

The Basel Convention: Well Intentioned Treaties Need Well Intentioned Parties

The Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal (Basel) was developed in response to several international incidents involving environmentally unsound hazardous waste disposal. See Sylvia F. Liu, *The Koko Incident: Developing International Norms for the Transboundary Movement of Hazardous Waste*, 8 J. NAT. RESOURCES & ENVTL. L. 121, 121-22, 127-30, 142 (1992). For example, in 1986 the *Khian Sea* left a Philadelphia port carrying toxic incinerator ash. *Id.* at 129. After over two years of searching, the *Khian Sea* could not find a country to accept their ash as the waste was rejected by over fifteen countries. *Id.* Eventually, the ship arrived off the coast of Singapore with its hold empty, leading to the conclusion that the toxic cargo was likely dumped somewhere in the Indian Ocean. *Id.* at 129-30. Another late 1980s incident involved an Italian waste trade broker, Jelly Wax, which unloaded resins, pesticides, and polychlorinated biphenyls (PCBs) in Venezuela. *Id.* at 128. The wastes were left above ground for six months until there were reports of drums leaking, sick dockworkers, and dying children. *Id.*

Though Basel has been successful in bringing attention to problems associated with international hazardous waste movement, wealthy countries continue sending hazardous waste to countries that are not equipped for safe disposal. For example, *Probo Koala*, a tanker ship owned by a Dutch company called Trafigura, unloaded 500 tons of petrochemical waste in Côte d'Ivoire in August 2006. Raechel Anglin, *International Environmental Law Gets Its Sea Legs: Hazardous Waste Dumping Claims Under the ATCA*, 26 YALE L. & POL'Y REV. 231, 231-32 (2007). After Amsterdam refused to accept the waste without being paid \$250,000, *Probo Koala* found cheaper dumping grounds in Côte d'Ivoire. *Id.* at 232-33. Trafigura unloaded even

though Côte d'Ivoire lacked the technical capacity to safely dispose of the material. *Id.* at 232. And, at least ten people died within a few days of the dumping. *Id.*

Probo Koala illustrates that wealthy countries persist in externalizing the costs of hazardous waste management at the expense of the people and environment in poor countries. Though the U.S. disposes or recycles most of its hazardous waste domestically, U.S. hazardous waste is found being managed in unsafe manners abroad. Liu, *supra* 125-26; Kimberly K. Gregory, *The Basel Convention and the International Trade of Hazardous Waste: The Road to the Destruction of Public Health and the Environment is Paved with Good Intentions*, 10 CURRENTS: INT'L TRADE L.J. 80, 84 (2001). For example, electronics, containing hazardous waste, from the U.S. and other wealthy nations, have been found exported to countries where disposal and recycling methods are hazardous. Lisa Collins, *Dumping Data*, NATIONAL DEFENSE, Oct. 1, 2007, at 34, *available at* 2007 WLNR 20575019; Joel Boon, *Stemming the Tide of Patchwork Policies: The Case of E-waste*, 15 TRANSNAT'L L. & CONTEMP. PROBS. 731, 752 (2006). Such incidents demonstrate the need to examine why the U.S., the largest producer of hazardous waste, remains the only industrialized country not party to Basel. Sejal Choksi, *The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation*, 28 ECOLOGY L.Q. 509, 511-12 (2001). After pointing out the major differences between Basel and U.S. domestic regulation, this article will discuss why the U.S. has chosen not to ratify Basel and consider alternate solutions to prevent unsafe management of hazardous wastes.

Major Basel Provisions

Adopted in 1992, Basel represents the first comprehensive effort to regulate international trade in hazardous wastes. Liu, *supra* at 142. Though there are 170 member states, the U.S.

remains a non-member. Basel Convention's Ratifications, <http://basel.int/ratif/convention.htm> (last visited Apr. 15, 2008); See Rebecca A. Kirby, *The Basal Convention and the Need for United States Implementation*, 24 GA. J. INT'L & COMP. L. 281, 281-83 (1994). Basel's key objectives include minimization of the generation of hazardous wastes, disposal of them as close to the source of generation as possible, and reduction of the transboundary movement of hazardous wastes. Origins of The Basel Convention, <http://basel.int/convention/basics.html> (last visited Apr. 16, 2008). Basel also considers the risks and threats that hazardous wastes have on human health and the environment. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, pmbl., Mar. 22, 1989, 28 I.L.M. 657 [hereinafter Basel Convention]. Towards these ends, Basel requires that exporters notify and obtain the consent of transit and destination countries. *Id.* art 6. Also, wastes must be disposed of in an environmentally sound manner. *Id.* art. 4(8).

