

Basel Convention Plastic Waste Amendment and Continued Aftermath : Remnant Challenge & Future Road for a Cleaner Environment

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【Abstract】

As an internationally-traded commodity, plastic waste has been part of the ongoing recycling market, consequently leaving its unwanted disproportionate environmental and health burden on the world's most vulnerable populations. Africa and East Asian countries, where most of the plastic waste has been exported or illegally trafficked since the late 1980s, are countries that are underdeveloped where few waste management infrastructures exist. In order to halt the concentrated plastic waste pollution on these poor parts of the world, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, known as the Basel Convention (hereinafter “the Convention”), was established. The Basel Convention is an international treaty designed to control the movement of hazardous waste between nations, and particularly from developed to developing nations. Outrageous practices increased with the number of reported incidents, with The Khian Sea incident perhaps drawing the greatest attention worldwide. The Basel Convention was a response a product of international concern about these Western nations’ excessive dumping of hazardous waste in impoverished, developing nations during the 1970s and 1980s. As the Basel Convention is regarded as extremely business unfriendly, the Convention has been a great concern of the global recycling industry. Despite, in the absence of any other dedicated, enforceable international legal regime as to plastic waste recycling, the Convention remains the basis of plastic waste recycling multilateral environmental agreement since 1992. In 2019, however, the Convention was amended to narrow down the plastic wastes within the category of wastes controlled as

“hazardous waste,” or “waste requiring special consideration.” However, despite, because of many remained challenges, mainly due to the continual act of illegal trafficking, an illegal export of plastic waste, which is an act of deliberate dump of hazardous wastes, which is regarded as one of the worst environmental issues, by a number of countries, severe damage to human health and pollution to both land and the marine environment is getting serious. This article, thus, seeks to address the challenging issue relevant to the Basel Convention and its resolution. The article will first talk about analyzing certain key terms and provisions of the Convention, which went under amendment in 2019. The article postulates that reliance on the amended Convention as it is itself is not enough and there needs to be further stricter realistic regulations for the Convention to be effectively applied, which should be concentrated on the protection of the poorest countries that have little regulations within the country as to plastic waste. Then, the article will divulge the serious issue of illegal traffic in plastic waste and look into how to prevent illegal traffic realistically and effectively in order to combat plastic crisis based on the Convention. The article will be concluded by reflecting on the very initiative purpose of the Basel Convention, which could make a huge difference on marine environment for it will be a potential catalyst to ameliorate the lives of the people, especially the people in one of the poorest and vulnerable countries in the world.

I. Introduction

Plastic. It did change the world and made the present-day possible, and still is. Plastics are used to make safety seats, airbags in cars, helmets, cell phones, computers, other electronic equipment, plastic package for products, and roof and wall of our home and building that makes our daily life possible. It is the current state that we no longer can live without it. However, as nearly everything in this world has merits and demerits, plastics are not an exception, for the plastics we effectively use daily, will eventually be thrown away. Many of those that are thrown away, every single day, regrettably, are incessantly piled up in landfills, ocean and rivers, despite its effort to be recycled. Additoinally, because most of the people do not reside near those toxic landfills, ocean and rivers, it is at times hard to realize the seriousness of the plastic wastes that is currently gradually becoming a huge threat to mankind. For instance, it is estimated that our sea holds about 160 million tons of plastic and about two-third of sea animals (e.g., fish, whales, sharks, turtles) that we consume contain microplastics in their body. Yet this is only one example. Provided that we continue this road without a drastic change, there will be less fish than plastics in the sea and the situation in the land will at the same time further worsen. Therefore, in order to manage and resolve this plastic crisis which threatens the very existence of our planet earth, it is important to realistically regulate the various types of plastic waste at an international level. Because no matter what, plastic must be reduced.

The Basel Convention was a product of international concern about Western nations' excessive dumping of hazardous waste in impoverished, developing nations during the 1970s and 1980s. Outrage over this practice increased with the number of reported incidents, with The Khian Sea incident perhaps drawing the greatest attention worldwide.¹⁾ As it is extremely business unfriendly, the Basel Convention has been a great concern of the global recycling industry. In the absence of any other dedicated, enforceable international legal regime on ship recycling, the Convention remains the basis of current global ship recycling jurisprudence in the domestic courts of all dominant ship recycling states and the rest of the world. This article, however, seeks to address the challenging issue relevant to the Basel Convention and its resolution. The article will first talk about analyzing certain key terms and provisions of the Convention, which went under amendment in 2019. The article postulates that reliance on the amended Convention as it is itself is not enough and there needs to be further stricter realistic regulations for the

1) In August, 1986, the cargo ship Khian Sea loaded 14,000 tons (28 million pounds) of toxic incinerator ash from Philadelphia and set off on an odyssey that symbolizes a predicament we all share: what to do with our refuse. Starting in the 1970s, Philadelphia burned most of its municipal garbage and sent the resulting incinerator ash to a landfill in New Jersey. In 1984, when New Jersey learned that the ash contained enough arsenic, cadmium, lead, mercury, dioxin, and other toxins to be classified as hazardous waste, it refused to accept any more. When six other states also rejected incinerator ash shipments, Philadelphia was in a predicament. What would they do with 180,000 tons of the stuff every year? The answer was to send it offshore to countries with less stringent environmental standards. A local contractor offered to transport it to the Caribbean. The Khian Sea was to be the first of those shipments, *see* The McGraw-Hill Companies, Environmental Case Study, "Voyage of the Khian Sea, Wandering Garbage Barge: What a Long, Strange Trip It Has Been", available at http://www.mhhe.com/Enviro-Sci/CaseStudyLibrary/Topic-Based/CaseStudy_VoyageOfTheKhianSea.pdf (last visited on December 21, 2023).

Convention to be effectively applied, which should be concentrated on the protection of the poorest countries that have little regulations within the country as to plastic waste. Then, the article will divulge the serious issue of illegal traffic in plastic waste and look into how to prevent illegal traffic realistically and effectively in order to combat plastic crisis based on the Convention. The article will be concluded by reflecting on the very initiative purpose of the Basel Convention, which could make a huge difference on the marine environment because it will be a potential catalyst to ameliorate the lives of the people, especially the people in one of the poorest and vulnerable countries in the world.

II. National Plans as to Plastic Waste & Basel Convention

In reality, along with a number of various necessary environmental projects, there is an additional way to reduce plastic wastes through legislation. Generally, the national legislation as to plastic waste will force the government to ban the production of non-recyclable plastic materials that are unusually hard or impossible to recycle. Namely, the legislation, in general, will force the corporations to adapt and adjust their manufacturing process to the newly built measures which is based on production of recyclable plastic materials. Additionally, the legislation will state the government to further plan to produce plastics from recycled plastic instead of producing non-recyclable plastics. During this process, it will be a matter of course that the relevant corporations will be against these newly built measures because it is said that ban on production of non-recyclable plastic

materials could cause prices to suddenly increase because of various reasons such as under-developed recycling capabilities and lack of viable alternatives to plastics on the market. However, it is either excuse or revival. It is either excuse or progress, that is, it is either perish or progress. It is now or never. Blessedly, there are a number of countries that are in the process of establishing legislations relevant to plastic ban nowadays, along with financial support, which is an amazing form of initiative, which will be very effective provided that the relevant corporations could be supportive to this initiative and be aware that the amount of growing scale of plastics and wastes on landfills depends on their courageous changed act and contribution.

For example, Australia is currently taking unprecedented action to manage plastic pollution and build a circular economy for plastics, which includes ambitious waste reduction and resource reuse targets to 2030 under Australia's National Waste Policy Action Plan.²⁾ In Colombia, the National Plan for the Sustainable Management of Single-Use Plastics was launched, which works on

2) Australia National Plastics Plan includes actions to reduce plastic waste and increase recycling rates, find alternatives to plastics and reduce the amount of plastic impacting our environment, including in our oceans and waterways. Australia is even said to be the first country in the world to introduce ban on the exports of certain wastes – requiring instead that recovered resources be processed onshore before they can be exported for remanufacture. Australia is funding clean-up of ghost nets and plastic litter along northern Australia's remote coastline to improve the health of the ocean, reduce threats to marine life and build regional capacity to prevent marine pollution and litter. Additionally, Australia is supporting the Australian Packaging Targets to ensure that all packaging on Australian products is recyclable, reusable or compostable and that 70 per cent of our plastic packaging is recycled or composted by 2025, *see* "Waste to wealth: capitalizing on Australia's circular economy", Australian Government, pp. 1 – 4, available at https://www.globalaustralia.gov.au/sites/default/files/2022-06/GB-CircularEconomy-FactSheet_A4-4pp-Proof.pdf (last visited on December 29, 2023).

incorporating eco-design in the manufacture of plastic products based on life-cycle analysis, utilization processes, strengthening of recycling production chains and responsible consumption.³⁾ As for France, in addition to specific bans on single-use plastics, "3Rs" (i.e., Reduce, Reuse, Recycle), with the ultimate aim of phasing out the sale of single-use plastic packaging by 2040 is its main approach.⁴⁾ In addition, according to the National-level visions, actions and plans announced at the 2022 OECD Council at Ministerial Level ("MCM"), in order to take into account the specificities of each sector, French professional federations are being encouraged to develop their own roadmaps and take ownership of these public policy objectives, with the help of a dedicated public fund.⁵⁾ More generally, funding measures (900 million euros) are being introduced to promote eco-design, reuse, as well as capacity building for the collection, sorting and recycling of plastics.⁶⁾

3) Goverse, Tessa, "Addressing Single-use Plastic Products Pollution with a Life Cycle Approach", UNEA5 Side Event UN environment assembly (February 19, 2021), available at <https://www.lifecycleinitiative.org/wp-content/uploads/2021/02/UNEA5-Slide-Deck-for-website.pdf> (last visited on January 2, 2024), Colombia is implementing the National Circular Economy Strategy, which promotes the productive transformation of industrial and agricultural systems and sustainable cities, based on circularity, technological innovation, and collaboration in new business models.

