

ADVANCING ENVIRONMENTAL LAW IN THE PACIFIC:

Towards 2030 and Beyond:
Highlights of the Inaugural IUCN Oceania
Environmental Law Conference 2021 (Oceania
Environmental Law Congress) & the Environmental
Law Roundtable Dialogue



WCEL

WORLD COMMISSION ON ENVIRONMENTAL LAW
COMMISSION MONDIALE DE DROIT DE L'ENVIRONNEMENT
COMISION MUNDIAL DE DERECHO AMBIENTAL



A turtle among the coral reef. Photo credit: Jordan Robins

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Inaugural IUCN Oceania Environmental Law Conference
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The conference would not have been successful without the support and commitment of the following groups of people:

- The chief guests who opened the conference: Dr Grethel Aguilar of IUCN; Hon. Dr Mahendra Reddy, Minister for Agriculture, Waterways and Environment, Fiji; Mr Arnold Kreilhuber of the UNEP Environmental Law Programme; Mr Tony Greubel of the US Embassy in Fiji; Justice Antonio Benjamin of the World Commission on Environmental Law (WCEL).
- Distinguished chairs, speakers and rapporteurs for accepting IUCN's invitation to perform the roles they were invited to conduct at the conference. The conference would not have been a success without the calibre of the chairs and speakers and there would be no report without the rapporteurs who diligently conducted themselves and provided summaries of the sessions to the Head Rapporteur.
- Staff of the environmental law associations of Vanuatu and Solomon Islands, together with Gaylyn Puairana and Virana Bogiri, who were instrumental in providing support to the environmental law associations in the success of the conference hubs in the respective countries in the lead-up to and during the conference.

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- The staff and volunteers of the IUCN Oceania Regional Office who showed commitment and resilience in planning and hosting the conference during a difficult time for Fiji, the region and the world.
- Ms Emily Gaskin, Executive Officer of the IUCN World Commission on Environmental Law who was instrumental in the success of the virtual platform chosen to stream the conference to participants and attendees from across the region and the world.
- Participants and attendees of the conference who, despite the conference format, showed up each day and provided valuable discussions and information during the conference.

Environmental Law Roundtable Dialogue: The Future of Environmental Law in Oceania

IUCN Oceania Regional Office takes this opportunity to also extend its thanks to the IUCN World Commission on Environmental Law, its partner in hosting this session at the IUCN World Conservation Congress in Marseille, France on 8 September 2021 together with the distinguished speakers of the Roundtable Dialogue who joined the session both physically and virtually. Special thanks is extended to Professor Denise Antolini for identifying the Oceania Environmental Law Global Partnership as a way forward to successfully implement the key priority areas of the Conference Outcomes Statement.

Development of this publication

IUCN Oceania Regional Office extends its appreciation to the IUCN World Commission on Environmental Law for making this publication a reality through its financial assistance and to the following individuals for their respective roles in the production of this publication:

- Maria-Goreti Muavesi
- Patricia Parkinson
- Epli Nakautoga
- Uraia Makulau
- Akanisi Nabalarua-Vakawaletabua
- Elena Rakoto
- Neehal Khatri

The journey to the conference was long but, in the end, fulfilling. We thank each of you that we might not have been able to name but you know who you are. We appreciate you and look forward to working with you in the near future to continue to advocate the advancement of environmental law in the region.

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Foreword



Chair, IUCN World Commission on Environmental Law (WCEL)
Professor Dr Christina Voigt

For IUCN WCEL, it was a great honour to partner with the IUCN Oceania Regional Office and IUCN WCEL Members in Fiji in the successful hosting of the Inaugural IUCN Oceania Environmental Law Conference in July 2021. The conference took place in conjunction with the 2nd IUCN WCEL World Environmental Law Congress and I want to warmly thank all our partners for the wonderful cooperation and impactful outcome which the event delivered.

Oceania, this magnificent, vast, blue area between Asia and the Americas is a body of water larger than all the earth's continental land-masses and islands combined. Its thousands of islands have harboured human cultures for more than 30,000 years. The marine environment and the human societies within it have always been exposed to the forces of nature and are vulnerable to it.

Yet, current challenges exceed past challenges, by far.

For example, rising global temperatures cause the melting of glaciers in the Himalayas, and the Greenland and Antarctic ice shields, leading to the rise in global sea levels which cause land inundation, salination of groundwater and loss of arable and livable lands and livelihoods for people; drastically impacting islands and low-lying coastal States.

Higher carbon dioxide (CO₂) concentrations in the atmosphere also lead to higher CO₂ concentrations in the marine waters, leading to acidification – the decrease in pH value – and affecting marine organisms, such as shellfish and coral formations.

Ocean plastic pollution accumulates in so-called “garbage patches”. The great Pacific Garbage Patch, for example, now stretches over 1.6 million square kilometers.

What have all these challenges in common?

First, they cannot be solved by the island nations of Oceania alone. Second, they are the result of collective action problems that accumulated over time by many actors and require a collective response. In this situation, international law is indispensable to establish fair and effective responses. Third, the legal solutions under international law are still absent or inadequate and legal developments are urgently needed.

It is against this background that the Inaugural IUCN Oceania Environmental Law Conference came at a crucial moment in time and provided a much-needed forum for exchanges of lessons learnt and constructive ideas to address the challenges ahead.

The conference brought to the forefront the immense challenges that the islands of Oceania, their natural environment and their people are facing and made clear that environmental law – and the environmental rule of law – will have to play a crucial role in addressing them, even if progress sometimes is slow.

Many ideas are needed on how to develop the law from what it currently does to what it needs to do. And many of these ideas are captured in the proceedings of this conference, for the whole world to see and to engage with.

The conference clearly demonstrates IUCN's important contributions: expertise and knowledge in environmental law in the Pacific and internationally, network building and generation of new ideas, and advocating for and developing environmental law in the Oceania region with powerful impact!

Professor Dr Christina Voigt

FOREWORD



Mr Clark Peteru

Legal Counsel, Secretariat of the Pacific Regional Environment Programme (SPREP)

I'm very pleased to provide this foreword having been involved, intermittently, with various IUCN Commissions, activities, and environmental legal specialists since the early 1990s, which is when I began work with a local environmental NGO. The 1992 Earth Summit and the added impetus it provided for environmental awareness and activism coupled with the biodiversity importance of the region presaged the eventual establishment of an IUCN office for Oceania, which occurred in early 2007.

This allowed for the placement of a dedicated environmental legal officer at the office and I've been fortunate to have worked with each one of them over the years up until the present time in my capacity as Legal Adviser and later Legal Counsel for the Secretariat of the Pacific Regional Environment Programme.

Maria-Goreti Muavesi has been the latest and also the longest-serving legal officer and has been a welcome source of sharing and learning. That duration has given her a solid grounding in shaping this conference which I find notable for its scope and ambition. A virtual conference presents huge logistical and technical challenges and getting there is almost always longer and tougher than anticipated. But here we are, safely on the other side. Congratulations to Maria-Goreti and the organising team for successfully orchestrating this exceptional event.

Environmental conferences in the region happen all the time but what makes this one special is its sole focus on environmental law. A lot of ground is covered over three days with something new each day. Despite the growing number of environmental lawyers in the region, there has not been a venue which allows them to talk to one another or with science and policy colleagues or with counterparts outside the region. IUCN, in putting its extensive networks to good use, has achieved this by bringing together an impressive array of speakers with decades of international, regional and national level experiences. Specific on-the-ground experiences combined with broad analysis from the conference yielded new insights and solutions.

A speaker from UNEP's Legal Division, Mr Arnold Kreilhuber, mentions that a global analysis in 2019 found that despite a 38-fold increase in environmental laws put in place since 1972, there was still a failure to fully implement and enforce these laws. That finding certainly applies to our region, but the solutions that UNEP then proposed, the commonalities that emerged in many Pacific country presentations and just observing the functioning of the environmental legal systems of our neighbours Australia and New Zealand, give us confidence that while our island nations may still have some way to go, we are on a path that has clear signposts ahead in our journeys to our destinations.

There are very few Pacific environmental law publications. This book collects and records the thoughts, conclusions and distilled experiences of numerous environmental veterans and, for that reason, holds immense practical value for the reader. For the same reason, this book should also inspire or enable the more rapid advancement of environmental law within the Pacific.

A handwritten signature in black ink, appearing to be 'CP' or similar initials, written in a cursive style.

Clark Peteru

FOREWORD



Professor Antonio Herman Benjamin

**Justice, National High Court of Brazil (STJ)
President, Global Judicial Institute on the Environment
Secretary-General, UNEP International Advisory Council
for Environmental Justice Chair Emeritus, IUCN World
Commission on Environmental Law**

I am grateful for the invitation to write this Foreword. I have been personally involved with the design and organization of the IUCN Oceania Environmental Law Conference, a milestone in the evolution of the legal protection of the environment in this large and crucial part of the Planet. It has been a privilege to work in partnership and in collaboration with my colleagues in the IUCN Oceania Regional Office, a dedicated and competent group of people, particularly Maria-Goreti Muavesi, Senior Environmental Legal Officer, and Mason Smith, the energetic and visionary Regional Director.

The Conference Outcomes Statement was formally presented at an Environmental Law Roundtable Dialogue at the IUCN World Conservation Congress in Marseille in September 2021. In both events, the IUCN World Commission on Environmental Law (WCEL), of which I served as Chair for nine years, collaborated with the Oceania Regional Office—a long-term engagement that continues under the leadership of the new WCEL Chair, Professor Christina Voigt, as a clear commitment for the next four years.

