



# Globalising your practice for South Pacific lawyers

OPPORTUNITIES AND CHALLENGES



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## Introduction

The Bar Issues Commission of the International Bar Association (IBA) awarded funding for a conference on helping lawyers from the South Pacific to face the consequences of globalisation. It was organised on 6-7 September 2019 in Nadi, Fiji, in cooperation with the Law Society of Fiji.

The conference – entitled ‘Globalising your practice: opportunities and challenges’ - followed on the success of its predecessors: ‘Helping Zimbabwe’s lawyers face globalisation’, which took place on 2 and 3 November 2016 in Nyanga, Zimbabwe; and ‘Globalising your practice: opportunities and challenges’, which took place in Nairobi, Kenya on 18 and 19 May 2017, in Livingstone, Zambia on 3 and 4 April 2018 in Siem Reap, Cambodia on 1 November 2018, and on 9 April 2019 in San José, Costa Rica.

It was different to its predecessors in that it was incorporated into the annual convention of the Law Society of Fiji. This ensured that it had a large audience of over 230 lawyers. These came not only from Fiji, but also from around the South Pacific. The IBA generously funded the attendance of representatives from further South Pacific countries. As a result, there were representatives from the bars of 11 South Pacific countries beyond Fiji:

- Law Council of Australia
- Kiribati Law Society
- Nauru Law Society
- New Zealand Law Society
- Papua New Guinea Law Society
- Samoa Law Society
- Solomon Islands Bar Association
- Timor Leste Bar Association
- Tonga Law Society
- Tuvalu Lawyers
- Vanuatu Law Society

Given that our planned conference was incorporated into the Fiji Law Society’s annual convention, there were other topics incorporated into the two day conference as well - for instance, lawyer wellness and mental health, and cultural intellectual property and traditional ownership in the Pacific. Obviously, it was for Fiji Law Society to choose how they wanted to run their own conference, and although IBA funding contributed to the conference, it by no means covered all the costs, which were also assisted by outside sponsors.

Yet the IBA logo and presence was signalled continually and in a very prominent manner – for instance, with our logo in a prominent place on the programme, an IBA banner at the front of the hall, and the Chair of the Bar Issues Commission giving an opening address.

All the usual topics of our ‘globalising’ conferences were present nevertheless. There were some IBA speakers who had spoken on previous occasions, and some new ones. Their presentations were adapted to local needs. The topics relevant to the IBA funding included:

- globalisation and Its effect on lawyers practising in non-global law firms

- creation of joint ventures: different forms of international alliances and their benefits
- working with international law firms and international business clients – top tips for business development
- major trends in International law practice – how do we compare in Pacific jurisdictions
- foreign direct investment: the role of lawyers
- alternative dispute resolution through international arbitration and mediation

The substantive content of the IBA parts of the conference contributions is summarised in the pages that follow.

The conference programme is attached as Annex A.

The feedback from the Fiji organisers and the attendees was consistently positive. The President of the Fiji Law Society said: 'Nothing but high praise has been the overall comments of the sessions and the convention as a whole so we have much to be thankful for'.

## The IBA-funded parts of the conference

**Laurel Varsari**, President of the Fiji Law Society, gave the opening welcome address.

She said how pleased she was that the IBA was present, and spoke of the IBA's great support for Fiji, including during Fiji's troubled times. She spoke of the IBA's financial support for Fiji young lawyers to attend the IBA annual conference, including 7 this year going to Seoul. She hoped that this conference will mark further cooperation with the IBA.

Overall, she spoke of Fiji punching above its weight in the world. Fiji needed to address the issues of globalisation, and this conference will help that.

**Péter Köves**, Chair of the IBA Bar Issues Commission, then gave an opening address.

He introduced the IBA, which has more than 190 member bars. He said that the health of the whole legal profession depends on the health of each member bar, even those from small countries.

The IBA has come to Fiji to express solidarity and to offer help. Fiji is not alone in the issues it faces. If there are problems with lawyers in Fiji, they affect lawyers in New York, too, because of globalisation. He gives the examples of US trade policy and climate change as affecting every citizen.

**H.E. the President of Fiji, Major- General (Rtd) Jioji Konusi Konrote** gave the keynote address.

The President's address is attached as Annex B.

In brief summary, he said that this conference is helping Fiji's development. If Fiji is to achieve its purpose to be at the heart of the Pacific, it must pay attention to how the rest of the world is developing, including in the practice of law. He encouraged participants, from whatever generation, traditionalist or millennial, to begin a conversation on current practices.

He quoted Helen Keller about how small tasks should be accomplished as if they were great and noble, and asked: are you delivering your small tasks, such as preparing documents for the court, in a noble way?

He thought one of the major issues of the day is probably climate change, and its effect on migration and refugees. He feared that the day may arrive when climate refugees may arrive in Fiji.

Progress is generated by being exposed to global conversations. Fiji must consider how the wider world will affect it, and what work is needed now to prepare for it.

He was pleased to see the sizeable number of participants, and that this would be an interactive conference.

**Bhupendra Solanki**, a Council member of the Fiji Law Society, gave the vote of thanks to the President.

**Gordon Hughes**, President of the South Pacific Lawyers Association (SPLA), then gave an address speaking about the South Pacific Lawyers Association. He explained that the IBA had founded it, and

that it had been funded by AusAid and the IBA over the years. The Law Council of Australia provides the secretariat. The IBA had funded the possible participation of a representative of every member of SPLA (16 countries) to attend this conference.

**Han Jun**, Vice President, Shenzhen Lawyers Association (SLA) spoke about the SLA.

He said that China strongly supports the development of the Belt and Road Initiative. Chinese lawyers are facing huge challenges and opportunities because of globalisation. Shenzhen has become a centre for the rule of law. The SLA has signed an MoU with Fiji Law Society. He believed that this convention will play a great role in helping with the internationalisation of the profession.

### **Major trends in International Law Practice – how do we compare in Pacific jurisdictions**

**Prof. Shaista Shameem**, Dean, Coordinator, International and Regional Relations, JDP School of Law, University of Fiji, was the moderator of the session, and introduced the subject and the speakers

**Pauline Wright**, President-elect designate, Law Council of Australia, spoke first. Her speech is attached at Annex C.

In brief, she said that technology can be a help and a hindrance. On the one hand, cybersecurity and hacking are problems, but on the other hand there is e-discovery and significant help with costs. She focused on the benefits of e-discovery, and gave an example from a major commission of enquiry in Australia, where e-discovery had been a significant help. She cited the High Court of Australia case about Glencore and the documents involved in a tax case, in relation to cybersecurity (because the documents were stolen).

**Péter Köves**, Chair, Bar Issues Commission, IBA, spoke next.

He cited Richard Susskind, the futurologist, who had said that 95% of lawyers would become redundant and replaced by artificial intelligence within a few years. But instead there had been a substantial increase in the number of lawyers since then.

He also cited research into the language of various professions: lawyers, doctors and engineers. The researchers had compared books relating to those professions from 500 ago and now. Engineers from back then would understand 5% of current engineering books, medieval doctors 40% of current medical texts, but medieval lawyers would understand 95% of current legal text books. The law and the legal profession have not changed, but the speed of change is now picking up with the impact of science.

He believed that the essence of a lawyer's job would not change, even if the methods of delivery will.

**Gertrude Elai**, Papua New Guinea Law Society Council member, spoke next.

She gave some facts about Papua New Guinea. She said that it is a very litigious country. It has over 800 languages among 8.4 million people. In very small villages, there is no government official, no hospital or post office, but there will be telecommunications through mobile phones. How do we best use this set of facts to improve the situation of its citizens?

Virtual law firms may be beyond people for the moment, but women lawyers, for instance, have realised that on-line forms may be able to help women suffering violence.

She said that Papua New Guinea will never be able to compete with big players, but its lawyers should do what they can with available resources.

**Nick Barnes**, Partner, Munro Leys, Fiji, spoke next.

He said that the two major developments of concern from the wider world which should concern lawyers in Fiji are: alternative dispute resolution (ADR) and technology.

Regarding ADR, the Fiji Mediation Centre is picking up pace. Clients begin to know about mediation, and lawyers are using it more. In the last 18 months, there have been one mediation and two local arbitrations, and another three local arbitrations are coming up now. He advised that lawyers should get into ADR.

Regarding technology, he said that his firm had just invested in a new practice management system. It was a big upfront investment, but worth it for serving clients. Clients are very cost-sensitive now. Electronic filing and electronic discovery have not yet arrived in Fiji, but are coming. Things are changing. Fiji lawyers do not need to be leaders and experimenters, but be fast followers.

