



Ecocide: Developing a View from The Hague - The Legal Capital of the World

5 November 2012

Summary Report

Institute for Environmental Security (IES)
Anna Paulownastraat 103, 2518 BC The Hague

www.envirosecurity.org/ecocide/nov2012/workshop.php

ECOCIDE: Developing a View from The Hague, The Legal Capital of the World
Monday, 5th November 2012, The Hague

Wouter Veening

Chairman/president Institute for Environmental Security

Wouter Veening welcomed all participants. He, his colleagues from the Institute and co-organiser, Pauline Verheij, from the consultancy Ecojust, were thrilled that so many of the people he contacted could join!

The workshop is meant to be a first exchange on the issue of ecocide from the perspective of The Hague, “Legal Capital of the World”. The discussion will be informal and according to the Chatham House Rule. For the organizers, the most important objective of the meeting is to assess whether it would be useful to organise a more formal and larger scale follow-up conference on the subject in The Hague in the coming year.

The workshop will be roughly divided into two parts: in the morning, presentations will be given on the definition and forms of ecocide and in the afternoon, discussions on how “The Hague” should take up the issue, in an open exchange with all participants.

It was then Wouter’s great pleasure and privilege to introduce Ms. Polly Higgins, internationally well-known, forceful speaker and advocate on the topic of ecocide as an international crime against peace, as the first speaker.

Polly Higgins

Presentation Topic: Eradicating Ecocide

Ecocide, defined as “[t]he extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished” is the “missing 5th Crime Against Peace”, the first four being Crimes against Humanity, Genocide, War Crimes and Crimes of Aggression, as recognised in the Statute of Rome of the International Criminal Court (ICC).

As ecocide is detrimental to the peace and well-being of all life (humanity and nature, now and in the future), it is a moral wrong and therefore also a criminal wrong.

It results from resource depletion and pollution caused by mining, fossil fuel extraction (including fracking to get natural gas out of the subterranean rock layers and oil spills), deforestation and by conflict and war.

Prevention of ecocide requires an industry that does not look at the environment as an inert thing, governed by property law and to produce monetary value commodities, but as a living being with intrinsic value, to which we all have responsibility and which should be governed by Trusteeship Law.

It is Polly’s strong wish to end ecocide by 2020 by having it formally recognized as the 5th crime against peace and by engaging visionary business leaders who will realize that there was no economic collapse after the prohibition of slavery neither will there be economic collapse if ecosystems are seen and treated as essential for the well-being of all life.

(N.B.: see also Polly’s PowerPoint, attached to this summary report, and of course her full argumentations as developed in her two books: ERADICATING ECOCIDE (Exposing the corporate and political practices destroying the planet and proposing the laws needed to eradicate ecocide), and EARTH IS OUR BUSINESS (Changing the rules of the game) See www.eradicatingecocide.com).

Pauline Verheij

Ecojust

Presentation Topic: Transnational Wildlife Crime: The case for creating an international judicial process

Pauline presented several shocking examples of the increase in transnational wildlife crime.

2011 has been the *Annus Horribilis* for African Elephants. After the 1989 ivory ban by CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) elephants were thriving, but when in 2008 a one-off ivory sale was agreed a massacre ensued and now illegal ivory trade continues to grow. Demand is from Asia to produce ivory handicraft.¹

¹ On 11 December 2012 a record 24 tonnes of ivory shipment from Africa was seized in Malaysia: <http://www.trust.org/alertnet/multimedia/pictures/detail.dot?mediaNode=115ef05c-336c-4d76-90de-1116b671ec24>; <http://thestar.com.my/news/story.asp?file=/2012/12/11/nation/20121211191659&sec=nation>; <http://news.malaysia.msn.com/regional/malaysian-customs-seize-record-24-tonnes-of-ivory>.

While in 2007, 13 African rhinos were killed, in 2012 so far this has been 500. The value of rhino horn is now US\$ 60,000 per kilogram.

There are around 3,200 tigers left in the wild and at least 100 are killed for trade each year, with the illegal trade increasing in 2012.

Both demand for rhino horn and tiger bone comes from traditional medicine markets in Asia.

Organised crime is behind it and it is war in the African parks. Fraud, corruption, violence, money laundering, funding of terrorist movements/fueling armed conflicts and connections with other forms of crime are associated with the transnational wildlife crime.

There are impacts on species, ecosystems, human and animal health, revenue loss (tourism).

