



Organised by Institute for Environmental Security and EcoJust

Ecocide: Developing a View from The Hague¹, 5 November 2012

Background Note

If ecocide relates to the wilful serious and/or massive destruction of the environment, it has been part of warfare since antiquity (poisoning water wells, scorched earth) up until modern times (defoliation Vietnam, bombing oil tanks First Gulf War, use of cluster bombs US invasion of Iraq 2003, bombing Lebanese oil tanks and use of cluster bombs South Lebanon 2006 Israel/Lebanon War).

Art 55 of the 1978 Additional Protocol to the Geneva Conventions of 1949 and Art 8 (2)(b)(iv) of the Statute of Rome of the International Criminal Court recognize the duty to prevent or to make a criminal offense “the long-term, wide-spread and severe damage to the natural environment” as a result of disproportionate military action.

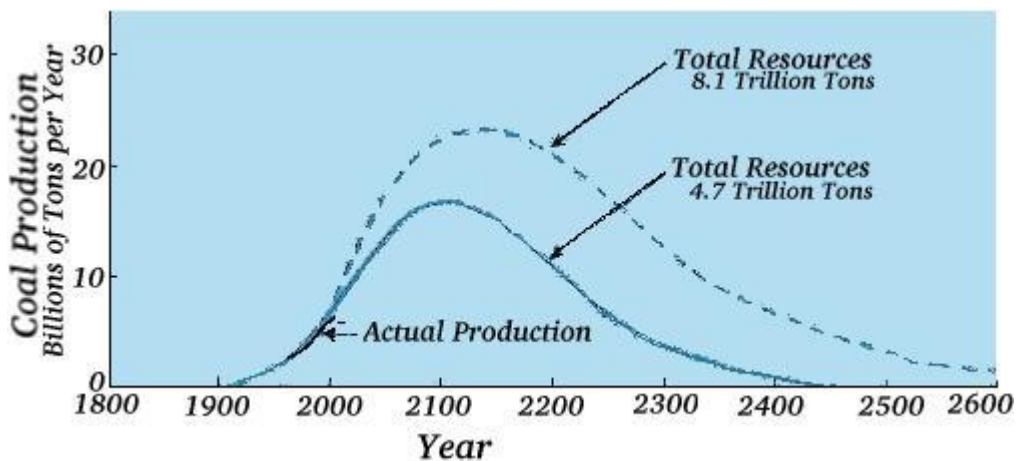
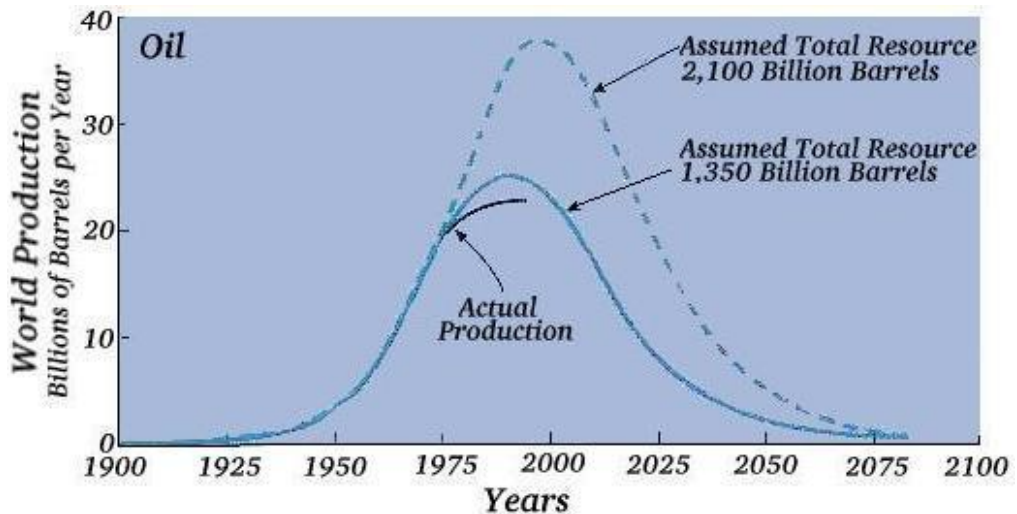
While actual warfare by regular armies or armed conflict resulting from guerrilla, militia or terrorist activities, including the testing of new weaponry, remain of great environmental concern, one can say that the vast majority of environmental destruction since about the 1950s results from the interplay between demographics, economic activities and the development and application of technology² outside the realm of warfare.

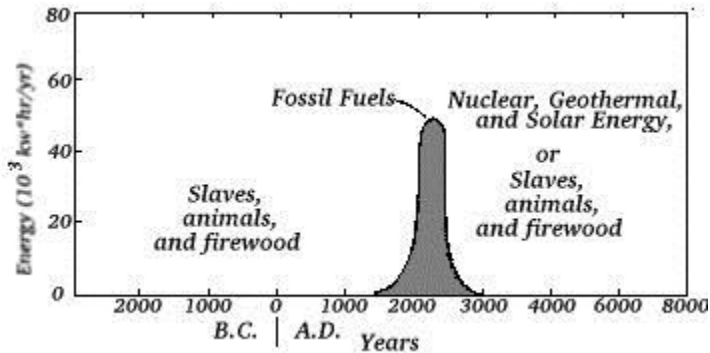
In 1950 we were with 2.5 billion people on the planet, now we have passed the 7 billion.