When I was initially elected WCEL Chair in 2012, I set two geographic priorities: Africa and the Pacific. Despite the great relevance of these regions as Earth's biodiversity hotspots and the devastating present and future impacts of climate change on their lands and oceans, the Commission had previously had only a minor presence, or no presence at all, in these parts of the world. Particularly in my second term, I began closely working with the IUCN Oceania Regional Office (ORO), having found in Maria-Goreti Muavesi the perfect partner.

Since I was appointed to the National High Court of Brazil in 2006, I have watched as judges around the world have increasingly made the protection of the environment a priority, as mandated by many and diverse constitutional and legal provisions. In this area, law is finally leaping from the books and playing an active role in achieving the objectives set by international and national legislation. The Environmental Rule of Law has entered the courtroom as a fundamental concept for our times. In 2016, a network of judges formally established the Global Judicial Institute on the Environment, now incorporated in Geneva under Swiss law.

I met Maria in 2015 while attending the Oceania Regional Conservation Forum, a gathering of IUCN Members, Commission Members and Stakeholders in the Oceania Region. She had just joined IUCN as a Legal Officer and was tasked with managing IUCN Oceania's Environmental Law Programme. We worked together again at the 2016 inaugural World Environmental Law Congress in Rio de Janeiro, where she was invited to speak at the Early Career Group event. Since our first meeting, Maria has impressed me enormously with her dedication, competence, and outstanding knowledge of the complex environmental law challenges in the Pacific. She is responsible for giving Environmental Law a central stage in the work of IUCN in the region, making her Regional Office the only one in the world to have a comprehensive legal program that goes beyond individual and fragmented projects.

The Inaugural IUCN Oceania Environmental Law Conference has, without a doubt, been a major achievement for the region in spite of the difficult circumstances brought by the COVID-19 pandemic. As the first WCEL Chair to personally visit the IUCN ORO in Suva, I cannot express in words how proud I am to see these positive advancements and growing emphasis on Environmental Law in Oceania.

To date, almost all the Pacific Island Countries (PICs) have enacted environmental legislation and become parties to a number of global and regional environmental conventions, agreements and protocols. The development of the environmental rule of law is a testament to the ever-growing recognition and common interest shared among the international community to safeguard the environment and the benefits it generates. However, the reflections captured over the three-day Conference made it clear that effective implementation of these commitments presents ongoing challenges for the Pacific to fully embrace Environmental Law.

The road to effective enforcement of environmental legislation begins with acknowledging the prevailing discrepancies among countries and continents of the world. I was impressed that the Conference highlighted this particular aspect faced

by many Pacific countries and at the same time recognized their common strengths, presenting opportunities to collectively produce meaningful and region-specific solutions. This holistic and realistic undertaking drew the attention of Conference participants and posed important questions on how governments, judges, non-government organisations and stakeholders could build upon existing capacities and partnerships to ensure that environmental law thrives in the region.

Oceania, like Latin America, is an area of high biological diversity and faces institutional capacity challenges that make it more susceptible to a range of human-induced threats. The unique biodiversity and ecosystems define the very foundation of Pacific peoples' identity and their socio-economic and cultural livelihoods. In adapting and building resilient measures to protect local ways of life from emerging and global challenges, we need to ensure that the fundamentals throughout the legal process—from the drafting of laws, regulations, and rules to the application of legal tools for implementation, compliance, and enforcement—incorporate customary law and are integrated with custom and traditional knowledge. We cannot underestimate the importance of modern and adequate legal regimes, but those regimes must come from within regions like Oceania and not simply be attempts at transplantation. Protection of the environment does not exist without law. But not just any law, nor only “law in the books” will suffice. What we really need is law in action.

The Conference offered a collaborative space that openly discussed building regional resilience on climate change, the deteriorating health of oceans, land degradation and the exploitation of terrestrial and marine resources. The concept of an open Talanoa dialogue unpacked these complex issues with the help of the distinguished panellists and prompted participants to share stories interwoven with law, providing useful practical perspective and guidance, in context.

The success of the Conference reflects the growth of Environmental Law in Oceania. Its focus on advancing the Environmental Rule of Law and the other topics covered built upon the agenda and results of the 1st and 2nd IUCN World Environmental Law Congress. This publication captures for the reader a summary of the discussions at the event. It provides a mosaic of texts structured in the same flow of the conference programme. In addition to the results of the Conference, the publication provides a summary of the debates held at the Marseille IUCN World Conservation Congress that analysed key priority areas of the Conference Outcomes Statement. Furthermore, it introduces the idea of an Oceania Environmental Law Global Partnership, a vision originally proposed by my dear friend Professor Denise Antolini, from the University of Hawai'i Law School. I hope that together we can establish this platform for coordination and cooperation among local and international organisations—including the Global Judicial Institute on the Environment—with similar objectives for Environmental Law. Our dream is that this partnership can directly contribute towards the implementation of the key priority areas outlined in the Conference Outcomes Statement for many years to come.

An important Environmental Law gathering as such would not have been possible without the institutional partners and people who contributed tirelessly behind the scenes. I would like to thank the IUCN Oceania Regional Office, its Regional Director Mason Smith, Senior Environmental Legal Officer Maria-Goreti Muavesi and ORO support staff in convening this auspicious event. I also take this opportunity to share my sincere gratitude to the IUCN World Commission on Environmental Law (WCEL), the United States Embassy in Fiji, United Nations Environment Programme, Pacific Islands Forum (PIF) Secretariat, the European Union, the Asian Development Bank (ADB), Environmental Defenders Office, Pacific Network for Environmental Law and the Environmental Law Associations for Fiji, Solomon Islands and Vanuatu for their valuable inputs and willingness to actively participate throughout the three-day Conference.

This Conference was the beginning of a new horizon for Oceania and its people in respect to how law and the legal profession envision and sustain a healthy environment for humans and the planet. The discussions should provoke those in leadership roles to rethink their outlook on the environment and to more boldly shape policies and legislation—toward a horizon in which we go beyond simply adding more law to the books, but rather actively promoting the protection of the environment. We all share in this responsibility to support exciting efforts like the Conference in Oceania to spearhead implementation of the Environmental Rule of Law that will set examples to the world today and for generations to come.

Muito Obrigado! Many thanks.

Professor Antonio Herman Benjamin

Justice, National High Court of Brazil (STJ)

President, Global Judicial Institute on the Environment

Secretary-General, UNEP International Advisory Council for Environmental Justice

Chair Emeritus, IUCN World Commission on Environmental Law



IUCN Oceania Regional Director's Message

Mr Mason Smith

As IUCN's Oceania Regional Director, I am indeed proud of the achievement we had over hosting the Inaugural IUCN Oceania Environmental Law Conference from 14 to 16 July 2021. This success rides on years of building our reputation as an innovative organisation that centres its work around the needs of our members, partners, stakeholders and most importantly, people and the biodiversity that they rely on.

To ensure we continue building resilience for 'a just world that values and conserves nature', IUCN Oceania has provided strong leadership roles in conservation and sustainable development agendas through the expansion of our project portfolios in the region. The Inaugural IUCN Oceania Environmental Law Conference, in this regard, has set a vital platform that allows us to elevate this vision of not only advancing environmental law but also, to a greater degree, warrants commitment to implement it.

Despite the many curve balls pitched by the COVID-19 pandemic, the special attention drawn to environmental law could not have come at a better time. With many resorting to questionable alternative means of socio-economic recovery as a 'band-aid approach', the discussions that transpired at the conference reminded and encouraged all facets of governance to move past the rhetoric and to focus and invest in 'Advancing environmental law in the Pacific: Towards 2030 and beyond'.

To guarantee that we address these challenges and better equip ourselves with the necessary tools to narrow the significant disparity, the region must renew their commitment to work together to amplify the fundamental role of environmental law, forge and strengthen partnerships and implement relevant national, regional and international agreements and obligations.

The Oceania region is at the forefront of global environmental crises that are affecting our oceans, climate and livelihoods. These global environmental crises require global solutions that strongly involves all levels of governance, from the youth, grassroots and communities to the region and onward to the international fora. I cannot emphasise this enough: it is only through meaningful partnerships and cooperation that we will be able to address, adapt and mitigate the impacts of these pressing environmental crises.

We are merely custodians of the biodiversity and resources we enjoy today, and it is our responsibility to ensure that our future generations have the opportunity to experience the same. I encourage you to flip through the pages of this publication as it reflects the concerns, hopes, ideas, ambitions and solutions of experts, participants and stakeholders who participated at, and supported, the Inaugural IUCN Oceania Environmental Law Conference and the Environmental Law Roundtable Dialogue held at the IUCN World Conservation Congress in 2021. It is a publication with immense information that can be used to guide and inform stakeholders of the challenges in the region and the need to enhance environmental legal awareness, promote the environmental rule of law and strengthen compliance and enforcement of environmental law in the region. IUCN Oceania remains fully committed and looks forward to working together with its partners under the banner of the Oceania Environmental Law Global Partnership to implement the key priority areas of the Conference Outcomes Statement.

2022 is proving to be an exciting year for environmental law in the region and I look forward to your support.

