

Constraints and Deficiencies of CITES Regime on Mahogany Smuggling in Madagascar: Case Study of Shihua Industry Alliance Co. Ltd

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Abstract:

In 2021, a Kenyan Magistrate's Court ruling on the return of smuggled mahogany seized by Hong Kong Shihua Industry Alliance Co. Ltd in 2014 in violation of the Convention on International Trade in Endangered Species (CITES) has caused widespread public concern. China, a major destination for smuggled Malagasy mahogany, continues to see an inflow of illegal mahogany to this day. This study is primarily based on the normative International regime theory proposed by Stephen Krasner, as well as semi-structured interview texts and related data. The results show that CITES does restrict the entry of Malagasy mahogany into destination countries, but is not clearly binding on Malagasy exports.

Keywords: CITES, Madagascar, mahogany, smuggle

1. Introduction

¹ This essay was originally submitted in fulfillment of the requirements of the course "Global Environmental Governance" taught by Dr. Edoardo Monaco within the Globalisation and Development (GAD) Programme at Beijing Normal University - Hong Kong Baptist University United International College (BNU-HKBU UIC), with which CBCGDF has recently established the "GAD-CBCGDF Sustainability Leadership Platform".

In early 2022 the well-known Chinese environmental NGO China Biodiversity Conservation and Green Development Foundation (CBCGDF) exposed the smuggling of Malagasy mahogany in its social media article "CITES releases status of Madagascar mahogany intercepted in Kenya". The CBCGDF was soon contacted by the Hong Kong-based company, Shihua Industry Alliance Co. Ltd (世华产联有限公司) (Shihua Company), who wanted to use the NGO's channels to claim the illegal mahogany confiscated by the Kenya Wildlife Service (KWS).

Mahogany is a generic term for a group of eight woods including mahogany, pearwood and ebony. In southern China, ebony and mahogany are particularly popular with merchants. The amount of mahogany furniture in the living room is considered to be a symbol of status and wealth in Guangdong areas such as Shantou (汕头) and Foshan (佛山) (Davis, 2019, P.181). Chinese merchants collected mahogany pieces to demonstrate their wealth, which was key to helping them secure business partnerships in a society where special social relationships so called 'Guanxi' (关系) were important (Davis, 2019, P.203). Although CITES listing of mahogany in Appendix II and the severe restrictions on trade, smuggling of foreign mahogany has still increased in China (Peluso & Vandergeest, 2020, P.1091).

Therefore, this study aims to analyse the achievements and limitations of CITES as an environmental regime in combating illegal mahogany smuggling through a study of Shihua company's purchase of smuggled mahogany from Madagascar in 2014.

Literature review

Stephen Krasner (1977) defines international regime as implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations are set (Aggarwal, 1984, P.181). He seeks to emphasize the dimension of international political norms in the middle ground of order and explicit commitments (Aggarwal, 1984, P.182). This is a strong refutation of Donald Puchala and Raymond Hopkins (1975) who inferred mechanisms from patterned behaviour (Kransner, 2001). Habermas's description of a norm as a moral principle that can be freely and collectively accepted by all those affected if and only if there is a predictability of its universal adherence to the interests and values of each

member is skilfully applied by Krasner to the analysis of the mechanisms of normative operation in international regimes (Andersen, 1994).

CITES as one of the international regime was signed in Washington, D.C. on 3 March 1973 and entered into force on 1 July 1975 (CITES, 2022). The core of the Convention is the explicit control of international trade in the wildlife species listed in its appendices (CITES, 2022). However, there is still a lack of research on the binding effect of specific international regimes on trade between sovereign states in violation of such rules. This study will therefore use a case study (Shihua company) to reveal the extent to which CITES is binding on the Malagasy mahogany trade.

Research questions and methodology

This paper will use interviews from the articles published in CBCGD WeChat official account, relevant regulations from the official CITES website and data from the World Bank databank and integrate them into an analysis to examine the following three issues: 1. The success of CITES in restricting and combating mahogany smuggling in Madagascar. 2. The limitations of CITES in the control of international trade in mahogany. 3. The ways in which CITES can strengthen the regulation of international Mahogany trade in the future.

