

Index

- Aarhus Convention, 45–46
 ABNJ. *See* areas beyond national jurisdiction
 absolute liability, 147
 adequate and prompt compensation, 31–34, 114, 200, 231, 249, 263. *See also* prompt and adequate compensation
 advisory opinions
 for access to remedies, 210–211
 Sub-Regional Fisheries Commission Advisory Opinion, 154–155
 Antarctic, 6–12. *See also* Antarctic Liability Annex
 access to remedies for environmental harm, 220–223
 Antarctic Liability Annex, 221–222
 under Antarctic Protocol, 220–222
 in domestic forums, 222–223
 in international forums, 220–222
 activities in, 8–9
 under Antarctic Treaty System, 6–7, 9
 Antarctic Treaty Area, 10–11, 162–163
 Antarctic Treaty Consultative Parties, 7–8, 12, 183, 187–188
 institutional arrangements under, 7–8
 standing for claims for environmental harm, 183–186
 compensable damage in, 76–80
 under Convention for the Conservation of Antarctic Seals, 6
 under Convention on the Conservation of Antarctic Marine Living Resources, 6, 8–9
 under Convention on the Regulation of Antarctic Mineral Resource Activities, 9–11
 environmental protections for, 10–12
 environmental risks, 8–9
 Exclusive Economic Zones and, 7
 financial assurances in, 239–242
 Antarctic Liability Annex and, 235–236, 238–241, 246
 under Antarctic Protocol, 232, 238–239
 Antarctic Treaty Consultative Meetings and, 241
 legal status as global commons, 6–7
 liability allocation for environmental harm in, 119–123
 liability framework for, 10–12
 liability standards for, 149–150
 under Protocol on Environmental Protection to the Antarctic Treaty, 6, 7, 10–11, 12
 environmental impact statements, 10–11
 sovereignty claims, 6, 7
 standing for claims for environmental harm in, 183–188
 under Antarctic Liability Annex, 183–186
 under Antarctic Treaty, 183–186
 by international organizations, 187–188
 by non-state actors, 187–188
 by state operators, 183–186
 under Third Conference on the Law of the Sea, 8–9
 under UN Conference on the Law of the Sea, 11
 Antarctic Liability Annex (2005), 11–12, 28, 35, 49, 50–51, 121, 131
 access to remedies for environmental harm, 221–222
 access to remedies under, 221–222
 areas beyond national jurisdiction and, 77–78, 93
 financial assurances and, 235–236, 238–241, 246
 Antarctic Protocol. *See* Protocol on Environmental Protection to the Antarctic Treaty

- Antarctic Treaty (1959), 6–7
 - areas beyond national jurisdiction under, 76–77
 - preamble to, 6–7
 - Protocol on Environmental Protection to the
 - Antarctic Treaty, 6, 7, 10–11, 12
 - environmental impact statements, 10–11
- Antarctic Treaty Consultative Parties (ATCPs), 7–8, 12, 183, 187–188
- Antarctic Treaty Consultative Meeting (ATCMs), 7–8, 51, 78, 119–120, 185–188
 - access remedies, 221–222
 - financial assurances and, 241
- Antarctic Treaty System, 6–7, 9
 - Antarctic Treaty Area, 10–11, 162–163
 - Antarctic Treaty Consultative Meeting, 7–8, 51, 78, 119–120, 185–188
 - Antarctic Treaty Consultative Parties, 7–8, 12, 183, 187–188
- areas beyond national jurisdiction (ABNJ),
 - environmental damage and harm in. *See also* Antarctic; deep seabed area; global commons; high seas; standing
- Antarctic Liability Annex, 77–78, 93
 - under Antarctic Protocol, 76–79, 150
 - under Antarctic Treaty, 76–77
- civil liability in, 3, 65–73
- compensable damage in, 76–85, 92–93
 - in Antarctic, 76–80
 - in deep seabed, 80–84
 - in high seas, 84–85
- under Convention on the Regulation of
 - Antarctic Mineral Resources Activities, 78–80, 149
- under customary international law, 57–76
 - assessment of environmental damage, 70