He had read recently about a firm with 300 people where they do not have an office, but arrange meetings between the lawyers twice a week. There are no virtual law firms in Fiji yet, but it will also happen.

Once the presentations were over, there were various questions from the floor.

What happens if clients breaks confidentiality once copies shared with clients are put on e.g. Facebook? The answer from Australia was that once documents are published, confidentiality is shattered.

The second question was whether there are firms which specialise in getting documents into e-discovery format? The answer from Australia was that some law firms have sophisticated in-house systems for this. There are off-the-shelf systems, or you can code your own. Nick Barnes said that you can also outsource it to specialist firms, with agreements regarding confidentiality.

The third question was as to what the Glencore case actually means. The answer from Australia was that once a document is out in the public arena, it is out there, and so if you want to protect your information, you need to develop tight security systems.

Gordon Hughes of the SPLA explained that he was based in Melbourne, and his secretary in Canada, and this system worked when he was at home or in Fiji. Maybe technology will save the law firm and not lead to its disappearance? There is no answer as yet.

One of the speakers explained how you can be away from the office and yet be in the office. He cited Microsoft Teams, and said virtual offices are nearly here.

There was a comment from China. In Shenzhen, there is blockchain in the tax bureau. The commentator wondered what its impact would be on legal services e.g. if big audit firms used it and outperformed



law firms in the future. Péter Köves replied that he did not feel that blockchain would have a big impact on the legal profession. Yes, lawyers will lose standardised work. But standardised work is an exception to lawyers' overall work. Blockchain will not replace the intellectual and 'true' professional work of lawyers. And even blockchain needs a lawyer to produce its first template.

## Working with international law firms and international business clients – top tips for business development

**Kimitoshi Yabuki (Japan)**, Vice-Chair of the IBA's Bar Issues Commission, introduced the session, and spoke to his slides.

The main topic was business development, and he highlighted the following:

### **Part 1: Ask yourself three questions:**

1. What is my market?
2. What is my "offer"? What makes it different?
3. What do the clients I want to serve, really want?

### **Part 2: Take three decisions:**

4. What is my international growth strategy?
5. How do I want to position myself in the market?
6. How will I reach new potential clients?

Regarding international business development through comparison with domestic practice:

- What kind of assistance and services do international clients expect from law firms and lawyers in their international business?
  - Services
  - Price
  - Quality
- Do international clients prefer to use reputable domestic law firms or international law firms? What are differences between domestic firms and international firms?

Regarding the cultivation of international clients:

- How to prepare for such area? - capacity, experience development
- How to have possible clients be aware of your practice? – conference, seminar, article, international membership
- How to have possible client be reachable to your firm? – reference firm, international directory?
- How to strengthen your practice? – quick and in depth
- How to make your practice dependable for clients? – reputation, recommendation of current clients to others

- How to keep in touch with clients?

Regarding collaboration between domestic and international law firms:

- How can domestic law firms collaborate with international law firms?
  - Work together and information exchange in the market – differentiation of your practice from others
  - Client referrals – how will international clients find your law firm?
  - Training of young lawyers – how will your young lawyers get knowledge and practice in the international legal market

Regarding the role of bars and organisations like the IBA:

- Bar association's role in enhancing business development of its members
  - Enforcement of best practice
  - Awareness and empowerment
  - Training of young lawyers
  - Coordination with government
- Role of international lawyers' associations such as the IBA to assist local bars

**Dilip Jamnadas**, Principal, Jamnadas & Associates, spoke next. He said that business in Fiji centred around tourism, buildings for sale, and investment in technology. There was a need to improve infrastructure. Investment and tax laws affect investment. He went on to look at how lawyers could attract the legal work around investment:

- at what does a foreign investor look? You need more than a website. You need to have a foot in the system, and it is mainly a recommendation from one investor to the next that helps you. If you do a job well, you will get more work that way;
- have the ability to persuade the client that you can get the work done well and efficiently - once you're in, you're in;
- have the ability not only to talk law, but to be able to speak about matters of general interest;
- our local practices are general, but big foreign firms are usually specialist.

**Lou Hong**, Shenzhen Lawyers Association (SLA), spoke about his law firm. It is one of the longest established in China, but it has only just celebrated its 30<sup>th</sup> anniversary. China has only relatively recently opened its doors to the outside world. Shenzhen is now the third biggest city, having overtaken Guangzhou, just behind Beijing and Shanghai. It is just 14 minutes by train from Hong Kong.

He said foreign lawyers are not allowed to practise as Chinese lawyers, and so local lawyers are needed for court cases. But foreign lawyers are allowed to establish in certain cities.

**Heilala Tabete**, Director, Client Engagement & Business Development, Corney & Lind Lawyers, Australia spoke about the compliance issues (establishment and restructuring) that arose when a church wanted to establish a base in Australia. Her lesson was that if you do it well, you will have more churches knocking on your door. Off-line referrals need to be supplemented by websites, which is a firm's shop

window. She advised lawyers to dress up their shop window well, publish articles and so establish themselves as an authority, also by engaging in public speaking events.

Once a website is up and running, there is a problem about advertising, which is rather restricted in Fiji e.g. lawyers are not allowed to speak about their expertise. But it was an open question whether this extended to social media and other platforms. Businesses needed training in how to use such avenues.

In answer to questions, **Lou Hong** said that lawyers should use international speaking engagements to help with making contacts and improve their work. In July of this year, he had worked with a Japanese university, which could help him develop his business. Chinese companies have invested in Fiji, and maybe there will be business arising out of that.

**Heilala Tabete** spoke about how to keep in contact with international clients. Have you been in touch with them, have you gone out to dinner with them, do you know what keeps them awake at night?

**Lou Hong** said that every lawyer in Shenzhen has to become a member of the SLA. The SLA has forged international partnerships. He also spoke about the Belt and Road Initiative. Fiji is part of the Silk Road by sea. Chinese lawyers hope to use this very good opportunity for Chinese companies to go abroad and take advantage of the initiative.

There was a question about how to make yourself appealing to a client. The answer was that it depended on what kind of client you have e.g. listed. There are Belt and Road initiatives in Fiji, but then reporting to clients is more important (as with other foreign clients). **Lou Hong** agreed. For instance, every Chinese company is told to find out about Fiji culture. They are told to have a Chinese lawyer, and to find a good local partner, including lawyers. Chinese lawyers work fast.

**Iain Sandford** from Sidley Austin spoke from the audience. He said that his firm did not do much work in the Pacific. But American law firms will often want a good local partner, to ensure that local compliance is undertaken. He said that local lawyers should get to know American law firm partners, acquire a reputation and then their name will come up.

### **Alternative dispute resolution through international Arbitration and Mediation**

**Isala T Isala**, Tuvalu Law Association introduced the topic and the speakers.

**Jonathan Goldsmith** spoke to Thierry Ngoga's slides, since Thierry could not be there.

He asked:

- 1) whether it is appropriate to impose restrictions on the choice of counsel (legal representation) in international arbitration, and the implication of doing so for positioning as a 'Safe Arbitration Seat';
- 2) using available statistical data in the Pacific region regarding international arbitration, what lawyers and policy makers should be doing to get the 'cake shared properly' as a way to face globalisation.

Limitations on the parties' choice of legal representatives would contradict the basic concept of arbitration as a flexible and self-tailored dispute resolution system. Freedom of legal representation is recognised in most national arbitration laws, and by most institutional arbitration rules in south-east Asia and the Pacific, and elsewhere:

- Art. 35 of Fiji International Arbitration Act 2017: *"Unless otherwise agreed by the parties, a party may appear in person before an arbitral tribunal and may be represented— (a) by himself or herself; or (b) by any other person of that party's choice"*
- Article 5 of the Chinese European Arbitration Centre (CEAC) arbitration rules 2012: *"Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance(...)"*
- South Korea: Article 7 of Korean Commercial Arbitration Board rules 2016: *"A party may be represented by any person of its choice in proceedings under the Rules, subject to such proof of authority as the Arbitral Tribunal may require"*
- Singapore: Art. 23 of SIAC rules 2016
- Australia: Article 8 of ACICA arbitration Rules 2016
- Thailand: Article 53 of the Thailand arbitration center rules 2015
- China: Article 22 of China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules 2014

Despite what has been said, laws in a few jurisdictions require that counsel in locally-seated arbitration must be locally-qualified to represent in arbitration:

- That is true in Turkey, Thailand and was formerly true in Japan and a few other jurisdictions (Gary Born, 2014)
- There are difficulties also in India. There, the law appears to allow foreign lawyers to appear in arbitration but this has been challenged before the Supreme Court in *Bar Council of India v. A.K. Balaji - SLP (Civil) No. 17150-54/2012*. The position of the SC of March 18, 2018 appears to be that foreign lawyers are not allowed to appear in arbitration. (<http://www.advocatekhaj.com/library/judgments/announcement.php?WID=9848>)
- In Nigeria: the Nigeria Legal Practitioners Act defines a legal Practitioner only as a lawyer registered to practise law in Nigeria (is that a good way to share the cake?)