4) 3Rs targets are set every five years for single-use plastic packaging, with the first targets for 2025 established by decree in 2021: a 20% reduction in the tonnage brought to market, half of which must be achieved through reuse, with a particular focus on developing bulk purchasing; a target of 100% reduction unnecessary single-use plastic packaging; a target that single-use plastic packaging should be recyclable at scale and in practice, and not contain hazardous substances (problematic plastics); a target of 100% recycling, *see* "Plastic Packaging in France : Reduction, Reuse and Recycling Potential By 2025", *Ministères de la pp.* 1 – 4 (2021), available at <https://www.ecologie.gouv.fr/sites/default/files/MTE-Summary-3R-ENG.pdf> (last visited on January 4, 2024).

5) "Environment Ministers' commitments on plastics", National-level visions, actions and plans announced at the 2022 OECD Council at Ministerial Level ("MCM"), 2022, p. 11.

Republic of Korea has established a set of policy measures to tackle plastic pollution. Its main focus is to operate a resource circulation system that includes the waste charge system, producer responsible recycling system, recycling environmental assessment, waste disposal charge system for recycling companies, and technology review for recycling resources recognition, which includes strengthening standards for packaging materials to make sure they are easy-to-recycle from design stage.⁷⁾ Based on the Plastic Phase-out Plan (December 2020), Korea aims to reduce plastic production and use at source and scale up the use of recycled content by increasing the current level of plastics tax rate; limiting or banning the use of single-use plastics by their item types; mandating the use of transparent PET bottles for beverage products; mandating the use of recycled content; and promoting the development of bioplastics technologies.⁸⁾ As for Mexico, the country has committed to strengthening domestic policies and fostering international cooperation; working towards the prevention, reduction, and elimination of all plastic pollution; and promoting sustainable production and consumption patterns.⁹⁾ For instance, with the

6) *Id.*

7) Moon, in-Young, Youngseok-Park, *et al.*, “Accelerating Transitions towards a Circular Economy and Policy Implications for Korea”, *World Economy Brief*, Vol. 12, No. 33, p. 4 (2022).

8) Environment Ministers’ commitments on plastics, p. 16, *supra* note 5.

9) Commission for Environmental Cooperation, “Transforming Recycling and Solid Waste Management in North America” (November 15, 2021), available at <http://www.cec.org/transforming-recycling-and-solid-waste-management-in-north-america/> (last visited on January 11, 2024), The project is also said to be accomplished by developing milestone studies to better understand the opportunities for the recycling sector and secondary material markets in North America, and an overview/description of the legal and policy-relevant frameworks’ and by identifying emerging materials and technologies and support stakeholder collaboration and knowledge sharing through

support of the Commission for Environmental Cooperation (hereinafter “CEC”), the project “Transformation of recycling and solid waste management in North America” enables Mexico to accelerate the uptake of circular economy and sustainable materials management practices that are needed to transform North American recycling and solid waste management and will generate economic and environmental benefits for the region.¹⁰⁾ Furthermore, equally supported by CEC, under the project “Reduction of marine litter”, based on the identification and quantification of the captured waste in the Mexican municipality of Chiapa de Corzo, science-based activities are implemented along with an awareness raising campaign aimed at the public on the threats posed by land-based marine litter in order to encourage the participation of local communities in Mexico for the purpose to reduce marine litter.¹¹⁾ United States is taking an all-of-government approach to implement the actions and plans to strengthen domestic action and foster international cooperation to address plastic pollution, through strategies and programs such as the National Recycling Strategy; National Strategy for Reducing Plastic and other Waste in Waterways and Oceans; and Sustainable Materials Management and WasteWise Programs, which are programmed to provide information on U.S. municipal waste generation, recycling, composting, combustion with energy recovery and landfilling, as they work with businesses, governments, and nonprofit organizations to promote the use and reuse of materials more productively.¹²⁾ Additionally, the

networking activities.

10) *Id.*

11) Commission for Environmental Cooperation, “Reduction of marine litter” (November 15, 2021), available at <http://www.cec.org/reduction-of-marine-litter/> (last visited on January 17, 2023).

European Union (hereinafter “EU”) is taking action as well to tackle plastic pollution and marine litter to accelerate the transition to a circular and resource-efficient plastics economy, which mainly aims to transform the way plastic products are designed, produced, used and recycled in the EU; transition to a sustainable plastics economy; support more sustainable and safer consumption and production patterns for plastics; and spur change and set an example at the global level.¹³⁾

Among aforementioned countries, except for the United States, other countries as Australia, Colombia, France, Republic of Korea, Mexico, and European Union are currently parties to the Basel Convention. Along with its respective autonomous approach in dealing with plastic wastes, it will be considerably effective for countries to follow the suggested national plans and strategic framework of activities under the Basel Convention 10/2 which is

12) There are other plastic waste programs the United States that are under execution such as “Strategy for Plastic Innovation Program”, which creates a comprehensive program to accelerate innovations that will dramatically reduce plastic waste in oceans and landfills and position the U.S as global leaders in advanced plastics recycling technologies and in the manufacture of new plastics that are recyclable by design; “Agricultural Research Services”, which is to develop and raise buyer/consumer awareness of bioplastics, including developing a Certified Biobased Product label to increase consumer and buyer recognition, and the purchase of bioproducts; “Recycled Plastics for Food Packaging Program”, which is to help divert plastic food contact articles from ending up in landfills or polluting the marine environment, while ensuring that the high-quality plastics previously used for food contact articles are safely used to produce new food contact articles; “Marine Debris Program”, which provides grants to address the adverse impacts of marine debris on the U.S. economy, the marine environment, and navigation safety and forms partnerships across the United States and internationally., etc., see Environment Ministers’ commitments on plastics, *supra* note 5, pp. 22 – 23.

13) European Commission, “Circular Economy Action Plan : For a cleaner and more competitive Europe”, 2021, pp. 4 – 25, available at https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf (last visited on January 21, 2023). The relevant specific rules and targets within the Action Plan apply to certain areas, including single-use plastics, plastic packaging, microplastics, and soon bio-based, biodegradable and compostable plastics.

an overarching plan to implement the Basel Convention in countries, which its main strategic goals and objectives were as follows.¹⁴⁾

- a) effective implementation of parties' obligations on transboundary movements of hazardous and other wastes;
- b) strengthen the environmentally sound management of hazardous and other wastes;
- c) promote the implementation of the environmentally sound management of hazardous and other wastes as an essential contribution to the attainment of sustainable livelihood, the Millennium Development Goals and the protection of human health and the environment;
- d) promote the implementation of parties' obligations through means such as domestic resources; external resources and funding; private sector; regional cooperation; capacity-building involving human resources, organizational and institutional development; mechanism for promoting implementation and compliance; partnerships; and financial mechanism.

Mirrored on these Basel Convention strategic framework, the parties could develop further guidance on control of transboundary movements; assist parties in meeting their national reporting obligations, including improving the comparability of the data on the transboundary movements of hazardous and other wastes and providing guidance on collecting information for reporting; disseminate and pilot testing technical guidelines and manuals on

14) Secretariat of the Basel Convention, "National Plans and Strategies: Achieving the effective implementation of parties' obligations on transboundary movements of hazardous and other wastes", available at <https://www.basel.int/?tabid=7554> (last visited on June 27, 2023), *see also* BC-10/2: Strategic framework for the implementation of the Basel Convention for 2012-2021.

control schemes and transboundary movements; strengthen legal and institutional frameworks to implement and enforce the Basel Convention and to prevent and combat illegal traffic more effectively; and address the entry into force of the Ban amendment at regional and national levels.¹⁵⁾

III. International Treaty as to Plastic Waste : Basel Convention

As the plastic issue is getting serious day after day, the efforts in the national level to reduce plastic wastes based on recycling are heightened more than it has ever before. However, there is a new international view whether recycling of plastic has been a good plan. That is, it is said that the scale of plastic production is too much to resolve the plastic issue through mainly recycling alone. Currently in 2022, globally only 9% (i.e., the counted and uncounted plastics combined) of plastics have been recycled.¹⁶⁾ Considering that the number of plastics is still increasing in every country, the total recycled amount could be deemed indescribably low. The figure is set to plummet ever since China and a number of countries that used to buy the discarded hazardous plastics from other countries have been rejecting plastic waste. This means the rest of the world that sent their plastic wastes are now piled with tons of plastic waste in their landfill, which means

15) *Id.*

16) OECD, "Plastic pollution is growing relentlessly as waste management and recycling fall short" says OECD, available at <https://www.oecd.org/environment/plastic-pollution-is-growing-relentlessly-as-waste-management-and-recycling-fall-short.htm> (last visited on January 21, 2024), *see also* Agence France-Presse, "9 percent of Plastic Worldwide is Recycled, OECD says", VOA Science & Health (February 22, 2022), available at <https://www.voanews.com/a/percent-of-plastic-worldwide-is-recycled-oecd-says-/6455012.html> (last visited on January 24, 2023), Note that other 19% was incinerated and almost 50% went to sanitary landfills.

“Environmental Alert”.

