



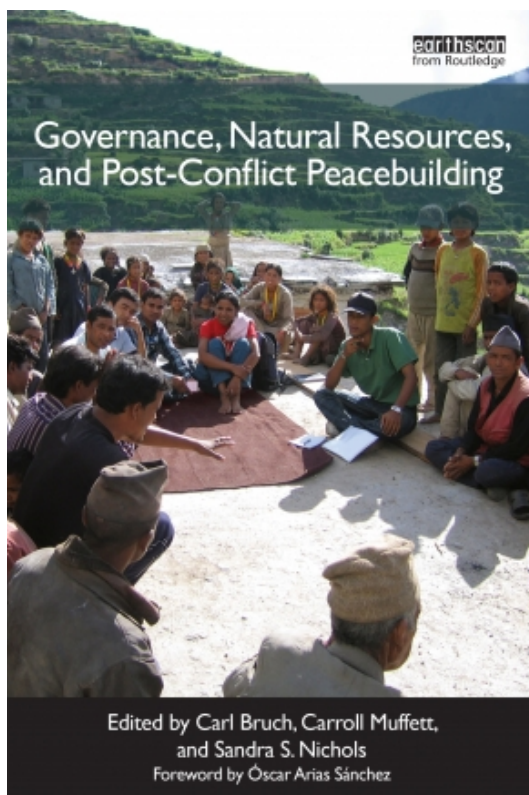
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Part 5: Transitional Justice and Accountability

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PART 5

Transitional justice and accountability

Introduction

Crimes committed during wartime often involve natural resources. During the 1990–1991 Gulf War, for example, the retreating Iraqi army set fire to over 600 oil wells in Kuwait and poured over 6 million barrels of oil into the Persian Gulf, destroying vast swaths of coastal wetlands, polluting air throughout the region, and leaving large sections of the Kuwaiti countryside covered in a hardened oily residue.¹ In numerous conflicts across the world, natural resources have also provided a source of funding for atrocities and human rights abuses.² In Sierra Leone, for example, Foday Sankoh and other rebel leaders seeking diamonds—both for personal wealth and to pay their troops—had their fighters displace communities, conscript laborers to work in the mines, and use physical and sexual violence to maintain control of diamond-rich territories.³

Following conflict, human rights and natural resource–related crimes must be addressed to provide peaceful closure (and avert a cycle of revenge), compensate victims, restore trust in the new government, and support the transition to long-term peace. Imposing accountability for environmental crimes may also deter future illegal actions, including wartime damage to natural resources. However, transitional justice mechanisms designed to address crimes committed during armed conflict have only recently begun to consider environmental and natural resource–related crimes. Previously, such mechanisms—which include domestic and international tribunals, compensation funds, and truth and reconciliation commissions—had assigned low priority to environmental crimes, focusing instead on more readily recognizable human rights violations and urgent humanitarian claims.

This part identifies and evaluates mechanisms for ensuring accountability and compensation for environmental and natural resource–related crimes. Imposing liability for crimes related to natural resources can be problematic: damage can be slow to manifest, indirect or attenuated in causation, and difficult to value economically. But ignoring environmental and natural resource–related crimes can have devastating impacts on human health, security, livelihoods, economic development, governance, and society.

When natural resources are closely linked to wartime crimes, transitional justice efforts need to consider natural resources in order to be effective. Prosecutors, truth and reconciliation commissions, and other transitional justice

¹ See Cymie R. Payne, “Legal Liability for Environmental Damage: The United Nations Compensation Commission and the 1990–1991 Gulf War,” in this book.

² See Mark B. Taylor and Mike Davis, “Taking the Gun out of Extraction: UN Responses to the Role of Natural Resources in Conflicts,” in this book.

³ See Emily E. Harwell, “Building Momentum and Constituencies for Peace: The Role of Natural Resources in Transitional Justice and Peacebuilding,” in this book.

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institutions, however, often neglect natural resources as a component of wrongdoing during conflict. In “Building Momentum and Constituencies for Peace: The Role of Natural Resources in Transitional Justice and Peacebuilding,” Emily E. Harwell discusses the relationship between natural resources and a range of transitional justice mechanisms. She argues that in addition to facilitating compensation and accountability for natural resource–related crimes, investigation of such crimes can generate information about the role of natural resources in human rights abuses, which can inform the broader peacebuilding program.