Lack of political will, capacity, international collaboration and information exchange and corruption are why so far we have failed to tackle this form of environmental crime.

There are some noteworthy developments, however:

- INTERPOL and the UNODC (UN Office on Drugs and Crime) are stepping up their activities
- The UN General Assembly in September 2012 for the first time discussed wildlife poaching and trafficking
- The Asia-Pacific Economic Cooperation (APEC) published a Declaration on wildlife trafficking in September 2012
- The UN Convention against transnational organised crime was adopted in October 2012²
- In April 2013 the UN Commission on crime prevention and criminal justice will discuss the issue.

An international judicial process based on global jurisdiction is needed because national systems are “inadequate and/or unwilling” to deal with this international crime, and “kingpins” have impunity in national courts. Therefore it is relevant to discuss a role of the International Criminal Court.

In the meantime interventions are changing consumer behavior, raising the profile of wildlife crime, tackling corruption and

strengthening national criminal justice systems remain vital.

(For further details see attached Pauline’s PowerPoint).

Julian Newman

Environmental Investigation Agency (EIA)

Julian presented the case of the illegal trade in ozone-depleting substances (ODS), a subject on which EIA (established in 1984 with offices in London and Washington DC) has been working for many years, together with the subjects of illegal logging & trade and illegal trade in endangered species..

While production and trade in ODS is controlled by the Montreal Protocol, hailed as one of the most successful environmental agreements, illegal trade in ODS and alternatives, some of which, however are also potent greenhouse gases (GHGs), emerged in the mid-1990s and continues to be a problem. The chemicals are used in refrigerators and air-conditioners.

Illegal trade in the phased-out CFCs (Chlorofluorocarbons) is declining, but in HCFCs (Hydrochlorofluorocarbons) is increasing. Still, in 2006 15,000 tons of CFCs were smuggled into developing countries. The tricks are false-labelling, misdeclaration at customs, using complex trade routes with transit countries, middle-men and middle-companies. Main source (and producer) country is China and main destinations are the US (with Dominican Republic as transit), Russia, South East Asia and the Middle East. Large profits are made: Cost in China \$ 3.5/kg, US\$ 22!

As production of CFCs in China has ceased in 2008, trade proceeds from stockpiles with “recycled” CFCs (see PowerPoint for the very complex trade route between China and Russia).

The threat of illegal trade in HCFCs, where there are different phase-out schedules such as the 2010 EU ban, with other countries freezing their usage of HCFCs in 2013, is increasing. See cases of the Kroy Corporation in Florida, which imported 418 tonnes of HCFCs from China (via Dominican Republic) between 2007 and 2009, falsely declaring it as legal HFCs (an extremely potent GHG!) and of the smuggling of HCFCs from Russia to Finland, concealed in a container on a truck, behind a layer of ceramics.

² See <http://www.unodc.org/unodc/en/wildlife-and-forest-crime/index.html> for relevance in relation to wildlife crime (WV).

Ways to prevent the illegal trade is by cross-checking of licenses, training of customs in smuggling methods and setting up national task forces as in the US. So far, prosecutions have been rare, however.

Louis-Joan Lemmer

Ghent University/Hasselt Municipality (Belgium)

Louis-Joan focuses on the restoration of the landscape and fauna and flora of Mesopotamia (“the land between two rivers”, the Euphrates and the Tigris), the land which now is modern Iraq.

Due to colonial hydro-engineering, oil drilling, but especially by the works of Saddam Hoessein in the 1990s the 20,000 km² World Heritage (cultural ecosystem) Site of the Marsh Arabs where the two rivers come together has been turned into a dryland area of 18,000 km², which suffers from salinisation, toxication and desertification. (Maps of the transformation and pictures of the original habitat with the unique structures built with the local material by the Marsh Arabs can be found on Ms. Lemmer’s PowerPoint which will be posted on www.envirosecurity.org).

A certain measure of reclaiming (15%) has been done in the recent years, under supervision of the US Army Corps of Engineers.

Contextual factors are the Great Anatolia Project upstream the two rivers in Turkey, which will affect the downstream flow of the rivers and thus the marshland area. The nearby Rumalia oil field, one of the biggest in the world, needs much water: 1 barrel of oil costs 1 barrel of water, impacting the hydrology of the region.³

Restoring the ecosystems requires independent research teams, technical and stakeholder fora for communication and information exchange, amongst others on the economic value of the ecology as discussed in TEEB (The Economics of Ecosystems and Biodiversity).