Vinaka vakalevu

Mason Smith
Regional Director
IUCN Oceania Regional Office

Introduction

IUCN Oceania Regional Office hosted the Inaugural IUCN Oceania Environmental Law Conference in conjunction with the 2nd World Environmental Law Congress from 14 to 16 July 2021, in partnership with the IUCN World Commission on Environmental Law (WCEL), the United Nations Environment Programme (UNEP), the US Embassy in Fiji and the Pacific Islands Forum Secretariat. The conference was also supported by the Pacific Network for Environmental Law (PaNEL), Secretariat of the Pacific Regional Environment Programme (SPREP), Asian Development Bank (ADB), Environmental Defenders Office (EDO) and the environmental law associations of Vanuatu, Solomon Islands and Fiji.



Fiji Crested Iguana. Photo credit: Epeli Nakautoga

IUCN WCEL had postponed the 2nd World Environmental Law Congress, originally planned for Rio de Janeiro in March 2020, in response to the global health risks posed by the COVID-19 pandemic. In early 2021, the WCEL Steering Committee reconvened and agreed to split the global Congress into a series of converging regional hybrid events. This conference was one of five regional hybrid events that took place in 2021 and is considered to be the Oceania Environmental Law Congress.

The conference focused on the theme 'Advancing environmental law in the Pacific: Towards 2030 and beyond'. It brought together environmental law experts, judges, lawyers, practitioners, conservationists, project managers, government and civil society representatives to share their experiences of the continued challenges that Pacific Island Countries face in protecting natural resources through law and policy. It provided a platform that encouraged sharing approaches to address these challenges and identified options for improving or strengthening the environmental rule of law. It focused on the challenges and opportunities that Pacific Island Countries face in protecting and managing natural resources and the environment through law and explored opportunities to leverage legal tools and approaches to drive and scale-up positive conservation and development outcomes. The conference addressed issues that challenge the implementation and enforcement

of current legal frameworks at national, regional and international levels and provided a space for experts to speak on areas of environmental law that continue to evolve. During the course of the conference, an Outcomes Statement was developed that addressed issues discussed at the conference.

At the IUCN World Conservation Congress in Marseille, France on 8 September 2021, IUCN Oceania Regional Office partnered with IUCN WCEL to facilitate a session titled 'Environmental law roundtable dialogue: The future of environmental law in Oceania', where a panel of speakers discussed the key priority areas of the Inaugural IUCN Oceania Environmental Law Conference Outcomes Statement and the strategy and support needed to effectively implement them. The key outcome of this session is the establishment of the Oceania Environmental Law Global Partnership that will bring together key partners in the region with the common goal of advancing the environmental rule of law.

This publication summarises the key discussions and outcomes of the Inaugural IUCN Oceania Environmental Law Conference and the Environmental Law Roundtable Dialogue at the IUCN World Conservation Congress.

Some stats from the Inaugural IUCN Oceania Environmental Law Conference in conjunction with the 2nd World Environmental Law Congress:



PROGRAMME

- Welcoming and Call to Order
- Opening Remarks
- Keynote Address
- Introduction of Speakers
- Roundtable Dialogue
- Closing Remarks

ENVIRONMENTAL LAW ROUNDTABLE DIALOGUE: THE FUTURE OF ENVIRONMENTAL LAW IN OCEANIA

Wednesday 8 September 2021
4.00PM - 6.00PM CEST
OCEANIA-HAWAI'I PAVILION
Marseille, France

The Future of Environmental Law in Oceania

CO-CHAIRS

 MARA-GRETTI BRUNSI <small>Senior Environmental Legal Officer, IUCN Oceania</small>	 JUSTINE ARINNE BELLEAU <small>Chair, IUCN WCEL & Justice, High Court of Brazil</small>
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SPEAKERS

 DR CRYSTAL ZOUKAR <small>Deputy Director General, IUCN</small>	 DR GEORGINA LIETZ <small>Regional Coordinator Environmental Law and Governance, UNEP</small>	 LIZITA SERRANO-RODRIGUEZ <small>Program Manager, Pacific Conservation Society & Regional Coordinator Candidate, Oceania Region</small>	 PROF. ANJIE ANTILAN <small>Professor of Law, Nelson A. Rockefeller School of Law, University of Hawaii & Member of WCEL Steering Committee</small>	 JUSTICE MICHAEL S WALLEN <small>Associate Justice, Supreme Court of Hawaii</small>	 PROF. CHRISTINA VIKST <small>Professor, University of Otago, Maritime & Oceans Law, IUCN WCEL Steering Committee</small>	 ZYRAN GILLESPIE <small>Global Manager, Administration of Environmental Protection, Ministry</small>	 WILSON SMITH <small>Regional Secretary, IUCN Oceania</small>
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Inaugural IUCN Oceania Environmental Law Conference Outcomes Statement

Introduction

The IUCN Oceania Regional Office hosted the Inaugural IUCN Oceania Environmental Law Conference from 14 to 16 July 2021 in conjunction with the 2nd World Environmental Law Congress (Oceania Environmental Law Congress).

The Inaugural IUCN Oceania Environmental Law Conference (the Conference) was held in partnership with the IUCN World Commission on Environmental Law (WCEL), the UN Environment Programme (UNEP), the US Embassy in Fiji, the Secretariat of the Pacific Islands Forum and the European Union, with the support of the Pacific Network for Environmental Law (PaNEL), the Asian Development Bank (ADB), the Environmental Defenders Office (EDO), the Secretariat of the Pacific Regional Environment Programme (SPREP), the Solomon Islands Environmental Law Association (SIELA), the Vanuatu Environmental Law Association (VELA) and the Fiji Environmental Law Association. The organisers are grateful for financial support from the US Embassy in Fiji, UNEP, WCEL, the Secretariat of the Pacific Islands Forum (PIFS) and the European Union.

Over three days, the Conference created a platform for environmental law experts, judges, lawyers, practitioners, academics, conservationists, government and civil society representatives to share experiences on the continued challenges that Pacific Island Countries face in protecting natural resources and biodiversity through law and policy. Participants explored opportunities to leverage legal tools and approaches to drive and scale-up positive conservation and development outcomes, and identify options for improving or strengthening the environmental rule of law.

This Outcomes Statement reflects the participants' most pressing issues of concern discussed during the Conference. It intends to inform and guide IUCN Oceania and partners' initiatives in the years ahead towards the achievement of environment protection and conservation objectives through law and in the context of the IUCN Programme 2021-2024 and of the IUCN Oceania Programme 2021-2024.

Preamble

Deeply concerned about the extreme adverse impacts of the environmental crises of climate change, biodiversity loss, pollution and deteriorating oceanic ecosystems' health.

Acknowledging the crucial role of the ocean in the Pacific cultures, national economies and community livelihoods. Honouring that the Pacific Ocean is the largest and deepest of Earth's oceans, and home to the greatest number of coral reef species globally.

Understanding also the global ecological function of the Pacific Ocean as a global carbon sink. Highlighting the central role of coral reefs and mangrove forests to climate adaptation. Stressing that an estimated 70% of the global fish catch comes from the Pacific Ocean.

Recognising the importance of Indigenous, traditional and local knowledge systems and practices, the value and centrality of customary law, governance and rights over natural resources and territories, and of the benefits of synergies between customary and formal legal and governance systems for conservation outcomes.

Noting the fundamental role of the Environmental Rule of Law, including the procedural and substantive environmental rights it upholds, to support the conservation of nature and sustainable development.

Aware of the role of lawyers and of the judiciary in advancing environmental law and in giving effect to the principles of environmental law including but not limited to intergenerational equity, polluter pays, prevention of transboundary environmental harm, the precautionary principle, Free, Prior and Informed Consent, in dubio pro natura, in dubio pro aqua and the rights of nature.

Taking into account the obligations of the countries of Oceania under global and regional Multilateral Environmental Agreements including, among others, the UN Framework Convention on Climate Change, the Paris Agreement on climate change, the Convention on Biological Diversity (CBD), the Nagoya Protocol on Access and Benefit-Sharing, the Aichi Targets, the UN Convention on the Law of the Sea (UNCLOS), the Ramsar Convention on Wetlands, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Kigali Amendment to the Montreal Protocol, the Basel, Rotterdam and Stockholm Conventions on hazardous chemicals and wastes, as well as global strategies, plans and programmes, notably the UN Sustainable Development Goals 2030 (SDGs), the CBD post-2020 Global Biodiversity Framework and the IUCN Programme 2021-2024.

Further taking into account the Pacific regional environmental agreements, including the Convention for the Protection of Natural Resources and Environment of the South Pacific Region (Nouméa Convention), the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (Waigani Convention); as well as the Pacific regional strategies and plans for the conservation of biodiversity and natural resources, including the Pacific Islands Framework for Nature Conservation and Protected Areas 2021-2025 and the IUCN Oceania Programme 2021-2024.

Affirming the principles of the 1972 Stockholm Declaration, 1992 Rio Declaration on Environment and Development, and 2015 Sendai Framework on Disaster Risk Reduction.

Recalling the principles upheld and commitments made in the following declarations and statements: the Kunming Declaration of the World Judicial Conference on Environment, 2021; the Vemöore Declaration: Commitments to nature conservation action in the Pacific Islands region, 2021-2025; the Statement of the Asia-Pacific Judicial Conference on Environmental and Climate Change Adjudication, 2020; the Brasilia Declaration of Judges on Water Justice, 2018; and the IUCN World Declaration on the Environmental Rule of Law, 2016.

