

Contents

<i>Acknowledgements</i>	<i>page</i> xi
<i>Table of Cases</i>	xiii
<i>Table of Treaties and Instruments</i>	xix
<i>List of Abbreviations</i>	xxvii
1 Introduction	1
1.1 Introduction	1
1.2 Defining the Global Commons or Areas beyond National Jurisdiction	4
1.2.1 Antarctic	6
1.2.2 Deep Seabed	12
1.2.3 High Seas	18
1.3 Environmental Harm	25
1.4 Approach and Structure of the Book	27
2 Purposes of, and Approaches to, International Liability	29
2.1 Introduction	29
2.2 Purposes of Liability Rules	30
2.2.1 Adequate and Prompt Compensation	31
2.2.2 Environmental Harm Prevention and Restoration	34
2.2.3 The Polluter-Pays Principle	36
2.2.4 Economic Objectives	37
2.3 Approaches to the Form of Liability Schemes	38
2.3.1 State Responsibility	39
2.3.2 Unharmonized Domestic Liability	43
2.3.3 Harmonized Domestic Liability Rules	44

2.3.4	Administrative Approaches	50
2.3.5	Loss and Damage	51
2.4	Conclusions	52
3	Definition and Valuation of Compensable Environmental Damage	54
3.1	Introduction	54
3.2	Defining Compensable Environmental Damage under International Law	57
3.2.1	State Responsibility	57
3.2.2	Civil Liability	65
3.2.3	Threshold of Harm	73
3.3	Defining Compensable Environmental Damage in ABNJ	76
3.3.1	Antarctic	76
3.3.2	Deep Seabed	80
3.3.3	High Seas	84
3.4	Valuation of Environmental Damage	87
3.5	Conclusions	92
4	Allocation of Liability for Environmental Harm in Areas beyond National Jurisdiction	95
4.1	Introduction	95
4.2	Causation	97
4.3	General Approaches to the Allocation of Liability for Environmental Harm	100
4.3.1	State Responsibility	100
4.3.2	International Organizations Responsibility	105
4.3.3	Operator Responsibility	109
4.3.4	Allocating Liability amongst Several Responsible Actors	116
4.4	Specific Rules on Allocation of Liability in ABNJ	119
4.4.1	Antarctic	119
4.4.2	Deep Seabed	123
4.4.3	High Seas	129
4.5	Conclusions	131
5	Standards of Liability	133
5.1	Introduction	133
5.2	Policy Considerations Underlying Standards of Liability	135
5.3	Approaches to Standards of Liability in International Law	142
5.3.1	State Responsibility	142

5.3.2 Civil Liability	145
5.4 Standards of Liability in ABNJ	149
5.4.1 Antarctic	149
5.4.2 Deep Seabed	150
5.4.3 High Seas	154
5.5 Conclusions	157
6 Standing to Bring Claims for Environmental Harm in Areas beyond National Jurisdiction	159
6.1 Introduction	159
6.2 General Approaches to Standing for Environmental Harm	160
6.2.1 Standing under International Law	160
6.2.2 Civil Liability	175
6.2.3 National Law	176
6.3 Rules of Standing in Specific Regimes in ABNJ	183
6.3.1 Antarctic	183
6.3.2 Deep Seabed	188
6.3.3 High Seas	195
6.4 Conclusions	197
7 Access to Remedies	199
7.1 Introduction	199
7.2 General Approaches to Access to Remedies	200
7.2.1 International Forums	200
7.2.2 Domestic Forums	211
7.3 Specific Approaches to Access to Remedies in ABNJ	220
7.3.1 Antarctic	220
7.3.2 Deep Seabed	223
7.3.3 High Seas	227
7.4 Conclusions	228
8 Insurance and Compensation Funds	230
8.1 Introduction	230
8.2 The Purpose of Financial Assurance	231
8.3 Forms of Assurance	234
8.4 Financial Assurance Obligations in ABNJ	237
8.5 Financial Assurances in Liability Structures in ABNJ	239
8.5.1 Antarctic	239
8.5.2 Deep Seabed	242
8.6 Future Prospects for the Use of Financial Assurance in ABNJ	244
8.7 Conclusions	248

9	Conclusion	251
9.1	Introduction	251
9.2	Key Developments	252
9.2.1	The Purpose of Liability Rules	252
9.2.2	State Responsibility	254
9.2.3	Civil Liability Approaches	257
9.2.4	Institutional Mechanisms	259
9.3	Challenges	260
9.4	Moving Forward	262
	<i>Bibliography</i>	265
	<i>Index</i>	277