

## LIABILITY FOR ENVIRONMENTAL HARM TO THE GLOBAL COMMONS

This book examines liability for environmental harm in Antarctic, deep seabed and high seas commons areas to highlight a unique set of legal questions: Who has standing to claim for environmental harm in global commons ecosystems? How should questions of causation and allocation of liability be addressed where harm arises from a wide range of activities engaging diverse state and non-state actors? What kinds of harm should be compensable in global commons ecosystems, which are remote and characterized by high levels of scientific uncertainty? How can practical concerns such as ensuring adequate funds for compensation and access to dispute settlement forums be resolved? *Liability for Environmental Harm to the Global Commons* provides the first in-depth examination and evaluation of current rules and possible avenues for future legal developments in this area of increasing importance for states, international organizations and commercial actors, as well as legal and governance scholars. This title is also available as Open Access on Cambridge Core.

Neil Craik is Professor of Law at the Balsillie School of International Affairs, University of Waterloo, Canada. He has published widely in the fields of international and Canadian environmental law and the law of the sea, and is co-editor of *Global Environmental Change and Innovation in International Law* (Cambridge University Press, 2018).

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The general editor of the series is Professor Jorge E. Viñuales, the Harold Samuel Chair of Law and Environmental Policy at the University of Cambridge and the Founder and First Director of the Cambridge Centre for Environment, Energy and Natural Resource Governance (C-EENRG).

# Liability for Environmental Harm to the Global Commons

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<sup>1</sup> The work of the LWG is summarized in Neil Craik and others, 'Liability for Environmental Harm: Synthesis and Overview' CIGI, Liability Issues for Deep Seabed Mining Series Paper No 1, 13 July 2018. The complete set of papers of the LWG can be found online: <[www.cigionline.org/series/liability-issues-deep-seabed-mining-series](http://www.cigionline.org/series/liability-issues-deep-seabed-mining-series)>.

<sup>2</sup> Neil Craik, 'Liability for Environmental Harm from Deep Seabed Mining: Towards a Hybrid Approach' (2019) 33 *Ocean Yearbook* 315–338.

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(2002) UN Doc S/AC 26/2002/26

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1945	Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI	UN Charter
1946	General Convention on the Privileges and Immunities of the United Nations (adopted 13 February 1946, entered into force 17 September 1946) 1 UNTS 15, 90 UNTS 327	UN Privileges and Immunities Convention
1946	International Convention for the Regulation of Whaling (adopted 2 December 1946, entered into force 10 November 1948) 161 UNTS 72	ICRW
1947	Convention on Privileges and Immunities of Specialized Agencies (adopted 21 November 1947, entered into force 2 December 1948) 33 UNTS 261	Specialized Agencies Privileges and Immunities Convention
1959	Antarctic Treaty (adopted 1 December 1959, entered into force 23 June 1961) 402 UNTS 71	1959 Antarctic Treaty
1960	Convention on Third Party Liability in the Field of Nuclear Energy (adopted 29 July 1960, entered into force 1 April 1968) 956 UNTS 251	1960 Paris Convention
1963	Vienna Convention on the Civil Liability for Nuclear Damage (adopted 21 May 1963, entered into force 12 November 1977) 1063 UNTS 265	1963 Vienna Convention
1969	International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (adopted 29 November 1969, entered into force 6 May 1975) 970 UNTS 211	1969 Intervention Convention
1969	International Convention on Civil Liability for Oil Pollution Damage (adopted 29 November 1969, entered into force 19 June 1975) 973 UNTS 3	1969 Oil Pollution Liability Convention

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Year	Full Reference	Abbreviation
1971	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (adopted 18 December 1971, entered into force 16 October 1978) 110 UNTS 57	1971 Fund Convention
1972	Convention on International Liability for Damage Caused by Space Objects (adopted 29 March 1972, entered into force 1 September 1972) 961 UNTS 187	1972 Space Liability Convention
1972	Stockholm Declaration, Declaration of the United Nations Conference on the Human Environment (1972) UN Doc A/Conf.48/14/Rev.1	1972 Stockholm Declaration
1972	Convention for the Conservation of Antarctic Seals (adopted 1 June 1972, entered into force 7 April 1982) 11 ILM 251	1972 Seals Convention
1972	London Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (adopted 29 December 1972, entered into force 30 August 1975) 1046 UNTS 120	1972 London Convention
1974	Nordic Convention on the Protection of the Environment (adopted 19 February 1974, entered into force 5 October 1976) 1092 UNTS 279	1974 Nordic Convention
1976	Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (adopted 16 February 1976, entered into force 1 February 1979) 15 ILM 290 as amended June 1995, UNEP(OCA)/MED IG.6/7 (entered into force 9 July 2004)	1976 Barcelona Convention
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1981	Protocol between the Government of Canada and the Government of the USSR (2 April 1981) 20 ILM 689	–
1982	World Charter for Nature (adopted 28 October 1982) UN Doc A/RES/37/7	–
1982	United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397	UNCLOS
1988	Convention on the Regulation of Antarctic Mineral Resource Activity (adopted 2 June 1988) 27 ILM 868	CRAMRA
1989	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (adopted 22 March 1989) 1637 UNTS 9	1989 Basel Convention