Currently, total 85 % of plastic waste is now left in the landfill in this world.¹⁷⁾ It is true that landfills are necessary for a proper plastic waste disposal and to help to keep every community clean. However, it poses serious threats to the people and the environment itself as well. And let’s not forget there are a large number of people who live near the landfills. Landfills are one of the main causes of water, air, land, and natural environmental pollution. These pollutions combined could worsen its negative effects in no time. That is, a large number of materials that end up as waste contain toxic substances, and these toxins, including greenhouse gas and leachate (i.e., a highly toxic liquid), by spreading into the air and leaching into the land and groundwater will become a serious environmental hazard for a long period of time. Yet, to make matters worse, these toxins just does not stay in the landfill. The toxins travel through winds, river and tidal flows which end up thousands of kilometers from where it was first piled. This is the reason why plastic pollution becomes a matter of international concern. Therefore, because damages occurred through the floated plastic from one country to another cannot be resolved through national law, a legally binding international environmental treaty with evident standard will be necessary and important. Note that the type of environmental treaty that is established relevant to the aforementioned plastic issue cannot say that it exists simply by mentioning its purpose is to protect and preserve the nature and the environment. They

17) “Our planet is choking on plastics”, UN environment programme, available at <https://www.unep.org/interactives/beat-plastic-pollution/> (last visited on February 1, 2024), Approximately 36 per cent of all plastics produced are used in packaging, including single-use plastic products for food and beverage containers, approximately 85 per cent of which ends up in landfills or as unregulated waste.

should be established with a set of standardized norms in details that could practically and realistically manage plastic waste on an international scale. Among certain international treaties that are established in order to reduce plastic wastes, this article will deal with “The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (hereinafter ‘Basel Convention’)”.

1. Basel Convention Prior to 2019 Amendment

There are certain international treaties and agreements that are relevant to environmental protection and preservation, however, one of the international treaties that is closely and directly relevant to plastic waste management is the the Basel Convention, the world environmental agreement on wastes. The Basel Convention was adopted in 1989 by the Conference of Plenipotentiaries and entered into force in 1992 in response to a public outcry following the discovery in the late 1980s in Africa, Central America, South Asia, the Caribbean and other parts of the countries nearby of deposits of toxic wastes imported from abroad.¹⁸⁾ The conference has adopted eight resolutions as follows related to further development and the implementation of the Basel Convention.¹⁹⁾

- a) Establishment of an Ad Hoc Working Group to consider the necessity of mechanisms for the implementation of

18) Secretariat of the Basel Convention, *supra* note 14., “History of the negotiations of the Basel Convention”, available at <http://www.basel.int/TheConvention/Overview/History/Overview/tabid/3405/Default.aspx> (last visited on February 1, 2023).

19) UNEP-IG.80-Resolution (Adopted on March 21, 1989), available at <file:///Users/mac/Downloads/UNEP-IG.80-Resolution-All.English.pdf> (last visited on June 27, 2023).

- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal
- b) Relationship of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal and the London Dumping Convention²⁰⁾
 - c) Recognizing the necessity of developing rules, as early as practicable, on liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes, Requests the Executive Director of the United Nations Environment Programme (UNEP) to: (a) Establish, pending a decision by the Parties at their first meeting on how to implement Article 12 of the Convention, an ad hoc working group of legal and technical experts to develop elements which might be included in a protocol on liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes; (b) Report on the results of this group's work to the first meeting of the Parties
 - d) Responsibility of States for the Implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
 - e) Harmonization of Procedures of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Code of Practice for International Transactions involving Nuclear Wastes
 - f) Institutional and Financial Arrangement

20) The "Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972", the "London Convention " for short, is one of the first global conventions to protect the marine environment from human activities. The Convention has been in force since 1975, *see* Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, available at <https://www.epa.gov/sites/default/files/2015-10/documents/lc1972.pdf> (last visited on June 27, 2023).

- g) Cooperation between the International Maritime Organization and the United Nations Environment Programme in the Review of Existing Rules, Regulations and Practices with Respect to Transport of Hazardous Wastes by Sea
- h) Establishment of a Technical Working Group of Elaborate Technical Guidelines for the Environmentally Sound Management of Wastes subject to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

As such, the main guiding principles of the Basel Convention are that transboundary movements of hazardous wastes should be: reduced and minimized at source, managed in an environmentally sound manner, and strictly controlled within the country in which they are generated. The purpose of the Convention was to address concerns over the management, disposal and transboundary movement of the estimated tonnes of hazardous wastes; to protect human health and the environment from hazardous waste; and to combat toxic trade, where industrialized countries were using developing countries to remove their useless and hazardous plastic wastes.²¹⁾ However, because the Basel Convention faced a number of limitations, such as, no ban on transboundary movement of hazardous waste, mere requirement of notification and consent mechanism known as “Prior Informed Consent (“PIC”)”, and no detailed management framework or guidelines of hazardous wastes, the transboundary flows of plastic was not meant to be stopped. Thus, unfortunately, a number of countries had to find out, without a warning or protection, about the arrivals of plastic wastes on their land or sea only after it was too late to take preventative action against the plastic bomb.

21) Secretariat of the Basel Convention, *supra* note 14.

However, it is very important for the countries to effectively and expeditiously respond to these current dangerous plastic waste flows and trades, and receive early warning and protection, especially the poorest regions in low-income countries that are most vulnerable to these plastic flows and trades and are the main victims of these plastic bomb without the fault of their own.

2. New Rules under Basel Convention 2019 Amendment in 2023

Prior to the amendment of the Basel Convention, where the new rule was adopted in 2019, aforementioned, majority of plastic waste was not considered hazardous. Therefore, in 1995, the Amendment to the Basel Convention, so-called the Ban Amendment, was adopted by the Conference Of the Parties of the third meeting (“COP-13”), which provides for the prohibition by each Party (i.e., Parties and other States which are members of the OECD, EC, Liechtenstein) included in the proposed new Annex VII to the Basel Convention.²²⁾ Additionally, in 1998, Annexes VIII and IX were added to the Basel Convention by the COP-14, to provide further elaboration as to the wastes regulated by the Convention as listed in Annexes I and III.²³⁾ In 2019, the COP-14 adopted further amendments to Annexes II, VIII and IX to the Convention by amending or inserting entries on plastic waste.²⁴⁾ As of now, in 2023, under the amendment of the Basel Convention, the parties have established the first regulation that specifically addresses plastic waste.

22) *Id.* at <https://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx> (last visited on June 27, 2023).

23) *Id.*

24) *Id.*

The plastic waste is categorized into two categories of hazardous wastes and one category of non-hazardous waste.

가. Improvement of Regulation as to Hazardous Plastic

(a) Hazardous Waste

à metal and metal-bearing wastes (= plastics listed under Basel Convention Annex VIII);²⁵⁾

à residue wastes (i.e., requires special consideration such as wastes collected from households and residue arising from the incineration of household wastes (= plastics listed under Basel Convention Annex II);

(b) Non-hazardous Waste

à waste that is not considered waste unless it says otherwise under Basel Convention Annex IX. ²⁶⁾

Note that, currently, after the amendment, the shipments of plastic waste listed under Annexes II and VIII are subject to the Basel Convention control system. Under the the Basel Convention control system, which was established in 2001, it sets out a detailed “PIC Procedure” with strict requirements for transboundary movements of hazardous wastes and residue wastes.²⁷⁾ It is said that the procedure forms the heart of Basel Convention control system and is based on the following four

25) UN Environment Programme, “Basel Convention : Protocol on Liability and Compensation (Revised in 2019)”, 2020, pp. 34 – 71.

26) Proposal to Amend Annexes II, VIII and IX to the Basel Convention, United Nations Doc. UNEP/CHW.14/27 (December 17, 2018).

27) Secretariat of the Basel Convention, “Controlling Transboundary Movements”, available at <http://www.basel.int/Implementation/Controllingtransboundarymovements/Overview/tabid/4325/Default.aspx> (last visited on February 4, 2024).

stages.²⁸⁾

- a) notification
- b) consent and issuance of movement document
- c) transboundary movement
- d) confirmation of disposal

Under the control system, after the amendment of the Basel Convention, it includes application of the prior informed consent mechanism; an obligation to ensure environmentally sound management; authorization requirements for traders and processors, as well as mandatory packaging, labelling, and transport requirements; information transmission requirements; and an obligation to re-import when environmentally sound management cannot be completed.²⁹⁾ These amendments entered into force in January 1st, 2021 and currently affects all the Basel parties as well as their non-party trading partners. However, the most radical change brought on by the amendments of the Convention are trade restrictions for non-party members. That is, under the previous provisions of the Convention, parties were able to conduct plastic waste transactions with non-parties, whereas, under the new amendment makes it illegal for parties to the Convention from trading certain plastic waste and scraps (subject to the PIC Procedure) with non-parties.³⁰⁾ The only exception to this rule is under Article XI, which allows members to conclude

28) *Id.*

29) Secretariat of the Basel Convention, “Proposed Amendments : Amendment of the Basel Convention (Article 17)”, available at <http://www.basel.int/Implementation/Controllingtransboundarymovements/Overview/tabid/4325/Default.aspx> (last visited on February 8, 2024).

