

Simon Marsden, *Protecting the Third Pole: Transplanting international law* (Cheltenham: Edward Elgar, 2019)

Protecting the Third Pole: Transplanting international law is Simon Marsden's third and final book in an Edward Elgar series analysing the current and prospective regional and sub-regional legal framework and governance in Asia. Building on his two previous volumes, *Transboundary Environmental Governance in Asia*, co-authored with Elizabeth Brandon (2015), and *Environmental Regimes in Asian Subregions* (2017), Marsden offers a sharp and in-depth look at international environmental law and the law of international watercourses to protect the Himalayas.

While it might not be obvious at first why a review of *Protecting the Third Pole* might find its way into the present volume of *Nordicum-Mediterraneum*, Marsden's comparison between the legal regimes in place in the first (the Arctic), the second (Antarctica) and the third pole (Himalaya-Hindu Kush mountain range and the Tibetan Plateau) seems to be a perfect match for this journal at a time where the academic focus on the polar regions is rapidly increasing. Whereas the three poles experience different ecological, social and legal realities, there are good management practices that could be learnt, and transplanting or adapting the legal framework of one pole to another can help developing better ecological governance in the region. The Third Pole, with its ice fields containing the largest reserve of fresh water outside the polar regions, is the source of ten major river systems that provide irrigation, power and drinking water for over 1.3 billion people in Asia.

Throughout his book, Marsden explores what legal frameworks can potentially guide the development of a comprehensive regime to protect the environment of the Third Pole. Following an introduction where the author sets his main methodological approach and discusses the environmental significance of the region, the second chapter gives a comparative law overview by focusing on legal transplants. The first part of this chapter centres around more theoretical questions linked to the overall feasibility of legal transplants and norms diffusion. The author lays down several approaches to international legal transplants while also stressing that contextual awareness is key from any transplant to be successful; in that this does not differ from the introduction of domestic law within the context of any other State. Towards the end of the chapter Marsden analyses the potential to transplant the governance models of certain legal institutions (e.g. intergovernmental organisation) elsewhere. Marsden analyses the Arctic Council (AC) and the South Asian Association for Regional Cooperation (SAARC) and asks whether the institutional arrangements of the AC and its focus on collaborative knowledge exchange (e.g. the negotiations of the Agreement on Enhancing International Arctic Scientific Cooperation) and environmental protection (e.g. EIA guidelines) could be transplanted to the Third Pole through SAARC. He concludes that the mix of hard and soft law arrangements negotiated under the auspices of the AC demonstrates that there is no best single to protect the Third

Pole.

Having laid robust theoretical underpinnings, the book examines the development of global protected areas in international law under the Wetlands Convention, the World Heritage Convention and the European Landscape Convention in chapter 3. Marsden suggests the possibility of the European Landscape Convention to be transplanted to the Third Pole as it could both enhance cooperation and enable public participation, and it would strengthen the provisions of the World Heritage Convention regarding landscapes. Mindful as always in his analysis, Marsden is conscious that there might be a greater possibility in some Third Pole States where the political climate is more inclined to changes. Chapter 4 on connecting area and species protection considers the European Nature Convention and the Antarctic Environmental Protocol as clear candidates for connection area and species protection via the Ecosystem Approach (EA) for the integrated management of land, water and living resources and promote conservation and sustainable use in an equitable way.

In chapter 5, Marsden studies the applicable customary international law related to environmental impact assessment (EIA) in light of several decisions by the International Court of Justice. As most scholars working in this field, the author highlights that while the procedural requirements of EIA have become customary, the lack of substantive process obligations limits the effectiveness of EIA as a customary norm. He thus recommends looking at the Espoo Convention on Transboundary Environmental Impact Assessment and its subsequent Kiev Strategic Environmental Assessment Protocol as potential legal transplant for the Third Pole. Given the practicalities and global contextual application of the Espoo Convention and the Kiev Protocol, this proposal seems like the most feasible for now. In the rest of the chapter, Marsden uses polar EIA mechanisms such as the EIA guidelines developed by the Arctic Council (soft law) and the three-level detailed regulations for EIA in the Antarctic described in Annex I of the Environmental Protocol to the Antarctic Treaty (hard law) to advocate for the creation of contextualised Third Pole EIA Guidelines or for an EIA treaty. Chapter 6 and 7 respectively analyse the evolution of protection regimes for international rivers (i.e. the 1997 ICJ *Gabcikovo-Nagymaros Dams* case, the UN Watercourse Convention, the UNECE Water Convention and the Mekong Agreement) and transfrontier mountains through the Alpine and Carpathian mountain regimes. In concluding his chapters, Marsden emphasizes the importance of creating cross-border solutions to protect the environment and make a genuine contribution to sustainable development - especially when it comes to energy production.

In sum, Marsden offers three potential solutions to answer the question of what international legal frameworks can help guide the development of a comprehensive regime to protect the the Third Pole environment. His first suggestion is to transplant existing

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international law that originated in either a European or a polar context to Asia's Third Pole. The second suggestion is the transplant of a framework treaty based on the Alpine or Carpathian regimes. The European focus of option one and two might hinder their viability, and he recommends further research to test them. For the third option, Marsden suggests developing a new treaty involving all relevant regional stakeholders and public participation. With *Protecting the Third Pole*, Simon Marsden once again manages to publish an excellent contribution to the fields of international environmental and polar legal studies. His detailed, rigorous and comparative examination of relevant customary international law and treaty obligations helps better understand the connections between all the different environmental regimes at play. *Protecting the Third Pole* not only manages to describe the current legal regimes in place at the poles, it also distils complex legal theory and approaches into understandable analyses and conclusions. Marsden's book will certainly delight environmental lawyers and is a must-read for any legal or policy scholars working on environmental issues.

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