Although the imposition of liability for wartime environmental crimes is still rare, an increasing number of cases involving natural resource–related damage during conflict have been brought before international and domestic tribunals. In “Peace through Justice: International Tribunals and Accountability for Wartime Environmental Wrongs,” Anne-Cecile Vialle, Carl Bruch, Reinhold Gallmetzer, and Akiva Fishman survey civil and criminal cases heard by a variety of tribunals, including the International Court of Justice, the International Criminal Court, the Permanent Court of Arbitration, and conflict-specific international tribunals, as well as national courts in Belgium, France, the Netherlands, Switzerland, and the United States. Such cases are part of a growing body of case law interpreting and clarifying the laws and principles governing natural resource–related damage during conflict.

The United Nations Compensation Commission (UNCC) is a quasi-judicial international mechanism established to decide the extent of Iraq’s liability—including for environmental harm and depletion of natural resources—arising from the 1990–1991 Gulf War. The UNCC reviewed 168 environmental claims and awarded US\$5.3 billion for damage caused by oil spills and oil well fires, landmines, unexploded ordnance, tank treads, and refugees’ overuse of natural resources. It also funded monitoring and assessment programs and reimbursed expenses for international emergency response.

In “Legal Liability for Environmental Damage: The United Nations Compensation Commission and the 1990–1991 Gulf War” Cymie R. Payne assesses some of the successes and challenges of the UNCC during its operation. Although it eventually gave unprecedented attention to environmental claims, the UNCC initially prioritized humanitarian and corporate claims, deferring review of environmental claims to the end of the work program. The awards for natural resource–related damage, though substantial, represented only a small fraction of the amount claimed; in many cases, the UNCC reduced or refused to grant awards, on the basis of evidentiary problems or disagreement over the appropriate remediation method.

The UNCC employed an innovative funding mechanism that drew on a fixed percentage of Iraq’s oil revenue; however, the commission was criticized for garnishing Iraq’s oil revenue at a time when Iraq struggled to finance its own humanitarian needs. Payne observes that the experiences of the UNCC highlight the challenges inherent in prioritizing and securing funding for environmental compensation and rehabilitation in post-conflict contexts. She recommends the

creation of an international fund for restoration of conflict-damaged natural resources, focusing on early and practical intervention and financed by fines on belligerents.

In “Reflections on the United Nations Compensation Commission Experience,” Lalanath de Silva discusses the changing nature of Iraq’s participation in UNCC proceedings over the lifetime of the commission, particularly in the context of environmental claims. During the UNCC operation—and especially following the 2003 invasion of Iraq by coalition forces—Iraq sought and received increased access to documents, as well as legal and technical assistance, to respond to complex cases, including environmental cases. Such participation helped establish a sense of fairness and justice surrounding the process, and facilitated regional cooperation in monitoring the use of awards for environmental rehabilitation. Like Payne, de Silva concludes by recommending the creation of a permanent international mechanism for imposing liability and ensuring compensation for wartime environmental damage.

As illustrated by the chapters in this part, a permanent international transitional justice mechanism for addressing wartime environmental damage could help resolve some of the problems confronted by existing transitional justice institutions. First, because it would focus exclusively on environmental issues, such a mechanism could ensure that environmental concerns do not get lost or ignored amid other urgent post-conflict priorities. Second, the mechanism could provide funding for immediate action to rehabilitate environmental damage, without waiting for resolution of claims. Third, it could facilitate the development of international norms and practical expertise in investigating and addressing environmental and natural resource–related crimes. Finally, the results of investigations of environmental crimes conducted by an international transitional justice mechanism could inform peacebuilding programs.

Regardless of whether such a mechanism is established, the trend toward giving increasing attention to wartime environmental crimes will likely continue. To pave the way for peace, tribunals, compensation funds, truth and reconciliation commissions, and other transitional justice mechanisms must address both the environmental components of war crimes and the impact of war crimes on the natural environment.