 - causation in, 58–61
 - ecosystem services loss, 70–73
 - forms of reparation, 61–65, 92
 - in International Court of Justice cases, 59, 63–64
 - international organizations' responsibilities, 105–108
 - loss of profit as result of environmental impairment, 67
 - monitoring of environmental damage, 70
 - pure environmental damage, 70–73
 - reasonable preventive measures, 67–68
 - reinstatement measures, 68–69
 - remoteness in, 58–61
 - reparation principles, 58
 - state responsibility under, 57–65
 - threshold of harm, 73–76
- definition of, 4–6, 54, 66
- under Draft Exploitation Regulations, 82–84
- under Environmental Compensation Fund
 - (deep seabed), 82–84
- environmental impact assessments, 56
- environmental impact statements for, 80
- financial assurances for, 237–248
 - future uses of, 244–248
 - liability funding mechanisms, 244
 - mandatory insurance, 245
- under UN Convention on the Law of the Sea, 237
- habitat equivalency analysis for, 88, 89–90
- heads of damages, 55–56
- ILC Draft Article on State Responsibility, 58–63
- ILC Draft Principles on the Allocation of Loss, 55, 65–67
- international organizations' responsibilities, 105–109
 - under domestic/national laws, 109
 - under international law, 105–108
- under ISA regulations, 82–84
- liability allocation for environmental harm in, 99
 - amongst several responsible actors, 116–119
 - in Antarctic, 119–123
 - causation factors, 97–100
 - climate change factors, 97
 - conceptual approach to, 95–97
 - in deep seabed, 123–129
 - in high seas, 129–130
 - International Seabed Authority, 123–129
 - for land-based activities, 95–96
 - for ocean-based activities, 95–96
 - operator responsibility, 109–116
 - rules for, 96–97
 - Seabed Disputes Chamber, 126–128
 - special rules on, 119–130
 - under UN Convention on the Law of the Sea, 123–127, 130
- liability standards in, 149–157
 - in Antarctic, 149–150
 - in deep seabed, 150–154
 - in high seas, 154–157
- marine biodiversity and, 84–85
- Oil Pollution Liability Convention and, 67–68, 105
- scope of, 55–56
- state responsibility for, 100–105
 - attribution of conduct in, 101
 - in coastal states, 103–104
 - under domestic/national laws, 104–105
 - over exclusive economic zones, 103–104
 - under international law, 57–65, 100–104
- UN Compensation Commission and, 56–57, 60–65, 71, 74, 87–92

- under UN Convention on the Law of the Sea, 80–83
- valuation of environmental damage, 54, 87–92
 - in U.S., 87–88
- ASR. *See* ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts
- ATCMs. *See* Antarctic Treaty Consultative Meeting
- ATCPs. *See* Antarctic Treaty Consultative Parties
- atmosphere, as form of commons, 5
- atmospheric trust, 139–140
- Australia, 183
 - Exclusive Economic Zones off Antarctic, 7
- Bahia Paraiso* oil spill, 9
- Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 73
- Basel Liability Protocol. *See* Protocol on Liability and Compensation to the Basel Convention on Transboundary Movement of Hazardous Wastes
- Biodiversity beyond National Jurisdiction (BBNJ), 196–197, 261–262
 - high seas and, 19–20
 - international legally binding instrument, 20, 24–25, 196–197, 227–228
- Biodiversity beyond National Jurisdiction (international legally binding instrument) (BBNJ ILBI), 20, 24–25, 196–197, 227–228
- Bunker Oil Convention, 114, 146
- causation, of damage, in areas beyond national jurisdiction, 58–61, 97–100
- CCAMLR. *See* Convention on the Conservation of Antarctic Marine Living Resources
- CERCLA. *See* Comprehensive Environmental Response, Compensation, and Liability Act, U.S.