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1992	Convention on the Protection and Use of Transboundary Watercourses and International Lakes (adopted 17 March 1992, entered into force 6 October 1996) 1936 UNTS 269	1992 Watercourses and Lakes Convention
1992	Convention on the Transboundary Effects of Industrial Accidents (adopted 17 March 1992, entered into force 19 April 2000) 2105 UNTS 457	1992 Convention on Industrial Accidents
1992	Convention on the Protection of the Marine Environment of the Baltic Sea Area (adopted 9 April 1992, entered into force 17 January 2000) 2099 UNTS 195	1992 Baltic Sea Convention
1992	Convention on the Protection of the Marine Environment of the Black Sea Against Pollution (adopted 21 April 1992, entered into force 15 January 1994) 1764 UNTS 4	1992 Black Sea Convention
1992	Convention for the Protection of the Marine Environment of the North-East Atlantic (adopted 22 September 1992, entered into force 25 March 1998) 2354 UNTS 67	OSPAR Convention
1992	Protocol to Amend the 1969 International Convention on Civil Liability for Oil Pollution Damage (adopted 27 November 1992, entered into force 30 May 1996) 1956 UNTS 255	1992 Oil Pollution Liability Convention
1992	Protocol to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (adopted 27 November 1992, entered into force 30 May 1996) 1953 UNTS 330	1992 Fund Convention
1992	Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development (1992) UN Doc A/ Conf.151/26/Rev.1, Annex I	1992 Rio Declaration
1992	Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79	–

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Year	Full Reference	Abbreviation
1992	United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107	UNFCCC
1993	Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (adopted 21 June 1993, not yet entered into force) 32 ILM 1228	1993 Lugano Convention
1994	Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (adopted 28 July 1994, entered into force 28 July 1996) 1836 UNTS 3	1994 Implementation Agreement
1995	Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (adopted 4 August 1995, entered into force 11 December 2001) 34 ILM 1542	1995 Fish Stocks Agreement
1996	Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 (adopted 2 May 1996, entered into force 13 May 2004) Can TS 2008 No 18	1996 LLMC
1996	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (adopted 3 May 1996, not yet entered into force) 35 ILM 1415	1996 HNS Convention
1996	Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (adopted 7 November 1996, entered into force 24 March 2006) ATS 11	1996 Dumping Protocol
1997	Convention on the Law of the Non-Navigational Uses of International Watercourses (adopted 21 May 1997, entered into force 17 August 2014) 36 ILM 700	1997 Watercourses Convention
1997	Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage (adopted 12 September 1997, entered into force 4 October 2003) 2241 UNTS 270	1997 Vienna Convention
1997	Convention on Supplementary Compensation for Nuclear Damage (adopted 12 September 1997, entered into force 15 April 2015) 36 ILM 1473	1997 Nuclear Supplementary Fund Convention
1998	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447, 38 ILM 517	1998 Aarhus Convention

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Year	Full Reference	Abbreviation
1999	Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movement of Hazardous Wastes and Their Disposal (adopted 10 December 1999) UNEP/CHW.1/WG.1/9/2	1999 Basel Liability Protocol
2000	Cartagena Protocol on Biosafety (adopted 29 January 2000, entered into force 11 September 2003) 2226 UNTS 208	Cartagena Protocol
2000	International Seabed Authority, Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (13 July 2000) Doc No ISBA/6/A/18 (13 July 2000)	PMN
2001	International Convention on Civil Liability for Bunker Oil Pollution Damage (adopted 23 March 2001, entered into force 21 November 2008) UNTS No 47	2001 Bunker Oil Convention
2001	International Law Commission, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries’ (2001) UN Doc A/56/10	ASR
2001	International Law Commission, ‘Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries’ (2001) UN Doc A/56/10	Draft Articles on Prevention of Transboundary Harm
2003	Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil, (adopted 16 May 2003, entered into force 3 March 2005) 92FUND/A.8/4 Annex 1	2003 Supplementary Fund Convention
2003	Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (adopted 21 May 2003, not yet entered into force)	UNECE Protocol on Liability for Industrial Accidents
2003	Protocol on Strategic Environment Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (adopted 21 May 2003, entered into force 11 July 2010) 2865 UNTS 140	2003 Kiev SEA Protocol
2004	European Council, Environmental Liability Directive 2004/35/CE (entered into force 30 April 2004) OJ L 143	Liability Directive
2005	Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty on Liability Arising from Environmental Emergencies (adopted 17 June 2005) (2006) 45 ILM 5	Liability Annex
2006	International Law Commission, ‘Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities, with Commentaries’ (2006) UN Doc A/61/10	Draft Principles

