

# Preface

---

The cover of the edition of *Scientific American* of August 2008 indicated that it included an article entitled 'Running out of Water: a six-point plan to avert a global crisis'. It noted that 'the technologies and policy tools required to conserve existing freshwater and to secure more of it are known'. These needed to be implemented. Accordingly, 'governments and authorities at every level have to formulate and execute concrete plans for implementing the political, economic and technological measures that can ensure water security now and in the coming decades'. Each of these measures – it is assumed – will be implemented within an existing legal framework or within a legal framework that needs to be established to enable these measures to be implemented. It is the purpose of the following chapters to review the fundamental doctrines of the legal system which underpin and support the management of water resources at all levels including international, regional and national.

The effectiveness of the legal instruments that create or reflect fundamental legal doctrine depends ultimately upon how they are structured and upon the language used to create that structure. The focus of the following chapters is thus upon the text of these instruments, but the text of these instruments in the wider context in which they have effect. So the linguistic detail of the provision in the instrument is just as important as – if not more important than – the context in which it has effect. But both are critical in reviewing the legal arrangements for the sustainable use and development of water resources that have been emerging over recent years. There has been much reliance in the following chapters upon the text of these instruments and how they are structured. This should assist in determining the appropriate function for the law to perform in a system of sustainable water resources governance.

The texts of the principal international instruments and of a growing number of national instruments are readily available. A number of significant international instruments are less readily available. I have accordingly relied upon the text that has appeared in a number of other publications. I would accordingly like to acknowledge the availability of many of these in publications of the Food and Agriculture Organisation and of the Economic Commission for Asia and the Far East both of the United Nations. In addition I would like to acknowledge the text of a number of interstate agreements in the United States of America contained in *Dividing the Waters: the Resolution of Interstate Water Conflicts in the United States* by George William Sherk, published in 2000 by Kluwer Law International. Although the following chapters rely as much as possible upon sources which include the text of the instruments in question, it has not proved to be possible in all circumstances. I would therefore like to acknowledge in particular the information included in *Regulatory Frameworks for Water Resources Management*, which is a comparative study written by Salman M.A. Salman and Daniel D. Bradlow and published by the World Bank in Washington DC in 2006. This has enabled me to review material that would have been otherwise difficult to obtain.

One of the themes in the following chapters is the relationship between the several elements of the relevant legal system. These include on the one hand principles, policies, goals and objectives, and on the other hand rights protectable by the law and obligations

enforceable by the law. The relationship between these has been become increasingly significant. In this context I would like to acknowledge the concept of 'interstitial normativity' introduced in the essay entitled 'Sustainable development and unsustainable arguments' by Vaughan Lowe and included in *International Law and Sustainable Development* edited by Alan Boyle and David Freestone and published by Oxford University Press in 1999.

Sustainable development in one form or another is increasingly emerging as a critical element of the legal arrangements underpinning the management, not only of natural resources in general, but also of water resources in particular. The following chapters may contribute to the development of some of the relevant ideas. These chapters could not have been put together without the assistance of Gail Fellows in the preparation of the manuscript and of Anne Overell in the subsequent checking and formalising of the text. My very sincere thanks to them for their assistance.

D.E. Fisher  
October 2008