

THE AFRICAN ELEPHANT IN INTERNATIONAL LAW

A thesis
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by

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Abstract

This thesis examines the status of the African elephant (Loxodonta africana) in international law. Particular emphasis is placed on the most recent changes in that status, introduced at the 8th Meeting of the Conference of the Parties to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES 8), held in Kyoto, Japan in March of 1992.

It is argued that much of the international law designed to exploit -- and later to protect -- the African elephant has fallen short of its goals. Important among the reasons for that failure has been a failure to understand the limitations of the international legal order. It is suggested that there has sometimes been a tendency (among laymen and international lawyers alike) to recreate in the international order an image of the municipal system that is untenable. This has led to disappointment and to frustration.

It is suggested that the study of international wildlife law might benefit from less emphasis on textual analysis and on litigation than on a cluster of considerations called here the 'factors of compliance'. The factors of compliance are those considerations which lead

international actors towards the effective discharge of their international obligations. These factors are enumerated. They include factors flowing from the nature of the elephant (e.g. the trans-boundary migrations of some elephant herds); from economic considerations (e.g. the importance of non-use values for the elephant, and the difficulty of quantifying these); and political considerations (e.g. the difficulty in enforcing wildlife laws in many African elephant range states, the contrasting ability of Western countries to close down ivory markets through public awareness campaigns, and the amenity of Japan to pressure from Western conservation interests).

The model presented is a very simple one, and its primary purpose is merely to reorient the student of international law. By focusing on the factors of compliance it is hoped that less important aspects of international wildlife law -- such as litigation -- will be viewed in their proper perspective.

The thesis documents various attempts to regulate the fate of the elephant in light of this model. Pre-colonial and colonial laws are considered briefly. Greater attention is paid to the efforts to conserve the elephant within the legal framework of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Special emphasis is placed on the negotiations which led to each change in the legal status of the elephant, and on the assumptions under which the players in these negotiations were acting.

The conclusion is in two parts. The first part presents an 'ideal' model for international law and the elephant. The second part discusses the degree to which lessons derived from this research could be applied more generally to other areas of international law.

A brief prediction on the future legal and conservation status of the elephant is hazarded.