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Year	Full Reference	Abbreviation
2007	Nairobi International Convention on the Removal of Wrecks (adopted 18 May 2007, entered into force 14 April 2015) 46 ILM (2007)	2007 Wrecks Convention
2008	Guidelines for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area' (2008) UNEP(DEPI)/MEDI G.17/10	Barcelona Convention Guidelines
2010	Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (adopted 15 October 2010, entered into force 5 March 2018) (2011) 50 ILM 105	2010 Nagoya-Kuala Lumpur Supplementary Protocol
2010	International Seabed Authority, Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area, Doc No. ISBA/16/A/12/Rev.1 (7 May 2010)	PMS
2010	Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (adopted 30 April 2010, not yet in force)	2010 HNS Convention
2011	International Law Commission, 'Draft Articles on the Responsibility of International Organizations, with Commentaries' (2011) II (2) ILC Yearbook 1	DARIO
2012	Amendments to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 (adopted 19 April 2012, entered into force 8 June 2015) IMO Resolution LEG.5(99) (2012)	2012 LLMC
2013	International Seabed Authority, Regulations on Prospecting for Cobalt-rich Ferromanganese Crusts in the Area, Doc No. ISBA/19/C/17 (22 July 2013)	CFC
2013	Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts (31 January 2014) UN Doc FCCC/CP/2013/10/Add.1	WIM
2014	Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea (Consolidated text of the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and the 2002 Protocol to the Convention), (adopted 1 November 2002, entered into force 23 April 2014) Cmnd 8760	2014 Athens Convention
2015	Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1	Paris Agreement

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2019	Draft Regulations on Exploitation of Mineral Resources in the Area, Prepared by the Legal and Technical Commission, ISBA/25/C/WP.1 dated 22 March 2019	DER
2022	Further revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, Note by the President UN Doc A/CONF.232/2022/5, 1 June 2022	2022 Draft ILBI Text
2023	Draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, Advance, Unedited text, 4 March 2023	2023 BBNJ Agreement

Abbreviations

ABNJ	areas beyond national jurisdiction
AJIL	American Journal of International Law
ATCM	Antarctic Treaty Consultative Meeting
ATCP	Antarctic Treaty Consultative Party
BBNJ	biodiversity beyond national jurisdiction
CCAMLR	Commission on the Conservation of Antarctic
Commission	Marine Living Resources
CCLR	Carbon and Climate Law Review
CEP	Committee for Environmental Protection
CHH	common heritage of humankind
CLJ	Cambridge Law Journal
COP	Conference of the Parties
CRISTAL	Contract Regarding an Interim Supplement to
	Tanker Liability for Oil Pollution
DRC	Democratic Republic of the Congo
ECF	Environmental Compensation Fund
EEZ	exclusive economic zone
EIA	environmental impact assessment
EJIL	European Journal of International Law
EPL	Environmental Policy and Law
EPG	Environmental Policy and Governance
GAIRS	generally accepted international rules and
	standards
GRIR	Geneva Risk and Insurance Review
GYIL	German Yearbook of International Law
HEA	habitat equivalency analysis
IAEA	International Atomic Energy Agency

ICGJ	International Courts of General Jurisdiction
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
IJLMA	International Journal of Law and Management
IJMCL	International Journal of Marine and Coastal Law
ILBI	internationally legally binding instrument
ILC	International Law Commission
ILM	International Legal Materials
IMO	International Maritime Organization
IOPC Funds	International Oil Pollution Compensation Funds
IPCC	Intergovernmental Panel on Climate Change
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
JEL	Journal of Environmental Law
JIDS	Journal of International Dispute Settlement
JLS	Journal of Legal Studies
LJIL	Leiden Journal of International Law
LP ICT	The Law and Practice of International Courts and Tribunals
LTC	Legal and Technical Commission
MJEAL	Michigan Journal of Environmental and Administrative Law
MJIL	Melbourne Journal of International Law
MJSDL	McGill Journal of Sustainable Development Law
NEA	Nuclear Energy Agency
NGO	non-governmental organization
NILR	Netherlands International Law Review
NYIL	Netherlands Yearbook of International Law
OECD	Organization for Economic Cooperation and Development
P&I	protection and indemnity
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
RECIEL	Review of European, Comparative & International Environmental Law
RFMA	Regional fisheries management arrangements
RFMO	Regional fisheries management organization
SDC	Seabed Disputes Chamber



*List of Abbreviations*

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TOVALOP	Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution
UN	United Nations
UNCC	United Nations Compensation Commission
UNGA	United Nations General Assembly
UNTS	United Nations Treaty Series
UTLJ	University of Toronto Law Journal