30) Benson, Emily and Sarah Mortenson, “The Basel Convention: From Hazardous Waste to Plastic Pollution”, Center for Strategic & International Studies (October 7, 2021), available at <https://www.csis.org/analysis/basel-convention-hazardous-waste-plastic-pollution> (last visited on February 11, 2024).

agreements with non-parties.³¹⁾

4. Improvement of Regulation of Plastic Waste Shipment

Based on the new rules of the Basel Convention, shipment of plastic waste should not be subject to hazardous waste controls. This is clearly mentioned under Annex IX amendments. The waste under Annex IX usually was presumed not hazardous and not subject to PIC Procedure. However, fortunately, after the amendments of the Basel Convention, the Annex now covers plastic waste consists exclusively of one non-halogenated polymer or resin, selected fluorinated polymers or mixtures of polyethylene, polypropylene and/or polyethylene terephthalate, which are excluded from any shipment unless provided the waste is designated to be recycled in an environmentally sound way and are not contaminated.³²⁾ The plastic wastes that are considered non-hazardous, clean, that could be traded without restriction, are plastics that are uncontaminated and recyclable, and non-recyclable materials that are prepared to be recycled immediately in an environmentally sound way.³³⁾ The best part as

31) *Id.* For example, the United States remains one of the largest plastic waste exporters, sending most of its waste to Canada and Mexico. However, as the United States has not ratified the convention, it is a non-party. Canada and Mexico are parties to the Basel Convention. Therefore, the transactions between the United States and Canada & Mexico could be processed only based on the rule of Article XI of the Basel Convention.

32) Article 3 and Article 4 of the Basel Convention & decision VI/19 of COP6, "Circular on the national classification and control procedure for the import of wastes contained in Annex IX (List B Wastes)".

33) The Contracting Parties shall (a) Prohibit all persons under their national jurisdiction from transporting or disposing of hazardous wastes which are the subject of a transboundary movement, unless such persons are authorized or allowed to perform such types of operations; (b) Require that hazardous wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices; (c) Require that hazardous wastes that are the subject of a

to this new rule of Basel Convention is that the Basel parties can no longer import the types of plastic waste shipments from non-parties. Namely, parties are prohibited from shipping hazardous waste to and from non-parties, unless such transfers are regulated under special bilateral or regional agreements that contain standards equivalent to those established under the UN Environment Programme documents.³⁴⁾

다. Improvement of Regulation through Plastic Waste Partnership

Based on the new rules of the Basel Convention, the Basel Parties created a Plastic Waste Partnership (“PWP”), which is established as a working group, in order to improve and promote the environmentally sound management³⁵⁾ of plastic wastes at the national and international level, and to prevent and eliminate the discharge of plastic waste into the environment, in particular, the marine environment. The following activities are to be undertaken by the working group of the Partnership on Plastic Waste and any project groups established thereunder, in close cooperation with other activities under the Basel Convention and other organizations, as appropriate, in order to enhance synergies, increase efficiency and avoid duplication of efforts.³⁶⁾

transboundary movement be accompanied by a hazardous waste movement document from the point at which a transboundary movement commences to the point of disposal, see Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1673 U.N.T.S. 126, U.N. Doc. UNEP/WG. 190/4 (May 5th, 1989).

34) *Id.*

35) Environmentally Sound Management means management that takes all practicable steps to ensure that used and/or end-of-life products and wastes are managed in a manner which will protect human health and the environment.

36) Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal Fourteenth meeting Geneva, 29 April – 10 May 2019 UNEP/CHW.14/INF/16/Rev.1, “Workplan for the working group of the Partnership on Plastic Waste for the biennium”, pp. 8 – 9 (June 11, 2019), available at file:///User

First, “Plastic Waste Prevention Project” is included in order to collect information as to (a) best practices on measures taken to prevent and reduce plastic waste, (b) lessons learned on measures taken to prevent and reduce plastic waste, (c) test innovative products or services that contribute to plastic waste prevention and reduction, (d) challenges and opportunities on re-use of plastic products, (e) explore options and test design of plastic products to increase their durability, reusability, repairability and recyclability, as well as to reduce hazardous constituents in plastic products, (f) undertake a local/national-level impact assessment for substituting a plastic product, etc..³⁷⁾ Second, “Plastic Waste Collection, Recycling and other Recovery Project” is included in order to collect information as to (a) best practices to improve collection, separation and recycling systems of plastic waste, (b) lessons learned to improve collection, separation and recycling systems of plastic waste, (c) best practices to increase capacity for environmentally sound recycling plastic waste through innovative approaches in cooperation with various stakeholders with a special focus on finance scheme, technologies for recycling, etc., (d) lessons learned to increase capacity for environmentally sound recycling plastic waste through innovative approaches in cooperation with various stakeholders with a special focus on finance scheme, technologies for recycling, etc..³⁸⁾ Third, “Transboundary Movements of the Plastic Waste Project” is included in order to (a) undertake and develop capacity building activities and pilot training activities by relevant actors, including customs, and law enforcement authorities to facilitate

s/mac/Downloads/UNEP-CHW.14-INF-16-Rev.1.English.pdf (last visited on February 17, 2024).

37) *Id.*

38) *Id.*

implementation of the amendments to the Convention on plastic waste , (b) collect information on actions taken by countries to implement the amendments to the Convention on plastic waste, on their interpretation of these amendments, on enforcement in relation to transboundary movements of plastic waste and on the challenges experienced in preparing for implementation (i.e., including pilot project to facilitate tracking and reporting of transboundary movements of plastic waste, using electronic systems and technologies, such as GPS technology.³⁹⁾ Lastly, “Outreach, Education & Raising Awareness” is included in order to (a) develop and pilot educational & outreach activities to reduce plastic litter through collection, and (b) develop and pilot an educational program for schools, supporting prevention of plastic waste.⁴⁰⁾

라. Improvement of Regulation through the Assessment in the Work Programme

In 2019, the Conference of the Parties to the Basel Convention is said to have decided to include in the Work Programme (2020–2021) in the consideration of whether, how and when the Conference of the Parties should assess the effectiveness of the measures taken under the Basel Convention. The Work Programme is to address the plastic waste contributing to marine plastic litter and microplastics; and which further activities could possibly be conducted under the Basel Convention in response to developments in scientific knowledge and environmental information related to plastic waste as the cause of land pollution and marine plastic litter. The following is the brief review of the

39) *Id.*

40) *Id.*

general issues of compliance and implementation of 2022 – 2023 under the Basel Convention.⁴¹⁾ First, improve timely and complete National Reporting, where the the Parties, consistent with national laws and regulations, transmit information as follows (yet not limited to), (a) information on transboundary movements of hazardous wastes or other wastes; (b) measures adopted by competent authorities in implementation of the Basel Convention; (c) available qualified statistics which have been compiled by competent authorities on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes ; (d) bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 ⁴²⁾; (e) accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them; and (f) measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes.⁴³⁾ Second, Parties to aid in preventing and combating illegal traffic by reviewing the information provided by Parties and make recommendations to improve the implementation as they relate to preventing and combating illegal traffic; exploring procedures for disseminating existing guidance and technical assistance tools developed under the Basel Convention to assist

41) Secretariat of the Basel Convention, “Work Programme (2022 – 2023)”, available at <http://www.basel.int/Implementation/LegalMatters/Compliance/WorkProgramme/20222023/tabid/9294/Default.aspx> (last visited on February 21, 2024).

42) Article 11 of the Basel Convention (Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements are not derogated from the environmentally sound management of hazardous wastes and other wastes as required by this Convention).

43) *See* Secretariat of the Basel Convention, *supra* note 29.

Parties to prevent and combat illegal traffic; and guiding the activities undertaken under the Basel Convention to prevent and combat illegal traffic effectively and develop recommendations to improve implementation and compliance with the Basel Convention. Third, relevant to national legislation, improve implementation of and compliance with the following acts (yet not limited to), (a) inviting parties to undertake a self-review of their legislation for implementing the Basel Convention; (b) keeping an eye on requests for information aimed at facilitating the development and review of national legal frameworks, as well as technical assistance activities, which is aimed at promoting the implementation; (c) keeping an eye on activities undertaken by or with the support of the Basel Convention regional and coordinating centers and other entities aimed at assisting Parties to develop legal frameworks for the implementation of the Basel Convention; and (d) developing recommendations on how to improve implementation of and compliance with the specific provisions of the Basel Convention. Lastly, improve the implementation of and compliance with the Convention as well as enhancing coordination with the Compliance Committee of the Rotterdam Convention,⁴⁴⁾ and Integration in United Nations Sustainable Development Cooperation Frameworks.⁴⁵⁾

44) Explore the possibilities for enhancing coordination with the Compliance Committee of the Rotterdam Convention to facilitate compliance through, for example, the provision of joint secretariat support for the committees, facilitation of the exchange of information between the committees, including reports on the outcomes of each other's meetings, attendance by each chair at the meetings of the other committee and the appointment of committee members who have experience of the other compliance mechanism, and make recommendations to the Conference of the Parties, *see* Work Programme (2022 – 2023), *supra* note 35.

45) *Id.* Provide guidance, for consideration by the Conference of the Parties at its sixteenth meeting, on how individual Parties can integrate action to address their needs under the Basel Convention into their United Nations Sustainable Development Cooperation

3. Significance of Basel Regulation

가. New Positive Impacts based on Basel Convention Amendments

Specifically addresses plastic waste. There are three positive points that were brought as a result of the amendment of the Convention. The first positive point will be trade restrictions for non-party members, which its main purpose is to reduce plastic waste. Under the previous provisions of the Convention, parties were able to conduct plastic waste transactions with non-parties.⁴⁶⁾ Now, fortunately, the new amendment prohibits parties to the Convention from trading certain plastic waste (e.g., plastic scrap and waste covered by Basel listings Y48 and A3210)⁴⁷⁾ with non-parties, subject to the Prior Informed Consent Procedure (hereinafter “PIC” procedure). However, there is an exception to this new rule. That is, under Article 11 of the Convention, parties can still enter into agreements with non-parties, inasmuch as they don’t derogate from the environmentally sound management of hazardous wastes and other wastes, as required by the Convention.⁴⁸⁾ In order for parties to ratify the new amendment,

Frameworks.