Basel generally provides for exporter responsibility. For example, if movement of wastes cannot be completed in accordance with the terms of a contract between the involved parties, the state of export has to re-import the wastes if alternative arrangements cannot be made for their disposal in an environmentally sound manner. *Id.* art. 8. Basel also provides that the exporting nation must ensure that it minimizes its generation of hazardous wastes. *Id.* art 4(2)(a). Also, Basel obliges parties to only export if they lack technical capacity to dispose of the wastes in an environmentally sound and efficient manner. *Id.* art 4(9)(a). Furthermore, Basel provides that states must refrain from exporting if there is reason to believe that the wastes will not be managed in an environmentally sound manner. *Id.* art. 4, (2)(e).

Another important element of Basel is its allowance of separate bilateral and multilateral agreements. Though not a Basel member, the U.S. may still export and import wastes from

Basel parties provided that such agreements do not derogate from the environmentally sound management of hazardous wastes. *Id.* art. 4(5), art. 11. The U.S. has separate bilateral agreements with Canada, Mexico, Costa Rica, Malaysia, and the Philippines, and a multilateral agreement with the Organization of Economic Co-operation and Development (OECD). Paul E. Hagen, *Update on the Basel Convention and Other Agreements Governing the Transboundary Movement of Hazardous Wastes*, SG056 A.L.I.-A.B.A. CONTINUING LEGAL EDUCATION 331, 338 (2002). Similar to Basel, the U.S. bilateral agreement with Mexico provides notice and consent requirements along with a re-importation requirement, but the agreement lacks Basel's "environmentally sound" requirement. Agreement of Co-operation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances, Nov. 12, 1986, T.I.A.S. No. 11269.

Another important element of Basel concerns its definition of "hazardous waste," which Basel organizes by lists and categories. Basel Convention, *supra* at art. 3(1). Examples of what Basel aims to regulate include lead (found in computer screens), mercury (found in electronic waste), PCBs (found in plastics), and medical wastes. The Basel Convention at a Glance, http://basel.int/convention/bc_glance.pdf (last visited Apr. 15, 2008). Basel also includes regulation of household wastes. Basel Convention, *supra* at Annex II. Further, each party provides Basel with their definitions of "hazardous waste," making it possible to broaden the definition and create confusing and complex disputes. *Id.* at art. 3(1).

Basel's dispute-settlement procedures are sparse in guidance and fail to aid Basel enforcement. Basel provides that parties are to initially settle any dispute through negotiation or any other peaceful means of their own choice. *Id.* at art. 20(1). Basel does not create an entity to settle disputes, so parties are most often left with their local agencies to settle disputes. This

arrangement is often unsatisfactory. For example, in China, enforcement agencies are chronically understaffed and directly answerable to government bodies which often have direct financial interests in local industries. Mark Bradford, *The United States, China & the Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal*, 8 FORDHAM ENVTL. L.J. 305, 341 (1997). Further, even if the government of an importing nation officially halts import shipments, enforcement is difficult. *Id.* For example, exporters and carriers can easily mislabel shipments or bribe customs officers. *Id.* at 314; Choksi *supra* at 514.

If parties fail to settle through a negotiation or otherwise peaceful means, Basel does offer one other option. If the parties to the dispute agree, they may submit their dispute either to the International Court of Justice (ICJ) or to arbitration. Basel Convention, *supra* at art. 20(2). Standing to bring suit in the ICJ is difficult, however, because the dispute must involve a legally protected interest constituting customary international law. Gregory, *supra* at 88. Further, the provision that parties must agree to a means of settlement is problematic because liable parties will likely avoid agreeing on a means of settlement.

