is important in order to restore substantive and procedural justice for Indigenous peoples. As per Advice no.12 of the UN Expert Mechanism of the Rights of Indigenous Peoples,

> States are encouraged to enter into bilateral and regional agreements, including in situations of cross-border conflict or where international borders have been closed, to address cross-border issues, and to take effective measures to facilitate the implementation of the provisions contained in article 36 of the Declaration.[92]

The new trilateral agreement between Russia and Finland and Russia and Norway is needed in order to address current issues of discrimination against Indigenous Sámi people.

As previously discussed, soft-law mechanisms have proven to be ineffective in the Arctic region. Therefore, it is imperative to prioritise treaty-based cooperation as a valuable option for future models of Arctic governance.[93] In this regard, a treaty guaranteeing Indigenous peoples' border-crossing rights could be a potential solution to the problem of divided Sámi. A possible historical example of such a treaty is the Jay Treaty of 1794, which established a framework for the peaceful coexistence between the US and the British North American Indian tribes.[94] However, this Treaty has downsides, and the borders are still disturbing the traditional livelihood of Indigenous peoples.[95] By adopting a treaty-based approach, Arctic governance can be more effective in addressing cross-border issues and ensuring the protection of Indigenous rights. There is still a need to widen the scope of those rights internationally; however, the realisation of these rights often depends on advocacy, negotiation, and the political context within individual countries.

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91 A/HRC/54/52, *supra* note 6.

92 *Ibid.*

93 Kavanagh, Elena. "Arctic governance: An analysis of a treaty-based cooperation hypothesis." *Spanish Yearbook of International Law* 27 (2023).

94 Bryan Nickels, 'Native American free passage rights under the 1794 Jay Treaty: Survival under United States statutory law and Canadian common law' (2001) 2 *Boston College International and Comparative Law Review* 24, 313–340.

95 S. Kirchner, *supra* note 24.

The Sámi case is particularly noteworthy, as it exemplifies the complexities of cross-border cooperation and the potential impact of spill-over conflicts on Arctic nations. Notably, none of the Arctic treaties or soft-law agreements had foreseen this situation, which has resulted in the almost complete pause of the Arctic Council's work. This situation underscores the importance of anticipating and addressing unforeseen challenges that can arise in cross-border cooperation and the necessity of continually reevaluating existing agreements and treaties. However, Russia's threat to withdraw from the Arctic Council is a matter of genuine concern today after the country made a decision to suspend annual membership payments.[96] The Cold War security issues are becoming more real again, and the new 'Gorbachev' figure has not yet been found.

6 Concluding Remarks

There is a strong link between nature, people, and peace. In the Arctic region, it is especially important to carefully manage natural resources to bring about peace while concurrently addressing climate change, pollution and biodiversity loss. One of the major concerns is the impact of EU-Russian border enforcement policies on the Sámi ability to maintain social and cultural relationships with Indigenous community members across the international line.

The international legal framework provides a foundation for cross-border rights, however those rights 'are widely and routinely violated or ignored by nation-states through their existing policies, laws, and practices'.[97] The prospects of cooperation and Indigenous paradiplomacy in the Arctic are limited by the political will and the capacity of Sámi people in all four countries to engage in legal processes. This research draws attention to the limited mention of cross-border rights in a select number of international instruments. The complexity of implementing such rights is further compounded by the colonial nature of these provisions, as well as the need to safeguard the territorial sovereignty of individual states. As a result, the practical implementation of such rights remains an ongoing challenge.

There is a need for international attention, resources, and collaboration in addressing the prevention of escalation of the Arctic regional conflict and

96 Russia to resume contributions to Arctic Council when it restarts its full-fledged work <https://tass.com/politics/1746183> accessed 23 December 2024.

97 Tone Bleie, Sheryl Lightfoot, and Elsa Stamatopoulou, supra note 55, 22.

promoting peace, sustainability, and transboundary biodiversity conservation. It is crucial to advance the treaty-based participatory rights of Indigenous peoples in decision-making and their cross-border rights. This should be followed by developing effective implementation mechanisms and integrating traditional Indigenous knowledge into environmental governance as a key strategy.

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