

**Environment, Development and Human Rights in China:  
A Case Study of Foreign Waste Dumping**

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## ***I. Introduction: China's Environmental and Health Crises***

### ***A. Remarkable Achievements***

In 1949, China faced a massive burden of nutritional deficiency and infectious and parasitic diseases. More than half of the population was expected to die from infectious and other non-degenerative diseases before reaching middle age - a pattern still common throughout the developing world. Since then, dramatic and extensive social improvements, including rising incomes, have accompanied China's growth. The average life span has risen from 35 in 1949 to 70 in 1998. Infant mortality rate has dropped from 200 per 1,000 people to 31 per 1,000. Infectious diseases, while still a serious problem in some parts of the country, now claim the lives of well under a half percent of the population each year (China Ministry of Public Health, 1995) .

According to the World Bank, China's achievements in health and life expectancy over the past four decades far exceed what could be expected in view of China's primary stage of economic development. Most remarkable is the decrease in morbidity and mortality rates associated with infectious diseases, which can be attributed to an aggressive central government campaign to improve primary health care and tackle infectious diseases (World Bank, 1997). The campaign aimed to provide the Chinese people with services in family planning, child immunization, improved nutrition and infectious disease control, and access to better education, housing and sanitation.

These improvements have been firmly founded on a broad, publicly financed, disease prevention strategy, coupled with accessible primary health care, particularly for mothers and children. They reveal the capacity of a strong central government to carry out its mandate to bring health to people by wedding the best of traditional methods with modern approaches. However, the current transformation of China's health care system to be more market-oriented is bringing shock waves to people's lives.

### ***B. Emerging Crises***

Social, economic and health improvements have been achieved in China at very high costs, both environmental and human. According to the 1996 State of the Environment Report, 78 percent of China's river sections can no longer be used for drinking purposes; 50 percent of urban groundwater is contaminated; nearly 39 percent of the river sections of the seven major river systems monitored are classified as Grade IV, Grade V or below Grade V surface water standards; and about 38 percent of urban river sections are below Grade V standard, which means that the water cannot even be used for irrigation.

Pollution in China's seven major river systems is worsening, and polluted areas are becoming larger. In addition, lake and reservoir eutrophication has become serious, and coastal water quality has been declining (National Environmental Protection Agency, 1996).

Emissions of residential and industrial waste gas have risen with each passing year and pollution from coal-burning has worsened. In 1995, China's total waste gas emissions stood at 12.33 trillion cubic meters, an increase of 127 percent from 1982, and industrial waste gas accounted for 87 percent of the total. For the long term, there has been a slight decrease of total suspended particulates (TSP) and sulfur dioxide (SO<sub>2</sub>) emissions, but in general, all air pollutant emissions have historically been high and are projected to remain high (ibid). In 1996, average ambient level of TSP in major cities was 309 ug per cubic meters, more than twice the permissible level recommended by the World Health Organization. Some cities suffer from very serious SO<sub>2</sub> pollution, with an average ambient level nationwide at 79 ug per cubic meter.

Due to the increase of automobiles in large cities, nitrous oxide (NOX) emissions from vehicular exhausts have increased rapidly, and in some metropolitan areas, are the top air pollutant. Acid rain is affecting a growing area of China. One recent report found that acid rain affects 40 percent of China's total land area and is especially serious in central, southwest, south and east China. In 1996, the annual average pH level of precipitation in 43 cities was below 5.6 (National Environmental Protection Agency Publishing House, Beijing, China, 1996).

China's industrial solid wastes have also been increasing. In 1996, a total of 660 million tons of solid wastes were produced, 20 million tons more than in 1995 and an increase of 75 percent since 1991. Of the total solid wastes produced, 10 million tons were hazardous. In the same year, the total discharge of industrial solid wastes stood at 16.9 million tons, 1.3 percent of which was hazardous. Due to the lack of treatment capacity, a cumulative total of 6.49 billion tons of solid waste was stockpiled over 51,680 ha of land. In addition, there were nearly 70 million tons of household garbage produced nationwide. Because of the shortage of garbage handling plants, a large amount of garbage was stockpiled in suburbs and has become a major source of pollution (Ibid).

Environmental pollution has been identified by the Chinese government as one of the four leading factors that adversely affect people's health and lead to early deaths. The morbidity and mortality rates from respiratory diseases, digestive system illnesses and cancer have been very high and are still rising in China, especially in areas where problems of air pollution, contaminated drinking water and poor water sanitation are especially serious.

According to the World Resources Report 1994-95, China's death rate of chronic obstructive pulmonary disease (COPD) is 162.6 for every 100,000 people - five times higher than that in the United States. In big cities, an estimated 178,000 Chinese die early every year because of pollutants in excess of standards. In Shenyang, Shanghai and

other major cities, the average blood-lead level of children is approximately 80 percent above what is considered to be dangerous to mental development. Indoor air pollution, primarily from burning coal and biomass for cooking and heating, causes an estimated 111,000 premature deaths each year (World Resources Institute, 1995). According to the World Bank, 7.4 million person-work-days are lost to air pollution each year. Meanwhile, with more reaches of urban rivers failing to meet even the lowest standards for irrigation water, access to safe drinking water in the future is threatened for tens of millions of people.