46) U.S. Department of State, “Basel Convention on Hazardous Wastes”, Office of Environmental Quality, available at <https://www.state.gov/key-topics-office-of-environmental-quality-and-transboundary-issues/basel-convention-on-hazardous-wastes/> (last visited on February 24, 2024).

47) Y48 in annex II of the Basel Convention includes exemptions for a range of plastics “provided it is destined for recycling in an environmentally sound manner and almost free from contamination and other types of wastes” & A3210 reads “Plastic waste, including mixtures of such waste, containing or contaminated with Annex I constituents (i.e., space waste categories (Y1 to Y18) and wastes having specific constituents (Y19 – Y45)) under Basel Convention, to an extent that it exhibits an Annex III characteristic (i.e., explosive, flammable, poisonous, infectious, corrosive, toxic, ecotoxic under Basel Convention, ”

and at the same time interact and trade with a non-party, a country needs to enter into an arrangement and conclude agreements with the non-party to make sure that the non-party ensures, “environmentally sound management of non-hazardous waste and scrap subjects” and “shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.”⁴⁸⁾ For instance, provided a non-party country has separate bilateral agreements other countries such as Canada, Mexico, Malaysia and the Philippines which cover transboundary shipments of hazardous waste under specific terms, under the bilateral agreements the country may receive hazardous waste for recycling or disposal from the Malaysia and the Philippines, but may not export hazardous waste to these countries. Additionally, it is important to note that while it is plausible a party of the Convention could be exempted from its core obligation under the Convention to enter into agreements or arrangements for transboundary movement of hazardous wastes or other wastes, there further need strict restrictions and protections without redefinition of the categories of waste indicated in the Basel annexes strictly ensuring equivalent levels of control to the Convention. Here, equivalent levels of control to the Convention indicates the agreements or arrangements need to be (a) legally binding, must (b) strictly guarantee environmentally sound management which should (1) include PIC or tracking and reporting requirements ; (2) sufficient information that is crucial for ensuring safe disposal by exporter; (3) remove provisions to keep certain relevant information confidential; (4) include a

48) U.S. Department of State, *supra* note 41.

49) *Id.*

requirement to minimize hazardous wastes or treat the hazardous wastes regionally as much as possible.⁵⁰⁾ Without these procedures to be equivalently environmentally implemented within sound management in a timely manner, whether the agreement is a continuous agreement or a new one, the agreements should not be considered as a valid Article 11 agreement.⁵¹⁾

The second positive point is that the amendment has amended certain provisions of the Convention by reclassifying plastic wastes in 2019 and in 2022. First from April to May 2019, the Convention currently deleted a certain type of plastic waste from

50) Toto, Deanne, "Legal analysis calls into question the validity of Basel Article 11 agreements", *recycling today* (February 6, 2021), available at <https://www.recyclingtoday.com/news/ciel-analyzes-article-11-basel-convention-agreements-plastic-scrap/> (last visited on February 27, 2024).

51) The EU, as a "political or economic integration organization" party to the Basel Convention and its member states have also declared they will rely on an Article 11 agreement, the sections of the EU Waste Shipment Regulation ("WSR") governing trade among member states, to depart from the requirements of the Plastic Amendments for intra-EU-and-European Economic Area ("EEA") trade. While the WSR creates, like Basel and the OECD Decision, a system of notification and consent for shipments among covered wastes among EU members (as well as separate provisions on trade with countries outside the EU/EEA), the amended WSR departs from the Basel Plastic Amendments in two key ways: First, it allows for the free trade of the same categories of uncontaminated plastic waste as the new Basel B3011 listing, but does so where the waste is destined for any of a number of "recovery" operations rather than the more stringent Basel stipulation that such uncontaminated waste is destined for "[r]ecycling/reclamation of organic substances which are not used as solvents . . . Second, the WSR provisions also allow for the free trade of some categories of plastic wastes that are subject to PIC requirements under the Basel Convention, including polyvinyl chloride (PVC) and Polytetrafluoroethylene (PTFE), as well as a greater number of mixtures of plastic wastes. Consequently, the analysis concludes that because it fails to ensure equivalently environmentally sound management and control of all wastes covered under the Basel Convention within its scope, the EU WSR clearly does not meet this bar, and the updated WSR should therefore not be considered a valid Article 11 agreement, *see* Azoulay, David and Nathaniel Eisen, "Legal Analysis of the Consequences of the OECD Non-Consensus Determination on the Basel Plastic Convention", *Center for International Environmental Law*, pp. 10 – 11 (2021).

Annex IX of the Convention. The amendment to Annex IX, with a new entry B3011, clarifies the types of plastic wastes that are presumed to not be hazardous and, as such, not subject to the PIC procedure.⁵²⁾ The plastic that the Convention has deleted is a type of plastic that can physically harm wildlife and humans because they are potentially toxic or they absorb other pollutants. It is an enigma that this type of plastic was included in the Annex in the first place. And, regretfully, until now, this certain type of plastic wastes were shipped to other countries disguised as non-hazardous plastic wastes. Further, the Convention currently added a new category of plastic waste under Annex II of the Convention, a category that requires special consideration, which now covers all plastic wastes, especially mixed plastics, would require countries that export plastic wastes to receive a PIC by the countries who will accept them. That is to say, before a country is permitted to ship plastic waste to another country, it would have to (a) notify the prospective countries as to the import and transit, and (b) receive their written consent. This amendment will be a key tool for the countries that are vulnerable and threatened by plastic wastes, provided that countries strictly abide by the Convention in real life. In addition, the amendment will give countries that will accept the plastic wastes the right to make informed decisions and the possibility to refuse polluted

52) The wastes listed in entry B3011 include: a group of cured resins, non-halogenated and fluorinated polymers, provided the waste is destined for recycling in an environmentally sound manner and almost free from contamination and other types of wastes; mixtures of plastic wastes consisting of polyethylene (PE), polypropylene (PP) or polyethylene terephthalate (PET) provided they are destined for separate recycling of each material and in an environmentally sound manner and almost free from contamination and other types of wastes, *see* Secretariat of the Basel Convention, “Basel Convention Plastic Waste Amendment” available at <http://www.basel.int/Implementation/Plasticwaste/Amendments/Overview/tabid/8426/Default.aspx> (last visited on March 1, 2024).

plastic waste they are not able to safely manage in an environmentally sound way.

Lastly as to Annex VIII of the Basel Convention, which refers to those wastes that are characterized as hazardous under Article 1, paragraph 1(a) of the Basel Convention, is amended with the entry A3210 plastic waste trade, which requires PIC procedure of the importing state.⁵³⁾ This is because Annex VIII include wastes that are plastic waste, including mixtures of such plastic waste that is hazardous which contains or is contaminated with constituents of Annex I, and demonstrates characteristics of Annex III.⁵⁴⁾ Next, in June 2022, the Parties to the Convention made changes to similar Annexes with the objectives of enlarging the control of transboundary movements of e-waste and making all electronic and electrical waste subject to the PIC procedure. First, as to Annex II (i.e., waste that requires special consideration and is subject to the PIC procedure) added to cover all e-wastes, its components and wastes from the processing of e-waste (e.g. fractions from shredding), except for those e-waste covered by entry A1181 (in Annex VIII). As to Annex VIII (i.e., waste presumed to be hazardous and subject to the PIC procedure), added new entry A1181 covering hazardous e-wastes, its components and wastes from the processing of e-waste (e. g. fractions from shredding), except for those existing entry A1180; Annex IX (i.e., waste presumed not to be hazardous: not subject to the PIC procedure), except for the existing e-waste entries B1110 (i.e., e-wastes) and B4030 (i.e., single-use cameras).⁵⁵⁾

53) See BC-14/12: Amendments to Annexes II, VIII, and IX to the Basel Convention.

54) *Id.*

55) The fifteenth meeting of the Conference of the Parties to the Basel Convention (face-to-face segment of COP-15 , 6-17 June 2022) adopted amendments to Annexes II, VIII and IX to the Convention with the objectives of enlarging the control of

As such, the Basel Convention until now has created its standards to address the know-how of plastic wastes disposal and has given parties to the Convention the responsibility to enact its own regulations for the transboundary movement of wastes. However, the Basel Convention merely offers part of the resolution as to waste transfer. Yet with the increase of items included with the flow of time, it is crucial for each country turn toward to build a sturdy economy to dispose wastes in an environmentally sound manner, which will require new policies from both national governments and international environmental organizations. However, despite many countries currently realize as to the seriousness of the negative impact plastic wastes have on both marine environment and land, there are still a number of countries that disguise the hazardous plastic wastes as non-hazardous plastic wastes, and then redirect the plastic wastes to countries with little regulation, generally to the poor regions, which is absolutely against the initiative of the Convention. The Convention has been amended as a warning sign to those countries to take better responsibility and to stop shifting the health and environmental negative impacts and tremendous costs onto the countries that is not responsible for the plastic wastes, which again, are one of the poorest countries in the world. Any country any world organization that has a good heart will not want to sacrifice any person or any country that are desperately in need, furtively illegally. However, there are countries where words said and actions taken are different. It should be duly noted again that this type of pretentious act is one of the main barriers to make a better world. The amendment of the Convention and a

transboundary movements of e-waste and making all electronic and electrical waste subject to the prior informed consent (PIC) procedure. The new entries become effective as of 1 January 2025.

few people who genuinely care for the environment cannot fix the plastic crisis alone. It cannot be emphasized enough that the realistic cooperation and full commitment by each and every country is indescribably significant.