The participants at the Conference recognise that:

Oceania's small islands developing states (also referred to as large ocean small islands developing states) are facing urgent and existential environmental challenges as a result of extreme exposure to the impacts of the global environmental crises affecting the oceans and the climate.

Advancing environmental law in Oceania, towards 2030 and beyond, is critical to addressing, adapting to and mitigating the impacts of these challenges. Through collaboration, partnerships and resource and knowledge sharing, some positive developments are taking place.

The Conference highlighted key areas for advancing environmental law that align with and complement the objectives of Multilateral and Regional Environmental Agreements, global and regional strategies as well as with the declarations and statements referred to in the preamble of this Outcomes Statement. Further, they contribute to the commitments made in previous IUCN World Commission on Environmental Law conferences, and to the implementation of the IUCN Programme 2021-2024, the IUCN Oceania Programme 2021-2024 and of the resolutions adopted at the 2021 IUCN World Conservation Congress.

And identify the following priority areas for advancing environmental law in Oceania:

Strengthening the environmental rule of law is an overarching goal for good environmental governance. The role of lawyers and the judiciary is critical to developing and upholding the environmental rule of law. It is essential not only for combating environmental crimes and promoting ecologically sustainable development, but also for protecting everyone's fundamental right to live in a safe, clean, healthy and sustainable environment and climate. It further underpins and enables the implementation of fundamental environmental law principles and the advancement of environmental law.

Strengthening the environmental rule of law in Pacific Island Countries promotes SDG 16 – 'peaceful and inclusive societies for sustainable development, provides access to justice for all and builds effective, accountable and inclusive institutions at all levels' – and contributes to the achievement of other SDGs. Pacific Island Countries are more exposed than larger and more developed countries to the impacts of the global environmental crises, and therefore are among the most vulnerable to environmental harm. Good environmental governance entails social, gender and intergenerational equity and respects Indigenous and

human rights. It also contributes to positive conservation outcomes. The environmental rule of law also contributes to securing the protection of environmental human rights defenders.

Recognise formally the role of customary law and practices and of traditional knowledge in environmental and natural resources management including through strengthening co-management models and the role of Indigenous and local communities as environmental monitoring and enforcement partners.

Support the development of adequate and effective environmental legislation, as recommended by the objectives of the UNEP Fifth Montevideo Environmental Law Programme for the Development and Periodic Review of Environmental Law and in line with the findings of assessment and gap analyses of the environmental legal frameworks in Pacific Island Countries. Outdated laws governing natural resource management are inadequate for the implementation of national policies and the commitments made under regional and international environmental agreements, including climate and biodiversity conservation commitments. Adequate legislation in Oceania should address the environmental and climate change issues, be science-based and cognizant of traditional knowledge and enable bridging of formal and customary governance systems. It should also align with national policies and give effect to the commitments made under international and regional agreements while upholding the environmental rule of law, including procedural and substantive rights.

Strengthen equitable access to justice (SDG16) and improve environmental and climate change adjudication processes and institutions, including through facilitating equitable access to remedies, especially for Indigenous and local communities and vulnerable populations, such as alternative dispute resolution mechanisms. The establishment of environmental tribunals in the Pacific Island Countries should be supported, and the option of a regional tribunal or a regional alternative dispute resolution mechanism further explored. Specialised environmental tribunals enhance the development of environmental and climate change jurisprudence and improve compliance and consistent enforcement of environmental and climate law. A regional tribunal or mechanism could enhance access to justice by focusing on science-based dispute resolution with an emphasis on the collaboration of experts and recognising customary dispute resolution mechanisms.

Improve compliance and enforcement of environmental law. Limited human and financial resources of the government authorities vested with implementing and enforcing environmental laws, the lack of coordination between government agencies, and the need for greater awareness and capacity, compounded by the geographic challenges of the Pacific small island developing and archipelagic States, were some of the impediments to compliance, monitoring and enforcement that were highlighted during the Conference. These challenges affect particularly the effectiveness of environmental planning legislation, compliance with the environmental impact assessment's requirements, and with the conditions of development approvals and fisheries legislation leading to overfishing and illegal unreported and unregulated (IUU) fishing.

Enhance environmental legal awareness of communities and the capacity of enforcement officers

for improved environmental decision making and environmental law implementation, compliance and enforcement. This entails enhanced community awareness of environmental laws and of their rights, including access to information and public participation. The role of non-government organisations – such as environmental law associations – in raising legal awareness and of community-based organisations in environmental monitoring, was identified during the Conference as an efficient and effective means to address the human and financial resource limitations of public enforcement agencies. Improved environmental legal capacity of environmental officers and other stakeholders may also be enhanced through legal education and knowledge platforms such as InforMEA, the UNEP Law and Environment Assistance Program (LEAP), ADB e-learn, Asian Judges Network on Environment, and through the implementation of other objectives of the Montevideo Environmental Law Programme.

Support the health, resilience and sustainable management of ocean and marine ecosystems through law

- Further development of marine protected area networks are needed in line with SDG 14, Life Below Water. Planning and protection must cover marine spatial planning and actively promote action for the protection of marine life, especially ecosystem architects such as coral reefs and mangrove forests, and for the reduction of marine pollution, notably plastics and microplastics pollution. A precautionary approach should be promoted and supported by IUCN and partners in the Pacific in their engagement with all activities relating to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ), as part of the current UN negotiations for a new international legally-binding instrument for a BBNJ Agreement under UNCLOS. This applies to the mining of seabed minerals, of which the impacts on the environment and marine biodiversity are largely unknown. At national level, a robust and science-based legal framework, including environmental, social and cultural impact assessment, should be developed prior to the issuance of deep seabed mining licences.

Improve the legal framework for pollution control and waste management and strengthen the regional and global legal frameworks to prevent plastic pollution.

Waste management is one of the most critical challenges in Pacific Island Countries and Territories, which are faced with an increasing volume of waste to manage, insufficient waste management facilities and no or little options for recycling. Plastics and microplastics pollution and its impacts have become an escalating part of the waste and pollution problem. Plastics are an additional global transboundary threat to the region, contributing to and exacerbating climate change impacts on the ocean, biodiversity, food security, human health and rights. Plastics' impacts affect the region's progress towards the objectives of the Multilateral and Regional Environmental Agreements and strategies, including the sustainable development goals. The need for a coordinated and effective national, regional and global legal response that addresses plastics pollution and its impacts at every stage of the plastics' life cycle was identified by the findings of the marine litter and microplastics working group reporting to the UN Environment Assembly that is expected to decide on the establishment of an intergovernmental

negotiating committee for a new global agreement to prevent plastic pollution in 2022.

Strengthen partnerships at global, regional, national and local levels for improved environmental rule of law and conservation outcomes

(SDG17). As this Conference illustrated, dialogue and partnerships established across stakeholders groups – governments, and non-state actors including civil society organisations and the private sector – as well as between local, national, regional and international actors including donors and UN agencies, are an essential and effective tool for advancing environmental law and for coordinated, inclusive, and adequately resourced legal responses and nature-based solutions to the crises facing Oceania. National, regional, and global frameworks need to empower and protect the right of participation, especially by those who are vulnerable to climate change, including women, children, older adults, Indigenous peoples, persons with disabilities, and the poor. All partnerships must be founded on the principle of intergenerational equity.

IUCN, UNEP, ADB and other partners will exercise their convening powers to work in identified areas of collaboration with partners and other stakeholders in the region, and leverage IUCN's Members and Commissions' expertise to address the priority issues raised during the Conference and highlighted in this statement as part of the implementation of IUCN Programme 2021-2024 and the IUCN Oceania Programme 2021-2024.

INAUGURAL
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CONFERENCE

DAY 1
14 July 2021

DAY 1

1.1. Opening and welcoming remarks

Chair: Ms Maria-Goreti Muavesi, Senior Environmental Legal Officer, IUCN Oceania Regional Office; Member of the WCEL Steering Committee

Speakers: The Reverend Moses O'Connor, Lead Pastor of Inner City Tabernacle & General Presbyter for English-speaking churches in the Central and Eastern divisions, Assemblies of God, Fiji

Mr Mason Smith, Regional Director, IUCN Oceania Regional Office



The Reverend Moses O'Connor
Opening prayer and devotion

Thank you very much. It is such a delight to be on this platform to share briefly with you before you start this important conference, and I'd like to share a bit from the Book of Psalm 115:16. The Bible says the heavens belong to our God. They are his alone, but he has given us the earth and put us in charge. Psalm 90:12 exhorts us to have the wisdom to understand that our days are numbered and if we could set our wisdom deeply in our hearts so that we may accept correction.

It's interesting to see that we have brilliant people collaborating to give back to this earth as we've heard from Scripture that the earth is our responsibility. God owns the heavens. He has given man the responsibility to manage earth. What we see today is the result of the way we have managed the earth. And I'm grateful that we have people like yourselves, who have realised that we need to do better than what we're currently doing. We need the wisdom to realise as well that our days are numbered. We as a race, the human race, are responsible for this earth. It is true that whatever we don't manage, we will lose. And so, we pray this morning that each and every one of us would have the wisdom to know that our days are numbered, and that while we're here on earth we do everything within our powers with the resources that we have to leave this place a better place than we found it. It is our responsibility and I'm thankful for this conference that IUCN is having, to put together laws that govern our world.