### ***C. Law and Order***

Recognizing the urgency of these problems, the Chinese government has endorsed a suite of policies to halt contamination of air and water. The success of these policies, which will have direct bearing on public health and environment in China, as well as on the global environment, depends very much on both the government's continued commitment to these policies and the active participation by the whole society.

Strengthening environmental legislation has been identified as a major responsibility of law enforcement authorities in China. Besides two dozen laws on the protection of environment and natural resources, China rewrote its criminal law in March 1997 and opened the door for punishing environmental destroyers as criminal offenders. The confidence of environmental authorities in law enforcement has been strengthened.

With rising incomes and literacy rates, Chinese people have become increasingly aware of the importance of environmental protection. Recent studies show that, as communities become wealthier and better-educated, they tend to push for stronger environmental regulations and enforcement. Such an awareness can be attributed in large part to the increase in media coverage of pollution accidents, which brought pictures of, among other things, the destruction of forests, to people's living rooms. As a result of media coverage, more and more people have realized that they no longer want to breathe dirty air, drink polluted water and eat contaminated foods. It is no wonder that a popular saying in the developed region in eastern China goes like this: house is new, money is enough, but water is foul, and life is short.

### ***D. Foreign Waste Dumping***

The dumping of foreign garbage is a highly charged and controversial issue in China, one that has received widespread and prolonged media coverage. Moreover, a number of more serious popular revolts against environmental degradation, including the series of incidents along the Huaihe River because the people there were deprived of safe drinking water, have never been covered by the official media. Under these circumstances, the Chinese government was often forced to react.

Since the latter half of 1996, China's aggressive campaign against foreign garbage dumping, as well as the public debate over the issue, has taken on new momentum. For the government, daily coverage by the official media on the illegal imports of environment-damaging industrial and residential wastes, unusual in the number of reports and their investigative nature, laid the groundwork for Beijing to stage a high-stakes, mostly political fight against unfair and immoral practices in international trade.

The battle against foreign junk, as the campaign was officially coined, also provided an extraordinary opportunity for the Chinese government to manifest to its people and the rest of the world that Beijing intends to keep its promise over the protection of fundamental human rights in China. More importantly, it provides an opportunity for China to further clarify to the world that its interpretation of human rights does not only differs from the West, but also is highly relevant to Chinese reality.

Through extensive research in both China and the United States, we found that in the case of foreign garbage dumping, China has effectively and with unprecedented reserve used the weapons of law and regulation. In China, relationships, or *guanxi*, are usually the most important currency of business and politics. Although the current battle has not led to increasing xenophobia, Beijing's efforts to explain its human rights record have taken on new, political meaning.

The battle, however, is being waged entirely by the Chinese government and official media. China's emerging non-governmental organizations are nowhere to be found. Despite the fact that foreign waste dumping has significant implications for environmental quality and people's daily lives, the general public has not been involved. The lack of genuine public debate and NGO activism suggest that any solution arrived at by the government —on this as well as other domestic or international environmental issues—will be incomplete.

## ***II. China's Definition of Human Rights***

### ***A. The Concept of Sustainable Development***

Achieving sustainable development is a challenge facing all human society. Ever since World War II, industrialization has brought rapidly accumulating wealth as well as tremendous and unprecedented problems. How to coordinate economic growth with social and environmental goals has been the subject of endless discussion.

It was the World Bank that first developed the concept of "equal opportunity of development". Later, the United Nations Development Program integrated the human factor into this concept and developed the concept of "sustainable human development".

In 1987, when the World Council on Environment and Development presented the concept of sustainable development, it focused on the links between the demands of the current and future generations. The World Resources Institute added another dimension, "human health", to this concept and maintained that along with the enhancement of living standards and the conservation of natural resources, the quality of the environment should be protected and improved. Human rights, under this developed circumstance, shall take on new meaning.

Environmental rights, first coined in the Tokyo Decision in 1970 by the International Symposium on Public Hazard, represents the further extension of development rights, and the prerequisite for the protection of both rights is international cooperation.

### ***B. No Development, No Human Rights***

Owing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights.

China has always maintained that the issue of human rights falls by and large within the sovereignty of each country. However, it was not until 1991 that the Chinese government, under consistent Western pressure, offered its first clear, official interpretation of Chinese human rights concepts with the State Council's publication of China's White Paper on Human Rights. The book, however, was rich with China's human rights achievements and relatively weak in theoretical interpretation. In the years afterwards, the government left the work to scholars.

To the Chinese government, basic human rights can be divided into four parts in order of significance: rights to subsistence, rights to development, rights to equality, and rights to freedom, in addition to political rights, religious freedom, economic freedom, and the rights to education and culture. As compared with Western emphasis on the responsibility of government to protect freedom of speech as a prominent aspect of human rights, the Chinese government, quoting the Universal Declaration of Human Rights, interprets human rights as, first of all, the guarantee of basic food and clothing.