Other examples:

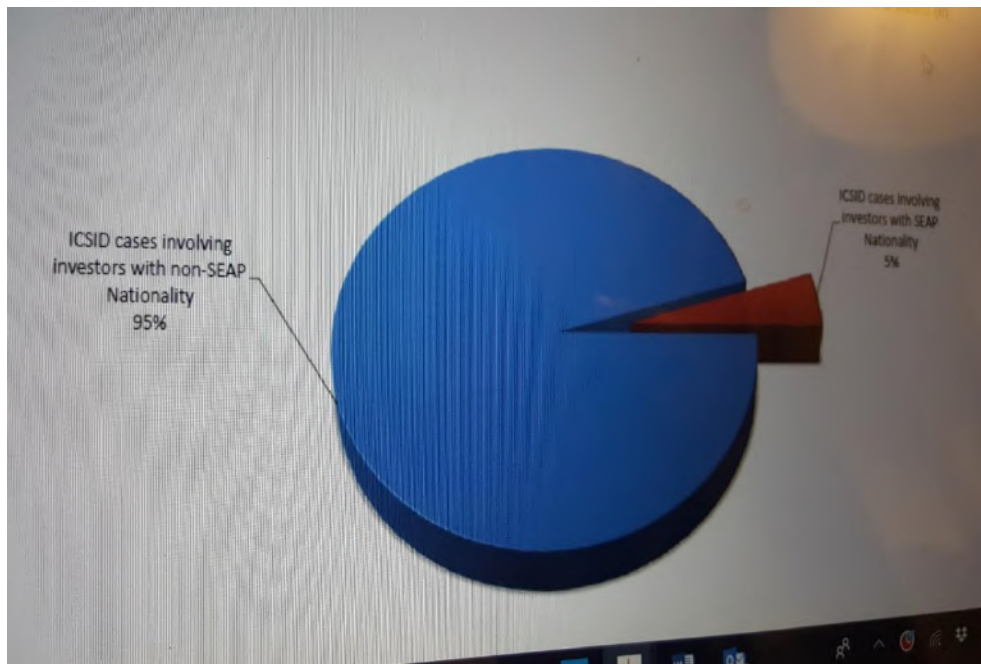
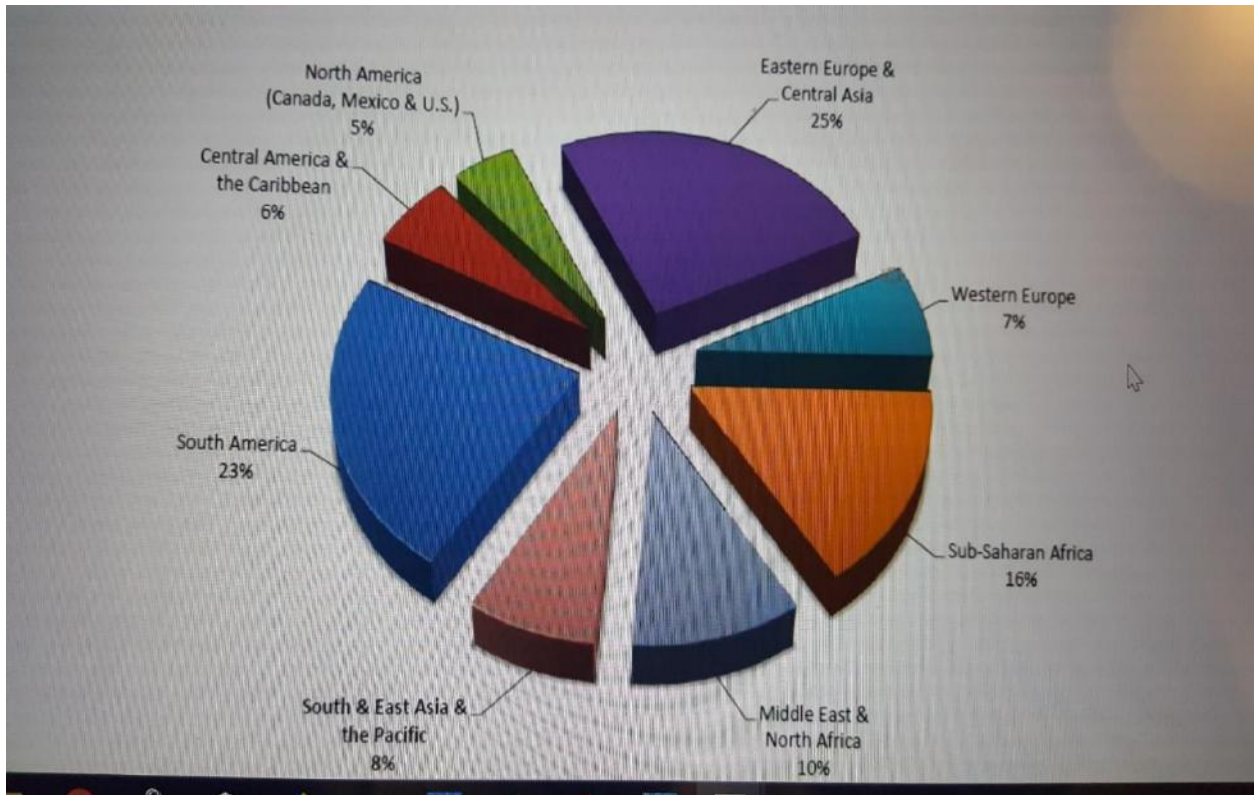
- Philippines: Article 13 of the Philippine Dispute Resolution Center rules of 2015 : *“the parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification”*
- Mauritius: In the Mauritius Arbitration Act (section 31) *“Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the arbitral proceedings by a law practitioner or other person chosen by him, who need not to be qualified to practice law in Mauritius or in any other jurisdiction.”*
- Tested Best Practice without precision: case of Rwanda with 25 IAC international arbitration cases out 97 total cases (parties have been represented by foreign counsel but preferred to work with local counsel since the seat of arbitration and applicable law to the contract were mainly Rwandan in the 97 cases)

Conclusions:

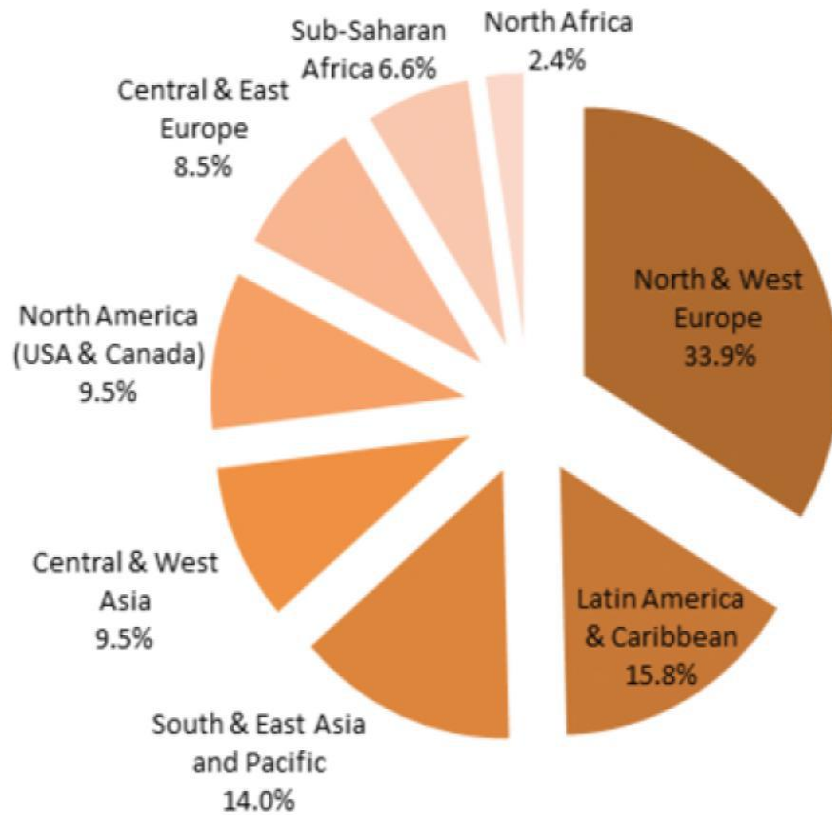
- including also non-local counsel is important for defining a ‘safe arbitration seat’
- focus more on your seat in the contract (applicable law) to improve the share in the ‘cake’

ICSID Statistics 2010-2018 revealed that the SE Asian and Pacific region registered 8% of the total arbitration cases, with Western Europe at 7% and North America at 5%.