- cessation
 - of harmful activities, 207–208
 - of wrongful acts, 169
- channelling of liability, 110–116, 125
 - advantages/disadvantages in, 114–115
 - for nuclear energy production, 110
 - for operators, 110–116
 - polluter-pays principle, 115–116
 - for vessel-based cargo oil, 110–113
- CHH. *See* common heritage of humankind
- China, 166
- CHM. *See* common heritage of mankind
- claims, espousal of, 44, 174
- climate change
 - impacts on global commons, 5
 - loss and damage, 51–52
 - Paris Agreement, 51–52
 - standing for claims for environmental harm and, 180–181
- coastal states. *See also specific states*
 - areas within national jurisdiction and, 69
 - state responsibility and, 103–104
- Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR Commission), 187–188
- common heritage of humankind (CHH), 13–14, 189–192, 194–195
- common heritage of mankind (CHM), 13, 17, 83, 127, 153, 189–190, 194, 264. *See also* common heritage of humankind
- compensation. *See also* remedies
 - access to remedies and, 199–200
 - adequate and prompt compensation, 31–34, 231
 - global commons and, 3–4
 - International Law Commission, 30
 - UN Convention on the Law of the Sea and, 31
- compensation funds
 - Environmental Compensation Fund (deep seabed), 82–84
 - International Oil Pollution Compensation Funds, 47, 71–72, 175–176, 217, 255
 - financial assurances and, 231
- Comprehensive Environmental Response, Compensation, and Liability Act, U.S. (CERCLA), 87
- Convention for the Conservation of Antarctic Seals, 6
- Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), 23, 48, 157
- Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), 36–37, 141
- Convention on Civil Liability for Oil Pollution Damage, 1–2, 214–215
- Convention on International Liability for Damage Caused by Space Objects, 5, 144
- Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS Convention), 37–38, 215–216
 - financial assurances and, 235–236, 246–247
- Convention on Limitation of Liability for Maritime Claims, 156, 232

- Convention on the Conservation of Antarctic Marine Living Resources, 6, 8–9, 187–188
- Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 85, 110–111, 147, 217, 230–231
- Convention on the Law of the Non-Navigational Uses of International Watercourses. *See* UN Watercourses Convention
- Convention on the Protection of the Environment (Nordic Convention), 45
- Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA), 9–11, 78–80, 120–122, 149
- Conventions on Transboundary Watercourses and Transboundary Effects of Industrial Accidents, 36–37, 48
- Costa Rica, 90–91
 - ecosystem services in, 90
- CRAMRA. *See* Convention on the Regulation of Antarctic Mineral Resource Activities
- cumulative effects, 26, 56, 260
- damage. *See* environmental damage and harm
- DARIO. *See* ILC Draft Articles on the Responsibility of International Organizations
- deep seabed area, 12–18
 - access to remedies for environmental harm, 223–227
 - in domestic forums, 226–227
 - in international forums, 223–226
 - International Seabed Authority and, 223–226
 - Seabed Disputes Chamber, 223–226
 - activities in, 15–17
 - common heritage of humankind and, 13–14, 189–192
 - compensable damage in, 80–84
 - definition of, 13–14
 - environmental risks in, 15–17
 - financial assurances and, 242–244
 - institutional arrangements for, 14–15
 - International Seabed Authority, 14–15
 - environmental liability, 17–18
 - environmental protection obligations, 17–18
 - 1994 Implementation Agreement, 14–15
 - resource management, 16–17
 - legal status as global commons, 12–14
 - liability allocation for environmental harm, 123–129
 - liability standards for, 150–154
 - resources in, 15–17
 - ISA regimes for, 16–17
 - Seabed Disputes Chamber, 36, 46, 126–128
 - areas beyond national jurisdiction under, 81–82
 - standing for claims for environmental harm, 188–195
 - International Seabed Authority, 189–192
 - by non-state actors, 194–195
 - Seabed Disputes Chamber, 188–190
 - by state operators, 192–194
 - under UN Convention on the Law of the Sea, 12–15, 17–18
 - common heritage of humankind, 13–14
 - International Tribunal for the Law of the Sea, 14–15
- Democratic Republic of the Congo, 91, 92
- DER. *See* Draft Exploitation Regulations
- dispute settlement mechanisms
 - in Antarctic, 222
 - in international forums, 201–207
 - Seabed Disputes Chamber, 223–226
- domestic laws, standing for claims for