China regards the right to subsistence as the most important of all human rights without which other rights are out of the question. Moreover, without national independence, there would be no guarantee for people's lives. The problem of food and clothing having been solved, the people have been guaranteed with the basic right to subsistence (Information Office of the State Council of the People's Republic of China, 1991) To China, "the rights to subsistence and the rights to development are the most fundamental human rights, and this is particularly true for developing countries" (People's Daily, February 7, 1992).

Han Peide, chief author of *Human Rights: Theory and Practice*, a key government-sponsored research project which runs 1158 pages and was co-written by more than 50 researchers, argued that Marxist human rights theory, which China sticks to, differs with capitalistic human rights theory. Marxist theory stresses the protection of collective rights as well as individual rights and suggests that rights to subsistence and development are the most important basic human rights. Human rights conditions in a particular country, Han notes, should not be considered separately from that country's history and national condition. To many developing countries, he adds, there would be no other rights for its people to enjoy if there were no national independence or sovereignty or no rights to subsistence or development. (Peide, 1995).

### ***C. Environmental Rights and National Sovereignty***

According to Xie Zhaoguo, author of *On Environmental Rights*, China's interpretation of environmental rights consists of three parts: 1) the right to ecological benefits, which means there should be no discrimination, intervention or exploitation; 2) the rights to economic and financial benefits, which come with the ownership of natural resources; and 3) the rights of a nation or a people to control its environment, which could be interpreted as national sovereignty to environment and independent development of natural resources.

Environmental rights, Xie says, could be in the form of a country or a people to bring certain natural elements under control. It means, therefore, a nation's or a people's sovereignty over its environment, which include the rights to independent land development, utilization and management, the rights to protect the nation's own environment and its people from pollution and other forms of destruction from the outside, the rights to enjoy the benefits of commonly-owned environment, natural resources and heritage in the world, and the rights to participate in international cooperation for environmental protection (Zhaoguo, 1997).

Chinese scholars also say that the reason that they are trying to define the concept of environmental rights, a relatively new concept in China, is the limited nature of natural resources. Environmental rights, these scholars say, is a reflection of the struggle of a country or a region to protect their rights to enjoy the benefits of the nature. Setting up a guarantee system, meanwhile, is crucial to the realization of development rights of the developing countries.

The guarantee mechanism should be based on two of the principles. The first is an equal rights principle, or one country, one vote, which means that every country enjoys equal rights to choose the model of its development free of external interference and pressure. The second is the permanent sovereignty principle, which means that every country has permanent sovereignty over the exploitation and utilization of its natural resources. Foreign development of the host country's natural resources must have permission of that country (Ibid).

### ***III. Foreign Waste Dumping: A Case Study***

#### ***A. William Ping Chen Decision***

On January 13, 1997, after a month-long trial covered gavel-to-gavel by the official media and attended by United States consulate representatives, Shanghai First Intermediate People's Court sentenced William Ping Chen, chairman of Unity Paper Co. Lt., a China-U.S. joint venture, to 10 years in prison for dumping foreign garbage in China. Chen, 56 and by that time an American citizen, was also slapped with a fine of RMB 500,000 (equivalent to approximately \$70,000 U.S.) and was ordered to leave the country for good. A highly publicized court drama that placed Beijing in direct diplomatic confrontation against Washington and subjected China's law enforcement to unprecedented credibility tests, finally came to its conclusion.

According to court documents, from July to December of 1996, Chen used the name of two fodder trade companies in Zhejiang and Anhui Provinces to import into Shanghai's Wusong harbor 238 tons of American residential and hospital garbage. The 16 containers of garbage, which originated from the west coast of the United States, as local environmental agency and Shanghai Customs officials discovered, did not hold waste or mixed paper, as the defendant alleged, but contained highly hazardous wastes whose imports were banned by Chinese law. Chen, the judge proclaimed, lied about the nature of imports, attempted to evade customs inspections, caused serious damage to the Chinese environment, and put Chinese people's health in danger. Those who commit crimes like this, according to the revised Criminal Law that went into effect days before the trial, could be punished for more than 10 years in prison.

The case of Chen, the first person to be tried as a criminal and to receive such a sentence since China's law against waste import went into effect in April 1996, sent a clear signal to the outside world that China had finally gotten serious about ending foreign waste dumping. In the days before and after Chen's trial, as the drama against foreign garbage played out in Chinese courts and throughout the unusually critical official media, the country's law enforcement records were being examined more closely than ever. The government's interpretation of human rights took on new, if not entirely political, meanings.

#### ***B. Waste Imports: Sources and Policies***

As a major consumer of paper, China has a long history of importing waste paper from the West. Such imports caused few problems, let alone public outcry, for years. In 1993, some 1,300 tons of chemical wastes from South Korea, labeled as fuel oil, were discovered by customs officials in Nanjing, a port city near the mouth of the Yangtze River, few newspapers covered it. The government, hoping that it was an isolated incident, did little about it. Incidents such as the import of another 6,440 barrels of South



Korean chemical wastes from dozens of factories - all labeled on Customs forms as engine oil began to garner attention.