Arbitrators appointed: SE Asian and Pacific 179 , Western Europe 850, North American 393.



In 2017, of the 810 cases registered by the ICC, 14% involved SE Asia and the Pacific, while North & West Europe were at 33.9%.



Origin of arbitrators appointed in ICC cases in 2017:

Region	Year	Men	Women
North America	2016	193 86%	32 14%
	2017	114 82%	25 18%
Latin America & Caribbean	2016	145 88%	19 12%
	2017	165 82%	36 18%
Central & West Asia	2016	46 84%	9 16%
	2017	43 68%	20 32%
South & East Asia and Pacific	2016	109 89%	14 11%
	2017	123 87%	18 13%
North & West Europe	2016	617 86%	103 14%
	2017	679 85%	119 15%
Central & East Europe	2016	64 70%	27 30%
	2017	61 69%	27 31%

In 87% of the disputes referred to ICC Arbitration in 2017, parties included a choice-of-law clause in their contracts. The laws of England and USA states remained the most frequent choices, followed by French and Swiss law.

Consideration: the choice of law (*lex arbitri*) determines the appointment and the counsel to involve (dispute resolution clause).

Some barriers to arbitrate in developing countries cited in literature:

- interference of courts
- corruption
- limited pool of trained professionals (issue of capacity building - for example, as of December 2016, the most widespread university in Oceania only taught “Foreign Trade and Investment” Faculty of Arts, Law & Education – School of Law, The University of South Pacific))
- poor legal/regulatory frameworks
- lack of data on enforcement in many developing countries
- what else? political instability, visa issues? airlines?

The Pacific Islands need to work on the above to position themselves as pro-arbitration. An effort to improve will accelerate the participation of players from the Pacific to appear on the map of international arbitration.

The enforcement time in Singapore is 6 months, according to Herbert Smith Freehills in 2018. Among the ASEAN countries, 91.02% of participants consider the Singapore courts to be highly or very effective in enforcing international arbitral awards. This is followed by Malaysia where close to 69% of the participants consider the courts to be effective generally in enforcing international arbitral awards. The courts' approach to enforcement of arbitral awards in the other South East Asian countries is still not as developed as in Singapore, but they have steadily improved over the years, especially in Thailand, and Philippines where courts have been increasingly effective in recognising arbitral awards.

Recent Experience of Rwanda (as safe seat):

- Kigali International Arbitration Centre (KIAC ) registered 120 cases in 6 years (30% are international cases)
- 3-6 months (enforcement of award varies between 3 to 6 months)
- None of the 70 KIAC awards has yet been set aside by the Rwandan court
- No visa required to come to Rwanda since 2017 to all citizens of the world
- Chief Justice rules of 2012 give priority of arbitration case over other matters, which does not follow the normal rule
- The new civil code procedure of April 2018 and the provision on court intervention
- Art: 21: Grounds for refusal of registration of a claim by the court Registrar
- Files a claim without demonstrating that he/she has used amicable settlement or arbitration specified in the contract

Some developing countries have better rankings than developed countries in the indexes and surveys (the Pacific Islands should be part of these surveys).



What lawyers and their jurisdictions can do to appear on the map of international arbitration and so share the cake:

- driving/positioning your respective countries as an arbitration safe seat (legal representation, 1958 New York Convention, model law, supportive courts, clear enforcement regime, visa policy, safety etc.)
- testing the use of arbitration in the Pacific Islands
- start with contract negotiation & drafting (seat-applicable law, avoid pathological clauses), for the purpose of sharing the cake when disputes arise
- learn more than one international language (for young people)
- be aware that: arbitration is not only a legal concept or a form of justice but an industry which includes many attractive factors such as tourism, hotels facilities, zero tolerance to corruption, entry facilities (visa), safety, internet facility, transport etc....
- example: PRADA Report in France (2011)
- Rwanda: 2012 Ministerial Instruction on Contract Drafting, negotiation of dispute resolution clause, with model arbitration clause compulsory for government contracts
- establishment of arbitral institution in the region or a proactive Government of one of the islands to support nearby institutions such as ACICA (Australia) or AMINZ (New Zealand) to establish branches across the region. This could involve tax incentives or premises subsidised by Government.
- ongoing professional training in Arbitration and Mediation( SAA, Ciarb, CEDR, SMC) and review of the university curriculum to include an arbitration module (the change to start at the law school)
- push for the seat and applicable law to be one of the attractive laws in the Islands
- sharing the cake in the future may require making your seat “safe” (particularly a clear enforcement regime)

As for mediation, the current legal framework in Fiji seem to be favourable to mediation. The High Court Rules (Art.59.2) and Magistrates Court Act 1944 (Art 28, 29,30), among others, require magistrates and judges to promote mediation in Fiji.

Conclusion:

- The lesson from what is happening in the Pacific islands is not different from other developing countries, including in SE Asia and Africa, which have made useful progress in arbitration and mediation in positioning themselves as a new ADR seat.
- Change is possible, it is happening, and the mission of the legal practitioners gathered here is to contribute to make it happen more quickly than in the past, for the cake to be shared properly.

**Kou Xuan**, Shenzhen Lawyers Association, spoke about the Belt and Road Initiative. There is a special initiative beginning this year to enable the Pacific to know China and China to know the Pacific. She referred to the fact that there was much Chinese investment in Fiji.

**Ana Tuiketeti**, Lawyer, AP Legal, said that only 3 countries in the region have passed an international arbitration act (Cook Islands, Marshall Islands and Fiji). They have ratified the New York Convention and Model Rules. There is no arbitration centre. You can have your hearings in Fiji, and have it enforced in

Dubai or elsewhere. She spoke about the importance of speaking foreign languages – Chinese, French, Arabic.

Should there be a specific tribunal for environmental issues? Should there be a specific Commonwealth arbitration centre? If it were to come about, there would be more and more choice of arbitration centres for your client.

**Raijeli Tuivaga**, Principal, MRV Legal Consultancy, said that alternative dispute resolution (ADR) has arrived in Fiji, through the Mediation Centre, established in 2015. Singaporean experts came over to help build capacity, training the judiciary and the legal profession. 105 people have undertaken training. Fiji also signed the recent UN Singapore Convention on mediation. Work is underway to implement the Singapore Convention. Mediation can save money (there has been research to this effect). Local lawyers who want to participate can be trained at the Mediation Centre.

She said that there should be more cases being referred to the Mediation Centre. Asian countries have embraced mediation, and there is growth as a result of the Belt and Road Initiative.

There was a question stating that choice of jurisdiction is a challenging aspect, and there are bullying tactics by vendors to take their view - what can be done? The reply was that you can download examples of choice of law from the various arbitration institutes around the world e.g. Hong Kong.

Another questioner asked about the difference between mediation and arbitration. The answer was as follows. Mediation is based on both parties wanting it, and both parties are guided towards a consensus. Arbitration is closer to a court with international rules and enforcement. Mediation can come from court, or come direct. Once there is agreement between the parties, there is a consent order. Arbitration comes from clause in the contract. You can go back to the court afterwards, if there is a failure. Arbitration is like a court but you have a choice of venue and of rules. Mediation is non-binding, informal and confidential.

The final question was as to how many international arbitrations have been settled in Fiji, and how many recognised arbitrators come from the country? The answer was that the Act has only come into force recently, and so there have been only a handful of cases so far.