 - environmental harm under, 176–183
 - parens patriae*, 177–179, 189, 206, 216
 - public law remedies, 181
 - public trust doctrine, 178–179
- domestic liability law, 43–49
 - harmonized, 44–49
 - tort of nuisance, 41
 - transboundary harm, 46
 - unharmonized, 43–44, 254
- Draft Exploitation Regulations (DER), 82–84, 151–152
- due diligence, 152–153, 156–157
 - international liability and, 42–43
 - state responsibility and, 42–43
- ecocide, 252
- ecosystem services, loss and damage to
 - in areas beyond national jurisdiction, 70–73
 - Costa Rica v Nicaragua*, 90
- EEZs. *See* Exclusive Economic Zones
- effective control, 102, 128
- Environmental Compensation Fund (ECF) (deep seabed), 82–84
 - financial assurances and, 243–244
- environmental damage and harm, 25–26
 - liability rules for prevention of, 34–36
 - methodological approach to, 27–28
 - pure environmental damage, 70–73
- environmental impact assessments, for areas beyond national jurisdiction, 80
- environmental impact statements (EIS), 25–26
 - in Antarctic Protocol, 10–11
 - for areas beyond national jurisdiction, 56, 80

- environmental restoration, liability rules and, 34–36
- erga omnes*, 164–170, 179, 193, 198, 204–205
- erga omnes partes*, 164–170, 179, 184–185, 256–257
- espousal of claims, 44, 174
- European Convention on Human Rights, 180
- Exclusive Economic Zones (EEZs), 103–104, 166
- off Antarctic, 7
- Exxon Valdez* oil spill, 88
- fault-based liability, 134
- in France, 136
- in Germanic countries, 136
- policy considerations for, 135–141
- subjective fault in, 135–136
- financial assurances, 230
- analysis of, 248–250
- in Antarctic, 239–242
- Antarctic Liability Annex and, 235–236, 238–241, 246
- under Antarctic Protocol, 232, 238–239
- Antarctic Treaty Consultative Meeting and, 241
- in areas beyond national jurisdiction, 237–248
- future uses of, 244–248
- liability funding mechanisms, 244
- mandatory insurance, 245
- under UN Convention on the Law of the Sea, 237
- Basel Protocol and, 235–236
- in deep seabed, 242–244
- Environmental Compensation Fund and, 243–244
- forms of, 230–237
- HNS Convention and, 235–236, 246–247
- insurance and, 235
- mandatory, 245
- parametric insurance, 248
- self-insurance, 234–235, 242–243
- International Law Commission and, 237–238
- International Oil Pollution Compensation and, 231
- liability rules, 232–233
- Limitation of Liability for Maritime Claims Convention, 232, 240–241
- protection and indemnity clubs and, 234–235
- purpose of, 231–234
- risk internalization, 232–233
- Seabed Disputes Chamber and, 238
- flag states, 103, 129, 143, 154, 155, 156
- forum non conveniens*, 199–200, 214
- France, 183
- Exclusive Economic Zones off Antarctica, 7
- fault-based liability in, 136
- generally accepted international rules and standards (GAIRS), 157
- Germany, fault-based liability in, 136
- global commons. *See also* Antarctic; areas beyond national jurisdiction; atmosphere; deep seabed area; high seas; *specific environments*; *specific regions*
- climate change influences on, 5
- compensation approaches to, 3–4
- definition of, 4–6
- as resource domains, 4–5
- liability approaches to, 3–4
- habitat equivalency analysis (HEA), 88, 89–90
- harm. *See* environmental damage and harm
- harmonized domestic liability law, 44–49
- HEA. *See* habitat equivalency analysis
- high seas, 18–25
- access to remedies, 227–228
- BBNJ (ILBI), 227–228
- biodiversity beyond national jurisdiction and, 19–20
- under Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 23
- under Convention on the Law of the Sea, 18–19
- BBNJ (ILBI), 20, 24–25, 195–197
- environmental protection obligations, 22–25
- International Tribunal for the Law of the Sea, 19
- environmental liability procedures, 22–25
- environmental protection obligations, 22–25
- under UN Convention on the Law of the Sea, 22–25
- environmental risks and, 20–21
- institutional arrangements, 19–20
- legal status as global commons, 18
- liability allocation for environmental harm in, 129–130
- liability standards for, 154–157
- resource management, 20–21
- standing for claims for environmental harm, 195–197
- HNS Convention. *See* Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances
- ICJ. *See* International Court of Justice
- ICRW. *See* International Convention for the Regulation of Whaling
- ILC. *See* International Law Commission
- ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, 155

- ILC Draft Articles on the Allocation of Loss in the case of Transboundary Harm arising out of Hazardous Activities, 31
- ILC Draft Articles on the Responsibility of International Organizations (DARIO), 106, 108, 172–173
- ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ASR), 58, 98–99, 161, 163–164
in standing claims, 161–162, 164–166, 169–170
- ILC Draft Principles on the Allocation of Loss, 37–45, 74–76, 102–103, 175–176, 211–212, 213
- illegal, unreported and unregulated fishing, 25, 154
- IMO. *See* International Maritime Organization
- implied powers, of international organizations, 171–172
- insurance
financial assurances and, 235
mandatory insurance, 245
parametric insurance, 248
self-insurance, 234–235, 242–243
- inter-governmental organizations, access to remedies and, 205
- International Convention for the Regulation of Whaling (ICRW), 166, 183
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 162
- International Court of Justice (ICJ), 55
access to remedies cases, 200–201, 210
Monetary Gold principle, 203
areas beyond national jurisdiction cases, 59, 63–64, 87–92, 118–119
liability allocation for environmental harm in, 99
valuation of environmental damage in, 87–92
liability allocation for environmental harm, 99
standing for claims for environmental harm, 168–185
- International Court of the Environment Foundation, 209
- International Law Commission (ILC), 251
access to remedies, 199–200, 207–208
for areas beyond national jurisdiction, 55, 58–63, 65–67
compensation requirements and, 30
Draft Articles on the Responsibility of States for Internationally Wrongful Acts (DARIO), 58, 98–99, 161, 163–164
in standing claims, 161–162, 164–166, 169–170
financial assurances and, 237–238
- ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, 155
- ILC Draft Articles on the Responsibility of International Organizations, 106, 108, 172–173
- ILC Draft Principles on the Allocation of Loss, 37–45, 74–76, 102–103, 175–176, 211–212, 213
liability and, 28, 29, 31, 32–33, 40–41
- International Maritime Organization (IMO), 106, 107
- International Oil Pollution Compensation Funds (IOPC Funds), 47, 71–72, 175–176, 217, 255
financial assurances and, 231
- international organizations. *See also specific organizations*
areas beyond national jurisdiction and, 105–109
under domestic/national laws, 109
under international law, 105–108
- Draft Articles on the Responsibility of International Organizations and, 106, 108, 172–173
- implied powers of, 171–172
- regional fisheries management arrangements, 106
- regional fisheries management organizations, 106, 107
- standing for claims for environmental harm in Antarctic, 187–188
under international law, 171–173
- UN Convention on the Law of the Sea and, 107–108
- International Seabed Authority (ISA), 14–15
access to remedies for environmental harm and, 223–226
areas beyond national jurisdiction under, 82–84
Draft Exploitation Regulations, 82–84, 151–152
environmental liability, 17–18
environmental protection obligations, 17–18
Implementation Agreement, 14–15
liability and, 33, 151–152
allocation for environmental harm and, 123–129
environmental, 17–18
Seabed Disputes Chamber, 36, 42, 46
resources management, 16–17
- Seabed Disputes Chamber, 36, 42, 46, 126–128, 143
access to remedies for environmental harm, 223–226
areas beyond national jurisdiction under, 81–82

- standing for claims for environmental harm, 166–169
- standing for claims for environmental harm, 171, 173, 189–192
 - Seabed Disputes Chamber and, 166–169
- International Tribunal for the Law of the Sea (ITLOS), 14–15
 - access to remedies under, 202, 203
 - high seas under, 19
- IOPC. *See* International Oil Pollution Compensation Funds
- ISA. *See* International Seabed Authority
- ITLOS. *See* International Tribunal for the Law of the Sea
- joint liability, 116–117
- ius cogens*, 169, 170
- lex loci delicti* rule, 218–219
- liability, international
 - absolute, 147
 - access to remedies and, 199–200
 - under Antarctic Protocol, 34, 48
 - Antarctic Liability Annex, 11–12, 28, 35, 49, 50–51, 121, 131
 - approaches to, 38–53
 - administrative, 50–51
 - in areas beyond national jurisdiction, 138–139
 - Basel Liability Protocol, 32, 48
 - BBNJ (ILBI) and, 141
 - channelling of, 110–116, 125
 - advantages/disadvantages in, 114–115
 - for nuclear energy production, 110
 - for operators, 110–116