But things got worse. In 1995 and 1996, an average of two garbage dumping incidents were reported by the media per week. In April 1996, when some 600 tons of foul-smelling residential waste were discovered in a suburb of Beijing, merely a dozen miles from Tiananmen Square, Chinese bureaucrats were put on full alert.

According to the annual statistics reports of Chinese customs from 1990 to 1995, China imported a total of 25 million tons of wastes, with total import value at 6.68 billion dollars. In 1995 alone, China imported 6.52 million tons of wastes from abroad, worth 1.7 billion dollars and equal to 1.31 percent of China's total imports during the same period. The total amount of imported waste copper and its value shot up by 53.6 percent and 111.9 percent respectively from 1990 to 1995. The imports of other wastes such as oil residue, used plastics, waste paper and waste ropes and cables all increased dramatically.

**Table 1**  
***Import of Foreign Waste 1990-95***

Year	Value of Total Imports (\$10,000)	Waste Imports (Ton)	Value of Waste Imports (\$10,000)	Import of Waste as % of Total Imports
1990	5,334,500	991,542	25,999	.49
1991	7,379,100	2,114,410	60,610	.59
1992	8,058,500	5,715,823	134,326	1.67
1993	10,395,900	8,285,361	157,448	1.50
1994	11,561,400	6,668,963	136,067	1.18
1995	13,208,354	6,523,505	172,000	1.31

*Source: 1990 - 1995 China Customs Annual Statistical Report*

Of these wastes, some 50 percent came from member countries of the Organization of Economic Cooperation and Development (OECD), 16 percent came from Hong Kong, Taiwan, South Korea, Singapore and Macau, and another 34 percent came from other regions, mostly Eastern Europe. In 1994, the United States was responsible for 21 percent of China's imported wastes, Japan for 18 percent, Hong Kong and Russia for 11 percent respectively, and Taiwan, German, South Korea, Singapore, Spain, Britain, among other countries and regions, for the rest. There have been significant transshipment of wastes imported into China from developed countries via Hong Kong and Macau.

**Table 2*****Sources of Imported Wastes 1993 - 1994***

Country	1993		1994	
	Quantity (Tons) (% of Total)	Value (\$) (% of Total)	Quantity (Tons) (% of Total)	Value (\$) (% of Total)
OECD	4,630,000 (55.9)	8,570,000 (54.5)	3,360,000 (50.4)	6,560,000 (48.2)
NICs	1,570,000 (19.0)	2,640,000 (16.7)	1,160,000 (17.4)	2,070,000 (15.2)
Hong Kong	890,000 (10.7)	1,180,000 (7.5)	760,000 (11.5)	1,060,000 (7.8)
Singapore	110,000 (1.3)	650,000 (4.1)	100,000 (1.6)	170,000 (1.3)
S. Korea	70,000 (0.8)	210,000 (1.4)	110,000 (1.7)	260,000 (1.9)
Taiwan	100,000 (1.2)	430,000 (2.8)	140,000 (2.1)	520,000 (3.8)
Macao	40,000 (0.4)	30,000 (0.2)	30,000 (0.4)	30,000 (0.2)
Russia	690,000 (8.3)	1,250,000 (7.9)	750,000 (11.3)	1,260,000 (9.3)

*Source: 1993-1994 China Customs Annual Statistics Reports*

Some foreign enterprises in China have been directly involved in waste import, processing and disposal. In 1992, 195 foreign-funded enterprises in China were involved in waste processing with a total investment of 150 million dollars, an increase of 178 percent over the previous year. Of these enterprises, Hualong Plastics Chemical Industrial Co. Ltd., of Anhua, Zhejiang Province, was found in May 1994 to have imported 50

containers, or 1,000 tons of waste plastics from the European Union; the company was also found responsible for polluting some 20 acres of farmland with 30,000 tons of residential garbage. Chen's (USA) Tongtai International Co. imported approximately 150 truckloads of waste metals, of which 95 percent came from the United States. Tongtai now owns 10 processing factories across China.

In 1996 alone, a total of 4,100 tons of garbage and hazardous wastes were smuggled into China. Most were caught in Guangdong Province whose access to Hong Kong made it a paradise for the trade. In May, Hong Kong's Fuxun Transport Co., trying to deliver 20 tons of what the company clarified was PE film paper to a plastics factory in Dongguan County, was stopped by customs officials who became suspicious at the smell seeping from its containers. It turned out to be the last of 138 shipments of residential garbage coming out of the Netherlands. Fuxun was fined RMB 200,000 and ordered to take back the garbage, old and new. In July, five boats filled with used plastics, underwear, diapers and clothes, or 720 tons in total, were caught at the harbor of Shantou and were later ordered to return to Hong Kong, where they originated. In November, another five boats carrying used tires and rotten plastics were caught running in the Pearl River, and the Chinese buyers, who contacted the brokers only through cellular phones, were nowhere to be found.