Another enforcement problem arises with amendments and additions to Basel that are not considered in force until a certain number of parties ratify the new provisions. For example, Basel established the Protocol on Liability and Compensation (Protocol) in 1999. Choksi, *supra* at 522. The Protocol provides for strict and fault-based liability *Id.* The Protocol imposes maximum and minimum amounts that must be awarded when the violator is strictly liable. *Id.* at 523. Further, the Protocol requires insurance or other financial guarantees to cover liability. *Id.* at 522. But, the Protocol is currently unenforceable because only 13 parties have ratified while 20 are required for the Protocol to enter into force. Basel Convention, *supra* at art. 25; Protocol Ratifications, <http://basel.int/ratif/protocol.htm> (last visited Apr. 16, 2008).

Similarly, a 1995 amendment to Basel lacks the requisite number of ratifications to be in force. Perhaps in response to environmentalist concerns that Basel lacked a substantive ban, Basel parties adopted the Ban Amendment. The Ban Amendment prohibits all transboundary movements of wastes destined for recovery, recycling, or final disposal from OECD to non-OECD nations. *See* Choksi, *supra* at 520-21. Because three-fourths of the parties who adopted the Ban Amendment have not ratified the amendment with domestic legislation, like the Protocol, the ban has not entered into force. Basel Convention, *supra* at art. 17(3); Ratifications of the Ban Amendment, <http://basel.int/ratif/ban-alpha.htm> (last visited Apr. 16, 2008).

In 2006, at a Basel conference, the parties drafted a decision encouraging innovative solutions to the environmentally sound management of electronic wastes, but no substantive ban regarding electronic waste was adopted. Meeting Documents, <http://www.basel.int/meetings/cop/cop8/docs/16e.pdf#viii02> (last visited Apr. 16, 2008). But, even if such an addition to Basel were made – like the Ban Amendment and Protocol – the decision would not automatically be in force. Still, even if the Protocol and Ban Amendment enter into force, enforcement will be feeble given Basel’s skeletal dispute settlement procedures.

U.S. Regulation Compared to Basel

If the U.S. were to ratify Basel, U.S. compliance legislation would most comprehensively take place through the existing provisions of the Resource Conservation and Recovery Act (RCRA). Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et seq. (2008); Bradford, *supra* at 325-27. Congress enacted RCRA in 1976 to regulate the management of hazardous wastes. Bradford, *supra* at 325. RCRA’s purpose is to reduce generation of hazardous waste and ensure proper treatment, storage and disposal of waste that is generated. 42 U.S.C.A. § 6902 (2008). Like Basel, RCRA aims to decrease risks to human health and the

environment, but RCRA does not encompass Basel's objective to decrease transboundary movement of hazardous wastes. *Id.*

RCRA's basic structure includes standards for generators and transporters of hazardous wastes and for operators of treatment, storage, and disposal facilities. 42 U.S.C.A. §§ 6922-6924 (2008). A permit system is provided to enforce these standards. 42 U.S.C.A. § 6925 (2008). In addition, RCRA utilizes a manifest system in which generators, transporters, and operators are required to accurately label and track the wastes. 42 U.S.C.A. § 6937 (2008). RCRA regulation is often referred to as "cradle-to-grave" regulation because there are standards set for hazardous waste generation, transportation, and disposal. Kirby, *supra* at 294. The U.S. Environmental Protection Agency (EPA) provides national standards and detailed regulations in hundreds of pages of the Code of Federal Regulations.

RCRA did not include provisions pertaining to hazardous waste export until the 1984 Hazardous and Solid Wastes Amendments (HSWA) were enacted. Bradford, *supra* at 325. Section 6038 now prohibits the export of hazardous wastes unless EPA is notified, the receiving country is notified and has consented to accept the waste, and the shipments conform to the terms of the consent. 42 U.S.C.A. § 6938 (2008). Unlike Basel, RCRA does not require hazardous waste management in the import states to be environmentally sound. Bradford, *supra* at 326. Also, RCRA does not have a re-importation requirement analogous to Basel's requirement in Article 8. *Id.* Because of such departures from Basel, RCRA is sometimes referred to as "cradle-to-border" regulation instead of "cradle-to-grave." *See* Boon, *supra* at 750; *See* Lisa T. Belenky, *Cradle to Border: U.S. Hazardous Waste Export Regulations and International Law*, BERKELEY J. INT'L L. 95, 96 (1999).