Louis-Joan can imagine an International Ecocide Court, with certified and recognized locally installed nodes, bringing stakeholders and researchers together in a global network.

Tim Boekhout van Solinge

University of Utrecht, Criminology, specialist in eco-crime and green criminology

Fresh out of the Brazilian Amazon, in particular the State of Pará with most of the conflicts in Brazil, Tim spoke about land grabbing and its correlation with illegal logging. He looks at these activities primarily with the eye of a green criminologist.

Land grabbing is done for the raising of cattle and the production of soybean, which is then bought and transported (to Europe) by the American company Cargill, which has a major port facility in Santarem, on the Amazon river in Pará.

There is a Forest Law, but it is not upheld in practice and as a result great harm is done to the local communities and the indigenous peoples living in the Amazon. Still people defending their rights under the law are being killed – the most famous one being of course Chico Mendes, who was murdered in 1988 in the State of Acre. He started off speaking about the Amazon and pointed to similar issues in South East Asia, especially Indonesia.

As said, the crux of his presentation is to look at the activities of illegal logging and land grabbing in the eyes of a green criminologist. Not only is harm done to the local inhabitants here and now, but also future generations, plants and animals.

The fundamental question is to make the law work to protect the earth we live in.⁴

Wouter Veening

Institute for Environmental Security

Introduces briefly the article *Climate Change: A State-Corporate Crime Perspective* by Prof. Ronald C. Kramer, Western Michigan University, an earlier version of which was presented at the conference *Environmental Crime and its Victims*, 17-18 September 2012, Delft., Netherlands.

Prof. Kramer has been working on environmental crime and ecocide and regretted not being able to join the workshop, but wanted to share the article with the participants.

³ The Financial Times of 17 December 2012 describes the situation of the field with its 100,000 land mines, neglected infrastructure and, as to management, confronted with the Iraqi oil ministry bureaucracy.

⁴ See also Tim’s power point on www.envirosecurity.org and a larger background article of 2010: http://landsandrights.blog.com/files/2011/07/2010_BoekhoutvSolinge_Deforestation_crimes_conflicts_Amazon.pdf.

Climate change is an ecological catastrophe as would be nuclear war. Lack of action is one of the gravest transnational environmental crimes. It is caused by abject political failure and socially organised denial of the problematique. As yet, it is not an established international crime, that is why the activities by Polly Higgins to make it so, are so important.

Political failure and denial can be seen as a form of state-corporate crime because of the organizational intersections between the (federal) state which is not just an institutional actor but also a nexus of interrelations, both horizontal and vertical, i.e. with the various departments, the big corporations, especially the “rogue fossil fuel industry”, and the states and municipalities. There is a circulation of elites in this field of interrelations.

From a criminological perspective the lack of action by the state as the prime actor can be termed as *negligent state criminality* or *state crimes of omission*.

The socially organised denial of the problem of (human induced) climate change comes in the US particularly from the Republican Party with funding from the fossil fuel industry. As an orchestrated activity, despite scientific evidence to the contrary, it can be defined as a state-corporate crime of *commission*.

Using the conceptual language of *crime* may bring greater attention to the desperate need for a transformative movement to indeed reduce the greenhouse gas emissions to prevent catastrophic climate change.

Ingrid Kost

Conservator, Peace Palace Library

Ingrid introduces the Ecocide Research Guide, which provides the basic legal materials available in the Peace Palace Library, both in print and electronic format. The guide was started on the occasion of the workshop as part of the collaboration between the Library and the Institute for Environmental Security (on the other side of the street). On the request of Polly Higgins the Ecocide Research guide now also figures on the Earth Lawyers website (www.earthlawyers.com).

Ingrid encourages the participants to send in material which she then can integrate in the Guide (ingrid.kost@ppl.nl).⁵

⁵ Catherine Alfonsi from Europol (whom at the workshop mentioned the issue of dam building in Guatemala without proper impact assessment and safeguards and the

For more background see:

http://www.peacepalacelibrary.nl/2012/11/new-research-guide-ecocide/?utm_source=Peace+Palace+Library+List&utm_campaign=1146037d2e-Peace+Palace+Library+Newsletter+November+2012&utm_medium=email.

Reinhold Gallmetzer

Office of the Prosecutor, International Criminal Court

There is indeed a lack of precise legislation on ecocide. It may help to “crystallize” the situation to have reflections from the perspective of the Office of the Prosecutor, which of course looks at existing law and does not create new law.