In pursuing economic development, China's strategy of rapid industrialization has encouraged growth in many industrial sectors that typically generate hazardous and industrial waste, including chemicals, mining, metallurgy, electroplating, steel production, printing, and dying. NEPA Administrator Xie Zhenhua's recent testimony to the Standing Committee of the National People's Congress (NPC) during a review of the solid waste law suggests that the production of industrial and hazardous waste has far exceeded the country's capacity to treat, store, and dispose of it safely. Due to limited technology, funding, and administrative capacity, the handling and disposal of solid waste in China is still in the initial stage. Most procedures do not meet environmental protection standards. Ineffective waste management practices prevail, resulting in discharges of industrial and hazardous waste, contamination of land, air, and water resources, and foregone cost-saving recycling opportunities. Xie estimated that solid waste pollution costs China more than RMB 90 billion (\$10.8 billion) annually (China Business Review, 1996).

China's Agenda 21 plan, approved by the State Council in the wake of the 1992 UN conference, estimated that as much as 70 percent of the industrial waste generated annually in China might be hazardous, and warned that 5.9 billion tonnes of industrial waste occupying 540 million cubic meters have been improperly stored or discarded in recent years. The majority of the waste - which includes hexavalent chromium and polychlorinated biphenyls (PCBs) - is piled on unprotected areas where, according to the Agenda 21 report, it leaches into the water supply, endangering the health of the surrounding population.

Liu Peizhe, director general of the Administrative Center for China's Agenda 21, maintains that 620 million tonnes of industrial solid waste is produced annually, of which about five percent -- 30 million tonnes - is hazardous. In a 1994 presentation at a Superfund conference in Washington, DC, Liu estimated that annual production of industrial solid wastes in China has grown by 2.6 percent since 1980, and that farmland polluted by solid wastes now exceeds 20,000 ha nationwide. In one particularly notorious incident recounted by Liu, a factory in northeast China producing chromium salts piled up 200,000 tonnes of chromium-contaminated waste, resulting in such serious groundwater pollution that 1,800 wells in nine villages had to be abandoned (Ibid).

China's National Import Inspection Administration reports that during the first half of 1997, ninety-nine percent of the 3.6 million tons of imported goods met national standards for imported goods (China News Service Bulletin, 1997). According to the official China Environment News, Beijing's means of solving the issue of foreign garbage dumping consisted of "a combination of legislative, administrative, economic and diplomatic means" (China Environmental News, 1997).

To Beijing, waste dumping is a very emotional issue because it reflects on China's national pride and economic interests. The government formulated its solutions, therefore, by mixing law and order with economics and politics. By strengthening the enforcement of laws and regulations, Beijing tried to punish Chinese and American brokers and to send a message to industry that China is not a dumping ground. With debate on human rights and national sovereignty, the government hopes to bring public outcry under control, and to reconfirm its different interpretations of human rights to its people and the world.

The central government in Beijing appears eager to claim credit for what might have been only a limited success. The government may also have tried to inflate the statistics for political gain. The year 1996 was, in fact, the worst year in terms of foreign garbage dumping in China.

### ***C. Waste Imports: Laws and Regulations***

Foreign waste dumping, which was spotted as early as 1994, has begun to garner much attention in China. Having learned the hard lesson that solid and hazardous waste problems are not the exclusive concern of developed countries, Chinese authorities are beginning to address waste management policies, particularly where hazardous wastes are concerned.

Beijing now has a few legislative weapons at hand to fight waste dumping including the Basel Convention and its new provision on banning toxic waste exports, the Law on Preventing and Controlling Environmental Pollution Caused by Solid Waste, moreover

the newly revised Criminal Law for the first time punishes those responsible for waste dumping in China with prison sentences.

Beijing signed the Basel Convention in 1989 and in 1991, the Chinese People's Congress approved it. However, it was not until October 1995, after more than a decade of debate and more than 20 drafts, that the Law on Preventing and Controlling Environmental Pollution Caused by Solid Waste was promulgated on April, 1, 1996, together with Temporary Regulations on Environmental Management of Waste Import.

China's legislative efforts are notorious for falling behind the country's social and economic development. However, recent laws against foreign waste dumping have been used effectively by the Government as a powerful weapon in putting illegal importers and smugglers to the test. In these efforts, the State Environmental Protection Administration (SEPA) and the Customs Inspection Authority have been able to mobilize local regimes to act together.

China's Law on Preventing and Controlling Environmental Pollution Caused by Solid Wastes was the first milestone in China's fight against foreign waste dumping. It bans the dumping, disposing and handling of solid wastes imported from outside Chinese border. It also bans the import of certain solid wastes for use as raw materials and restricts the import of certain allowable solid wastes that can be used as raw materials.