Though RCRA prohibits export of hazardous wastes without prior notification to EPA, wastes are not subject to manifest or export requirements if they are not “hazardous wastes” as defined by RCRA. *See* Belenky, *supra* at 95-96, 100 n.37 (1999). RCRA defines “hazardous waste” more narrowly than Basel, so fewer materials are subject to RCRA provisions than Basel provisions. *Id.* RCRA defines “hazardous waste” by lists and characteristics. 40 C.F.R. § 260-261 (2008). Lead, mercury, and medical wastes, are subject to Basel and RCRA. 42 U.S.C.A. § 6992; Basel Convention, *supra* Annex I. On the other hand, household wastes are subject to Basel but not RCRA. 40 C.F.R. § 261.4; Basel Convention, *supra* Annex I, Annex II; Belenky, *supra* at 100 n.37.

There are numerous specific hazardous materials that are exempt from RCRA manifest or export requirements. For example, spent lead-acid batteries sent to a foreign country for recycling may be exempt from export requirements. 40 C.F.R. § 266.80; Belenky, *supra* at 122. Other materials that are not subject to RCRA manifest and export requirements include scrap metal that is going to be recycled, shredded circuit boards that are going to be recycled, some zinc fertilizers, and spent sulfuric acid used to produce virgin sulfuric acid. 40 C.F.R. § 261.4(b). Therefore, the export of such materials would not require notification to EPA or obtainment of consent and notification of import countries. Should Basel be implemented, unless otherwise provided through appropriate bilateral agreements, these materials would not escape export requirements.

Other key differences between Basel and RCRA relate to implementation and enforcement. RCRA has a single government agency, the EPA, charged with implementation and enforcement whereas Basel has no such entity in place. In addition, RCRA authorizes the EPA or private citizens to sue to enjoin violators. 42 U.S.C.A. §§ 6972(a)(1)(b), 6973 (2008).

Moreover, under certain circumstances, violators may be subject to criminal penalties including fines and imprisonment. 42 U.S.C.A. § 6928(d) (2008). In contrast, Basel leaves the specifications of dispute settlement procedures and liability amounts up to the parties. The absence of a single entity to manage Basel disputes further hinders Basel enforcement. As a consequence, Basel has yet to be effectively enforced.

Though it is estimated that 50-80 percent of waste collected for recycling was exported by the U.S. in 2005 contrary to Basel, the practice is legal in the U.S. because the U.S. has not ratified Basel. Where Does E-Waste go?, <http://www.greenpeace.org/usa/campaigns/toxics/hi-tech-highly-toxic/e-waste-goes> (last visited Apr. 14, 2008). An overview of why the U.S. has not ratified Basel will illustrate how Basel falls short of providing relief for poor countries and demonstrate the need for alternate solutions.

Why the U.S. Has Not Ratified Basel

In order for Basel to be implemented, the Senate must give its advice and consent by a two-thirds vote and Congress must adopt implementing legislation. Choksi, *supra* at 526. Though the Senate gave its advice and consent for Basel in 1992, Congress has yet to adopt necessary legislation. *Id.* at 509. Congress did not adopt any of the three bills introduced in 1991 or the bill introduced in 1994, and there has not been a vote to implement Basel legislation since 1994. *Id.* at 531. With such a long period of inaction, the U.S. is unlikely to ever ratify Basel.

Some Senators and Congress members that oppose Basel have deemed Basel unrealistic, and their criticisms are legitimate for several reasons. Choksi, *supra* at 528. For instance, implementing and enforcing an “environmentally sound” requirement is currently unrealistic. Should the U.S. enforce Basel’s “environmentally sound” requirement, resources would need to

be allocated to assess facilities, including those in poor nations, to determine if they are “environmentally sound.” *Waste Export Control: Hearing before the Subcomm. on Transportation and Hazardous Materials of the Committee on Energy and Commerce on H.R. 2358, H.R. 2398, and H.R. 2580*, 102d Cong. 1st Sess. 53-56 (1991) (testimony of William A. Nitze, Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Dpt. of State). Verifying compliance in foreign nations might be difficult or impossible. *Id.* at 56. Further, claims that Basel is unrealistic are well-founded because Basel lacks effective dispute settlement and enforcement structures. For example, a 2005 EU investigation revealed significant Basel non-compliance. Hilary Stone, *Flouting the Law? European Shipment of Hazardous Waste*, 21-SUM NAT. RESOURCES & ENV'T 49, 49 (2006). In 2005, 48 percent of shipments were found to be illegal during an investigation of seventeen ports in nine EU countries. *Id.*