You know, it's said that it would have been better if we had started 50 years ago, but the next best time to start is right now. And so, we're thankful to God that He still gives us the breath of life, even the wisdom to collaborate in such conferences to add value to our current planet. This is the only home that we have. No other place in the universe is conducive to life, although we're trying to look for them. This is the only place recorded in Scripture that God has given to us to live in, to thrive, to grow, to create and procreate. And so, we're thankful that we have this opportunity, while we still have the breath of life to realise that our days are numbered, while we still have breath so that we can contribute to this planet and leave it a better place than we found it. So, with that said, I'd like to pray for this conference before I hand it back over to our facilitator.

Father in the name of Jesus, we're so thankful this morning that you've given us the management rights to this planet. Forgive us for our failure to manage it as we needed to. But this morning, O Lord, we thank you for the opportunity to correct, the opportunity, O Lord, to make good the mistakes of the past and to implement things, O Lord, that will help us make this world a better place. When we leave, we leave a legacy behind, knowing that we've contributed with the purpose that you've given to us as individuals. Bless every speaker, everyone that will be participating in this conference. Give them wisdom, knowledge and understanding. I also pray, O Lord, for humility to accept, O Father God, the things that we need to correct and make corrections thereto. We commit this time to you now in the name of the Father and of the Son and of the Holy Ghost. Amen.



Mr Mason Smith
Welcome address

Ni sa bula vinaka, ladies and gentlemen, and good morning to you all. It is indeed my pleasure to welcome us, our partners and all our participants who are linking in from the region and indeed from around the globe.

First, let me thank the good Padre for the reflections and blessings this morning. Thank you, Talatala, for the pertinent message and words of wisdom. Indeed, if we have management rights, those rights no doubt come with responsibilities. It is a message that I think will ring true throughout the conference. I also wish to thank the IUCN Pacific Centre for Environmental Governance and the conference organising team for planning and hosting this Inaugural IUCN Oceania Environmental Law Conference, which I'm told is being held in conjunction with the 2nd World Environmental Law Congress. Thank you, Maria, and the support team, especially the team that is always in the background, the IT team, and the others that have pulled this conference together.

Ladies and gentlemen, a conference of this nature and magnitude comes with inherent costs. And I'm told that there are over 600 registered participants for the three days. This morning, I wish to acknowledge and thank the US Embassy in Fiji, UNEP Asia Pacific Regional Office, IUCN World Commission on Environmental Law, and the Pacific Islands Forum Secretariat through the 11th European Development Fund Technical Cooperation and Capacity Building Facility, all of whom financially supported this conference. On behalf of IUCN, thank you and vinaka vakalevu to our sponsors for your ongoing support and commitment to environmental law in Oceania. I also wish to acknowledge the support provided for the conference by the Pacific Network for Environmental Law, the Asian Development Bank and the Environmental Defenders Office, all of whom are joining us here this morning.

As I mentioned, this conference is also being held in conjunction with the 2nd World Environmental Law Congress. And at this stage, I wish to extend my appreciation and thanks to Justice Antonio Benjamin, the Chair of the IUCN World Commission on Environmental Law, for his continued support, not only for environmental law globally, but most specifically for his support to the region.

Colleagues, it is my pleasure to also acknowledge this morning the presence of Grethel Aguilar, the IUCN Deputy Director General, a colleague of mine and a lawyer in her own right who is deeply passionate about the rights of local communities and the inclusion of their knowledge and experience in mainstream conservation policy. Grethel will be delivering one of the keynote speeches this morning. Buenos días, Grethel, and welcome virtually to Fiji.

Dear participants, we live in challenging and difficult times, and I must make special mention for the support that we've received from Fiji's Ministry of Health and Medical Services and the Ministry of Commerce, Trade, Tourism and Transport for the permits to host this conference over the next few days. Their support has been critical to ensuring a successful conference during this COVID-19 pandemic. It would be remiss of me if I did not acknowledge the Minister for Environment, who is also here with us this morning. Thank you, Honourable Minister, for the ongoing support to IUCN's work in the region.

Ladies and gentlemen, allow me to close these short welcome remarks by highlighting the theme of the conference which is 'Advancing environmental law in the Pacific: Towards 2030 and beyond'. I urge you all to actively participate in the various programme sessions so that when we conclude on Friday, we can all own the outcomes of this conference and thereby advance the work of environmental law in the Pacific, which I feel is long overdue. With those words, thank you and I look forward to interacting with you over the next few days. Vinaka vakalevu and all the best for the conference.



Ms Maria-Goreti Muavesi

Five years ago, the journey to get where we are today began. It started with a very small team from IUCN Oceania Regional Office travelling to Rio de Janeiro in March 2016 to participate in the first World Environmental Law Congress. It was such an experience that upon our return, the idea to hold a regional environmental law conference was born. This journey has had its fair share of challenges, but the idea to convene a regional space to advocate for environmental law in the Pacific has never lost its importance to IUCN.

Ladies and gentlemen, today we have come full circle to where it all began. IUCN, together with its partners and supporters, is hosting the Inaugural IUCN Oceania Environmental Law Conference in conjunction with the 2nd World Environmental Law Congress.

Over the next three days, conference participants and attendees will engage and deliberate on the theme 'Advancing environmental law in the Pacific: Towards 2030 and beyond' in a hybrid format. While most will attend the conference virtually through the Whova website or app, our colleagues in Vanuatu and Solomon Islands are joining us from the Melanesian Hotel in Vanuatu and the Pacific Islands Forum Fisheries Agency conference room in Solomon Islands, where they are hosted by the respective environmental law associations.

This past year, the IUCN World Commission on Environmental Law made the decision to postpone the 2nd World Environmental Law Congress in response to the global health risks posed by the COVID-19 pandemic. Subsequently, last spring the WCEL Steering Committee reconvened and agreed to split the global Congress into a series of converging regional hybrid events. This conference is one of five regional hybrid events to take place in 2021.

Together, the regional events will consider the theme 'A critical decade for environmental law' by expanding upon the original themes of the 2nd World Environmental Law Congress. The focus on the future, in connection with the Sustainable Development Goals (SDGs), is an innovative look forward to and beyond the next decade for the legal discipline. In light of emerging and continuing global challenges, and the 2030 Sustainable Development Agenda, all regional congresses will reaffirm, further develop, and advance the 2016 World Declaration on the Environmental Rule of Law and set the stage for the design of its implementation guidelines. This conference will explore the challenges that Pacific Island Countries face in the effective implementation and enforcement of the environmental rule of law and will contribute to the continued work in the region to advance environmental law.

The conference would not have been possible without the financial and technical support of these organisations: IUCN, US Embassy in Fiji, UN Environment Programme, IUCN World Commission on Environmental Law, Pacific Islands Forum through the 11th European Development Fund Technical Cooperation and Capacity Building Facility, and the support of Pacific Network for Environmental Law, Asian Development Bank, Environmental Defenders Office, and the environmental law associations of Solomon Islands and Vanuatu.

INAUGURAL
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DAY 1
14 July 2021

1.2. Keynote addresses

Chair: **Ms Akanisi Nabalarua-Vakawaletabua**, Consultant Lecturer, The University of the South Pacific

Keynote address speakers:

Dr Grethel Aguilar, IUCN Deputy Director General – Regions and Outposted Offices

Hon. Dr Mahendra Reddy, Minister for Agriculture, Waterways and Environment, Fiji

Mr Arnold Kreilhuber, Acting Director, Law Division, UN Environment Programme

Mr Tony Greubel, Chargé d’Affaires, US Embassy in Fiji

Justice Antonio Benjamin, Justice of the National High Court of Brazil; Chair of the IUCN World Commission on Environmental Law; Secretary-General of the International Advisory Council for Environmental Justice

Rapporteur:

Ms Varea Romanu, Programme Assistant – Climate Change, IUCN Oceania Regional Office



Dr Grethel Aguilar
IUCN Deputy Director General –
Regions and Outposted Offices

Good morning, bonjour, buenos días, bula vinaka. On behalf of IUCN, it is my pleasure to be part of this Inaugural IUCN Oceania Environmental Law Conference being held in conjunction with the 2nd World Environmental Law Congress.

Firstly, I would like to reaffirm Mason's welcome remarks in conveying IUCN's thanks to donors, supporters and partners of the conference and to thank the World Commission on Environmental Law and its Chair, Justice Antonio Benjamin, for his commitment and support. Also, my appreciation to my colleagues in IUCN Oceania Regional Office for all their efforts to organise this conference. Thank you, Maria. I'm honoured to be sharing this virtual stage with IUCN Members, the host country of the IUCN Oceania Regional Office, the Government of Fiji, represented by the Honourable Dr Mahendra Reddy, Minister for Agriculture, Waterways and Environment.

IUCN, as you all know, is a global union with over 1400 Members from governments, NGOs, civil society organisations and Indigenous peoples' organisations, and it is underpinned by input from more than 18,000 experts from six Commissions who inform by using knowledge and help produce its work.

Oceania is a vital part of the world where culture and biodiversity mix in a delicate and unique form. There is a powerful connection between Pacific Island peoples, land, biodiversity and the ocean. This amazing region is home of a diverse range of Indigenous cultures in ancestral libraries. When thinking about Oceania, it is impossible for me not to imagine the deep blue ocean, an immense ally that provides food and oxygen, regulates our climate and serves humanity as a source of social and economic development. We all now know that multiple threats to biodiversity are confronting this planet. We all know that climate biodiversity crises are severely affecting the islands of Oceania, but understanding these threats only take us so far. We must act on our knowledge, and here environmental law has a critical role to play.