The effectiveness of this law has since been strengthened by several additional regulations related to the import of solid wastes. These regulations were promulgated, together or separately, by SEPA, the Ministry of Foreign Economic Cooperation and Trade, the National Administration of Industry and Commerce, and the National Commodity Inspection Bureau.

However, it was not until 1996, when the revised Criminal Law came into effect, that foreign waste dumping was constituted a crime punishable with prison sentences. According to the new Criminal Law, people whose acts result in environmental destruction could be punished with a new crime category called "crimes damaging environmental resources protection". The law spells out 12 subcategories of crimes, eight of which, according to legal expert Ying Xiangchao, are new in light of the development of market economy (Xiaochao, 1997).

The Law's Item 339, in particular, states that dumping, disposing and handling of solid wastes coming from outside Chinese borders in violation of national regulations should be punished with prison sentences of up to 10 years, plus heavy fines. Those responsible for the acts resulting in serious damage to public property, people's health and environmental protection should serve sentences of more than 10 years.

#### ***D. Basel Convention and Pinggu Incident***

China realizes that the final solution to transborder waste dumping must come from international cooperation. China's National Import Inspection Administration, as the semi-official China News Service reported in October, has recently established contract relationships with as many as eight foreign port authorities in order to ensure that goods for shipments to China undergo required inspections before they are put on the ships (China News Service, 1997).

Following a spate of highly-publicized incidents involving alleged dumping of foreign garbage into China under the guise of scrap imports intended for industrial use, in mid-June, 1996, the State Council, China's highest government organ, ordered environmental authorities to stop issuing approvals for imports of all scrap and waste materials. On July 26, 1996, SEPA and four other agencies jointly issued Supplemental Regulations to the Provisional Regulations for Environmental Management of Scrap Imports (Adams, 1997). The document adds 12 new regulations to the import process, in addition to the China's first solid waste law that took effect on April 1, 1996, which contained regulations governing the import of scrap and waste materials.

The case of William Chen mentioned above represented the first real efforts by the Chinese Government to use the law as a weapon to fight against illegal foreign waste dumping and to punish the persons responsible. Another foreign waste dumping case, in Beijing's suburb of Pinggu County, could shed some lights on how Chinese government has been trying to use international agreements like the Basel Convention, in addition to its own efforts in law enforcement, to protect China's national interests.

In May 1997, it was discovered that Beijing Zhiqiang Caoxian Co. Ltd., a China-Australia joint venture, had dumped 29 containers or 639 tons of what was labeled as waste paper in Beijing's suburb of Pinggu County in May 1997. Zhiqiang Co., knowing that not all of them were waste papers, failed to file a report. SEPA and the Beijing Environmental Monitoring Agency conducted field sample inspections over the waste that originated from Long Beach, California and was transported via China's port city of Qingdao. They found that less than 10 percent contained waste paper and the remainder was rest room garbage mixed with hospital wastes such as needles, drug bottles, and rubber gloves. Some of the waste had gone rotten, emitting foul odors and containing live worms. The site was sealed and the garbage was later returned.

Speaking to the press, officials of SEPA and eight other government departments including the Foreign Ministry and the Supreme Court, stressed that on top of the 47 kinds of wastes prohibited from exporting by the Basel Convention was medical wastes and that was why Zhiqiang's import represented a serious violation of international

convention. On May 13, 1997, SEPA filed a complaint to the Secretariat of the Basel Convention, alleging that it constituted a violation of China's national interests.

However, China's attitude towards the Basel Convention has been mixed. When 23 countries first signed the Basel Convention in 1989, it definitely did not ban the international shipment of wastes; instead it merely required that waste exporters must receive consent from the receiving country. Since the U.S. already had laws on the books requiring waste exporters to receive permission from the recipient country, Basel did not establish much that was new. However, China, one of the first to sign the convention, stressed that the revised Basel Convention of September 22, 1995, which contained provisions banning the export of toxic wastes from developed countries to developing countries, could be used as an effective international weapon to fight against hazardous waste dumping in China. China also supported the movement to put out a list of hazardous wastes whose exports should be banned, and before the list was finally approved in 1997, worked to drum up support for it.

### ***E. Opportunity to Interpret Human Rights***

The issue of human rights has always been sensitive in China. While Western countries have been trying to evaluate China's human rights record with their own standards, China has been rather passive in its response, arguing that given the universal principle of human rights in the world, the actual contents and emphasis of human rights can differ from country to country in view of their economic and political development. The Western countries interpret this as China's excuse to ignore basic human rights as freedom for the speech while stressing the need to feed and clothe its 1.3 billion people.

Foreign garbage dumping, however, gave the Chinese government an important opportunity to clarify its human rights interpretations in front of its own people and the world at large. The Chinese government seized the opportunity not only to claim the high moral ground, but, the most noticeably, point out that dumping garbage in the developing countries also constitute human rights violations, and in doing so, Beijing points it figure at Washington and other Western countries.