2. Arguments

2.1 CITES' contributes to the fight against the import of Malagasy mahogany by its members.

In January 2009, at the beginning of the political crisis in Madagascar, there was an unprecedented increase in the harvesting of valuable Mahogany (Anon., 2010b; Anon, 2013b; Randriamalala, 2014). Almost every Malagasy forest harvested tons of mahogany, affecting approximately 14,000 hectares of forest (Randriamalala, 2014). Between 65% and 88% of the precious Mahogany trade between 2009 and 2015 was not supported by administrative documentation from the Malagasy national government. The Shihua company purchased

mahogany from Atsinanana in 2014. However, according to the statement of the company's director:

Every aspect of the trade was formalised, the wood was fully documented for trans-shipment, and a photo was kept of the logs at the time of the Zanzibar customs transaction.

(Anonymous, 2022:1)

However, Kenyan smuggling researcher Chris Moris pointed out:

Madagascar's interim government tried to keep its finances afloat by exporting Mahogany and other precious woods from 2010 to 2015. As a result, the authority issued a large number of invalid permits, because they have violated Madagascar's responsibilities as CITES.

(Chris Moris, 2022:2)

Therefore, in 2014, KWS confiscated the mahogany in accordance with Article 4.6 of CITES (CoP16, Bangkok, 2013) and Notice No. 2019/051 dated September 26, 2019. The regulation requires member states to impose seizures of rare plants and animals belonging to appendix II imported under invalid licenses, including bans on entry and sanctions on traffickers under the Convention (CITES, 2022). This showed that the regime has a certain degree of binding force for the illegal trafficking of Madagascar's mahogany.

2.2 CITES lacks the ability to bind its members to export Madagascar mahogany.

In 2014, Madagascar had the highest level of deforestation ever recorded (Global Forest Watch, 2018). Some companies that import mahogany from Madagascar to China send agents to Antalaha or Sambava to closely monitor the collection and export of mahogany (Vyawahare, 2021). Their main aim is to ensure the quality of the logs exported, and surveys conducted by International Wildlife Trade Research Organization (TRAFFIC) in the Sava region showed that Chinese buyers are again present in Madagascar (Vyawahare, 2021). In the case of Shihua Company, they paid 50% of their mahogany orders in advance, indicating

that they see little risk of their Mahogany being confiscated or blocked in situ (Vyawahare, 2021). Many families earned their living in selling illegal mahogany at that period (Table 1).

Table 1: Estimated number of households engaged in activities related to the harvesting and export of precious mahogany in Madagascar in 2015.

| Region | Villages | Number of households surveyed | Family income from mahogany trade | | | Non-participating |
|----------------|------------------------------|-------------------------------|-----------------------------------|-----------|-----------|-------------------|
| | | | Trade | transport | cut | |
| Antalaha | Ambalabe | 10 | 3 | 3 | 0 | 4 |
| | Ambohitralanana | 8 | 3 | 1 | 2 | 2 |
| Andapa | Ampanavoana | 8 | 4 | 1 | 1 | 2 |
| | Mandena | 6 | 2 | 0 | 1 | 3 |
| Maroantsetra | Maroambihy | 6 | 2 | 0 | 1 | 3 |
| | Rantabe | 10 | 6 | 0 | 2 | 2 |
| | Anandrivola | 6 | 3 | 0 | 1 | 2 |
| | Ambanizana | 8 | 3 | 0 | 1 | 4 |
| Ambatondrazaka | ManakambahinyEs ^a | 6 | 0 | 0 | 2 | 4 |
| | Didy | 12 | 0 | 0 | 4 | 8 |
| | Fierenana | 6 | 1 | 0 | 3 | 2 |
| Total | | 86 | 27 | 5 | 18 | 36 |

a: Manakambahiny atsinanana is a rural community located in the Middle East of alaotra mangoro region. It belongs to Ambatondrazaka district.

