Interview with Annie Petsonk¹

1. *You have worked as a lawyer on environmental issues in a variety of settings, from national government and intergovernmental organisation to one of the largest and most effective advocacy groups in the world, the Environmental Defense Fund. Looking back, what prompted you to go into environmental law in the first place, and what are some of the highlights that stand out from each stage of your career? Would you have any advice for young lawyers seeking to enter the field?*

I grew up in a small coal-and-railroad community in Pennsylvania. I worked in my local hospital in high school, and saw my schoolmates' families come into the emergency room racked by disease and accidents that had largely preventable causes – like unsafe working conditions, like living along the railroad tracks and getting lungs full of coal dust. I went into law as a way of going 'upstream' to tackle those problems. After finishing law school and clerking for a wonderful judge, I began working for a private firm. I had no intention of going into international law until I went on a safari in East Africa, which opened my eyes to similar issues around the world. I was offered a one-month consultancy at the United Nations Environment Programme (UNEP) in Nairobi. I said to my supervising attorney at the law firm, 'what is this international law stuff? There's no global police force, no global enforcement power, why would anyone do it?' He said, 'the challenge of public international law is to design laws that sovereign nations will want, will choose, to obey.' In the field of the environment, that sounded like a tough challenge – and I wanted to use the most powerful non-police force I could think of, namely markets, to create incentives to help meet that challenge. So I took the job.

It was a privilege to work under the leadership of Dr Mostafa Tolba, the Executive Director of UNEP, and Dr Iwona Rummel-Bulska, who headed the Environmental Law and Machinery Unit (which meant not tractors, but the machinery to implement envi-

ronmental law). We worked on the finalisation of the Montreal Protocol on the Ozone Layer and the Basel Convention on Hazardous Wastes, and began what became the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change (UNFCCC). Four years later I came back to the States, joining the US Department of Justice (DOJ) during the administration of President George HW Bush. He and then-Assistant Attorney General Richard Stewart were, and remain today, deeply committed to the challenge of tapping market forces in favour of environmental protection – of providing incentives for action for environmental protection, for making it economically sensible to choose to protect the environment. Their signature environmental achievement, the 1990 Clean Air Act Amendments establishing the Acid Rain Trading Program, were just in the process of passing the US Senate – I watched a portion of the floor debate my first day on the job. It was terrific working with General Stewart and his fine team. After five years at 'the nation's top litigator', DOJ, including a year on detail to the US Trade Representative working at the intersection of trade and the environment, I was fortunate to be offered a chance to join an interdisciplinary team devoted to that same challenge – Dr Dan Dudek, Dr Michael Oppenheimer, and Attorney Joe Goffman of the Environmental Defense Fund (EDF). Working from the Acid Rain template which they had played such a crucial role in developing, they led the core ideas of the Kyoto Protocol to the UNFCCC – multi-year emissions budgets, mandatory reporting of emissions and transactions, fungibility of emissions units, consistent and strong consequences for non-compliance. We didn't get everything we wanted in Kyoto by any means, but it showed that markets could work internationally, and it spurred development of the world's currently largest trading system, the European Union Emissions Trading System, in which we also were deeply involved, and opened new pathways from China's emerging emissions trading system to the Carbon Offsetting Scheme for International Aviation (CORSIA).

My advice for young lawyers:

- Seek out people you can learn from – who share your goals and who bring different perspectives

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on how to meet those goals. Over my years of scholarship I've been privileged to co-teach with Prof Charles Di Leva, who just retired from the World Bank after a distinguished career there in international environmental law. His perspectives as an environmental enforcement attorney at state and federal level, and as chief environmental counsel at the Bank, continually challenge me to think about new ways to approach climate law issues.

- Sit at as many 'stones around the fire circle' as you can, to get as many different perspectives as you can. National government, local government, private sector, trade unions, management, civil society, media – all are important perspectives, and each varies according to geography.
- As Prof Charles Nesson at Harvard Law School used to say, 'Look for the gaps, conflicts and ambiguities. The places where there aren't easy answers.' As my judge used to say, 'the tough questions are the ones in the dark corners of the law. Go find them and shine your light on them.'

2. *International climate cooperation has been at the heart of your work since the earliest days of the climate regime. During this time, you have witnessed many surprises and disappointments in the diplomatic negotiations, and yet, after two decades, you still seem as passionate and committed as ever to the climate cause. How do you think being a lawyer has affected your ability to engage and influence the negotiating process and its outcomes? Has it also shaped your outlook on the issues more generally?*

The English word 'attorney' comes from the French word *attorn*, to stand in the place of. Being a lawyer offers me the challenge and the opportunity to try to understand what it would mean to stand in the place of others engaged in the negotiations – whether national, state, or local government representatives, or industry or civil society representatives. What are the economic, social, political, and emotional imperatives they face in their home countries and with their home constituencies – voters, local communities, employees, corporate boards, customers, memberships, concerned publics? How do those affect their negotiating stances? Working from this *attorn* perspec-

tive gives me the challenge and the opportunity to try to craft, and work with others to craft, solutions that address their interests while achieving the needed environmental results.

3. *Alongside your work as a practitioner and advocate, you have also been engaged in legal scholarship throughout your career, writing prolifically and sharing your knowledge with a new generation of international environmental lawyers. Drawing on more than two decades of experience with climate change and law, where do you see future challenges and frontiers for climate law? What issues would you like to see future scholars – maybe through this journal – take up in the area of climate change?*

Here are a few. The journal does a great service in inviting scholars to tackle these and we need more of its good work!

- The Paris Agreement: The Paris Agreement sets crucial aims for the world with its temperature goals, but the 'bottom up' approach of the Paris Agreement, while politically essential, raises enormous challenges for how to meet these goals and how to measure whether the world is meeting them. Negotiating rules among over 190 nations is quite difficult and time consuming. How can smaller groups of Parties and jurisdictions move forward faster while the broader Paris rulebook is being developed?
- Parallel progress in aviation and shipping: CORSIA has been agreed, but its rulebook still needs to be finalised. Shipping will follow.
- Challenges at the intersection of private and public climate law: For example: As climate governance becomes increasingly important, what are key legal tools for effectively engaging the private sector? How can the public be assured that this engagement avoids conflicts of interest that could taint the results and undermine public and investor confidence in the processes? That is a huge task, and one on which there has been relatively little scholarship.
- Subnational engagement: Progress in tackling the climate challenge must continue despite periodic electoral setbacks as we are currently witnessing at federal level in the United States. What are the various legal means by which concerned communities, states/provinces, and other subnational jurisdictions can engage in for-

ward progress? What are the international law tools for supporting and leveraging that progress?

- Trade law lessons learned: As we tap market forces to help drive international climate law and policy, what lessons can trade law provide?

Why have international trade rules developed? Are the reasons for their development applicable or useful in the context of climate law? Where has trade law failed, why, and what lessons can be learned from that for climate law and policy?