CORRESPONDENCE

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

TO THE EDITORS IN CHIEF:

I was surprised, in reading Thomas Franck's *The Power of Legitimacy and the Legitimacy of Power* (100 AJIL 88 (2006)), to find ascribed to me views that I have never espoused, such as the contentions that international law is a "disposable tool of diplomacy," that "law has no greater claim than any other policy or value preference," that "law is not privileged and has no independent value," that "the law does not matter," and that the United Nations should be swept aside in favor of a "new American (or, if possible, American-led) international order." I have explicitly and forcefully rejected such ideas. Indeed, in *How International Rules Die* (93 GEO. L.J. 939, 950–53 (2005)), generally addressing Professor Franck's arguments, I used the rational choice model that he dismisses to show why valid rules of international law are obligatory, not to suggest that they are not. Franck seems to believe that calling attention to the erosive effect of an international rule's repeated violation is tantamount to counseling violation. This inference is disquieting. Some years ago I contributed a piece to this publication entitled *Has International Law Failed the Elephant?* (84 AJIL 1 (1990)). Little did I realize that an effort to identify the law's deficiencies might be taken as urging the elephant's eradication.

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Thomas Franck replies:

My friend Professor Glennon appears to believe that one can advocate picking and choosing amongst multilateral treaty obligations (such as those pertaining to the use of force) by invoking the concept of desuetude and still be regarded as law supportive. But proclaiming the law's desuetude is the prerogative of a legitimate legal institution and processes, not the self-serving right of any state seeking to slip the law's bond.

In his book *Limits of Law, Prerogatives of Power* (2001), Glennon states: "What lesson is to be drawn from this [the United Nations'] sorry record? It is impossible to avoid the conclusion that use of force among states simply is no longer subject—if it ever was subject—to the rule of law" (p. 84). He concludes that "[l]aw is thus too demanding, too high-maintenance, to control use of force in the contentious international environment in which we still live" (p. 176).

By way of contrast, in his 1990 AJIL lead article *Has International Law Failed the Elephant?* to which his letter refers, Glennon takes a very much more constructive approach to law's imperfections. Assuming his chosen role of international Cassandra, he pinpoints and reproaches those—poachers and rogue governments, alike—who violate the international regime (CITES) prohibiting trade in ivory, but concludes: "A long-term solution requires several modifications of CITES" (p. 40) and proceeds to identify several useful reforms.

He does not argue that the international control regime has fallen into desuetude but, rather, calls for its strengthening. He does not claim that the contentious international environment, or the prevalence of scofflaw behavior, has set us all free to hunt the elephant to extinction.