

# Foreword

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Given its location the 'Third Pole' is significant for at least the lives of 20 per cent of the world's population. Despite being close to the equator, its ranges, which feature the highest altitudes in the world, are covered with a lot of snow and glaciers and contain some of the largest ice fields in the world. Its reserves of fresh water feed around ten river systems that connect across a range of countries in and around the Hindu Kush Himalaya mountain ranges and also the Tibetan Plateau. The water from melting ice provides for irrigation, energy production, and drinking water for the vast communities that rely on them. The Third Pole also contains vast and significant biodiversity and unique wildlife.

The grandeur of the Third Pole is often moderated by stories of flooding, pollution, the environmental costs of energy production using dams and weirs, political tensions amongst the communities of countries in the region, and the impacts of climate change more generally. Given the population growth in the region, energy use and production inevitably create challenges when developments have to steer the sensitive and precious ecological character of the Third Pole. The legal, political and institutional strategies for dealing with the ecological, energy and resource challenges in the Third Pole are complex given the dominance of India and China in that area. The overall environmental regulatory challenges for the region are exacerbated by the combination of *lacunae* in terms of international and regional law relevant for the Third Pole, and also the inevitability that norms developed in other regions of the world, including for the Arctic and the Antarctic, will be used to fill these gaps. All this makes the Third Pole an interesting subject of study by legal and social science researchers.

Simon Marsden has in this book taken a robust, inquisitive and methodical approach to thinking about how the law can guide developments and protective measures put in place for the protection of the environment of the Third Pole. This is a unique and ground-breaking book in that Simon has amassed a wealth of resources and information to bear on complex issues and problems. Through this research he has looked for existing or future legal solutions and innovations in a region that appears only to have gained scholarly attention in the past ten years. Simon's work is amongst the first to systematically and thoroughly discuss the ecological character of the Third Pole, and importantly

the legal solutions to critical environmental, energy and development-related issues and problems.

This monograph emerges from Simon's commitment in the past many years to write about the unique features and characteristics of environmental law in Asia. In fact, he refers to this book as being the last in his 'Asian international environmental law trilogy'. The first two books in this trilogy map a clear path to this third volume. While his 2015 book focused more broadly on trans-boundary environmental governance in Asia, his second and 2017 monograph made energy and China significant features of his exegesis on environmental law in Asia. In his 2017 monograph, as with all effective scholarly contributions, he mapped the importance of thinking more holistically about the Third Pole from an environmental perspective. As such this 2019 book targets the protection of the Third Pole by looking closely at the potential and future orientations of international and regional law for the region.

In this book, Simon first maps the importance of focusing on the Third Pole. He then isolates the significant issues that require attention, the most prominent being the obvious energy and environment conflicts, particularly those arising from challenges that come from building large dams. The other significant problems for the region that he discusses include those coming from extractive industries, forestry, transport infrastructure and also the accelerating tourism sector in the Third Pole. He deals with these issues systematically by focusing on legal regimes that may relate to them, for instance those pertaining to biodiversity protection, protected areas, environmental impact assessments, and also the equitable utilisation of rivers. The difficulty of this scholarly project is in that aside from bilateral agreements, the rules and the legal regimes applying to these issues are somewhat bare and undeveloped.

Simon has recognised in this work that drawing from rules and principles that have been developed and applied to regions other than the Third Pole can help to highlight the protection and conservation issues for the Third Pole environment. Importantly though, and unlike a range of other environmental law rules that are indiscriminately applied across regions, Simon manages to weave theoretical insights about whether transplanting rules and principles from one region to another will work or not. This is an important dimension of the work in this book in that it would be easy to suggest that some rules and principles should be used across other regions just because they have worked somewhere else. Simon draws on theoretical insights from scholars who have considered transplanting international law horizontally across regions. He also explores how differences between legal systems assume significance when one of them is forced to apply rules that have been developed in an alternative context and system. Drawing on critical insights developed in Chapter 2, he then goes on to weave his theoretical threads throughout the book as he examines, in other chapters, substantive issues relating to energy and sustainability.

Simon combines his critical views on transplanting laws relevant to the Third Pole in the final Chapter 7 with semi-structured interviews. This helps him to develop an additional set of insights into what should be the approaches adopted to governing the environment of the Third Pole.

There is no doubt that this book will make a valuable contribution to our understanding of international environmental law, and significantly to the general scholarship relating to the Third Pole. It fills an important and significant gap in the literature, particularly as it relates to energy issues in the Third Pole. This book will also definitely serve to motivate and create greater interest in the ecological issues of the Third Pole. Through this book Simon Marsden continues to consolidate his standing as a significant contributor to environmental law scholarship in Asia.

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