Toxic Legacies: Agent Orange as a Challenge

Rachel Carson Center

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Sponsors: Rachel Carson Center for Environment and Society, LMU Munich, Evangelische Akadamie Tutzing, Amerika Haus München.

Conveners: Amy Hay (University of Texas–Pan American/Rio Grande Valley), Martin Held (Evangelische Akademie Tutzing), Christian Lahnstein (formerly Munich Re), Nga Le (social entrepreneur and political activist, Munich), Christof Mauch.

Participants: Prof. Dr. Barbara Adam (Cardiff University), Prof. Dr. Stefan Ankirchner (University of Jena), Director Charles Bailey (Aspen Institute), Prof. Dr. María Valeria Berros (National University of Littoral), PD Dr. phil. Dipl.–Ing. Stefan Böschen (Karlsruhe Institute of Technology), Heather Bowser (Agent Orange Second Generation Veteran), Birgit Breidenbach (Diakonie Berlin), Prof. Dr. Ina Ebert (Munich Re), Prof. Kenneth R. Feinberg (Feinberg Rozen), Prof. Dr. Christian Förster (Heidelberg University), Saschko Frey (Im-Moment-Film), Susan Hammond (War Legacies Project), Rosemarie Höhn-Mizo (International Committee for the Vietnam Friendship Village), Rainer Hub (Diakonie Deutschland), Friedrich W. Ihloff, Annalisa Iob, (University of Trento), Karin Jurschick (Filmbüro-NW), Jihan Kahssay (Max-Planck-Institut für Sozialrecht und Sozialpolitik), Prof. Dr. Sophia Kalantzakos (New York University), Felix Klickermann (FU Berlin), Prof. Dr. Harald Koch (Humboldt University Berlin and Rostock University), Prof. Dr. Klaus Kümmerer (Leuphana Universität), Franz Langer (Rachel Carson Center), Prof. Matthias Leupold (BTK University for Design), Silvia Liebrich (Süddeutsche Zeitung), Prof. Dr. Gary Machlis (Clemson University), Dr. Michelle Mart (Pennsylvania State University), Prof. Dr. Ed Martini (Western Michigan University), Lilo Mayer-Behrens (independent interpreter), Manfred Mohr (Int. Coalition to ban Uranium Weapons (ICBUW)), Dr. Simone Maria Müller (University of Freiburg), Henriette Peisl, Patrick J. Reed, MA (Rachel Carson Center); Gerhard Rockenbach (ICEM), Nicholas Roenneberg (Munich Re), Margrit Schlosser (Longstanding Terre des Hommes CH in Vietnam), Ines Schröcker, Dr. Christoph Schwingenstein (Süddeutsche Zeitung, Förderverein Vietnam), Prof. Wilbur Scott (US Air Force Academy), Dr. Jens Soentgen (University of Augsburg), Thomas Thirolf (Munich Re), Phuong Tran Minh, Rafael Tyblewski (Film-Zeit), Dr. Roland Weber (POPs Environmental Consulting),

Günter Werner, Dr. Meike Zwingenberger (Bayerische Amerika-Akademie)

Agent Orange, a herbicide used during the Vietnam War, left a bitter legacy and a historical lesson to the world. To this day, humans struggle with the health and environmental damage caused by exposure to the chemical. Questions remain for lawyers, scientists, and affected individuals about potential and ongoing risks, over who should be held responsible, and as to victims' compensation. Agent Orange raises questions around environmental justice, military and peacetime interventions, economic damage, and sustainable development that are relevant worldwide.

GARY MACHLIS implored for a new field of study in his keynote address: "Warfare Ecology: A New Synthesis for Peace and Security." The effects of wars on ecosystems are tremendous, and need to be seen as an interdisciplinary challenge and ethical obligation for scientists worldwide. Purposeful environmental destruction, the targeting of industrial sites, and the creation of refugee crises create ecological problems that far outreach the actual duration of a war.

In the first panel, "History and Legacies," **MICHELLE MART** focused on the "Cultural History of Synthetic Pesticides in US since 1945." According to Mart, the use of Agent Orange should be seen as a consequence of the use of pesticides in civilian life. DDT was praised as a "wonder weapon" in the United States for delousing against typhus and malaria. The advantages seemed to outweigh skepticism about toxicity, which, according to Mart, ultimately explains the widespread acceptance of the use of Agent Orange in the Vietnam War.

AMY HAY's talk was entitled "Agent Orange in US Health and Environmental Policy." As Hay highlighted, Agent Orange was not only used in Vietnam but also in America with the agreement of the Department of Agriculture. The US army saw Operation Ranchhand as a way of shortening the war, saving American lives by making enemy movements visible. The negative health effects were an accepted risk to the manufacturers and the government. Ultimately, according to Hay, the 21 million gallons of Agent Orange and other pesticides led to "ecocide"—a genocide of the ecosystem in Vietnam.

WILBUR SCOTT explained in "Agent Orange and the Vietnamese Veterans since the War" how research on its effects, undertaken by medical schools and the Department of Agriculture, followed an agenda that was split between pro-war and anti-war undertones . The 1978 television documentary "Agent Orange: Vietnam's Deadly Fog" made the connection between the pesticide and cancer widely known. The Veterans Association, however, stood by its claim that Agent Orange cases are not considered service-related until a scientific link is proven between dioxin and

disease.