Law is fundamental to the just and effective governance of natural resources for the benefit of people and nature. And at IUCN, this is represented in our vision: a just world that values and conserves nature. IUCN aims to advance environmental law through the development of legal concepts and instruments. We also help societies apply environmental law in the conservation of nature and importantly, ensure that any use of natural resources is equitable and ecologically sustainable.

The conference theme 'Advancing environmental law in the Pacific: Towards 2030 and beyond' echoes the Nature 2030 IUCN Programme, which outlines IUCN's global environmental law ambitions. Among them, a world in which effective and equitable natural resources governance and environmental rule of law protect and sustain healthy biodiversity while contributing to the realisation of human rights, social equity, and gender equality.

Our programme is clear, indicating that a just fair legal system that protects the rights of nature and people is particularly essential in the face of climate and biodiversity crises. I am sure that we all understand the need to engage directly with judges, prosecutors, public interest lawyers, governments and society to build capacity, increase understanding and enforcement of environmental legislation, and promote information sharing to improve the implementation of laws at all levels.

Pacific Island Countries are the stewards of immense and globally important ecosystems and host an enormously precious share of the planet's biodiversity. Nature is the central element of Pacific identity and society and provides social and economic livelihoods for people. It is very pleasing to know, and a great asset, that communities are at the heart of environmental law in the Pacific, where I understand the customary land tenure systems are the rule rather than the exception, and that natural resources are used, customary owned, governed and managed by Indigenous people in local communities in partnership with government.



Cakaulevu Reef, Fiji. Photo credit: Stuart Chape

I am also excited by the involvement in the conference of the environmental law associations of Fiji, Solomon Islands and Vanuatu and the involvement with communities, the legal sector and governments. In my professional experience as a lawyer working for IUCN, I have witnessed, and more importantly learned from Indigenous peoples, that conservation cannot be achieved without recognising communities' rights and the traditional knowledge. This includes respect for the cultural, spiritual, social and environmental values they place on valuing nature.

The best environmental laws are the ones that take into account the voices and knowledge of local communities, both during instructing and its application. This is the best way to achieve our conservation in a way that works. IUCN's new programme that was recently approved, only last February, explicitly indicates that IUCN will support efforts to increase the recognition and enforcement of Indigenous rights to lands, territories and resources, and to secure traditional and customary law, Indigenous knowledge and cultural heritage. It will also reduce conflicts impacting Indigenous people in communal lands and protect environmental defenders.

Engaging committee members, partners and stakeholders is the core approach of IUCN, and this conference provides an excellent opportunity for discussion, review, analysis and recommendations on just how we are going to achieve the conference theme of advancing environmental law in the Pacific towards 2030. Pacific Island Countries have been continually developing and improving their environmental law, but limited resources and capacities across the region create an ongoing challenge as they seek to implement, monitor and enforce international environmental conventions in national environmental policy legislation and regulations.

Environmental law needs to be part of a collective effort so that we can improve and strengthen effective compliance and enforcement of laws at national, regional and international levels. Environmental law and policy reforms and, importantly, their successful implementation are extremely valued and vital if Oceania is to achieve its biodiversity and conservation goals and the benefits to communities and countries in the region. I am sure this conference provides a great opportunity for building on and driving the solutions to these challenges. IUCN remains committed to collaborating with its Oceania Members and partners to support this work and, as we do across the planet, bringing together the combined expertise and resources.

In closing, allow me to say that the environmental rule of law is a shared responsibility pivotal to the achievement of a better world for all. From Oceania, we can all learn how essential it is to understand the cultural relationship to nature, including traditional governance management systems and the need to respect and recognise this reality. I am sure we will learn much more during the coming days about ocean environmental law.

To sum up, let me say that we must all work together to close the gaps in the compliance and enforcement of environmental rule of law to protect people and nature. Thank you and I look forward to the outcomes and actions arising from this conference. Thank you very much.



Hon. Dr Mahendra Reddy
Minister for Agriculture, Waterways
and Environment, Fiji

Thank you, Madam Chair, Dr Grethel Aguilar, the Deputy Director General, IUCN; Mr Arnold Kreilhuber, Acting Director, Law Division, UNEP; Mr Tony Greubel, US Embassy in Fiji, Justice Antonio Benjamin, Chair of the World Commission on Environmental Law.

Ladies and gentlemen, it gives me great pleasure to be part of the Inaugural IUCN Oceania Environmental Law Conference. The conference theme of 'Advancing environmental law in the Pacific: Towards 2030 and beyond' in my opinion is very timely given the onslaught of the COVID-19 pandemic.

The pandemic is pushing the entire nation-states to a new normal and all institutions, formal or informal, need to re-evaluate their modus operandi to be effective in the new normal. In this regard, the institution of law and its functional bodies need to take the lead to re-examine and re-evaluate its gaps, status and structure. While the countries need to examine all their legislations, this address will only focus on environmental law, given it being the thematic area of the conference.

The Pacific Island Countries (PICs) also referred to as 'Large Ocean States' are home to some of the world's most astonishing biological diversity. However, these PICs are now facing numerous challenges and threats to their pristine and fragile environment. Destructive weather events, ocean acidification, mining, logging, overfishing, coastal erosion, littering and pollution increasingly degrade ecosystems and affect fishing, farming, and other cultural practices of Pacific Islanders.

The threats can be divided into the following key strands:

1. Climate change which is beyond the control of national jurisdictions
2. National policy and legislation induced threats
3. Individuals and households' behavioural activities
4. Commercial activities

The policies and legislation can, directly and indirectly, threaten our environment via these pathways. Therefore, there is an urgent need to understand, analyse and undertake changes to the various legislations while responding to these threats in our countries.

Constitutional and legislative measures

The Stockholm Declaration of 1972 has been the guiding beacon for legislative developments in small states regions across the world.

This declaration is accredited as the pioneer attempt to conserve and protect the human environment at the international level. Because of this declaration, the countries, States, and island nations like Fiji were required to adopt legislative measures to protect and improve the environment. The Fijian regulatory framework has considered the importance given to the idea of sustainability, as demonstrated by the original consideration of the relationship between nature and human beings included in its Constitution adopted in 2013. While declaring the Fijian people's commitment to safeguarding the environment in the preamble, the Constitution also mentions the "prudent, efficient and sustainable relationship with nature" as one of its foundational values. Also, in considering the individual environmental rights, it acknowledges "... the right to have the natural world protected for the benefit of present and future generations through legislative and other measures."

In addition, the Agenda 21 of the United Nations Conference on Environment and Development (UNCED) in its chapters 8, 38 and 39 recognises the effort needed in capacity development of legal and institutional areas for sustainable development in developing countries. Chapter 8.13 of the Agenda noted that laws and regulations suited to country-specific conditions are among the most important instruments for transforming environment and development into action. Legal enactment on the environment became necessary due to increased incidents of environmental degradation, unsustainable exploitation of natural resources, activities of regional and international organisations (multilateral financial agencies and bilateral donor organisations).

The global trend of environmental law-making suggests three eras of legal development with clear characteristics. The laws adopted in the post-Stockholm Era were 'use-oriented'. These were natural resource laws dealing with the management of land, forests, water, minerals, wildlife, fisheries and so on and had incidental environmental significance. The primary concerns of these laws were allocation and exploitation of natural resources rather than sustainable use and management. In the second phase, 'resource-oriented' anti-pollution laws were being adopted that aimed at long-term management and sustainable use of natural resources. In the third phase, the laws were more 'system-oriented' that aimed at integrated planning and management of the environment based on all-embracing ecological policies and environmental management programmes.

At the global level, various international conventions, treaties, protocols also contributed significantly to fostering the development of environmental law-making.

Fiji and environmental law

In a SPREP 2018 study on the review of natural resource and environment related legislation in Fiji, they listed a total of 43 legislations, directly and indirectly, affecting Fiji's environment. These fall under the following four categories:

1. Environmental law, planning and assessment: 16 legislations
2. Biodiversity conservation and natural resources: 21 legislations
3. Waste management and pollution: 4 legislations
4. Others: 2 legislations

Contemporary environmental law, policy and politics in Fiji pose an interesting dilemma. On the one hand, anecdotal public opinion surveys demonstrate consistently strong support for environmental values; it seems that poor households, small and medium enterprises are not that much concerned about long-term consequences on the environment. Any law-making and enforcement must accompany the buy-in by key stakeholders. In this respect, chambers of commerce for various municipalities, employers' federations, Fiji Institute of Accountants, the epic body of financial managers of various firms throughout Fiji, must all rally behind a behavioural change to protect our environment while business continues to grow.

So far, in Fiji and most small States' jurisdictions, we have enforced a formal law only which defines the relationship among private actors in society. The purpose of formal law is to structure private, social and economic arrangements. Law is not used directly to make value judgments; it determines a framework within which private parties make judgments and restricts itself to the definition of abstract realms of action for the autonomous pursuit of private interests. Formal law reflects a conception of legal reasoning that is based on deductive logic, universalism and internal consistency. It is indeed consistent with a market economy; it legitimates economic arrangements based on autonomy and individualism.