Despite all these, China has recognized that the increasing amount of industrial and residential wastes have posed great pressure to the economies of the developed countries. From 1974 to the end of the 1980s, global hazardous wastes increased from five million tons to 340 million tons annually, nearly 90 percent of which are in OECD countries. On the other hand, the cost of waste processing has also shot up, and now the cost of every ton of wastes is as high as 2,000 dollars. Exporting wastes to other countries seemed to be an easy way out. Exporters, in the name of recycling wastes and increasing the revenue of the developing countries, have been successful in exporting more and more wastes to these countries. (Youfu, 1997)

China disagrees with the view of the proponents of exporting wastes from developed countries to developing countries who argue that such trade benefits the latter. Proponents argue that imported wastes are inexpensive, some are entirely free or even enjoy subsidies from the government. Because some of these imports can be used as industrial raw materials, they are conducive to economic development. Moreover, some of these wastes are renewable or recyclable. Chinese scholars argue, however, that wastes imports are penny wise and pound foolish for the developing countries. Their potential destruction to the developing countries, in terms of economic costs or ecological destruction, could hardly be overstated.

To the Chinese government, human rights have always been part of international politics. The current international battle over human rights, wrote human rights scholar Xia Guang, is the hot spot in today's world politics. Some Western countries have repeatedly tried to tell developing countries what these have countries have done wrong in terms of human rights. These Western countries, in their attempt to give monopolistic interpretations to human rights, are in fact trying to control the other, more realistic rights of the developing countries.

The most noticeable phenomenon emerging from the three-year-old drama on foreign waste dumping is China's drive to claim its human rights record and its development of a human rights concept with clear Chinese characteristics.

Beijing's presumed intention could be clearly detected in the official media. An unidentified official from Shandong's Import Inspection Bureau, which discovered problems similar to those in Shanghai, was pointedly quoted by the official Xinhua News Agency in May 1996 as saying that the United States likes to use the excuse of human rights to attack other countries, but tries to restrict the export of high-tech products. Why then does it try to overlook the issue of exporting solid wastes? Why has the United States not acted to restrict the transshipment of its garbage? (Xinhua News Service, 1996)

A lengthy investigative report in the May 1996 issue of the bimonthly Green Leaves, a NEPA publication, concluded, when China is doing its best to bring pollution under control, a few Western nations, the United States in particular, have been trying to export so much toxic waste to China, and treat us as their dumping backyard. Chinese people could not help but be indignant at this criminal act. (Haiqiu, 1996, p9)

To the Chinese government, the most salient way to talk about human rights in China is to regard it as an issue of national sovereignty, and even nationalism. In an article published on China Environment News on April 1, 1997, Wang Yangzu, deputy administrator of SEPA, calls renewed attention to the implementation of China's law on the controlling of solid wastes. The transshipment into China of foreign garbage by the developed countries, Wang writes, has not only put China's environment into serious danger, but has also seriously threatened China's national sovereignty and dignity. He says, in our current battle against foreign garbage, justice is on our side. (Yangzu, 1997)



## **V. *The Role of NGOS in China***

### **A. *An Emerging Civil Society***

China's economic reforms have created opportunities for Chinese people at various levels, but at the same time, also exacerbated many of China's increasingly obvious social challenges, including environmental challenges. The Chinese government has begun to recognize the deficiencies of the old centrally planned system and realize that its capacity to solve social and environmental problems is limited and that the political structures set up to manage all sorts of social problems are weak. The government's efforts to seek alternatives to address these problems have led gradually to the emergence of social or non-governmental organizations.

However, non-governmental organizations in China are tied more closely to the government than in many other societies (Knup, 1996). Chinese government officials describe relationships with NGOs as collaborative. Chinese NGO members feel compelled to present themselves as supportive of the postulated social consensus rather than antagonistic to central government policies (Raab, 1996). The surprising conclusion is that the degree of autonomy of an NGO depends to a great extent on the strength of its ties to influential members of the government. (Ibid) Government trust has to be bought with a certain degree of restraint in NGO activism. Therefore, Chinese social organizations should be distinguished from Western-style NGOs, and their role and modus operandi can cause confusion if viewed through a predominantly Western lens.

Many social groups seem to have been constituted by and for state employees to carry out activities that do not exactly fit into but complement their ordinary work. They do not necessarily host any ambitions to evolve into independent bodies, but may in the opposite be transient arrangements, to be dismantled once specific tasks have been performed.

In terms of environmental NGOs, one word to describe them is fledgling. These NGOs are fairly new and are mainly trying to gain an understanding of SEPA policies. (Woodrow Wilson Center, 1997) These NGOs could be divided into three kinds: government-organized, or quasi-governmental NGOs, the least autonomous social organizations that are initiated from the top down and established by state agencies or well-known Chinese leaders; individual organized NGOs, which are far more autonomous, more grass-root in nature and whose founders have informal relationships with the government; and voluntary organizations, which are not registered but are the most autonomous organization of all social groups.