## Globalization and Its Effect on Lawyers Practicing in non-global law firms

**Samuel Ram**, Principal, SK Ram, introduced the topic and the speakers.

**Iain Sandford** (New Zealand), a member of BIC ITILS from New Zealand, spoke to his slides.

He said that he would speak about two things:

- Instruments governing international trade in legal services applicable to the Pacific Islands
- Personal reflections on globalisation and legal practice everywhere

Regarding the first, he talked about the definition of trade in legal services as the following:

- Supplying services to consumers in another country
- Several “modes of supply”
- Supply of legal services generally regulated in each jurisdiction
  - qualified lawyers often enjoy monopoly on certain services
  - Restrictions/rules on commercial vehicles
- Governments have agreed commitments on trade in legal services
- **Key Point:** long-term trajectory towards greater competition balanced against need to regulate profession for legitimate purposes

He spoke about the role of the WTO:

- WTO Agreements, designed to liberalize international trade (1995)
  - For the first time, trade in services was covered, in the General Agreement on Trade in Services (“GATS”)
- 164 Members in total
- Members in the Pacific region: Australia, New Zealand, Fiji, Papua New Guinea, the Solomon Islands, Tonga, Samoa and Vanuatu
- **Key point:** WTO rules are generally based on principles of good governance, so principles relevant even for non-Members

Regarding GATS:

- **Key point:** GATS aims to create a framework for gradual liberalization of trade in services by increasing openness and competition and reducing discrimination
  - Modest progress towards these goals.
  - Complex framework: some rules apply generally, others on an “opt in” basis.
  - “Domestic regulation” (qualifications and licensing) carved out: regulators retain discretion in this area but mutual recognition allowed
  - Opt in rules include market access and national treatment – allowing foreign suppliers to compete, subject to meeting reasonable regulatory requirements.
  - Regional liberalization permitted

As for GATS in the Pacific:

- **Key point:** Pacific WTO Members have all “opted in” with market access/national treatment for legal services
  - There are, therefore, some requirements to allow foreign firms to establish (subject to meeting regulatory requirements) and foreign persons to provide services (if qualified)
  - Because of commitments, qualification and licensing requirements must be administered reasonably and without discrimination.
  - Members retain discretion on “presence of natural persons” (FIFO)
  - No requirement to let unqualified lawyers practice

Because of lack of progress now at the multilateral level, there are plurilateral discussions:

- Unfulfilled promise of liberalisation under GATS has led to ‘plurilateral initiatives’ that include Australia and New Zealand
- Plurilaterals give a sense of where the global framework is headed
- Trade in Services Agreement (TiSA)
  - on hold
  - Potential updating of approach to scheduling legal service commitments
- E-commerce negotiations
  - Big new focus. Lawyers have interest in localisation and data flows, regulatory balance for services supplied by digital means and protection of confidential information

As for regional trade agreements in the Pacific:

- Little coverage of legal services in existing regional agreements:
  - South-Pacific Regional Trade and Economic Cooperation Agreement (“SPARTECA”)
- Pacific Islands Countries Trade Agreement (“PICTA”) & Melanesian Spearhead Group (“MSG”) Trade Agreement
  - Pacific Agreement on closer Economic Relations Plus (“PACER-PLUS”)
- Mutual recognition of practice rights in Australia & New Zealand
- Opportunities for closer integration/efficiencies?

He then went on to some personal insights:

- Much legal practice remains local and domestic regulation of lawyers usually carves out monopoly area for locally-qualified practitioners.
- Cross border investment and trade create opportunities for lawyers/firms to help existing clients in their international activities.
- **But local nature of local law requires international firms and lawyers to collaborate with local lawyers.**

There had been a paradigm shift:

- New coverage of legal services
  - Provision of services and advice across multiple jurisdictions
- New fields of the law
  - *E.g.* foreign investment law, international trade, international arbitration, international tax, etc.
- New forms of delivery
  - Through electronic means rather than face to face and paper bound
- New business models
  - *E.g.* virtual law firms, forms of collaboration between foreign and local firms, employment of local lawyers by foreign firms and of foreign lawyers by local firms

**Carl Cameron**, Ngamoki Cameron Lawyers (Fiji) and NCL Limited (HK), quoted Thomas Friedman about the world becoming flat. He said lawyers needed to develop their niche to survive, and Fiji needed to adapt itself to globalisation.

**Han Jun**, Vice President, Shenzhen Lawyers Association, gave statistics of the Chinese legal profession, for instance 122 Chinese law firm branches abroad. She explained the way that the Chinese government has supported the internationalisation of the legal profession. She spoke about the Belt and Road Initiative, for instance mentioning the report on the legal environment in Belt and Road countries.

### **Creation of joint ventures: different forms of international alliances and their benefits**

**Mele Rakai**, Associate, Sherani & Co was the moderator and introduced the topic and the speakers.

**Jonathan Goldsmith**, a member of BIC ITILS from the UK but based now in Belgium, gave an abbreviated version of his slides, in view of the time left for the session.

He began by explaining the benefits of cooperation between South Pacific and foreign law firms, as follows:

#### For foreign law firms

- local law firms provide services the foreign law firms cannot, or do not want to, provide – e.g. to support investment, debt financing, infrastructure projects, as part of regional advice (e.g. to a client wanting to do something in the South Pacific region and needing advice from various Pacific countries), etc
- in order to advertise to clients that they (foreign law firms) have a pan-regional offering

#### For South Pacific law firms

- foreign law firms provide access to new clients/branding
- they enable economies of scale/sharing of back office
- sharing of experience/technology transfer can take place

As for forms of cooperation, he mentioned the following:

#### For individual lawyers

- employment of a foreign lawyer/by a foreign lawyer
- partnership with foreign lawyers

#### For law firms

- marketing cooperation (e.g. referral networks such as Lex Mundi, or best friends)
- law firm networks and alliances
- partial integration models (joint ventures, vereins, etc)
- full mergers

There are regulatory issues to be considered, and he listed the principal ones:

- with which foreign lawyers should cooperation be allowed (e.g. WTO list versus one-by-one approved list, etc)
- what work should such joint practices be allowed to do? (e.g. full/limited licences)
- what kind of vehicles should be allowed? (e.g. partnership, limited liability, ABS etc)
- what are the approval processes?
- how to maintain regulatory oversight, and to what level? – should there be regulatory/disciplinary recognition agreements with home country Bars?
- what about insurance/social security/compensation fund contributions
- at what level should the fees be set (they should reflect the true cost of administration and not be a penalty for, or obstacle to, joint practice)
- does the local Code of Conduct apply to the joint practice, and how to deal with particular challenges e.g. names of firms
- be aware that a mix of domestic regulation and international rules (e.g. WTO, trade agreements) will be applicable

**Samantha Cook**, Senior Associate, Pacific Legal Network (PLN), spoke about the experience of her law firm network.

PLN is headquartered in Australia, and is a network of independent law firms operating across the Pacific Islands region. Its main areas of expertise are within the commercial space, banking and financial services as well as the highly regulated industries – for example telecommunications. As more and more Pacific businesses are engaging in intra-Pacific investment and trade, PLN essentially ‘follows’ its clients and assists them in providing access to legal services.

This is what they do:

- provide network member firms with access to centralised marketing resources and marketing support.
- build on strong relationships – work together on regional projects to generate outcomes for clients.
- leverage on-the-ground capability .
- support one another and engage in opportunities to grow professionally.

PLN does not charge referral fees. The firms themselves pay fees which cover the costs of maintenance of websites and for marketing support. From the affiliates’ point of view, this tends to pay for itself through the referrals and work won which has been achieved as a direct result of those marketing efforts. PLN is not a fly-in, fly-out model.

**Steven Thiru**, Vice President, Commonwealth Lawyers Association, and Immediate Past President of the Malaysian Bar Association, spoke about the liberalisation of legal services in Malaysia.

- Pathways for entry:
  1. Qualified Foreign Law Firm (“QFLF”)
  2. International Partnerships
  3. Employment as a foreign lawyer in a Malaysian law firm
  4. Fly-in, fly-out lawyers

- Only in permitted practice areas
- QFLFs currently operating in Malaysia
  - Trowers & Hamlins
  - Herbert Smith Freehills
  - 3 (out of a max of 5) licenses still available
- International Partnerships
  - None
- Foreign lawyers in Malaysian law firms
  - 1 Malaysian law firm employed a foreign lawyer

There is a new Legal Profession Bill and other new rules, which will make changes to this regime, as follows:

- 3 significant amendments:
  - Updated list of recognised jurisdictions (via subsidiary legislation)
  - New requirements for “fly-in fly-out” lawyers
  - New requirements for Malaysian lawyers employed by QFLFs
- The list of recognised jurisdictions will be amended to include:
  - the jurisdiction whose universities are recognised by the Legal Profession Qualifying Board for eligibility either to practise in Malaysia or to sit the CLP examination;
  - ASEAN countries namely Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Singapore, Thailand and Vietnam;
  - Lawyers who are called to the New York Bar; and
  - Other jurisdictions as the Bar Council may approve from time to time

## Foreign direct investment: the role of lawyers

Chair: **Mereseini Vanua**

Presenter: **Javier Negri** (Argentina)

Commentator: **Richard Naidu**, Partner, Munro Leys

**Rigamoto Motufaga**, Manager Exchange Control, Reserve Bank of Fiji

Unfortunately, because the reporter had to deliver Thierry Ngoga’s slides at the same time as this session took place, there is no report of the session on the role of lawyers in foreign direct investment.