While we have the formal laws, we have also taken another step in enacting substantive laws, an instrument by which the government intervenes to promote collective goals like safety and equity. It is the law of the regulatory state environment, occupational safety, consumer fairness, anti-discrimination, anti-litter regulations, and the like. These are doing reasonably well in pushing people to behave in a certain way.

However, as argued by Teubner, Farmer and Murphey in their 1994 treatise titled Environmental law and ecological responsibility: The concept and practice of ecological self-organization, we should also consider enacting reflexive law. They suggest that legal norms should produce a "harmonious fit" between institutional structures and social structures rather than influence the social structures themselves. Reflexive law seeks to design self-regulating social systems through norms of organisation and procedure. This exists in every household and work environment to deal with various

behavioural and conduct matters. Instead of taking over regulatory responsibility for the outcome of social processes, reflexive law restricts itself to the installation, correction and redefinition of democratic self-regulatory mechanisms. The idea is to force entities to internalise the damages they impose on society.

Environmental enforcement agencies need to evolve out of the first two strands of law and work closely with the community and business sector to put in place these reflexive laws. For this, there needs to be a sea change in thinking about how we can work together to grow the economy while protecting our environment for future generations.

This 'quasi-legislation' is voluntary civil regulations that can prove an important alternative to governmental authority in the era of globalisation. This quasi-legislation development, training, implementation and monitoring should be led by the environmental enforcement agency.

We must also tap into the unwritten reputational capital of firms to implement this quasi-legislation. There are companies that I have dealt with as the Environment Minister that are jealously safeguarding their reputational capital. We need to study these firms and delve deep into what has forced them to protect their reputational capital, what they can lose if their reputation is at stake and what policies they have implemented to ensure their reputational capital is protected. These frameworks can then be used to develop firm-specific quasi regulations for implementation.

Another challenge facing small island States is that the small number of large corporate companies are at times at odds with internal and external stakeholders. Those strongly advocating the shareholder theory tend to be the ones to compromise the long-term dimension of the environment in pursuit of the company's interest. The shareholder theory states that the corporation should serve the interests of shareholders only. Noting possible liabilities, the corporation obtains indemnity cover for the board.

The challenge for us is how do we graduate them to adopt stakeholder theory, which advocates service to larger society. The managers must be responsive to a broad constellation of constituencies both within and outside of the firm. So here, the country's overarching business legislation comes in handy. The law must hold the board and employees accountable for harmful side effects of corporate conduct. The Government of Fiji four years ago revised its Companies Act to ensure that the board and employees of the company can be held accountable.

While we undertake these changes as alluded to earlier on, we must also ensure that we have experts on our bench and also outside, both amongst the lawyers and experts, who can understand it and deal with these matters expeditiously.

In recent times when compared to the previous decade, there is an increasing trend in the number of cases based on environmental pollution, ecological destruction and conflicts over natural resources coming up before the courts. In most of these cases, there is a need for natural scientific expertise as an essential input to inform judicial decision-making.



Mangrove stand, New Caledonia. Photo credit: Stuart Chape

These cases require expertise at a high level of scientific and technical sophistication. To a large extent, the prosecution launched in ordinary criminal courts never reach a timely or ground-breaking conclusion either because of the workload in these courts, lack of specialised judges, or because there is no proper appreciation of the significance of the environmental matters on the part of those in charge of conducting these cases. Moreover, any orders passed by the authorities under the relevant environment and pollution Act are immediately questioned by the activities in courts. Those proceedings take several years to conclude. Often, interim orders are granted which effectively disable the authorities from ensuring the implementation of their orders.

Furthermore, there should be a separate environment-specific database or digital resources for good research to determine quality judgments. It is, therefore, essential to set up an environment court with the likes of Environment Court NZ or Land and Environment Court of NSW and Queensland Planning and Environment Court to cut down the delays which are hindering the implementation of environmental laws.

To begin with, we may have an environment court at the national level which may later be extended at the relevant district level (upon need). Such courts may be vested with the jurisdiction to decide both criminal prosecution cases under the various environmental laws and civil cases for compensation to victims of any activity leading to environmental damage or pollution. These courts should be allowed to adopt summary proceedings for speedy disposal of the cases.

Ladies and gentlemen, enacting new laws without understanding the ground realities along with traditional institutions responsible for enforcement will not bring in the desired changes in the environmental order. The slow response of the existing environmental laws is overwhelmingly attributed to several factors as explained in this address.

I do hope that while we do have up-to-date formal and reflexive laws, we must develop a series of firm-specific quasi regulations, assist firms to implement it, develop capacity within and outside the bench for quality judgments and work towards facilitating investment and growth. In the absence of the above, slow growth, rising hardship and poverty will provide a fertile ground for investors to seek exemptions to critical aspects of the formal legislation which could be detrimental to the quality of the environment in the longer run.

With the onset of the COVID-19 pandemic, the existing legislations have accommodated investor interests through certain legitimate exemptions. This has indeed assisted and will continue to do so and help fast-track investments. These efforts have already started to bear fruits. However, it would be prudent for all environmental enforcement agencies to get to the drawing board, list down further possible accommodations and/or exemptions that these investments would require and draw up appropriate second- and third-best responses to these requests.

So, time is of essence and we need to move now. In this regard, this conference is very timely. It has allowed us to think outside the box and think deeper. Let us look beyond the first-best textbook prescriptions. I wish to thank IUCN for organising this conference and hope that in future we have more interaction from government representatives from different ministries. With these remarks, I wish you all a successful conference. Vinaka!



Mr Arnold Kreilhuber
Acting Director, Law Division,
UN Environment Programme

Excellencies, ladies and gentlemen, distinguished participants. It's my pleasure to provide the opening address on behalf of UNEP for the Inaugural IUCN Oceania Environmental Law Conference.

This is an important event which reflects the advancement in environmental law in the region and particularly the fundamental role and criticality of strong environmental rule of law in addressing the environmental crises that we are facing.

This conference brings together judges, lawyers, academics and environmental law experts to discuss the challenges, opportunities and regional trends in the environmental rule of law. Over the next few days, within the various sessions and panels, there are extensive opportunities to exchange experience and ideas to advance environmental law in the Pacific – indeed towards 2030 and beyond.

UNEP is delighted to support this conference and acknowledges the leadership of the IUCN Oceania Regional Office and the World Commission on Environmental Law and the Global Judicial Institute on the Environment, along with support from the US Embassy in Fiji.

Ladies and gentlemen, UNEP has a leading role as the authority that sets the global environmental agenda in advancing the environmental rule of law. Environmental rule of law integrates environmental needs with the essential elements of the rule of law and provides the basis for improving environmental governance. We know that the rule of law is critical for the protection of the environment, to deterring and disrupting environmental crime, and the promotion of the rights of all to live in a healthy environment. Significantly, the environmental rule of law provides a foundation for environmental rights and obligations to be exercised. Without the environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be discretionary, subjective and unpredictable.

UNEP's support to Member States has shown that good environmental governance and the environmental rule of law are interlinked and complementary. Fundamentally, good environmental governance bolstered by the environmental rule of law ensures that decision-making is consultative and representative, giving diverse stakeholders, including children and youth, a sense of ownership, thus providing environmental policies more legitimacy.

UNEP publishes a flagship assessment on the environmental rule of law. In 2019, UNEP released the first-ever global assessment of the environmental rule of law. This found weak enforcement to be a global trend that is exacerbating environmental threats, despite prolific growth in environmental laws and agencies worldwide over the last four decades. Based on the global analysis, it is found that despite a 38-fold increase in environmental laws put in place since 1972, failure to fully implement and enforce these laws is one of the greatest challenges to mitigating climate change, reducing pollution and preventing widespread species and habitat loss.

So, in light of this state of affairs, the role of UNEP continues to be critical.

UNEP continues to advance environmental rule of law through:

1. Supporting Member States to meet international environmental commitments – improve laws and regulations through technical legal assistance.
2. Strengthening institutions – building strong, transparent institutions through capacity-building support.
3. Promoting environmental rule of law – supporting access to information, access to justice, participation in decision-making and supporting implementation of laws through assistance to enforcement agencies.
4. Advancing environmental rights – supporting global, regional and national recognition of the right to a safe, clean, healthy and sustainable environment.



Mr Tony Greubel
Chargé d'Affaires, US Embassy in Fiji

First, I really wish to extend my appreciation to the IUCN Oceania Regional Office for organising this. Greetings to my fellow keynote speakers and distinguished participants. Good morning. I'm really pleased to be with you at the opening of the Inaugural IUCN Oceania Environmental Law Conference.

The United States and the Pacific Islands, we share a vibrant partnership rooted in mutual interests and shared values. This includes our commitment to promoting security, democracy, economic prosperity, human rights and rule of law. Environmental law is an area that spans the entire breadth of these interests and values. But it's not just about the environment. Environmental law is an essential part of governance, security, economics, health, human rights and more. We see domestic environmental laws at work when environmental impact assessments are completed before new infrastructure development projects can begin. We see domestic environmental laws at work when fishing vessels are obligated to refrain from using certain fishing methods or fishing in particular areas. We've seen domestic environmental laws at work when waste is managed, and we see environmental laws at work to keep our homes, offices and public spaces healthy and safe.

Law is the foundation for just and effective governance of natural resources for the benefit of both people and nature. Environmental law has a role to play in conservation and sustainable development in the Pacific Islands, and we've seen great efforts on issues such as integrated ocean planning and management, combating ocean plastic and marine debris, climate change adaptation, green growth and renewable energy. So many of these issues have global implications and they're the leading edge of environmental law, so it's really exciting for practitioners in this field. That brings me to my second point.

