



**GLOBALISING YOUR PRACTICE -  
OPPORTUNITIES AND CHALLENGES**

# **GLOBALIZING YOUR PRACTICE OPPORTUNITIES AND CHALLENGES**

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## **INTERNATIONAL TRADE AGREEMENTS AND THEIR APPLICABILITY IN SICA**

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**9th April 2019**

**San José, Costa Rica**



# FIRST, SOME OBSERVATIONS

- The principal trend today is UNCERTAINTY
- Populism, as evidenced by Brexit and Trump's election has had a real and continuing influence
- Much of this represents a reaction to globalization



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# BUT...

- Is globalization's tide receding?
- Trade disputes create uncertainty
- While a recession isn't likely, growth will be slower
- The US, China, and India are all slowing down
- Europe continues to be sluggish



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# WILL THIS LAST?

- Despite some current pessimism, globalization is here to stay, why?
- At least twenty-five percent of the world's productive capacity is under the control of multinational corporations
- Global institutional frameworks still functioning
- International cooperation is not in retreat, *e.g.*, the Financial Action Task Force
- Trend toward regionalism
- Signs that populism tide is receding
- A basis for cautious optimism



# MORE ON GLOBALIZATION'S IMPORTANCE

- Facilitation of trade and investment, the cornerstone of economic development
- Fueled by the revolution in technology
- Enabled and sustained by a robust legal framework
  - The Rule of Law
- A competent, independent and well-regulated legal profession is an essential element of the Rule of Law



# WHAT DOES GLOBALIZATION MEAN FOR LAWYERS?

- “High quality is not enough”
- Ability to function in a cross-border context is essential
- Ever increasing use of technology
- “AI” is coming



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# HOW HAVE LAWYERS REACTED?

- Mega firms
- Networks
- New competitors – the “Big Four” and others
- Regional firms
- Many examples in the SICA area



## HOW HAVE BARS REACTED?

- In many ways, they have been slow to react to the globalized practice environment
- To be fair, bars deal with many problems, often with inadequate resources
- They also tend to be conservative





# PROFESSIONAL REGULATION IS IMPORTANT!

- Essential to the maintenance of an independent legal profession

AND/BUT

- To be effective and respected, it must be relevant to the realities of modern practice



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# HAVE BARS KEPT PACE?

- In the market, is there a gap between the regulators and the regulated?



# THE IMPACT OF TRADE AGREEMENTS; WHAT ARE THEY, AND DO THEY MATTER TO BARS?

- The WTO agreements – in particular the General Agreement on Trade in Services and various regional agreements remain in force
- They cover international trade in legal services
- These agreements are binding upon member governments
- New agreements are under negotiation
- Often a haphazard process, with little coordination between governments and bars



## TRADE AGREEMENTS (cont.)

- Notwithstanding the sometimes haphazard process, trade agreements over time have caused bars to examine the ways in which they address international trade issues
- The principal issues involve lawyer mobility and association
- Trade agreements DO NOT require liberalization, only a commitment that regulation not become more restrictive
- Legal services will continue to be on the table in trade negotiations



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# IN CENTRAL AMERICA ...

- Regional trade structures
- SICA
- CAFTA
- So far these regional arrangements do not cover legal services
- But that's not the end of the story – GATS still applies



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# THE CENTRAL AMERICAN RESPONSE TO GATS

- Only Panama has addressed legal services



# THE IBA AND TRADE AGREEMENTS

- No regulatory authority
- Advises its member bars on developments in international trade
- Speaks for the legal profession through resolutions of its Council



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# **TO DATE, SIX RESOLUTIONS HAVE BEEN PASSED BY THE IBA COUNCIL AND COMMUNITED TO THE WTO**

- They can be found on the IBA's website at:  
[http://www.ibanet.org/PPID/Constituent/Bar\\_Issues\\_Commission/BIC\\_ITILS\\_Committee/Default.aspx](http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Committee/Default.aspx)





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# **OF THE SIX RESOLUTIONS, FOUR ARE OF PARTICULAR INTEREST TO THE IBA'S MEMBER BARS:**

- “Core Values”
- “Establishment”
- “Skills Transfer”
- “Mutual Recognition”



# CORE VALUES—COMMON TO ALL LEGAL PROFESSIONS

- A role in facilitating the administration of, and access to, justice
- A duty to the courts
- A duty to uphold the rule of law
- A duty to keep client matters confidential
- A duty to avoid conflicts of interest
- A duty to uphold specific ethical standards
- A duty to provide clients with the highest quality of advice and representation
- A duty in the public interest of securing professional independence



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# CORE VALUES

Trade agreements purporting to “liberalize”  
trade in legal services *must respect the  
need to preserve the core values*



# ESTABLISHMENT OF FOREIGN LAWYERS

- Acknowledges the increasing mobility of foreign lawyers
- References Common Regulatory Principles Consistent with Core Values
- Suggests Licensing Approaches



# COMMON REGULATORY PRINCIPLES

- Authority of Host Bar to regulate foreign lawyers
- Fairness and Uniform Treatment
- Transparency
- Public Purpose
  - Effective delivery of services
  - Consistent with the need to protect the public
- Access to competent legal advice



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# LICENSING APPROACHES

- “Full Licensing”
- “Limited Licensing”



## “SKILLS TRANSFER”

- Recognizes that a regime permitting association of foreign lawyers with local lawyers provides the “efficient and effective” means of skills transfer
- Authorizes a *requirement* of training and skills transfer by foreign lawyers as a condition of establishment



# MUTUAL RECOGNITION

- Articulates “standards and criteria” for mutual recognition agreements
- Consistent with international trade norms





# EFFECT OF RESOLUTIONS

- Guidance for Member Bars
- Helped to shape the Conceptual Framework of Trade Negotiations
- In a manner that acknowledges and preserves the Core Values
- Confirm the Essential Role of the Legal Profession
- Suggest Regulatory Approaches



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# IN CONCLUSION

- For bars, the challenge is to remain relevant to practice realities – lawyer mobility, technology, association, etc.
- While at the same time ensuring proper protection of the public interest and the core values of our profession



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**MUCHAS GRACIAS!**

**THANK YOU!**