Basel has also been criticized by politicians for being paternalistic. Choksi, *supra* at 528. Basel places significant responsibility on exporter states to protect destination states, so this criticism is valid. The U.S. exported \$6 billion and imported \$1.5 billion in recyclable wastes in 1997. Choksi, *supra* at 536. Being that the U.S. is an exporter state, much of the responsibility would be put on the U.S. and other wealthy exporting nations to protect poor countries from receiving hazardous wastes. More illustrative of the downfall of Basel’s paternalism is the *Probo Koala* incident, a scenario in which authorities were able to reject wastes in one nation while the same wastes slipped by lax, understaffed, or corrupt authorities of another nation. Basel could be part of the solution if all nations are compliant and all nations are able to enforce, but neither of these two necessities are the current reality.

Opposition to Basel has also been attributed to the Ban Amendment and the Protocol. The Ban Amendment has been cited as a reason behind ending the 1994 discussions to implement Basel. Bradford, *supra* at 324. Many argue that the Ban Amendment violates the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA). Kimberly A. Breitmeyer, *Australia's Opposition to the Basel Ban Amendment on the Export of Hazardous Wastes; When will Australia Stop Stalling and Ratify the Amendment*, 9 IND. INT'L & COMP. L. REV. 537, 559-63 (1999); Gregory, *supra* at 85. Though both GATT and NAFTA provide for deference to international environmental obligations, the application of these provisions is uncertain. *See* Hagen, *supra* at 340 (explaining that the consistency of Basel with the obligations of free trade agreements is still being examined); *See also* Gregory, *supra* at 85-86 (explaining possible conflicts with GATT's "most favored nation" obligation, GATT's exception for "national measures that are necessary to protect human, animal, or plant life and health," and the Vienna Convention's provision that the treaty earlier in time prevails); *See also* Breitmeyer, *supra* at 560-561 (explaining that there are obvious conflicts between free trade agreements and Basel, but there are provisions that could possibly resolve these inconsistencies).

When the Clinton administration was pushing to introduce Basel implementing legislation in 1998, the Protocol was adopted soon after. Choksi, *supra* at 530. Because the U.S. is generally skeptical about treaties that assign liability and has negotiated to keep similar liability requirements out of other multilateral agreements, U.S. support for Basel was disrupted again. *Id.* Even though the Ban Amendment and Protocol are cited as reasons for U.S. opposition to Basel, the U.S. failed to ratify Basel even without the added provisions. So, the

ineffectiveness of Basel's paternalistic and unrealistic provisions is the key reason for Basel objection.

In addition to opposition from politicians, Basel lacks support from many industry leaders. Choksi, *supra* at 532-33. Industry leaders were not strongly opposed to Basel until after the Ban Amendment was adopted. *Id.* Industries strongly objected to the Ban Amendment because they believed shipments for recycling and recovery management should be permitted. *Id.* Though industry opposition is often cited as an influence over Congress's failure to implement Basel, many U.S. companies have voluntarily addressed the environmental problem of electronic waste. Boon, *supra* at 739. So, again, Basel's paternalistic and unrealistic system remains the principal and more grounded reasons for Basel's deficiency.

Alternate Solutions: Regulate Hazardous Waste Generation and Develop NGOs

Given that change in Basel's effectiveness and U.S. support of Basel is improbable, alternate solutions to the international unsafe management of hazardous wastes should be further pursued. One way to ease the burden of hazardous waste management is to minimize hazardous waste production. Since the world's most rapidly emerging waste stream is electronic waste, then solutions should focus on this problem. Boon, *supra* at 731 n.1.