Despite their general lack of autonomy, the roles of the emerging NGOs should not be ignored. The clear advantage of government-organized NGOs, like the China Environmental Protection Foundation, the China Society of Environmental Sciences and the National Natural Science Foundation, is their ability to draw together scholars and officials from a wide range of institutions that normally find it difficult to interact in China's highly vertical bureaucratic structure. Viewed in terms of what is currently needed at this stage of China's social development, and seen as growing out of a particular economic, social, and political context, these flaws can be seen as assets, or at the very least as evidence of growing pains. Perhaps the most important achievement of these organizations is that they are changing, in incremental ways, the manner in which average citizens interact with each other and with the state (Knup, 1996).

## ***B. Foreign NGOs in China***

The work of foreign NGOs in China started just a few years ago. With independent funding coming from overseas, foreign NGOs, including environmental NGOs, have been viewed with great interest and some suspicion by the Chinese government.

Chinese social organizations have provided new opportunities for international development cooperation, attracting the kind of support, which would be awkward or improper for government organizations to accept. It has been suggested that when working with China, however, it is important for the Western countries to know exactly what they want out of the relationships but be prepared to engage on a level that the Chinese feel is important to them. This holds true for NGOs as well. The role of the NGO in China is somewhat unclear. One purpose of NGOs is to initiate and facilitate change, yet this is a new approach for the Chinese culture. It is therefore important for foreign NGOs to proceed cautiously in China, and to work with - not against - the Chinese.

Meanwhile, international assistance can play a crucial role especially in the first phase of NGO life. Support to organizational development through fruitful international exchanges is of particular importance. Increased communication between overseas donors working or planning to work with Chinese NGOs may help to make the specific characteristics of Chinese NGOs more widely known, so that development projects can build on existing group rather than introduce artificial structures.

## ***V. Conclusions and Recommendations***

Judging from press reports and official comments, China has rarely been as open on controversial issues as it has been on the issue of foreign garbage dumping. The reasons are clear: foreign garbage dumping is an issue about Chinese sovereignty, and it is easier for the government, non-governmental organizations and people from all walks of life to find common ground on an issue that puts China against foreign countries than one which

pits Chinese against Chinese. Although law enforcement efforts have always lagged, on the issue of foreign garbage dumping, the National People's Congress, the State Environmental Protection Administration, the State Council were relatively swift in their actions in cracking down on such unfair trade practices and in pushing the individuals responsible for their crimes.

From the time foreign garbage dumping in China was first reported by the country's press, to the end of 1997 when the government has claimed victory in their fight against the imports of foreign wastes, no voices of NGOs, either from within China or from the outside, had been heard. As with other issues, the capacity of the Chinese government to do all is limited, and its efficiency in doing so is low. There are opportunities for NGOs, both Chinese and international, to play a role.

## **1. Engage the government**

Foreign garbage dumping is an issue that the Chinese government is strongly against. Efforts to endorse the government stand on the issue and facilitate a solution could easily have won the appreciation of the government. However, NGOs missed this important opportunity.

On the basis of working with, not against the government, NGOs should try their best to identify key issues that could easily win the endorsement of the government, but are also very important to China's environment and development. Such efforts on the part of NGOs should not be regarded as catering to the needs of the Chinese government but should be regarded as a results-oriented strategy.

## **2. Work internationally**

The Chinese government is very open with its environmental problems. One reason for such openness is China's dire need for foreign investment and expertise in helping to ease China's environmental woes. Foreign garbage dumping is an issue that the Chinese government is not familiar with and needs international cooperation to reach a solution.

The most important area for foreign NGOs to work in is to facilitate the Chinese government's international cooperation efforts in environment and development. A key issue for China's international cooperation is lack of funds. In helping to raise necessary funds, international NGOs can help exert international influence and pressure to move China to adopt international environmental standards and to sign international environmental treaties, such as climate change.

### **3. Understand China's environmental decision-making process**

A key headache of international organizations and companies working in China is the confusing and often complex power distribution and decision making processes within the government. Opening the Chinese government to the world is the prerequisite for international cooperation in environment and development.

NGOs who work consistently with China could also help the world to better understand and influence the operations, structures and decision-making process of Chinese government. This might not lead to immediate results but long-term benefit to China and the world will prove to be significant.

### **4. Bring foreign pressure to bear**

A key conclusion from China's international performance in the past two decades is that pressure from the international community works, especially in relation to improvements in China's environmental protection. China wants to improve its reputation but is moving very slowly. Tacit pressure from the outside is the key.

Pressure on the Chinese government to conform more quickly with international standards in environment and development is now deemed as necessary as ever. This should largely be the job of international NGOs as China's central government restricts domestic NGOs in their funding as well as political outreach efforts.

### **5. Work with counterparts in China**

The slow development of domestic NGOs in China is rooted primarily in political and economic structures. Chinese NGO's unfamiliarity and lack of understanding of basic operational principles and process has also contributed to its slow growth and ineffectiveness. A helping hand from abroad means a lot.

For the international NGOs, more time and effort should be spent in cooperating and helping with the development of China's domestic NGOs, in terms of registration, organizational structure, looking for sources of financing, and independent planning of activities.

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