¹ The workshop is part of the development of The Hague Environmental Law Facility (HELFF) programme of the Institute for Environmental Security, based upon a joint proposal with the Asser Institute, and in consultation with other The Hague-based institutions. Other elements of HELFF are an Environmental Law Clinic, currently discussed with the The Hague University of Applied Sciences, the promotion of remote sensing for the compliance and enforcement of international environmental law, series of environmental law lectures together with the Asser Institute and the Peace Palace Library, cooperation with the Peace Palace Library on expanding their facilities in the field of environmental law.

² The summary formula is I=PAT, in which I is Impact, P is Population, A is Affluence (standing for consumption and production patterns, and T is Technology. *Ex post* the formula is a tautology, *ex ante* it may give a handle for action and policy development

Global trade nowadays has increased 20-fold since 1950. It is mostly transported by fossil fuels, the use of which has been one of the major causes of global change. See here-under a few graphs illustrating the use of fossil fuels, major source of Greenhouse Gases and of the Gulf/Iraq Wars.





“The graph above illustrates the energy sources of mankind through history. We are currently using more energy than ever before, due to the availability of fossil fuels. Before 1500 A.D. we used slaves, animals and firewood. When we run out of fossil fuels will we use these sources again or find new technology.” (Prof Steven A. Nelson, Tulane University, date....)

New technologies since the 1950s were the development of nuclear power, myriads of new chemical substances, amongst which the ozone layer depleting substances and the so-called POPs (Persistent Organic Pollutants), bio-technology + GMOs, many leading to irreversible and cumulative pollution of the environment, compromising the viability of the community of life in the future.

The tremendous concomitant loss of biodiversity on the level of ecosystems, species and genetic diversity has been well documented by the Millennium Ecosystem Assessment, see reference: <http://www.greenfacts.org/en/biodiversity/1-3/3-extinction-endangered-species.htm> and is as to species updated by the IUCN and its *Red Lists*. Almost all of the biodiversity loss is irreversible as well (“extinction is forever”) and future generations will only learn about them through animated films.

The load of CO₂ in the atmosphere will be with us for many hundreds of years and so will be the acidification of the oceans with all its impacts on food, water and energy security, the integrity of ecosystems and its potential for conflict.

Questions for The Hague as “Legal Capital of the World”.

If the seriousness of the ecological degradation of the planet is beyond question, from a legal perspective the question is how much and what has been done wilfully, how much was caused out of ignorance, with in-between the situation of *criminal negligence* and the situation where people probably will not know that their activities and choices have or will have negative effects on the (natural) environment. If, for example, you buy a car, the aluminium in it may have been produced by bauxite from the Amazon, converted by hydropower from massive dams in the Amazon into aluminium, with the mining and dam-building leading to large scale deforestation and flooding of indigenous lands.

What is the legal relation between the buyer of the car and the wilful destruction of large parts of the Amazon?

If wilful and intentional destruction of the environment, including the poaching and trafficking of threatened species, and including gross negligence, can be considered crimes, the question would be whether the existing institutions dealing with criminal law in The Hague should consider including "ecocide" as part of their mandate or whether it would belong to other institutions, possibly also newly created ones, to do so.

Following the introduction by Ms Polly Higgins and a panel of various presenters of more specific cases and themes, reflections on these questions will be very much part of the discussions at the workshop.

One of the elements may be the relation between ecocide and crimes against humanity, where, for example in the case of Charles Taylor, the large scale sale of illegal timber has financed his militias and arms purchases, or where atrocities are committed to gain control over natural resources such as minerals, timber and wildlife.

If the situation of ecocide is the result of many individual decisions which by themselves cannot be considered criminal, then it would be the State in its role as Party to the Multilateral Environmental Agreements or otherwise (to act in conformity with international customary law) to prevent or mitigate the "ecocidal" impacts of the behaviour of its citizens. Here NGOs and forward thinking entrepreneurs can of course of course play major roles.

Reflections on the various roles of courts, governments, NGOs and the private sector to deal with or prevent ecocide will also be part of the discussions at the workshop.

What if a State fails to control – in the case of the U.S. and climate change – the emissions of its citizens and economic actors and is unwilling to do so, even in the light of convincing scientific evidence? (See paper by prof Ronald Kramer of Western Michigan University: *Climate Change: A State-Corporate Crime Perspective*, delivered at the Delft University conference on 17-18 September 2012 on environmental crime and its victims.) Could victims of this lack of (willingness to) control, such as the low-lying island states in the Pacific and Indian Oceans go to the International Court of Justice?

More Information

<http://www.envirosecurity.org/ecocide/2012Workshop.php>