Estimates show that 133,000 electronic devices are discarded daily in the U.S. totaling three million tons of electronic waste per year. Heather L. Drayton, *Economics of Electronic Waste Disposal Regulations*, 36 HOFSTRA L. REV. 149, 150 (2007). In addition, the Federal Communications Commission's new requirement that all new televisions be equipped with technology for receiving digital signals will phase out 500 million outdated devices that will have to be disposed in a landfill or recycled. *Id.* at 182. Further, Microsoft's launch of the Windows Vista operating system will render over half of the world's computers obsolete because

they will not have the basic system requirements to operate Vista. *Id.* Electronic waste contains hazardous substances, such as lead, mercury, and cadmium, which are linked to brain, blood, and fetal development damage. Boon, *supra* at 731 n.1, 752. Many importer countries are equipped with recycling and disposal methods that fall short of protecting workers from such health risks. *Id.* If nothing changes, the amount of electronic waste will overwhelm landfills in the U.S. and elsewhere. Drayton, *supra* at 182.

The EU has taken measures to reduce the amount of hazardous wastes present in electronic products. In 2002, the EU passed the Waste Electronic and Electrical Equipment Directive (WEEE) and the Restrictions of Hazardous Substances in Electrical and Electronic Equipment Directive (RoHS). Boon, *supra* at 734. WEEE and RoHS became effective in July 2006. *Id.* WEEE covers a wide range of products and holds producers accountable for paying the costs of collecting, treating, and disposing of electronic waste both for household and non-household waste. *Id.* at 735. RoHS essentially provides for a ban on the use of lead, mercury, chromium VI, cadmium, polybrominated biphenyl (PBB) and polybrominated diphenyl ether (PBDE) flame retardants in electronic equipment. *Id.* at 735-36. There are some notable exemptions from RoHS restrictions such as lead in cathode ray tubes, a component of television and computer monitors. *Id.* at 736. Such exemptions are periodically reviewed. *Id.*

U.S. federal law has not formulated regulation dealing directly with electronic waste, but some U.S. state laws have similar intentions of decreasing the amount of hazardous waste present in electronic products. Drayton, *supra* at 162. For example, Maine and Washington State have systems that require the manufactures to pay for electronics recycling. *Id.* at 169, 173. Furthermore, in 2003, California passed the first state law to restrict the use of PBDE mixtures, a substance banned by RoHS, in electronic equipment. Daryl W. Ditz, *Exploring How Today's*

Development Affects Future Generations Around the Globe: In this Issue: Sustainable Directions in U.S. Environmental Law: The States and the World: Twin Levers for Reform of U.S. Federal Law on Toxic Chemicals, 8 SUSTAINABLE DEV. L. & POL'Y 27, 28 (2007). By 2007, eleven states enacted comparable laws. *Id.* Also, high costs of recycling should have the effect of providing incentive for manufacturers to design their products without the materials, like lead and mercury, that are the most dangerous to manage. *Id.*

Implicating that some manufacturers are realizing such incentives, many U.S. companies have voluntarily taken measures to decrease the amount of hazardous materials in electronic products. For example, Hewlett-Packard's (HP) flat panel monitors are compliant with demanding emissions and environmental guidelines as well as with RoHS. Reduce Energy: HP Feature Story, http://www.hp.com/hpinfo/newsroom/feature_stories/2007/07energy.html (last visited Apr. 16, 2008). Furthermore, HP recycled 164 million pounds of electronic waste and coordinates free collection drives. Drayton, *supra* at 165. HP also conducts all of its recycling domestically, reducing the potential for international pollution. *Id.* Dell, HP, and many other electronic manufacturers and retailers joined with the United Nations in the new voluntary initiative called "Solving the E-Waste Problem" (StEP). *Id.*

The development of greener electronics is in the best interest of poor countries, in which electronic waste often ends up unsafely dumped or recycled. As landfills will be less burdened and products will become safer to recycle, efforts toward phasing out hazardous substances in electronics is also in the best interest of the U.S. Though starting at the birth of hazardous waste is a novel solution, the changing of manufacturing practices – like Basel provisions – relies heavily on changing the behavior of wealthy nations. Furthermore, decreasing the use of hazardous wastes within electronic products falls short of addressing occurrences such as *Probo*

Koala. So, attention also needs to be given to what citizens, who are subject to the downfalls of hazardous waste trade, can do for themselves.