Annex A - Program of the conference

**INTERNATIONAL BAR ASSOCIATION**  
the global voice of the legal profession

**FIJI LAW SOCIETY**

**FIJI LAW SOCIETY/  
INTERNATIONAL  
BAR ASSOCIATION  
CONVENTION 2019**  
6th to 7th September 2019  
Sheraton Fiji Resort

“Globalising  
Your Practice:  
Opportunities  
& Challenges”



Day 1 Friday 6th September 2019		
7.00am-8.30am	REGISTRATION	COFFEE & TEA
8.45 am	ALL SEATED	
9.00 am	Official Opening	
	Dress Code: Bula Formal	
	Welcome Address - Laurel Vaurast, President FII Law Society	
	Address from the International Bar Association: Péter Köves (Hungary), Chair, Bar Issues Commission, International Bar Association	
	Introduction of Keynote Speaker - Watt Seeto, Vice President FII Law Society	
	Keynote Address: <b>HE the President of FII, Major-General (Rtd) Jioji Koroni Korote</b>	
	Vote of Thanks - Bhupendra Solanki - Council FII Law Society	
10.00 am	Morning tea	
	Dress code for remainder of the Convention: Bula/Smart Casual	
10.30 am	Introduction: Gordon Hughes, South Pacific Lawyers Association Han Jun, Vice President Shenzhen Lawyers Association	
10.45 am	<b>SESSION 1</b>  <b>Major trends in International Law Practice - how do we compare in Pacific jurisdictions</b> <ul style="list-style-type: none"> <li>• Electronic discovery i.e. discovery of electronically stored information (ESI)</li> <li>• Multi-Generational Workforce</li> <li>• Virtual Law Firms</li> <li>• Technology - standardization and automation</li> </ul>	
Moderator:	Prof. Shatsta Sharnem, Dean, Coordinator, International and Regional Relations, IDP School of Law, University of FII	
Speakers:	Arthur Moses SC, President Law Council of Australia Péter Köves, Chair, Bar Issues Commission, IBA Gertrude Elai, PNG Law Society Council Nick Barnes, Partner, Munro Leys	
12.30 pm	<b>SESSION 2: TABLE TALK</b>  <b>Working with international law firms and international business clients - top tips for business development</b>	
Moderator	Kimitoshi Yahuki (Japan), Vice-Chair of the IBA's Bar Issues Commission	
Panel:	Dilip Jarnadas, Principal, Jarnadas & Associates Hedlala Tabete, Director, Client Engagement & Business Development, Corney & Lind Lawyers, Australia Lou Hong, Shenzhen Lawyers Association	
1.30 pm	Networking Lunch	
2.30 pm	<b>SESSION 3A</b>  <b>Alternative dispute resolution through international Arbitration and Mediation</b>  Chair: Isala T Isala, Tuvalu Law Association Presenter: Thierry Ngoga (Rwanda) Commentator: Kou Xuan, Shenzhen Lawyers Association Ana Tuiketeti, Lawyer, AP Legal Ratjeli Tutvaga, Principal, MRV Legal Consultancy	<b>SESSION 3B</b>  <b>Foreign direct investment: the role of lawyers</b>  Chair: Meresetini Vanua Presenter: Javier Negri (Argentina) Commentator: Richard Naidu, Partner, Munro Leys Rigamoto Motufaga, Manager Exchange Control, Reserve Bank of FII
3.30pm	Coffee Break	
4.00pm	<b>FLS ANNUAL GENERAL MEETING</b>	
6.30 pm	Pre - Dinner Cocktails   Venue: Sheraton	
7.30pm	<b>GALA DINNER</b>   Sheraton Golden Ballroom Dinner Speaker: Justice Anthony Gates, Supreme Court of FII Dress Code: Black Tie optional	

<b>Day 2 Saturday 7th September 2019</b>	
9.00 am	<b>SESSION 4</b> <b>Lawyer Wellness and Mental Health: Changing the Conversation</b> Lawyer wellness, also referred to as legal wellness or lawyer well-being, needs to be an essential consideration for all law firms, law schools, bar associations, and legal professionals. And although there are many "wellness" resources and programs available online, many do not focus specifically on the challenges facing the legal industry, nor do most of the available resources take a bird's-eye view of the legal wellness landscape
Chair:	Bernard Banks
Speaker:	Dr. Rachael Field, Professor of Law Faculty of Law, Bond University
Commentator:	Dr. Istmeli Tukana, National Advisor, Non-Communicable Disease, Min. of Health Fiji Lelataua Koruasi Korua, President Samoa Law Society Dafana Buresova, Regional Coordinator-Pacific, McCabe Centre for Law and Cancer Kameli Batiweti, GM Corporate Services, Fiji Sugar Corporation
10.30 am	Morning tea
10.45 pm	<b>SESSION 5</b> <b>Globalization and Its Effect on Lawyers Practicing in non-global law firms</b> Should a lawyer who doesn't practice in a global law firm care about globalization? If so, what, if anything, can or should Pacific Island lawyers do in response to globalization? This session includes an introduction to Instruments on international trade in legal services and their applicability in the Pacific
Chair:	Samuel Ram, Principal, SK Ram
Speakers:	Iain Sandford (New Zealand) Carl Cameron, Ngarnoki Cameron Lawyers (Fiji) and NCL Limited (HK) Han Jun, Vice President, Shenzhen Lawyers Association
12.00 pm	<b>SESSION 6</b> <b>Creation of joint ventures: different forms of international alliances and their benefits</b>
Chair:	Mele Rakat, Associate, Sherani & Co.
Speaker:	Jonathan Goldsmith (Belgium)
Commentator:	Samantha Cook, Senior Associate, Pacific Legal Network Steven Thiru, Commonwealth Lawyers Association
1.00 pm	Networking Lunch
2.00 pm	<b>SESSION 7</b> <b>Cultural Intellectual Property &amp; the Traditional Ownership in the Pacific</b> <ul style="list-style-type: none"> <li>• Cultural Intellectual Property</li> <li>• Traditional Ownership of Property</li> <li>• Melding of differing systems of ownership</li> </ul> How can the knowledge, experience, and creativity of indigenous Pacific Island groups be protected from exploitation and appropriation? Trademarks, for example, prevent other manufacturers from using trademarked labels, words, but cannot actually prevent the exploitative use of indigenous Pacific Island ideas or knowledge. Patent laws require detailed written documentation of the "invention" which can be problematic for cultures that rely on oral history and storytelling. Copyright law does protect artistic works including written stories, visual arts, performances, and music but may not protect oral histories belonging to a group? Copyright are also limited in duration lasting the lifetime of the author and 50 years after their death. So is IP law sufficient to protect traditional knowledge, creativity, and property? Do we need to change the Western system or do we need to change the traditional system? Is there a solution?
Moderator:	Matanuku Mahutka, Partner Chairperson, Kahui Legal
Speakers:	Atunaisa Siwatibau, Partner, Siwatibau & Sloan Hupfield Hoerder, Designer, Ass. Lecturer, University of the South Pacific Igelese Ete, Head of Performing Arts, University of the South Pacific Arthur Faerua, President, Vanuatu Law Society Sentleba Levact, Magistrate, Judiciary Fiji

3.45 pm	<b>SESSION 8</b> <b>The Image of Ethics in the Legal Profession - with Globalization and changes to business do lawyers remember the Core Values?</b>
Moderator	Wylie Clarke, Partner, Howards Law
Panel:	Wilke Rasmussem, President, Cook Islands Law Society David Naylor, Lecturer, School of Law, USP Laurel Vaurast, President Fiji Law Society
5.00 pm	<b>CLOSE OF CONVENTION</b> <b>SUNDOWNER BBQ &amp; DRINKS _ BAREFOOT ON THE BEACH _ FIJI STYLE</b>



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Pacific Legal Network **howards**LAWYERS SOLANKI LAWYERS



**Sherani**  
Solicitors  
Notaries Public



**SIWATIBAU & SLOAN**  
BARRISTERS & SOLICITORS



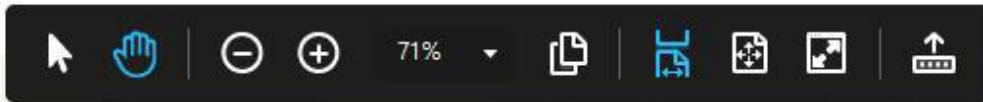
**YOUNG**  
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NOTARY PUBLIC