4. Continual Efforts of the Basel Convention

In May 2023, COPs to the Basel, Rotterdam, and Stockholm Conventions attracted a wide range and a significant number of participants as each treaty, together and individually, addressed issues at the core of their mandates.⁵⁶⁾ The Basel Convention adopted several decisions, the most significant of which was the technical guidelines on plastics wastes, which sets out how to manage these wastes in an environmentally sound manner and is timely, given the ongoing negotiations for a new treaty on plastic pollution.⁵⁷⁾ The COPs adopted joint decisions on technical assistance and financial resources, including a new resource mobilization strategy that aims to raise the funding commensurate to the challenges that countries face. The COPs also advanced work on the illegal traffic and trade of hazardous chemicals and wastes.⁵⁸⁾ The Basel Convention also took a careful look at their Convention's PIC procedure for the transboundary movements of

56) "Summary report, 1 – 12 May 2023 : 2023 Conferences of the Parties to the Basel, Rotterdam, and Stockholm Conventions (BRS COPs)", International Institute for Sustainable Development (IISD) Earth Negotiation Bulletin, Vol. 15, No. 304, pp. 1 – 22 (May 2023), The Rotterdam Convention is an international treaty designed to facilitate informed decision-making by countries with regard to trade in hazardous chemicals, *see* Rotterdam Convention Homepage <https://www.pic.int/>; The Stockholm Convention is a global treaty that aims to protect human health and the environment from the effects of persistent organic pollutants (POPs), *see* Stockholm Convention Homepage <https://www.pops.int/> (last visited on June 27, 2023).

57) *Id.*

58) *Id.*

hazardous wastes, where they adopted two decisions, (1) agreement to a new intersessional process that will consider how to improve the PIC procedure, gathering information from countries, operators, and others, and (2) agreement to modernize the implementation of the PIC procedure, namely, bringing the PIC procedure to the digital age in order to improve effective communication among states engaged in the transboundary movement of hazardous wastes,⁵⁹⁾ which is expected to help the Convention to overcome its shortcomings that could strengthen its capacity to manage waste in an environmentally and efficient way and develop detailed procedures, waste management plans, or strategies. There was an additional hopeful expectation that within two years, there will be a plastic pollution treaty and a science-policy panel on chemicals, wastes, and pollution that could help each Conventions maintain their role of protecting the planet and people from the hazards faced by chemicals and wastes.⁶⁰⁾

IV. Remnant Challenges & Solutions

1. Problems Remained within the Basel Convention : Illegal Traffic

As much as the Basel Convention has been the paragon of environmental agreement to ameliorate the serious plastic waste issue, there seems to remain a deficiency within the articles of the convention in tackling the serious international environmental problems. Illegal Traffic. Illegal Traffic, an illegal export of plastic waste, which is an act of deliberate dump of hazardous wastes, is

59) *Id.*

60) *Id.*

currently regarded as one of the worst environmental issues. It is a very serious organized crime that is a very lucrative illegal business to both corporations and underworld. Additionally, compared to the high degree of damage (i.e., negative effects on sustainable resource management, and cause significant harm to the environment and human health) the illegal business incurs to other vulnerable countries (i.e., countries where environmental legislation and implementation are weak), the restriction and sanction are too low.⁶¹⁾ And what is worse, the plastic waste that are illegally exported are usually leaked into the local environment due to improper treatment. And because these plastic wastes that are illegally exported are usually unrestricted hazardous chemicals, it is a matter of course the waste causes severe damage to human health; and pollution to both land and the marine environment. And in order to tackle the illegal traffic as to plastic wastes, the convention provides for specific obligations that parties of the convention (hereinafter “parties”) are to implement and comply with in order to prevent and combat illegal traffic. In accordance with the convention, parties consider that illegal traffic in hazardous wastes or other wastes is criminal, and each party is to take appropriate legal, administrative and other measures to implement and enforce the provisions of this

61) Rucevska, Ieva, and Christian Nellemann, etc., “Waste Crime – Waste Risks : Gaps In Meeting the Global Waste Challenge”, UN Environment Programme & GRID-Arendal, 2021, p. 4
1. Regulatory controls relevant to illegal traffic are often applied to organizations involved in physical production, storage, transport, treatment, and disposal of waste. However, waste brokers do not come into contact with the waste, and their role in illegal activities is particularly difficult to ascertain. Reported prosecutions point to few waste brokers being sanctioned for illegal waste activities. Analyses show that the opportunity structure is conducive to environmental crime in many ways. Most offences take little effort, chances of detection are low, rationalizations are easily found, and saving compliance costs is an attractive reward for non-compliance.

convention, including measures to prevent and punish conduct in contravention of the convention.⁶²⁾

In addition, specifically under the convention, when an incident relevant to illegal traffic occurs within the states, the convention requires that each party introduce appropriate national/domestic legislation to prevent and punish illegal traffic and cooperate based on the articles of the convention relevant to illegal traffic.⁶³⁾ Further, according to the convention, with respect to the consequences of illegal traffic, responsibility for the wastes rests with the entity whose conduct resulted in illegal traffic. That is, provided that the illegal traffic arises as a result of conduct on the part of the importer or disposer, the state of import shall be responsible to ensure that the wastes are disposed of in an environmentally sound manner by the importer or disposer or if necessary by itself.⁶⁴⁾ Likewise, provided that the illegal traffic is deemed to result from the conduct on the part of the exporter or generator, the state of export shall be responsible to ensure that the wastes are taken back or disposed of in accordance with the provisions of the convention.⁶⁵⁾ However, where responsibility for illegal traffic cannot be assigned to the generator, exporter, importer or disposer, the parties concerned or other parties, through cooperation, are to ensure that disposal is effected in an environmentally sound manner either in the State of export or import or elsewhere as appropriate.⁶⁶⁾ However, regretfully, even after the amendment of the convention, the illegal traffic by

62) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Proposal, Article 4. General Obligations Provision 4.

63) *Id.* at Article 9. Illegal Traffic Provision 5.

64) *Id.* at Article 9. Illegal Traffic Provision 3.

65) *Id.* at Article 9. Illegal Traffic Provision 2.

66) *Id.* at Article 9. Illegal Traffic Provision 4.

countries are countless. And the method of illegal traffic is on the increase as well. For example, country L first sent their waste to country Z legally. However, because the waste sent included toxic and explosive wastes which was in violation of the convention, the authorities of country Z demanded country L to take the waste back. Yet, country L refused to repatriate the waste sent to country Z (i.e., which is a violation under Article 8 of the convention, which requires exporting countries to repatriate and take responsibility for wastes they export when the shipment cannot be completed according to the contract). However, regrettably, the government of L and Z later negotiated to illegally divert the waste to another country (i.e., a country where environmental legislation and implementation are weak). However, what made matters worse is that during the illegal transportation of the plastic waste to the country, it is said that the significant amount of plastic waste was leaked and spilled into the sea,⁶⁷⁾ which is one of the main causes of increase in plastic wastes in the marine environment as well. As such, these days, instead of managing its waste legally within their territory or beyond, there are a number of countries managing its waste by dumping their mess to other vulnerable countries causing additional environmental issues one after another, which is an unacceptable illegal act that should not be tolerated.

67) Chung, Emily, "Ships are illegally dumping plastic trash at sea, study suggests", CBS (October 15, 2019), available at <https://www.cbc.ca/news/science/sea-litter-ships-bottles-1.5318390> (last visited on March 7, 2024).

2. Current Cases as to Illegal Traffic & Punishment

In general, prosecutions that are successful have a deterrent effect and aid to resolve the problematic situations. However, under the subject of illegal traffic (i.e., Article 9 of the Basel Convention), even though punishments through prosecution is to serve to fulfill the general obligations within Article 4 Provision 4 of the Basel Convention (i.e., Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention), it is not seem to be the case. The Following cases are the confirmed cases of illegal traffic under Basel Conventions.

가. United Kingdom (Waste origin) --> Sri Lanka (Waste destination) (2020)

In May 24th 2019, Sri Lanka Customs at Port of Colomba have done a random in spection on containers which detected wastes that are non-listed bulky wastes (i.e., mixture of post-consumer waste) such as plastics, textile, metal, wood.⁶⁸⁾ Due to the non-availability of sufficient safe waste disposal facilities within the country, it is presumed these wastes will pollute the environment including the soil, water, fauna and flora provided that the waste enters into the environment and affect the health of the nearby community and ultimately the economy of the families provided that the waste is disposed into the environment with a huge environmental negative impact. However, the date of

68) Form for Confirmed Cases of Illegal Traffic, "Sri Lanka - Form transmitted October 2020", Basel Convention, available at <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/CasesofIllegalTraffic/tabid/3424/Default.aspx> (last visited on March 8, 2024).

conviction on Canada is not yet informed even 4 years have passed.