 - polluter-pays principle, 115–116
 - for vessel-based cargo oil, 110–113
 - conceptual approach to, 2–4, 29–30
 - domestic liability law and, 43–49
 - harmonized, 44–49
 - tort of nuisance, 41
 - transboundary harm, 46
 - unharmonized, 43–44
 - in existing environmental agreements, 48–49
 - fault-based, 134
 - in France, 136
 - in Germanic countries, 136
 - policy considerations for, 135–141
 - subjective fault in, 135–136
 - future challenges for, 260–262
 - global commons and, 3–4
 - for Antarctic, 10–12
 - in deep seabed, 17–18
 - high seas, 22–25
 - HNS Convention, 37–38
 - institutional mechanisms, 259–260
 - under international law, 142–149
 - International Law Commission and, 28, 29, 31, 32–33, 40–41, 138
 - International Seabed Authority and, 33, 139
 - environmental liability, 17–18
 - Seabed Disputes Chamber, 36, 42, 46
 - under International Tribunal for the Law of the Sea, 143
 - joint, 116–117
 - limitations of, 262–264
 - for loss and damage, 51–52
 - under climate change regimes, 51–52
 - under Paris Agreement, 51–52
 - Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 45–46, 141
 - moral dimensions of, 133
 - Nagoya-Kuala Lumpur Supplementary Protocol, 48, 49
 - Oil Pollution Liability Convention, 37–38
 - polluter-pays principle, 36–37, 140, 141
 - application of, 37
 - legal status of, 36–37
 - proportionate, 117
 - under Protocol on Liability and Compensation to the Basel Convention on Transboundary Movement of Hazardous Wastes, 32
 - purpose for rules in, 30–38, 252–254
 - compensation, 31–34
 - economic objectives, 37–38
 - for environmental restoration strategies, 34–36
 - for prevention of environmental harm, 34–36
 - Seabed Disputes Chamber and, 143
 - several, 116–117
 - standards of, 157–158
 - in Antarctic, 149–150
 - for civil liability regimes, 145–147
 - conceptual approach to, 133–134
 - in deep seabed, 150–154
 - generally accepted international rules and, 157
 - in high seas, 154–157
 - policy considerations, 135–141
 - risk factors for, 136–140
 - state responsibilities and, 39–43, 142–145
 - default rules, 142
 - due diligence and, 42–43, 142–143
 - no-harm principle and, 42
 - Seabed Disputes Chamber and, 42
 - strict, 134, 140–141
 - UN Convention on the Law of the Sea and, 34, 139

- liability caps, 148–149
- Limitation of Liability for Maritime Claims Convention (LLMC), 232, 240–241
- London Convention. *See* Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
- loss allocation, 28
 - ILC Draft Principles on Allocation of Loss, 175–176
- loss and damage
 - ecosystem services loss and, 70–73
 - ILC Draft Principles on Allocation of Loss, 175–176
 - liability and, 51–52
 - under climate change regimes, 51–52
 - under Paris Agreement, 51–52
 - Warsaw International Mechanism for Loss and Damage, 51
- Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 45–46, 72–73, 141
- mandatory insurance, 245
- marine biodiversity, in areas beyond national jurisdiction, 84–85
- marine genetic resources, 19–20, 21, 26, 84, 156
- Monetary Gold* principle, 203
- Nagoya-Kuala Lumpur Supplementary Protocol, 48, 49, 72–73
- necessitous intervention, 69, 163, 179, 257
- negligence. *See* fault-based liability
- New Zealand, 10
- NGOs. *See* non-government organizations
- Nicaragua, 90–91
- 1994 Implementation Agreement, 14–15
- no-fault liability. *See* strict liability
- no-harm principle, 40, 251
- non-government organizations (NGOs)
 - access to remedies for environmental harm and, 203, 206–207
 - standing for claims for environmental harm, 173–175, 179–180
 - in Antarctic, 187–188
 - in deep seabed, 194–195
- oceans. *See* deep seabed; high seas
- Odyssey* oil spill, 1
 - areas beyond national jurisdiction and, 1
 - civil liability rules and, 1–2, 4
- Oil Pollution Act, U.S. (1990), 87
- Oil Pollution Liability Convention, 37–38, 67–68, 105, 110–111, 113, 114
 - standing claims and, 175–176
- OSPAR Convention. *See* Convention for the Protection of the Marine Environment of the North-East Atlantic
- parametric insurance, 248
- Pardo, Arvid, 13–14
- parens patria*, 177–179, 189, 206, 216
- Paris Agreement, 51–52
- participation in environmental decision-making, 205–206. *See also* Rio Declaration on Environment and Development
- Philippines, 166
- P&I clubs. *See* protection and indemnity clubs
- polluter-pays principle, 36–37, 140, 141
 - application of, 37
 - channelling of liability, 115–116