**NEEL SHIVAM**  
LAWYERS - COMMISSIONERS FOR GATS



**DIVEN PRASAD LAWYERS**  
BARRISTERS & SOLICITORS  
NOTARY PUBLIC & COMMISSIONERS FOR GATS



## Annex B - Opening address by His Excellency, the President of Fiji, Major General (Ret'd) Jioji Konrote at the Fiji Law Society/ International Bar Association Convention 2019

- The Chair of the Bar Issues Commission, International Bar Association Mr. Péter Köves (Hungary)
- The Vice – Chair of the Bar Issues Commission, International Bar Association, Mr. Kimitoshi Yabuki (Japan)
- Representatives and Members of the International Bar Association
- The President of the Fiji Law Society, Ms. Laurel Vaurasi
- The Vice President of the Shenzhen Lawyers Association, Mr. Han Jun
- Representatives and Members of the Shenzhen Lawyers Association
- President of the Law Council of Australia, Mr. Arthur Moses SC
- The Chair of the South Pacific Law Association Mr. Gordon Hughes
- Representatives and Members of the South Pacific Law Association
- The President, Law Society of New Zealand, Ms. Tiana Epati
- Representatives and Members of the Law Society of New Zealand
- The Representative and Member of the Commonwealth Lawyers Association, Mr. Steven Thiru
- The President, Cook Islands Law Society, Mr. Wilkie Ramussem
- The Representative and Member of the PNG Law Society Council, Ms. Gertrude Elai
- The Representative and Member of the Tuvalu Law Association Mr. Isala T Isala
- The President, Law Society of Vanuatu, Mr. Arthur Faerua
- Members of the Judiciary of Fiji
- Invited speakers from abroad and Fiji
- Distinguished guests
- Lawyers and Members of the Legal Fraternity in Fiji;
- Ladies and Gentlemen

Ni Sa Bula Vinaka, and a very good morning to you all.

It gives me great pleasure to address you at this Convention with the theme “Globalising Your Practice: Opportunities & Challenges co-hosted by the Fiji Law Society and the International Bar Association.

Ladies and gentlemen, it is a great honor to be invited by the co-hosts to deliver the keynote address at this Convention, given the esteemed representatives present from, the IBA, the Presidents and Chairpersons of the various Law Societies and Executive Councils present from the Asia Pacific region and other distinguished representatives from various parts of the world and within Fiji.

On behalf of the Fijian Government and all my fellow Fijians, I extend a warm welcome to Fiji to our overseas guests and convey my heartfelt appreciation for the opportunity to speak at this distinguished forum.

A few months ago, I also had the honour of delivering the keynote address at the LAWASIA Employment Law Forum co-hosted by the Fiji Law Society. I congratulate the President of the Fiji Law Society for continuing to build on the platform of expanding the Society’s relationships and influence beyond our borders. In doing so, you are not only enhancing the position of the Society and its members, but you

are also aiding in Fiji's progress towards continued development in the practice of law and management of law firms as a business commensurate with international trends and developments. The latter is by no means an easy feat. In fact, some would describe it as idealistic and perhaps commendable but, unrealistic in Fiji's context, as a relatively young democratic nation. I would venture to say, that many of you here today, particularly those with small, even a single lawyer law firms, may be questioning the relevance of the Convention theme to you.

After all, Fiji remains a developing country, despite the progress and advancements achieved since independence and the myriad of socio economical, cultural and political challenges we have overcome.

But I would say that if Fiji is to achieve the status of being the hub of the Pacific, then we must not only consider the lessons our own personal history has taught us. But we must also have regard to how the developed world has progressed in business, development, the use of technology, negotiating through cross cultural and generational relationships but also in the way the practice of law not just a profession but also as a business, ought to evolve in our nation. I must make one qualification in that, by saying "to have regard" I do not mean that we are simply to adopt what we observe from far more developed countries where the practice of law has evolved over centuries. To begin with, you must first become aware and informed of how the practice of law has progressed in other countries and then consider from the reality of your individual positions as legal practitioners and as a profession, what you think your progress and journey in the practice of law ought to be.

Whichever side of the argument you fall on, whether Fiji in the practice of law should have regard to global and international trends, and if so, to what extent, I encourage you all, whatever generation you are from, the "X" generation, the "Baby Boomers" the "Traditionalist" or the "Millennials", to at the very least, begin a conversation on this issue. Remember in so doing, you are not necessarily undermining the lessons of the past, but hopefully looking toward building on those lessons.

I note with interest the first session discusses "Major trends in International Law Practice – how do we compare in Pacific Jurisdictions". The matters expected to be covered will include electronic discovery and the impact of technology I gather in, among other things, the preparation and standardization of legal documentation.

I imagine that the very idea of purchasing software to protect against malware and other cybersecurity threats, relevant to the issue of security of client information, may seem an anathema to some of you. And yet I am confident that for many others, the issue of acquiring billing and case management software is a thing of the past and the next level for you, is the acquisition of software that assists in the preparation of legal documents.

The more substantive challenges may be the decision to delve into an area of law that is growing as a result of the way commerce and trade within the region and in the international arena is developing. Do you as a medium sized law firm make a strategic move to delve into a growing area of law influenced heavily by commerce and trade that very few practitioners have considered, or do you continue within the scope and area of law that you are comfortable and familiar with? It is never an easy decision to venture into a new area of practice, or life, for that matter, and whichever it is, this should be considered carefully.

For those of you who know of the remarkable life's achievements of Helen Keller, I would like to quote a phrase from her. She said:

“I long to accomplish a great and noble task; but it is my chief duty to accomplish small tasks as if they were great and noble.”

Briefly, Helen Kellen was both deaf and blind from a very young age and for her, until she was able to communicate, the world in which we as able-bodied members take for granted, was completely foreign. Despite the formidable challenges of her disabilities, she became the first deaf and blind person to acquire a Bachelor of Arts Degree and became a leading activist for the disabled, though she is known for many other remarkable accomplishments.

Yes, the idea of developing and extending your practice to a particular yet uncharted area like “Foreign Direct Investment – the Role of Lawyers” which you will learn about on Friday, may be a daunting task, but I pivot for a moment to ask you this. Review your current positions as legal practitioners, as officers of the courts, as key stakeholders in the process of the administration of justice. How close are you in reaching the standards of excellence in the application of the noble tenets of your profession, beginning with your ethical duties to the court and your clients? How much value do you actually place in the fiduciary duty you must fulfil to the court and to your clients? Are you delivering your services in accordance with the standards of competence and diligence required of you?

From the perspective of the practice of law, these are the “small tasks” you must accomplish and treat as ‘great and noble” first and foremost. I would urge you to carefully glean what you can from the esteemed speakers that will be presenting to you over the course of the next two days, particularly on these foundational requirements before venturing to the more formidable question of whether you should venture out into new areas of practice that cross international borders.

I am pleased to note that your final session discusses this issue. Although it may be the last session, I would encourage you all to attend that session entitled ‘The Image of Ethics in the Legal Profession – with Globalisation and changes to business do lawyers remember the core Values. Clearly the organizers of this Convention are mindful of the values that lie at the heart of the noble profession that you are all part of and want to ensure that they remain equally important to you all.

In addition, I hope all of you including the smaller law firms will take keen interest in the session on “Working with international law firms and international business clients – top tips for business development”. I expect you will receive guidance on the question of whether and when to expand your business into completely new areas of law.

Arguably the most dominant issue around the world and at the highest levels of policy and decision making is the issue of climate change and the consequential effects it has on migrant and refugee populations. Whilst Fiji has begun to see issues arising in relation to migrant workers, the day may yet come and soon, when the issue of migrant and refugee populations displaced as a result of climate change may arrive on our shores. Will you as legal practitioners be equipped to address the issue from a policy and legislative level for the benefit of our nation and its citizen as well as on behalf of a displaced migrant seeking refuge and some form of humanitarian and legal remedy in Fiji?

Ladies and gentlemen, it is exposure to these types of forums that generate and progress conversations on how global trends will keep you aware of the issues and developments around the world as they affect the practice of law. We have a responsibility if not to our ourselves but for the benefit of the

generations that will follow us, to consider how the world beyond our shores will affect them and consider what preparatory work may be needed now.