4. Canada (Waste origin) --> Belgium (Waste transit) --> India (Waste destination) (2019)

Throughout November 9th to 13th 2019, Environmental inspection and Federal Seaport-Police have done a random inspection on containers filled with ‘greenlist waste’ that was ready to be shipped on a vessel to India.⁶⁹⁾ The eight containers were loaded onto a ship at the Port of Montreal, Canada, which sailed to Antwerp in Belgium, for further shipment with another vessel to the port of Haldia in India, where the illegal export was discovered at the Port of Antwerp in Belgium during an at random inspection on the 9th of November 2019.⁷⁰⁾ Flemisch Environmental Inspectorate made some observations, and as a result inside the unpublished container was loaded with unrecyclable post-consumer paper waste in bales, contaminated with other household waste (Y46) and co-mingled waste (Y46) which the export to the non-OECD countries (in this case “India”) is forbidden, where the export of this container contravened Articles 6.1 and 6.3 of the Basel Convention because the requirements for notification and consent were not observed.⁷¹⁾ Because the illegal traffic is deemed to result from the conduct on the part of the exporter or generator, the Basel Convention preferred to send the 6 containers with contaminated paper waste

69) Form : Cases of Illegal Traffic, “Belgium – Form transmitted November 2019”, Basel Convention, available at <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/CasesofIllegalTraffic/tabid/3424/Default.aspx> (last visited on March 11, 2024).

70) *Id.*

71) *Id.*

back to Canada.⁷²⁾ Yet, the date of conviction on Canada is not yet informed.

㉔. Israel (Waste origin) --> Palestine (Waste destination) (2018)

Throughout January 28th 2018, the truck with its tank filled with plastic wastes, in which presented liquid material such as Phenolsand Organic solvent wastes (i.e., flammable liquid sand toxic) subject to illegal act, were unloaded, registered, discovered by Environment Quality Authority (“EQA”), then sampled and tested by Birzeit University Lab (Testing laboratories center).⁷³⁾ Because the illegal traffic is deemed to result from the conduct on the part of the exporter, the Basel Convention form states that, Israel was convicted in January 29th 2018, and for remedial action the Palestinian Preventive security office will hold the truck with its tank until the tank could be returned back to the Israel for the final disposal through communication process with the Israel side.⁷⁴⁾ However, the report does not show whether the wastes have been returned to the exporter state.

㉕. Canada (Waste origin) --> United State (Waste Transit) --> Brazil (Waste destination) (2012)

Throughout February 6th to 29th 2012, the plastic bags, in which presented an advanced degree of decomposition of organic matter subject to illegal act, were unloaded, registered, first discovered by the Custom Authority, then first inspected by the

72) *Id.*

73) Form for Confirmed Cases of Illegal Traffic, “State of Palestine – Form transmitted January 2018”, Basel Convention, available at <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/CasesofIllegalTraffic/tabid/3424/Default.aspx> (last visited on March 11, 2024).

74) *Id.*

Competent Authority.⁷⁵⁾ Because the illegal traffic is deemed to result from the conduct on the part of the exporter, the Basel Convention form states that the Brazilian Institute of Environment and Renewable Resources will notify the importer to proceed the returning of the waste to the State of export, Canada, along with fine (i.e., \$ 500,000 – \$ 10,000,000) to be applied.⁷⁶⁾ However, it is not shown whether the wastes have been returned or the fine has been paid to the importer state.

ㄱ. United Kingdom (Waste Origin) --> United Arab Emirates (Waste destination) (2009)

United Kingdom (hereinafter “UK”) Grosvenor Waste Management, which was bought by Waste Company Viridor was to have illegally shipped export of 25 40-foot containers, holding nearly 430 tonnes of plastics from various sites in England and Wales, via Felixstowe and Southampton to Dubai in United Arab Emirates (hereinafter “UAE”) between November 2006 and April 2007.⁷⁷⁾ The incident has been committed the offense despite having already been caught illegally exporting 1,800 tonnes of household waste to Asia in 2005. Viridor Resource Management Limited has been fined a total of £75,000 and ordered to pay costs of £35,000 at Maidstone Crown Court.⁷⁸⁾ Additionally, neither the Environment Agency, which is responsible for

75) Form for Confirmed Cases of Illegal Traffic, “Brazi – Form transmitted April 2012”, Basel Convention, available at <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Cases/ofIllegalTraffic/tabid/3424/Default.aspx> (last visited on March 13, 2024).

76) *Id.*

77) “Waste firm’s legacy lands Viridor with huge fine”, The ENDS Report (May 27, 2009), available at <https://www.endsreport.com/article/1568991/waste-firms-legacy-lands-viridor-huge-fine> (last visited on March 14, 2024).

78) *Id.*

enforcing waste shipments into and out of England and Wales under the Transfrontier Shipment of Waste (hereinafter “TFS”) Regulations, nor its counterpart, the UAE Federal Environment Agency were presumed to be notified of the exports, which is in breach of TFS rules.⁷⁹⁾ Further, because UK waste exports to the UAE are also generally subjected to the strictest controls of notification and written consent, it was unlikely that the shipments of plastic would have been permitted though the Environment Agency had been notified. However, despite a formal request to return the waste to the UK where the Environment Agency served a notice on Grosvenor requiring the waste to be repatriated, which was served in May 2007, it is said to have already sent to India and Malaysia.⁸⁰⁾

**마. United Kingdom (Waste Origin) --> Afghanistan (Waste destination)
(2009)**

In July 2009, United Kingdom Quest International Trading Limited transported waste, namely hazardous waste electronic equipment, for disposal in breach of article 34 of the European Waste Shipment Regulation EC 1013/2006, to Afghanistan, a third country to which the OECD decision does not apply.⁸¹⁾ Later in September 2009, a container was returned to Quest after checks identified the waste, which has been on its way to Afghanistan,

79) *Id.*

80) *Id.*

81) United Nations, “Matters related to the implementation of the Convention: legal, compliance and governance matters: national legislation, enforcement of the Convention and efforts to combat illegal traffic: Instruction manual for the legal profession on the prosecution of illegal traffic”, Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 10th meeting, UNEP/CHW.10/12 (October 2011).

where the Environment Agency officers examined 42 items from the container and found 29 to be broken from inside the container and found computer monitors, wrapped in cling film and stored on pallets, as well as a large number of computers piled up haphazardly behind them, which were labelled as faulty while others were damaged, classified as waste.⁸²⁾ The defendant is said to have claimed some damage had happened while the container was in transit and some containers have been loaded by mistake, which was not accepted by later in court.⁸³⁾ The Quest has been convicted of four counts of illegally storing and shipping hazardous wastes to Afghanistan, which after the two-day trial the company was fined £1,000 for each of the four offences and was ordered to pay full prosecution costs of £8,200,⁸⁴⁾ which the amount of punishment seems to be considerably low compared to the seriousness of crime the company could have imposed on the environment.

3. Solutions of the Problems

Currently, despite there are only a few illegal traffic cases that have officially taken into action, it is assumed that the cases where the flow of plastic waste from wealthier countries to less developed countries that has less infrastructure to properly dispose of the wastes is continuously in increasement. Additionally, aforementioned, there are cases where the waste origin countries have been convicted and penalties were imposed due to illegal traffic, however, despite the conviction, the penalties

82) *Id.*

83) *Id.*

84) *Id.*

are still not paid. Further, there are cases where the imposition of penalty is still pending for years. Thus, it is significant for certain solutions that is strictly mandatory and binding on perpetrators of illegal traffic must be established.

Legislative course of action plays a crucial role in reducing these types of illegal trafficking as to plastic wastes. However, without effective and actual enforcement of the process of taking action against the waste origins and mandatory implementation of the penalties imposed by the defendant country, regardless of the existence of the legislative measures, illegal shipments will continue to re-route to one of the most vulnerablae countries and regions. Yet, unfortunately, sentencing and punishment (i.e., fine, sanction) of illegal traffic differ which depends on relevant courts or tribunals that may be delimited by a number of factors, depending on the latitude allowed, which is typically found in relevant legislations, provided for by the legislation and the practice of the country concerned.⁸⁵⁾ Certain jurisdictions have extensive guidelines that list these circumstances, in accordance with established principles, to provide consistency and the desired or necessary level of punishment, which is of particular value in giving effect to the obligation set forth in paragraph 4 of Article 4 of the Basel Convention that states, “to take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention”.⁸⁶⁾ For instance, in Netherland, when illegal traffic is detected, the Economic Offences Act is applied which the perpetrator is

85) Basel Convention, “Basel Convention: Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes of other Wastes – VI. Sentencing for Illegal Traffic”, 2012, p. 33.

86) *Id.* Approaches that use sentencing guidelines may be especially valuable for cases heard in non-specialist courts, which may see relatively few environmental prosecutions.

generally sentenced to maximum six years' imprisonment and a fine of approximately \$ 80,000.⁸⁷⁾ In Afghanistan, each offence is generally fined \$ 1,000 and the defendant is obliged to pay full prosecution costs which is about \$ 9,000.⁸⁸⁾ In England, if a person illegally export recyclable waste, they are fined a total of approximately \$ 80,000, part of it paid to the plaintiff and part of it paid to the Crown Court.⁸⁹⁾ As such, sentencings of illegal traffic differ based on the deliberation by relevant courts or tribunals.

Theoretically, the enforcement of legislation relevant to plastic waste management is to follow strict environmental control and imposition of penalties by both those who import and export. That is, the Convention requires that the waste shipment may occur only after the exporting country notify the receiving country, and the receiving countries have given consent for the shipment after its thorough monitoring the import and management of plastic wastes. Thus, provided that the exporting country ships waste without a given consent by the receiving countries, strict environmental control and penalties are to be imposed, unless the exporting country does not have sufficient disposal or recycling capacity, disposal and recycling facilities that can manage the waste in an environmentally sound manner, the receiving countries.⁹⁰⁾ However, in certain plastic waste-receiving countries, these crucial policies or laws are either non-existent or very flawed. Even in countries or regions where fines are imposed relevant to plastic wastes through legislation, current penalties are too low to prevent environmental criminals from

87) *Id.* at p. 40.