 - legal status of, 36–37
- Portugal, 181
- Postiglione, Amedeo, 209
- prompt and adequate compensation, 22–23, 31, 33–34, 44–45, 62, 95, 130, 131, 145–147, 153, 157–158, 212–213, 230, 231, 237–238
- proportionate liability, 117
- protection and indemnity clubs (P&I clubs), 234–235
- Protocol on Environmental Protection to the Antarctic Treaty (Antarctic Protocol) (1991), 6, 7, 10–11, 12
 - access to remedies under, 220–222
 - Antarctic Liability Annex, 11–12, 28, 35, 49, 50–51, 77–78, 93, 121, 131
 - areas beyond national jurisdiction under, 76–79, 150
 - Antarctic Liability Annex, 77–78, 93
 - environmental impact statements, 10–11
 - financial assurances under, 232, 238–239
 - liability under, 34, 48
- Protocol on Liability and Compensation to the Basel Convention on Transboundary Movement of Hazardous Wastes (Basel Liability Protocol) (1999), 32, 48, 70, 113–114, 216
 - financial assurances and, 235–236
- public law remedies, standing for claims for environmental harm and, 181
- public trust doctrine, 178–179
- pure environmental damage/loss, 26, 55–56, 63, 65, 70–73, 83, 160–161, 176, 224, 243–244, 255, 258–259
- recognition and enforcement, of judgments, access to remedies
 - in domestic forums, 219–220
 - in international forums, 208–209

- regional fisheries management arrangements (RFMAs), 106
- regional fisheries management organizations (RFMOs), 106, 107
 - standing for claims for environmental harm and, 171
- reinstatement, 49, 50, 55–56, 65–69, 72–73, 160–161
- remedies, access to, for environmental harm. *See also* Antarctic Liability Annex
 - analysis of, 228–229
 - in Antarctic, 220–223
 - under Antarctic Protocol, 220–222
 - dispute settlement mechanisms and, 222
 - in domestic forums, 222–223
 - in international forums, 220–222
- under BBNJ (ILBI), 227–228
- compensation for environmental harm and, 199–200
- conceptual approach to, 199–200
- in deep seabed, 223–227
 - in domestic forums, 226–227
 - in international forums, 223–226
 - International Seabed Authority and, 223–226
 - Seabed Disputes Chamber, 223–226
- dispute settlement mechanisms
 - in Antarctic, 222
 - in international forums, 201–207
 - Seabed Disputes Chamber, 223–226
- in domestic forums, 211–220
 - choice of applicable law, 218–219
 - civil liability conventions, 218
 - forum choice, 213–216
 - forum non conveniens*, 214
 - international obligations for, 211–213
 - lex loci delicti* rule, 218–219
 - parties to proceedings, 216–218
 - recognition and enforcement of judgments, 219–220
 - sovereign immunity and, 217
- under Draft Principles on the Allocation of Loss, 211–212, 213
- in high seas, 227–228
- inter-governmental organizations and, 205
- through International Court for the Environment, 209–210
- in International Court of Justice cases, 200–201, 210
 - Monetary Gold* principle, 203
- in international forums, 200–211
 - advisory opinions, 210–211
 - in Antarctic, 220–222
 - available remedies, 207–208
 - dispute settlement mechanisms, 201–207
 - evidentiary issues in, 209
 - participation in environmental decision-making, 205–206
 - parties in, 203–207
 - recognition and enforcement of judgments in, 208–209
 - under international law, 199–200
- International Law Commission and, 199–200, 207–208
- non-governmental organizations and, 203, 206–207
- recognition and enforcement of judgments
 - in domestic forums, 219–220
 - in international forums, 208–209
- under Rio Declaration, 211–212
- scope of, 199
- state responsibility for, 207
- UN Compensation Commission, 200–201
- under UN Convention on the Law of the Sea, 199, 202, 203, 212–213, 226–227
- remoteness, 58–61
- reparations, for environmental damage
 - for areas beyond national jurisdiction, 61–65, 92
 - principles for, 58
- resource management
 - for deep seabed areas, 16–17
 - for high seas, 20–21
 - under International Seabed Authority, 16–17
- Restatement on the Law of Torts, U.S., 137
- RFMAs. *See* regional fisheries management arrangements
- RFMOs. *See* regional fisheries management organizations
- rights of nature, approaches to ABNJ, 182–183
- Rio Declaration on Environment and Development, 1–2, 142–143, 251
 - access to remedies under, 211–212
 - no-harm principle in, 40
 - Principle 10, 45–46
- Seabed Disputes Chamber (SDC), 36, 46, 126–128, 143
 - access to remedies for environmental harm, 223–226
 - standing for claims for environmental harm, 166–169