As the clock is ticking, it is worthwhile to see what existing laws and legal tools there are that can be used to prosecute environmental crime.

The only provision in the Rome Statute where damage to the environment is explicitly mentioned is the Article on War Crimes (Art 8(2)(b)(iv)).⁶

This, however, is a very qualifying article and only applies to situations of international warfare. The aspects of damage (widespread, long-term and severe) are cumulative: they all have to be satisfied in order for the article to apply.

So far it has never been used by the ICC nor have comparable articles been used by the *ad hoc* courts.

Other elements in the War Crimes article include Article 8(2)(a)(iv) which concerns the destruction of property not justified by military necessity. A fitting example would be the burning of a forest on which a community depends for its livelihood.

It always has to be remembered that the ICC is a court of last resort, working in positive

intolerable situation with leather tanneries in Bangladesh) already sent a Human Rights Watch report on the latter to Ingrid:

http://www.hrw.org/sites/default/files/reports/bangladesh_h1012webwcover.pdf; see also a recent article in The Guardian: <http://www.guardian.co.uk/global-development/2012/dec/13/bangladesh-toxic-tanneries-intolerable-human-price>.

⁶ “Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated”.

complementarity with national courts and national prosecutors.

Environmental crimes such as pollution of water wells and destruction of ecosystems can also be seen in the lights of the crime against humanity. This has been part of the original prosecution of President Bashir of Sudan who destroyed the water wells and environmental bases of the population in Darfur, destroying the communities and forcing them to migrate. This charge was not accepted by the ICC as it was not considered to be a core feature of the attacks. (Genocide is “the crime of crimes”: very difficult to prove).

What the ICC does concerns only the tip of the iceberg. The “body” has to be dealt at the national level, but the ICC can play a leading role. E.g.: Lubanga was convicted by the ICC for child-soldier offenses which were not part of national legislation. The deterrent role of the ICC is important here and more and more national governments are paying attention to what the ICC is doing.

In this, however, the ICC, has to be very selective: in order to be effective, the ICC can only take up cases which are relatively simple and will lead to conviction, in order to have the desired impact. The more complicated cases should be prosecuted and dealt with by the national prosecutors and courts.

Exploitation of natural resources for the purpose of armed conflict or for profit by organized crime syndicates or supplies to armed groups can be taken care on the national level. (The ICC has started the project of a Law Enforcement Network to enhance national prosecutions).

A London University paper has shown that originally ecocide was meant to be a crime under the Rome Statute, but it was pulled out at the eleventh hour in November 1996.

Bringing ecocide under the Statute has to be pursued, but it is a very lengthy process: it requires 4/5 of all member states to ratify an amendment, which may take decades. In the meantime, make creatively use of existing tools on all levels!

Let’s not forget that the existence of the ICC is a miracle. It is still very young and fragile and subject to political attack and it cannot be seen as a political institution.

Discussion

In the resulting discussion, the responsibility of the private sector for ecocide was brought forward. Mock trials as conducted by Polly Higgins can be very helpful to illustrate this responsibility in concrete cases and to show the strength of the moral argument over the economic argument.

Within the insurance industry awareness about the risks of insuring activities that may become subject to international criminal environmental law is growing.

In the legal world support for creating a body of law on Earth Rights is gaining momentum, including the human right to a clean environment. This all needs strong international vocalization. Public awareness of ecocide as a crime is also important to support campaigns on more specific issues, for example, to build a case against the perpetrators of climate change.

At Rio+20 a UN High Commissioner for Future Generations was established and the World Connectors in the Netherlands are proposing an Ombudsman for Future Generations.

The Municipality of The Hague welcomes further initiatives in The Hague on the subject of ecocide and points to the importance of the ICC trial competitions, of which the next round will be held from 21 until 26 April 2013 in The Hague. They may constitute a good forum for young lawyers to discuss ecocide.

See: <http://www.icc-trialcompetition.org/cms/>.

Closing

Wouter Veening closes the meeting, thanking everybody most heartily for their participation. It has become clear from the presentations and discussion that The Hague, “Legal Capital of the World”, will have to involve itself very substantially in the subject of ecocide which, as the workshop has shown, is an international issue of growing intensity and seriousness.

Suggestions on how to do this will be shared with the participants and those who could not join.

The Institute for Environmental Security looks forward to staying in touch with all interested parties and individuals.