88) *Id.* at p. 39.

89) *Id.* at p. 38.

90) *See* Basel Convention Article 4. General Obligations.

exporting plastic waste illegally and from efficiently reduce inflows of illegal waste. Additionally, even in this dire situation, it is still not clear what type of legislative measures are proposed for the fight against these organized environmental crimes. Thus, in order to tackle this serious illegal traffic issue, there are three crucial points that must be contemplated and executed immediately.

First, the need of improvement of mandatory and realistic legislations is further required. Legislations coupled with effective mandatory actions including appropriate fine and sanction framework must be further normalized and universalized. Namely it will be crucial to implement stricter legal provisions to limit both hazardous and non-hazardous waste exports and simultaneously make relevant resources and data available to people in legislative process, such as, judges and prosecutors, investigation units and enforcement bodies in order for the victim states to get adequate compensation they deserve, which is one of the ways to resolve the illegal environmental crime efficiently and assuredly as well. Additionally, it will be crucial for plastic waste-receiving countries to establish or amend the relevant environmental laws that are relevant to import/export of waste. There are certain countries that are currently banning the import and export of plastic waste. For example, Senegal bans the import of plastic waste and the export of waste unless the importing country allows the import and has adequate treatment facilities.⁹¹⁾ Next, it is crucial for countries importing plastic waste to implement a detailed review of methods, either incentive-based or self enforced commitment, to induce compliance with domestic and foreign standards relevant to fundraising, capacity-building, and

91) Senegal, Loi, Article 19 – 20, *Journal Officiel De La Republique Du Senegal* (January 8, 2020).

technology transfer, etc. That is, it is important to strengthen the capacities of receiving countries in terms of fundraising for plastic waste awareness among citizens of the impacts due to plastic waste in order to reduce the negative effect by plastic pollution. Additionally, based on the Basel Convention Regional and Coordinating Centres (BCRCs), the importing countries could be trained in technology transfer regarding the management of hazardous and other plastic wastes, capacity building to undertake the task of providing technical assistance at the regional level.⁹²⁾

Lastly, it will be significant for the wealthy and economically productive countries to readily provide innovative and well-organized effective resolutions to tackle the environmental crime. That is, these developed countries should endeavor to make full commitment to abide by the relevant environmental law, and further, fund and share their resources to tackle plastic wastes with the poorest countries and regions in order to realistically prevent the illegal trafficking. These funded and shared effective resources could be availed in the development of innovative technologies and applications that could detect illegal waste dumping or identify potential illegal trafficking within the scope of the developing countries, which could be the major part of helping curb the rates of illegal trafficking, especially the poor regions and rural areas. Unless these immediate changes in the implementation of a globally unified and strict plastics regulations

92) Secretariat of the Basel Convention, "The Basel Convention Regional Centres and Coordinating Centres", available at <https://www.basel.int/Partners/RegionalCentres/Overview/tabid/2334/Default.aspx> (last visited on June 27, 2023), The Basel Convention Regional Centres and Coordinating Centres have been given clear mandates on their core functions and responsibilities. A methodology for the evaluation of their performances was also developed, based on specific criteria, which mandates and guidance aim at ensuring efficient regional delivery of technical assistance in a highly professional manner.

with effective control measures are made, the developing countries, especially in the poor countries and rural regions, with no fault of their own, will remain to be the very victims of illegal trafficking as to plastic waste. Illegal act is an act that needs to be punished, because eventually the illegal act will result in a life or death matter to the affected. Thus, it cannot be emphasized enough for every country, as one of the exporters of plastic waste, to pay specific attention to environmental law implementation and enforcement as to how diligently it is implemented, how intelligently it is enforced where necessary, how it could transparently and better regulate and how it can be further developed to effectively address the remained flaws.

V. Conclusion

In order to fully ameliorate the seriousness of the plastic waste situation, legislations as to plastic waste that are relevant to human rights and environment should contain both safeguards and provisions as to standard of conduct, which is connected to the liability regime. In this sense, the Basel Convention could be deemed to have accomplished a lot and is walking toward the right path. However, as many legislations are, it still has a lot of subjects to deal with due to its ineffective governance. Additionally, there still remains a lot of work that needs to be processed, because in spite of the seriousness of the plastic waste nowadays, there is no actual international binding agreement that primarily aims to reduce the plastic pollution yet. That is, there is no actual international agreement that imposes countries a mandatory duty to reduce plastic waste, and one of the main

grounds that there is yet no agreement that imposes countries a legal duty to reduce plastic wastes will be that majority of the countries are not in cooperation. And one of the main grounds the majority of the countries are not in cooperation is because they consider throwing the plastic wastes far away from its country and from their eyes mean the wastes are in reduction, even though they know and acknowledge that it is not true because they can, even though they know that it is wrong. The world currently has lesser and lesser space to throw away plastic wastes. And, above all, there is no space for illegal plastic wastes. A serious issue to one country will be our problem whether we like it or not, sooner or later. Plastic waste will be one of the worst issues, soon or later, mankind will have to deal with, whether we like it or not. International cooperation by every country is absolutely indispensable for the very environmental justice which every person deserve.

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국문요약

바젤협약 개정안 및 개정 후 지속되는 플라스틱 폐기물의 여파 :
도전과제 및 깨끗한 환경을 위한 미래의 길

이지혜*

국제적으로 거래되는 상품과 같은 플라스틱 폐기물은 지금까지 지속적으로 거래되고 있는 재활용 시장의 일부가 되어 왔으며, 결과적으로 세계에서 가장 낙후된 국가들에게 바라지 않는 환경오염 및 인간의 건강권에 대한 부담을 가중시켜 왔다. 낙후된 국가들은 1980년대 후반부터 대부분의 플라스틱 폐기물이 수출되거나 불법적으로 버려진 아프리카와 동아시아 국가들로 폐기물 관리 인프라가 거의 없는 국가들이다. 이러한 플라스틱 폐기물이 집중적으로 오염되어 빈곤한 지역에 집중되는 것을 막기 위해 “유해폐기물의 국가간 이동 및 그 처리의 통제 관한 (이하 “바젤협약”)”이 제정되었다. 바젤 협약은 국가 간, 특히 선진국에서 개발도상국으로의 유해 폐기물이 이동되는 관행을 통제하기 위해 고안된 국제 조약이다. 이 관행에 대한 분노는 보고된 사건의 수가 증가함에 따라 증가했으며, 키안해 사건을 계기로 전 세계적으로 악명높은 불법 유해 폐기물 투기에 집중적인 관심이 가게 되었다. 바젤 협약은 1970년대와 1980년대를 시작으로 서구 국가들의 빈곤한 국가들에 유해 폐기물을 과도하게 투기하는 관행에 대한 국제적 우려의 응답이자 산물이다. 바젤 협약은 현재까지 기업들에게는 극도로 비우호적인 것으로 간주되어 전 세계 재활용 산업계의 큰 골칫거리로 여겨지고 있다. 그러나 현재 플라스틱 재활용에 관한 다른 전담적이고 집행 가능한 국제법 체제가 없는 상황에, 바젤 협약은 1992년 협약의 성립 이래로 플라스틱 재활용에 대한 다자간 환경 협약의 기초로 자리잡고 있다. 2019년에는 플라스틱 폐기물이 '유해 폐기물' 또는 '특별 고려사항이 요구되어지는 폐기물'로

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관리되는 방향으로 바젤협약의 일부 조항들이 개정되었다. 그러나 일부 국가에서 최악의 환경문제로 지적되고 있는 불법교역, 유해폐기물을 고의적으로 투기하는 행위, 즉 플라스틱 폐기물의 불법수출 및 불법거래행위는 멈추지 않고 행해지고 있는 상황이기 때문에, 관련국 주민들의 건강에 대한 심각한 피해 및 육지와 해양 환경에 심각한 오염은 점점 더 심각해져가고 있다. 이 논문은 바젤 협약 및 그 해결과 관련된 문제를 다루고자 한다. 이 논문은 먼저 2019년에 개정된 협약의 특정 핵심 조항들을 분석할 것이다. 더 나아가 논문은 개정된 협약에 의존하는 것만으로는 충분하지 않으며, 협약이 효과적으로 적용되기 위해서는 보다 엄격한 현실적 규제가 필요하며, 이는 플라스틱 폐기물과 관련된 규제가 거의 없는 최빈국을 보호하는데 집중되어야 함을 비칠 것이다. 이어 논문은 플라스틱 폐기물 불법교역의 심각한 문제들과 실제 관련 사건들을 다루며, 현 플라스틱 위기에 닥친 국가들이 현실적이고 효과적으로 불법교역을 방지할 수 있는 방안에 대해 설명할 것이다. 마지막으로 논문은 해양 환경에 큰 변화를 가져올 수 있는 바젤 협약의 이니셔티브 목적 자체를 성찰하며 마무리지을 것인데, 이는 현재로서는 플라스틱 폐기물로 고통을 받고 있는 세계에서 가장 가난하고 낙후되고 취약한 국가들내 사람들이 보다 나은 삶을 형유하는데 있어 바젤협약은 유일하게 잠재적인 현 촉매제가 될 수 있기 때문이다.



▶ 이지혜

플라스틱 이슈, 바젤협약 개정, 여과, 불법교역, 방지, 해결책 모색