- self-insurance, 234–235, 242–243
- several liability, 116–117
- sovereign immunity
 - access to remedies for environmental harm, 217
 - jure gestionis*, 105
 - jure imperii*, 105
- sovereignty, over Antarctic, 6–7
 - international claims of, 6, 7

- standard of care, 134, 140, 146, 156–157
- standing, for claims, for environmental harm in ABNJ
 - analysis of, 197–198
 - in Antarctic, 183–188
 - Antarctic Liability Annex, 183–186
 - under Antarctic Treaty, 183–186
 - by international organizations, 187–188
 - by non-state actors, 187–188
 - by state operators, 183–186
 - in civil liability regimes, 175–176
 - for climate change litigation, 180–181
 - collective legal interests in, 159–160
 - in deep seabed, 188–195
 - International Seabed Authority, 189–192
 - by non-state actors, 194–195
 - Seabed Disputes Chamber, 188–190
 - by state operators, 192–194
 - definition of, 159
 - under domestic/national laws, 176–183
 - parens patria*, 177–179, 189, 206, 216
 - public law remedies, 181
 - public trust doctrine, 178–179
 - Draft Articles on the Responsibility of International Organizations and, 172–173
 - under Draft Principles on Allocation of Loss, 175–176
 - erga omnes*, 164–170, 179, 193, 198, 204–205
 - erga omnes partes*, 164–170, 179, 184–185
 - in high seas, 195–197
 - under international law, 159, 160–175
 - Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 161–162, 164–166, 169–170
 - in ICJ cases, 168–185
 - in individual states, 160–171
 - for international organizations, 171–173
 - for non-state actors, 173–175
 - under International Oil Pollution Compensation Funds, 175–176
 - by international organizations
 - in Antarctic, 187–188
 - under international law, 171–173
 - International Seabed Authority, 171, 173
 - International Seabed Authority, Seabed Disputes Chamber and, 166–169
 - under International Tribunal for the Law of the Sea, 166–169
 - jus cogens*, 169, 170
 - legal criteria for, 159–160
 - necessitous intervention, 163, 179
 - by non-government organizations, 173–175, 179–180
 - in Antarctic, 187–188
 - in deep seabed, 194–195
 - Permanent Court for International Justice, 164
 - regional fisheries management organizations and, 171
 - rights of nature approaches, 182–183
 - under UN Convention on the Law of the Sea, 166–171, 173
 - state responsibility
 - for access to remedies, 207
 - analysis of, 254–257
 - for areas beyond national jurisdiction, 57–65, 100–105
 - attribution of conduct in, 101
 - in coastal states, 103–104
 - under domestic/national laws, 104–105
 - over exclusive economic zones, 103–104
 - under international law, 57–65, 100–104
 - international liability and, 39–43, 142–145
 - default rules, 142
 - due diligence and, 42–43, 142–143
 - no-harm principle and, 42
 - Stockholm Declaration, 142–143
 - no-harm principle in, 40
 - strict liability, 134, 140–141
 - submarine cables, 13, 18, 21, 162, 253
 - Sub-Regional Fisheries Commission Advisory Opinion, 154–155
- tort of nuisance, 41
- transboundary harm, 46
- UN Compensation Commission, 118
 - access to remedies and, 200–201
 - areas beyond national jurisdiction and, 56–57, 60–65, 71, 74, 87–92
- UN Convention on Biological Diversity, 19, 182–183
- UN Convention on the Law of the Sea (UNCLOS)
 - access to remedies, 199, 202, 203, 212–213, 226–227
 - areas beyond national jurisdiction under, 80–83
 - liability allocation for environmental harm in, 123–127, 130
 - compensation objectives, 31
 - deep seabed under, 12–15, 17–18
 - common heritage of humankind, 13–14
 - International Tribunal for the Law of the Sea, 14–15
 - financial assurances and, 237
 - high seas under, 18–19
 - BBNJ (ILBI), 20, 24–25
 - environmental protection obligations, 22–25

International Tribunal for the Law of the Sea, 19	United States (U.S.)
international liability and, 34, 139	areas beyond national jurisdiction and, 87–88
international organizations and, 107–108	<i>Exxon Valdez</i> oil spill, 88
standing for claims for environmental harm under, 166–171, 173	Restatement on the Law of Torts, 137
Third UN Conference on the Law of the Sea, 8–9	valuation of environmental damage, 87–88
UN Framework Convention on Climate Change, 19	under Comprehensive Environmental Response, Compensation, and Liability Act, 87
UN Watercourses Convention, 45	under Oil Pollution Act, 87
unharmonized domestic liability law, 43–44, 254	
	Warsaw International Mechanism for Loss and Damage, 51