Fiji has experienced unprecedented economic growth for the past 9 years. Apart from prudent financial management, this growth is also due to the conducive environment created by the Fijian Government for business, investments and employment of our people. Men and women need to work knowing that they will be eligible for equal pay for equal work, knowing that they can work in an environment free from violence and harassment, knowing that there are provisions that allow them to take care of their families and emergencies when the need arises and knowing that they are free from discrimination on the grounds of their sex, religion, sexual orientation or other characteristics that many still face in other parts of the world. I am proud to say that, whilst we are not perfect, we are well on our way to creating an employment environment that is conducive to our continued economic growth. These progressive developments would not have been achieved if we remained unaware of what was happening in other countries and considered the relevance of those developments to Fiji's context.

At this juncture, I commend the hard work and effort by the FIJI LAW SOCIETY and the commitment by the International Bar Association for hosting this Convention. I again note the caliber of SPEAKERS both local and from other jurisdictions in the program and have no doubt that they will enlighten us based on their respective wealth of experience and knowledge on the topics they will be delivering.

Thank you for giving up your valuable and no doubt very expensive time to be here in Fiji. For those visiting from abroad, I hope that you take some time out to experience the warm Fijian hospitality that puts Fiji on the world map. Get to know our people and if possible, try something new in Fiji.

I am very pleased to see a sizable number of participants present here today and I would like to commend them all for attending and making this Forum an interactive one.

On behalf of the Fiji Government and all Fijians, I thank you and wish you all the best.

Vinaka vakalevu and thank you.

## Annex C - Contribution of Pauline Wright, President-elect designate, Law Council of Australia

Bula colleagues and friends from across the South Pacific and further afield.

It is an honour to be here in beautiful Fiji for the Fiji Law Society Convention in association with the IBA. As you are well aware, technological advances have changed so many facets of our life and the legal profession has not been immune.

Today, from an Australian perspective, I'd like to speak to you about changes technology have made for the good, but also of the vital need to keep security measures up to speed with technological advances. Technology can be both a help and a hindrance.

For example, with the speed at which advances are being made, there is a growing awareness of emerging issues like cyber security, hacking and data leaks.

However, technology is making the lives of lawyers easier, with services like eDiscovery freeing up lawyers' time to work in other areas.

It also has the added benefit of significantly reducing costs in relation to the discovery process.

And it can make a positive impact on morale and ultimately staff retention.

I am sure most people here will remember that time as a young lawyer doing discovery. It was a rite of passage for many.

Long hours surrounded by boxes of documents and the mind-numbing drudgery of combing through thousands and thousands of pages of business and personal records.

Some discoveries can go for years and years, sucking the life out of the lawyers involved. Some firms in Australia even established 24-hour discovery rooms staffed with backpackers and university students.

As our use of email has grown, so has the size of these discovery tasks. In Australia, in recent times this discovery burden has increased even further with the growing trend of "Royal Commission Culture".

As you know, Royal Commissions are costly, move fast and generally involve the discovery of massive volumes of documents.

A recent Australian example of the substantial resources and costs involved in document production was the Hayne Banking Royal Commission.

The Royal Commission involved numerous parties from the financial services industry. All Australia's banks, big and small, wealth managers, superannuation providers and insurance companies found themselves under the microscope.

At least 1400 notices to produce were issued to institutions, who had to provide documents within tight deadlines. In some instances, this meant the production of documents covering a period of up to a decade.

However, the advent of new technology, involving artificial intelligence made this discovery task for many firms much easier.

Known as E-Discovery, documents are scanned, collated and produced electronically. It codes documents according to relevance based on a pre-determined data set.

Instead of paying for lawyers or paralegals to comb through documents, relevant content can be extracted via sophisticated computer programs.

Any irrelevant documents are removed so the software does not code them as relevant in the future.

Importantly, E-Discovery can quickly remove duplicate documents. This makes the discovery task considerably easier given the likelihood that internal email strings can be replicated many times over in an organisation.



In order to identify potentially relevant or privileged documents, lawyers work with e-discovery providers before document reviews are conducted to develop algorithms with key words and phrases. This involves setting specific parameters, such as the owner of the document, date ranges and keywords.

These parameters can then be refined over the course of the process based on the outcomes of searches.

EDiscovery allows thousands of documents to be reviewed in a short timeframe and can reduce data sets in as little as a few hours, saving significant time and money.

Ultimately, it streamlines the discovery process. It also removes the potential for human error that can – and does – occur in the manual discovery process.

In Australia, eDiscovery is a growing industry. There are now multiple companies providing large-scale eDiscovery and forensic services and this has changed the playing field, especially in relation to large litigations.

The Federal Court of Australia states: “At all times, any considerations relating to electronic discovery should have as their aim, the desire to minimise the burden of litigation on the parties and to maximise the effectiveness and efficiency of the particular trial, document production or other process”.

Generally, in any proceeding in which a significant number of relevant documents have been created or stored in an electronic format, in order to facilitate the quick, inexpensive and efficient resolution of the matter, the court may order that:

- discovery of documents be given in an electronic format and in accordance with a discovery plan, and
- hearings be conducted using documents in an electronic format.

The court expects the parties to use technology in the management of documents and conduct of the proceeding.

Barrister Ian Wylie, notes predictive coding software is more likely be accepted in cases involving voluminous material requiring review for the purpose of discovery, because:

- the use of a single, consistent algorithm in some cases might be more accurate than having numerous junior lawyers or paralegals reviewing documents, and
- it becomes progressively more cost-effective as the number of documents in a matter increase once provider costs have been paid.

He also raises concerns, however, in relation to duplication and the unintentional disclosure of privileged information, and highlights other problems with eDiscovery, including:

- searches that fail to discriminate adequately between emails, email chains and other identical documents and multiple copies of identical documents;
- searches that fail to identify privileged documents; and
- searches that detect irrelevant documentation which then needs to be reviewed at considerable cost by lawyers.

In addition to the obvious time and money savings that can be attributed to eDiscovery, it can also have other benefits for lawyers.

Harnessing this technology can help improve employee retention rates, especially those of young lawyers.

Rather than burning out, these young lawyers can work more closely on the coalface and gain valuable practical experience.

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In this context the extensive use of specialised eDiscovery technology came to the fore, allowing stakeholders to collate the documents they need to produce in a very limited time frame.

But, as I mentioned earlier, there are potential pitfalls that flow from eDiscovery.

The main problem is the potential for classified or confidential documents to be leaked or hacked from a server, where the discovery materials are stored.

In Australia, we are all too aware of this in the wake of the High Court's recent Glencore ruling.

The Glencore decision has created uncertainties and risks for lawyers and their clients that will need to be addressed quickly.

The key question before the High Court was whether the Australian Tax Office could use privileged material made public by a third party without the authority of the client – in this case Glencore – who owned the privilege.

Unlike other cases involving Legal Professional Privilege, Glencore sought to prevent use of documents already made public, rather than resist compulsory production.

This was because the ATO had obtained various documents about Glencore as a result of a hacker publishing stolen documents on the internet.

In its unanimous decision, the High Court noted there was no question the Glencore documents were subject to Legal Professional Privilege but it was not a freestanding legal right that could be enforced to enable the stolen documents to be recovered and not used.

The Court said the privilege is “only an immunity from the exercise of powers which would otherwise compel the disclosure of privileged communications”.

While the Court's affirmation of the privilege was welcome, the decision highlighted a gap in the law that will need to be addressed in this age of cyber security threats.

The High Court observed legal privilege cannot be used as a “sword” to restrain an agency from using privileged material already in its possession.

Rather, a claim can only be made defensively, as a “shield,” to resist an attempt by a court or an agency to compel production.

It was also noted that once privileged communications are disclosed, a privilege holder must resort to the equitable doctrine of breach of confidence for protection.

As you know, Legal Professional Privilege gives clients the necessary confidence to be frank and transparent with their lawyers in order to receive full advice as to their rights and responsibilities under law.

The Law Council of Australia believes any threats to this principle could have a chilling effect on this relationship and consequently the administration of justice.

Such a threat is highlighted by a growing number of cyberattacks and data leaks, an issue the legal profession in Australia – and internationally – must take into consideration.

The Glencore case highlights these risks and the potential consequences for those who have been victims of data leaks where information has found its way into the public domain.

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Obviously, there will be more and more advances in the eDiscovery domain, that will help lawyers do their jobs more quickly and expedite processes in large litigations.

However, we must never lose sight of those at the heart of the law – lawyers themselves. We can't come to rely on technology to do our job for us.

And, as I have pointed out, while there are many benefits technology brings with it, there are also many pitfalls of which we must be acutely aware.