

# **The University of Sydney**

**Law School Foundation Dinner  
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## **The Next 50 Years**

**Robert Pritchard**

Dean of the University of Sydney Law School, Professor Gillian Triggs, Ziggy Switkowski, Kevin McCann, other distinguished guests, ladies and gentlemen.

It is significant that the Law School is led at this time by Professor Triggs, one of Australia's most eminent international lawyers.

To enable the Law School to remain as relevant for the next 50 years as it has for the last 155 years, the Dean is leading a number of initiatives, one of which brings us together tonight – the establishment of a postgraduate Global Energy and Resources Program.

This initiative has been made possible by the generosity of Kevin McCann and the Macquarie Bank Foundation.

### **The Last 50 Years**

In speculating what this new program may lead to over the next 50 years, it may be helpful to do so from the perspective of what has taken place over the last 50 years, which is as far as my experience permits.

1960 was the year that the Organisation of Petroleum Exporting Countries, or OPEC, was formed, although relatively few people took much notice at the time.

1960 was also memorable for me. After I had enrolled in equity at the old Law School building in Phillip Street, I encountered a new member of the academic staff from the United Kingdom, Dick Bentham. Immensely popular with his students, we often enjoyed a cigarette and a beer together on Fridays in the Long Bar of the Hotel Australia in Castlereagh Street. At other times, it may have been a coffee at the Galleria in Rowe Street.

It was around 1960 that I met Kevin McCann. In those days Macquarie Bank had not even been thought of.

In 1961, the Berlin Wall went up. A lot more people took notice of that.

From the late 1960s, the oil industry experienced a transformation of government-investor relations, forced on it by a process of creeping confiscation, and sometimes outright expropriation, of oil fields in the Middle East.

In 1973, the Arab members of OPEC imposed an embargo on the export of oil to the United States, triggering the first major global oil crisis. In 1974, at the instigation of Henry

Kissinger, then US Secretary of State, the International Energy Agency was formed as a countermeasure.

The oil industry had, quite literally, been caught by the 1973 oil crisis with its pants down. Until then, the industry had operated on the assumption that the supply of oil was secure and that the producer price was predictable. As a consequence of the oil crisis, force majeure was widely declared, contractual disputes arose by the truckload, writs started flying and, ultimately, many legal precedents were set.

In 1974, my law firm was retained by BP in a case that eventually came to be decided by the Privy Council in London. On arriving in London to undertake preparatory work, I was met by none other than Dick Bentham. Dick had taken the jump from an academic career into corporate practice to become second in charge of the legal department at BP headquarters.

### **The Next 50 Years**

The last 50 years brought the globalisation of the world economy.

Since 1648, Westphalian sovereignty has been the bedrock upon which international relations have been conducted. However, globalisation has seen many additional forces at work and these will determine what happens over the next 50 years.

One force at work is the communications and information revolution that came with the advent of the internet. I remember well that, at the time of the 1973 oil crisis, data on the oil industry was confined to the non-communist world. In 1989, after the Berlin Wall had fallen (28 years after it had been erected) reliable data on the entire global oil industry became available for the first time.

Another force at work is the proliferation of multilateral and bilateral investment protection treaties, aimed at promoting foreign investment flows to countries in need of it. This has been with the acquiescence, if not active encouragement, of the World Bank and UNCTAD. It has been acknowledged as a success by most in the legal profession and the development community but it has not been without its critics. Last month, 37 legal academics denounced international investment arbitration as harmful to the public welfare. I wonder if this could be a signal that the pro-investment pendulum has swung too far?

Another force at work is the proliferation of international norms, or 'soft law'. One example is the 'precautionary principle' which emerged at the Rio Earth Summit in 1992 and later became part of European law. The precautionary principle is, some argue, a logical extension of the common law duty of care. Others complain that it is 'caution in advance', a paralysing principle that will restrict all action that involves the taking of risk.

Yet another force at work is the proliferation of international non-governmental organisations, or NGOs, that seek to regulate or enforce soft law. I believe that there are now around 40,000.

### **Some Memorable People**

One of the more memorable people that I have encountered over the last 50 years was the late Laszlo Gombos, the UK energy law practitioner whom I succeeded in 1979 as Chairman of the International Bar Association Committee on Petroleum Law.

Gombos' most distinctive quality as a lawyer was his high sense of honour. I cannot over-emphasise the importance of this to everyone aspiring to a career in the law today.

A second factor set Gombos apart: his conviction that the accommodation and nurturing of developing country interests (more specifically, the avoidance of 'national sovereignty' conflicts between resource owners and foreign developers) could only be achieved by a commitment to observe the rule of law.

A third factor set Gombos apart: his unswerving adherence to the view that an institutionalised commitment to the rule of law was a quality which could best be instilled by educating lawyers from developed and developing countries alongside each other. Gombos' adherence to this educational ideal is what accounted for the establishment of the Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee, Scotland in 1977.

This is not the end of the story. In 1984, almost as if preordained, another memorable person, Dick Bentham, after a successful career with BP, joined the Dundee Centre as its Director, where he remained until 1991. At 80 years of age, Dick still attends chambers and I believe that he remains the only Emeritus Professor of Petroleum Law in the UK today.

### **What Lies Ahead?**

Today's energy lawyers have exciting times ahead. As Dick Bentham's successor at Dundee, the late Professor Thomas Wälde, wrote in 2003:

*"International energy law is not only, as in a state-centric classical perception, the public international law determined by the list of sources in Art 38 (1) of the ICJ statute. It also comprises the lex mercatoria of international commercial practice developed specifically for transactions in the energy industries and, perhaps, also comparative administrative law, or emerging common state practice of regulating the energy industries."*

In the Australian context, it is clear that our economy has begun to prosper, and looks like continuing to prosper for the next 50 years, from our ability to supply energy and natural resources to the rapidly growing economies of China and India. This is the geopolitical context in which we find ourselves and the context for which our education, including our continuing legal education, must prepare us.

The Law School of the University of Sydney is rising to this challenge and, with everyone else at this celebratory dinner, I wish it every success.