A more realistic solution than Basel – or changing laws of wealthier nations – is the development and strengthening of NGOs. NGOs can prove vital in developing stronger enforcement regimes where environmental regulations are in place but are not obeyed. For example, the General Law of Ecological Equilibrium and Environmental Protection (LGEEPA) is Mexico’s principle instrument of environmental law. Jonathan G. Dorn, *NAAEC Citizen Submissions Against Mexico: An Analysis of the Effectiveness of a Participatory Approach to Environmental Law Enforcement*, 20 GEO. INT’L ENVTL. L. REV. 129, 131 n.9 (2007). But, even though Mexican environmental law is reputable, the law has a history of poor enforcement. *Id.* at 129. The allowance of citizen submission procedures has provided NGOs in Mexico with the ability to spot-light and “shame” non-compliant parties into complying with domestic environmental laws. *Id.*

Citizen submission procedures are provided under Article 14 of the North American Agreement on Environmental Cooperation (NAAEC), a side agreement of NAFTA. *Id.* From June 1995 through August 2007, thirty-two citizen submissions were filed against Mexico. *Id.* at 130. More notable is that six of these submissions resulted in the publication of a factual record, a document available to the public that provides information that assists submitters in taking appropriate actions. *Id.* Even more important is the fact that all six of the submissions that resulted in publication were brought by NGOs. *Id.* at 130, 144. Additionally, a majority of the thirty-two total citizen submissions brought against Mexico were brought by NGOs. *Id.* at 130. NGOs have played a major role in improving the enforcement of Mexican environmental laws,

and this indicates not only the importance of NGOs but also that citizens – as individuals – lack resources necessary to complete the citizen submissions procedure without NGOs. *Id.* at 138.

Like Mexico, China has environmental regulations with a history of lax enforcement. For instance, the National People's Congress, the highest legislative body in China, has adopted more than twenty statutes primarily addressing pollution control, natural resource conservation, and other environmental concerns. Richard J. Ferris Jr. & Hongjun Zhang, *Reaching Out to the Rule of Law: China's Continuing Efforts to Develop an Effective Environmental Law Regime*, WM. & MARY BILL RTS. J. 569, 583-84 (2003). The Clean Production Promotion Law, Energy Conservation Law, and Water Law are just a few examples. *Id.* But, even with these laws in place, enforcement is predominantly weak since industrial interests are often directly attached to the financial interests of Chinese government leaders. Bradford, *supra* at 341.

Unsurprisingly, China has not yet benefited from the collective force of NGOs like Mexico has. In China, one of the most relevant barriers to NGO involvement is the view maintained by Chinese leadership that such agencies are a threat to the Chinese government's monopoly on power and the dissemination of information. *Id.* Further, even though waste imports are illegal and punishable under China's environmental laws, there are no comprehensive records of arrest and prosecution of hazardous waste importers, excepting sporadic press reports. Srinivasan, *Regulating the Belching Dragon: Rule of Law, Politics of Enforcement, and Pollution Prevention in Post-Mao Industrial China*, 18 COLO. J. INT'L ENVTL. L. & POL'Y 267, 332 (2007). Another problem with the atmosphere of China's regime is that there are few legal experts in environmental law. For example, as of 2003, China's State Environmental Protection Administration Law and Policy Department was staffed with fourteen officials, only five of whom had law degrees. Ferris, *supra* at 600.

The ability of NGOs to garner public attention, spread awareness and foster interest has been demonstrated in Mexico and the U.S. NGOs that advocate for Basel legislation, such as Greenpeace and the Basel Action Network (BAN) from the U.S., should focus their energy on empowering NGOs located in countries where NGO presence is weak. With more capable NGOs, citizens can overcome the downfalls of the paternalistic regulations found in Basel.

Conclusion

Basel has been a success in that it provides a forum for transboundary hazardous waste issues. Also, regulations banning hazardous wastes in electronics can be somewhat attributed to Basel's existence. But, electronic waste from the U.S. was found dumped in environmentally unsafe ways in Nigeria in 2006. Collins, *supra*. Even more, though EU has implemented legislation to enforce Basel, 48 percent of shipments were found to be illegal during a week long investigation of seventeen ports in nine EU countries in 2005. Stone, *supra* at 49. Shipments included containers of domestic waste from the United Kingdom destined for India and cable wastes from Sweden bound for China. *Id.* Instead of relying on Basel to prevent unsafe hazardous waste management, Basel advocates should pursue with greater force the minimization of generation and, especially in countries where citizens are vulnerable, development of NGOs.

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