

## CORRESPONDENCE

The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters should be published and to edit any letters printed. Letters should conform to the same format requirements as other manuscripts.

## TO THE EDITORS IN CHIEF:

In his Editorial Comment *Protecting Indigenous Rights in International Adjudication* (89 AJIL 350 (1995)), W. Michael Reisman omitted the only international conventions on the subject, the Indigenous and Tribal Populations Convention, 1957 (No. 107), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Both were adopted by the International Labour Organization with the active participation of the rest of the United Nations system. Mr. Reisman also laments the fact that international human rights law cannot be updated easily; the adoption of Convention No. 169 was precisely a response to the outcry by indigenous peoples to update the only convention on their rights.

Indeed, a draft declaration is being prepared on the subject in the UN Commission on Human Rights. Its preparation and discussion began with the establishment of a UN working group in 1981, and it is likely that its adoption will take some years yet.

Mr. Reisman might also have referred to the corpus of law accumulated by the ILO's supervisory bodies on the land rights of indigenous and tribal peoples. I could not agree more that indigenous peoples are assimilated to flora and fauna in many international arbitrations and indeed in other processes; but the fact that a growing number of countries are bound by an international convention on the subject should be helpful in this connection.

While the interpretation of the ILO Conventions has not, to my knowledge, surfaced in an international arbitration, it has served as a basis for development guidelines on indigenous peoples adopted by the World Bank, the Inter-American Development Bank and the Asian Development Bank; it is the legal basis for the Regional Fund for Indigenous Development in the Amazon Basin; and the ratification of Convention No. 169 is a declared goal for the peace agreement recently concluded between the Government of Guatemala and the Indian rebel movement. It is serving as the basis for peace negotiations in the Philippines, and the ILO is working with the Government of the Russian Federation on new policies for the indigenous peoples of the country based on Convention No. 169. Land rights issues are intimately involved in all of them.

On the substance of the comment, it is particularly surprising that Conventions No. 107 and 169 were not invoked by El Salvador in the *Gulf of Fonseca* case. El Salvador ratified Convention No. 107 in 1958; and Honduras—which had not ratified the earlier Convention—ratified Convention No. 169 earlier this year. Article 11 of Convention No. 107 provides that “[t]he right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized”; this might have contributed to the pleadings.

LEE SWEPSTON\*

*Professor Reisman replies:*

My Editorial Comment, entitled “Protecting Indigenous Rights in International Adjudication,” dealt, *mirabile dictu*, with the protection of indigenous rights in international adjudication. Mr. Swepston states that my comment did not treat the lawmaking activities of the ILO with regard to indigenous rights. Mr. Swepston's statement is correct.

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