In his talk "The Ford Foundation Initiatives Addressing the Legacy of Agent Orange," **CHARLES BAILEY** looked at the relationship between the United States and Vietnam. The Ford Foundation currently works on dioxin clean-ups in hot spot areas in South Vietnam. With disability services, dialogue groups, and a new documentary, the Ford Foundation is working on giving first-hand help to victims of Agent Orange and on educating the US public. However, Bailey admits that with a budget of $30.5 million for health and disability assistance and $105.5 million for dioxin clean-ups, this is still a small year-by-year program working on improving relations between the two countries.

The second panel, "Responsibilities and Compensation," focused entirely on the legal aspects of Agent Orange. In "Regulative Functions of State and Civil Liability," **HARALD KOCH** explained how complicated jurisdiction in such an international case can be. The 1984 settlement between veterans and the producers of Agent Orange showed responsibility to be a flexible concept, especially in this case occurring in Vietnam rather than the United States. In his final remarks, Koch explained how jurisdiction depends on the case as well as the court, and that discussion over international jurisdiction will remain.

German lawyer **CHRISTIAN FÖRSTER's** focused on "The Korean Case"—a product liability case of Vietnam veterans from South Korea. In 1999, 20,000 veterans filed two separate lawsuits against US producers of Agent Orange, seeking $5 billion in damages; in 2002, they lost, but filed an appeal. In 2006, Dow Chemical and Monsanto were ordered to pay $62 million in compensation under liability since the dioxin in Agent Orange was a design defect. Förster stated the product liability approach to be an effective international jurisdictional tool: since they are used for private lawsuits, are internationally accepted, and are strict, liability laws exist around the world.

MANFRED MOHR looked at "International Public Law and the Toxic Remnants of War Project." He argued for a "toxic remnants of war" concept in relation to "explosive remnants of war." The definition, according to Mohr, should be "any toxic or radioactive substance resulting from military activities that forms a hazard to human or environmental health." From Mohr's perspective, general rules and laws need to be established to stop environmental destruction through warfare: the current case-by-case situation is no longer feasible.

CHRISTIAN LAHNSTEIN added to the discussion with his talk on "Comparing Historical Compensation." According to Lahnstein, comparative law offers insights on how liability and compensation are treated in different countries. In the US juridical system, settlements are far more

common than in Europe. This leaves not only the question of how much compensation is paid, but also how to distribute it: from Lahnstein's point of view this creates a legislative challenge, not a jurisdictive one.

In the third panel, "Lasting Legacies," **HEATHER BOWSER** discussed the "Second Generation Effects of Dioxin." Bowser herself is the daughter of a Vietnam War veteran, and was born with defects caused by her father's service in Southeast Asia. As an Agent Orange activist, she founded Children of Vietnam Veterans Health Alliance to provide help to the seven generations of children affected by the dioxin.

ROSEMARIE HÖHN–MIZU, a German widow of an American soldier, gave the introduction to Matthias Leupold's film "Lighter than Orange—The Lasting Legacy of Dioxin." Her husband, George Mizu, founded Friendship Village in Vietnam, a residential facility providing medical care, physical therapy, education, and vocational training to Vietnamese children and elders affected by Agent Orange. Mizu was awarded the medal of friendship by the Vietnamese state for his efforts.

In the fourth panel, entitled "Risks and Hazards: Lessons Learned," **BARBARA ADAMS** looked at time and space in relation to Agent Orange. She highlighted how the ongoing effects of the pesticide are not merely irreversible but are also partly invisible, and in this way are hard to grasp. Adams continued by stating that politics, law, and science follow a common route, only looking at present states and depending heavily on causality in order to establish facts. As Agent Orange will continue to exert effects, it will also remain a challenging problem for the aforementioned institutions.

In "Dioxins: Networks of Collective Experimentation," **STEFAN BÖSCHEN** focused on Sheila Jasanoff's concept of civic epistemology. Jasanoff reflects on how different societies use diverse modes of public reasoning to make decisions involving science and technology. Böschen argued that Agent Orange shows a strong interplay between science and institutions, as well as how knowledge is found and shared. By studying these interrelations, we are able to better understand the reasoning behind the use of Agent Orange and its legacy.

JENS SOENTGEN's talk, "The Dissipation of Hazardous Substance," looked at violence and chemicals: chemical violence, such as the use of chlorine in WWI and Agent Orange in Vietnam, has a social life. The chemicals are seen as war-shortening, pervasive, dominance establishing, life- and equipment-sparing, shocking, and unescapable. Soentgen added that future generations of scientists, especially chemists, need to be educated on how they influence the outside world with their work: only in this way can science serve for good.

On the "Perspectives" panel, **KENNETH FEINBERG** explained "The Tension between Law and Science." In his opinion, too much is expected from courts and science. Successful compensation brings an even bigger problem: how to spread the money. According to Feinberg, political action, rather than science or law, can bring decisive change: compensation for victims in Vietnam only seems probable as a foreign policy instrument, related to whether or not the US government has an interest in winning Vietnam as an ally in the region.

CHRISTOF MAUCH and **MARTIN HELD** ended the conference by stating that the event was a testament to the complexity of the legacy of Agent Orange. It is not only a historical topic, but also economic, environmental, juridical, and sociological—to name a few disciplines. Mauch also emphasized that future conferences should include greater insight from victims, where feasible. The Vietnam War might have been fought by the United States and Vietnam, and can be seen as both spatially and temporally distant, but its lessons remain important, From these, we can shed new light on our modern lifestyle and the legal and environmental issues with which we are faced.

-- Franz Langer