Source: International Wildlife Trade Organization survey, 2015

<https://vdocument.in/traffic-timber-island-timber-island-the-mahogany-and-ebony-trade-of-madagascar.html> (Accessed: January 30, 2022).

The reason for this phenomenon is that although Madagascar, as a member of CITES, needs to shoulder the responsibility of preventing mahogany smuggling. But at the same time, as a sovereign country, according to the extensional inference of Kranser's normative international regime theory (1977), the Madagascar government has the right to independently decide the use of resources in the territory in the event of national political turmoil. Although this view has been fiercely criticized by scholars of modern international institutionalism, it remains a basic dilemma as to whether a regime has the power to interfere in a country's internal affairs. Jürgen Habermas argues in his masterpiece *Faktizitat und Geltung* that international regimes have legitimacy only in coherent legislation that can be

agreed upon (Andersen, 1994, P.96).

Madagascar's interim government invoked the principle of sovereignty to sell illegal stocks to Shihua Company and issue a license for the company that violated CITES regulations (Peluso, 2020). This behavior has so routine in Madagascar that is vividly called "Suitcase piracy" (Peluso, 2020). As a result, this batch of up to 4,400 mahogany logs (640 tons) worth an estimated US\$12.8 million successfully passed through the Madagascar's customs (Vyawahare, 2021). According to CITES estimates, the corrupt interim government of Madagascar made about 30.15% profit from the total value of these mahogany logs (CITES, 2022). Therefore, this evidence proved that CITES has no obvious restraining effect on the illegal export of mahogany from Madagascar.

2.3 Changes in CITES' approach to the management of mahogany smuggling in Madagascar.

The Shihua Company case highlights the difficulty of CITES enforcing the regime in Madagascar, as the case involves governments and enforcement agencies in multiple countries (Vyawahare, 2021). Therefore, the relationship that needs to be coordinated is also extremely complex. In 2019, the Kenyan Land and Environment Court rejected a district court's decision to transfer seized mahogany (Aryal, 2019, P.154). Chris Moris (2022) pointed out that the consignee (Shihua company) must transport the mahogany to the destination. With the improvement of the regime, the timber is likely to be detained again by the customs in accordance with CITES regulations once it enters Hong Kong (Vyawahare, 2021).

Therefore, according to the proposal of CITES, the person in charge of the company is willing to dispose of this batch of mahogany through a charity sale and hopes to return the social funds from the charity sale to charity to support ecological and environmental protection through the channels of CBCGDF. However, KWS chief Mark Starrett believed the move could lead to an incentive to smuggle Madagascar mahogany as unscrupulous traders can mix their wood into bazaars for sale (Vyawahare, 2021). CBCGDF Secretary-General Zhou Jinfeng (周晋峰) expressed the opposite view. He believed that the storage or burning of illegal mahogany consumes a lot of resources and pollutes the

environment (Zhou, 2022). Therefore, the problem of illegal mahogany inventory should be solved through public welfare channels. Despite the controversy, this paper argues that CITES is improving the regulation and management of smuggled mahogany in Madagascar by combining a severe crackdown on smuggling of mahogany in Madagascar with public welfare disposal of existing illegal mahogany.

3. Conclusion

Through the case study of Shihua company's purchase of smuggled Madagascar rosewood, this work found that although this batch of rosewood successfully flowed out of the border of Madagascar, it was immediately confiscated by KWS according to CITES. Therefore, according to this case analysis through Krasner's normative international regime theory, we can think that CITES has limited binding force on the export of illegal rosewood by sovereign countries, but has a certain degree of restriction on the import of smuggled rosewood by member states. The Shihua company's choice for the charity sale of the seized rosewood can also be seen that CITES has chosen to digest the illegal rosewood inventory confiscated in history through social welfare methods in addition to maintaining a strict crackdown on the smuggling of rosewood in Madagascar. This can be seen as a new and more complete CITES approach to Madagascar rosewood smuggling. It is hoped that this paper can be used to further study the restraining effect of CITES as a regime on rosewood smuggling in Madagascar and its changes in different periods.

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