Environmental law is a complex and important area that includes a wide range of actors and stakeholders. But environmental law isn't just for lawyers. Today we see how environmental law interacts with fields such as commercial law, international law and even criminal law, wildlife trafficking, illegal logging and associated trade, marine pollution, attacks against environmental defenders and illegal, unreported and unregulated fishing. These are just some of the examples that represent cross-cutting issues that respect neither national boundaries nor one niche area of law. So, there's a critical need for environmental laws to provide direction for concrete action that improves lives and human health while protecting the environment. We need environmental laws that bring real change to the world.

working to achieve that goal under strong Member States' leadership and guidance. Last month, the national focal points for the Fifth Montevideo Programme selected the first priority area for action: to support countries to strengthen, develop and implement domestic legal responses to the air pollution crisis. And the Model Law approach is at the heart of the vision for the new Montevideo Programme because environmentally harmful activities often take place within national jurisdictions. These actions strengthen environmental law and ensure implementation at the national local level, it's the programme's first and primary focus.

Effective implementation of environmental law supports conservation and sustainable development efforts, but more concretely, environmental law is also a tool to protect wildlife, confront criminal gangs, prevent the spread of zoonotic diseases and combat corruption.

And finally, perhaps most importantly, the success of environmental law is linked to deep and strong partnerships between government and local stakeholders. We've seen this, for example, in the Lau Seascape Initiative. Local communities, chiefs, governments, NGOs and the private sector have worked together in the Lau Seascape area on a strategy for long-term management of its resources from 'ridge to reef'. Working together, these diverse actors built a consensus around tools and partnerships required to balance conservation and the use of rich resources in the Lau Seascape for generations to come. And we were proud to have provided a small grant that enabled this grand effort to be tested on Moala Island in Fiji.

We've also seen the power of partnerships in our other small grants' programmes, whether NGO, communities and schools in Yap, Micronesia; or NGO, tourism operators, communities and government representatives heading to the coral coast of Fiji to learn about sustainable coral restoration practices; or communities, tourism operators, NGOs working together in the Mamanuca Islands to understand waste management practices and how to make them more sustainable and ecologically sound.

Partnerships help us to truly make environmental law impactful instead of just some words on paper. The United States Government is really pleased to be able to contribute to strengthening cooperation. And I hope that this event provides a platform for all of us to gain deeper understanding, build stronger networks and be more effective in using law as a tool for advancing conservation and sustainable development. May you have fruitful deliberations over the next few days.

Thank you.
Vinaka.

UNEP's Montevideo Programme for the Development and Periodic Review of Environmental Law is currently



Justice Antonio Benjamin

Justice of the National High Court of Brazil, Chair of the IUCN World Commission on Environmental Law, and Secretary-General of the International Advisory Council for Environmental Justice

Colleagues from Oceania and from other parts of the world, it is a great pleasure for me to speak at this important event. Let me begin by thanking the local organisers, Mason Smith, Director of the Oceania Regional Office of IUCN, and as you know, there's extraordinary work in the region and we all recognise and praise his work and his dedication. I would like to congratulate especially my dear colleague and friend Maria Muavesi, who is also a Member of the Steering Committee of the World Commission on Environmental Law. It is the first time that WCEL, the World Commission on Environment Law, has in its Steering Committee a Member and a woman from the Pacific Islands, and this to me is a recognition of the leadership of the region and especially a recognition of the dedication and the knowledge of Maria Muavesi in this part of the world, but also globally. A word of gratitude to Emily Gaskin, the Executive Officer of WCEL, whose name shows all the time in between talks or lectures. Emily has spent many, many hours to make sure that we would have the technical support for not just Zoom, as we are using a new platform together with Zoom so we would be able to communicate among us from different parts of the world in different time zones. And as you know, my particular time zone is terrible in comparison to the time zone of Fiji and the other islands.

This event, as Maria Muavesi mentioned, is co-organised by WCEL together with the IUCN Oceania Regional Office and several other partners. And I would like to mention, Mason Smith has already done so and Maria Muavesi as well, the institutions of Fiji, the Government of Fiji, the US Government, UNEP, the Asian Development Bank, just some of those key institutions that, together with the IUCN Oceania Regional Office, are responsible for this event.

If we look at the programme, we are going to immediately realise that all aspects of environmental law are being discussed and this is precisely what we intended to do with the 2nd IUCN World Environmental Law Congress that was supposed to happen last year in Rio de Janeiro and now is divided into regional events. Just this week we had, during two days, the first of the Regional Congress of WCEL partners in Mexico City at the Supreme Court of Mexico, and the focus was on biodiversity. Now, the one in Fiji for the Pacific. At the end of the month, one in Rabat for Africa, and then several other events, regional events until the end of the year, bringing together this mosaic of issues, but also the environmental law family of the world.

Let me call your attention to this mosaic of topics that will be discussed in the next few days. We have in the programme, first of all, all the main topics we could call part of the general theory of environmental law, from the concept of ecological development to the concept of the environmental rule of law.

We will also discuss in the programme the implementation of environmental law. There are panels on adjudication, on the role of judges and, as we all know, compliance enforcement is probably the biggest challenge that environmental law faces all over the world, from the rich countries to the less developed ones. The programme also addresses the very important mission of teaching. How do we educate about environmental law, curriculum design, and UNEP has done a lot in that area and also the IUCN Academy of Environmental Law. Finally, the programme addresses important publications, and a good example of that effort is the very recent book published by the Asian Development Bank on climate change litigation. So, as you can see, we have in this event all pieces of the complex and absolutely necessary mosaic of what we call environmental law.

As my dear friend and colleague Grethel Aguilar mentioned just a few minutes ago, we cannot underestimate the importance of environmental law. There can be no protection of the environment without law, whose exception of paradise or the Garden of Eden. We also, along the lines of what Grethel alluded to, need laws that are implemented. Not just law in the books as several of the colleagues that spoke today stressed. So again, on behalf of WCEL, its Steering Committee, its Members, I would like to welcome all of you, all the participants. The Pacific is a very important region for me personally. I was the first Chair of WCEL to visit the Oceania Regional Office and I'm so happy institutionally, professionally, as a citizen of the world, as a judge to see how much the Regional Office of Oceania has embraced environmental law and has become a centre for the diffusion of environmental law knowledge. Congratulations to the team, from congratulations to Mason Smith and to Maria Muavesi and many thanks to all of you.

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DAY 1
14 July 2021

1.3. High-level roundtable dialogue: Environmental law needs in the Pacific – A regional perspective

Chair: Ms Kiji Vukikomoala, Executive Director, Fiji Environmental Law Association

Speakers:

Dr Georgina Lloyd, Regional Coordinator (Asia and the Pacific) of Environmental Law and Governance, UN Environment Programme

Mr Kosi Latu, Director-General, Secretariat of the Pacific Regional Environment Programme

Dr Christina Voigt, Professor of Law at the University of Oslo; Co-Chair of the Paris Agreement's Implementation and Compliance Committee; Chair of the WCEL Climate Specialist Group and Integrated Coastal Management Group.¹

Prof. Klaus Bosselmann, Professor of Law at the University of Auckland; Chair of the Ecological Law and Governance Association; Co-Chair of the Global Ecological Integrity Group; Chair of the Earth Trusteeship Initiative

Dr Alifereti Tawake, Council Chair and Technical Advisor, Locally Managed Marine Area Network International

Ms Rosamond Bing, Chief Executive Officer, Ministry of Lands and Natural Resources, Tonga

Ms Denise Antolini, Professor of Law at the William S. Richardson School of Law, University of Hawai'i; Member of the WCEL Steering Committee; Deputy Chair of the World Commission on Environmental Law from 2016 to 2020

Mr Peter Michael Cochrane, IUCN Regional Councillor of Oceania; ICM Councillor; Member of the IUCN Global Green List Committee and the World Commission on Protected Areas.

¹ Prof. Voigt was appointed Chair of the IUCN World Commission on Environmental Law at the IUCN World Conservation Congress in Marseille in September 2021.

Hon. Aiyaz Sayed-Khaiyum, Attorney-General; Minister for Economy, Civil Service, Communications and Climate Change, Fiji

Rapporteur: Mr Filimone Tuivanualevu, Senior Climate Change Adaptation Officer, Climate Change and International Cooperation Division, Ministry of Economy, Fiji

Pacific Island Countries have developed environmental law and governance systems, and continually strive to improve them. However, limited resources, institutional capacity and expertise across the region create an ongoing challenge for the implementation, monitoring and enforcement of international, multilateral environmental conventions, national environmental legislation and regulatory frameworks. This includes the revision, updating and implementation of national planning processes and legislation. Traditional governance systems, customary law and land tenure provide both opportunities and challenges in the development and implementation of environmental laws at local, provincial and national levels.

Environmental law has a key role to play in conservation and sustainable development in the Pacific Islands, including in: integrated ocean planning and management (including offshore and coastal fisheries management); combatting marine debris, runoff and wastewater from ships, boats and land-based facilities; climate change-induced migration and sovereignty; land and reef reclamation; territorial implications of rising sea levels; public/private partnerships for green growth and renewable energy; payments for ecosystem services; and deep sea mining. Many of these issues have global implications and are at the leading edge of environmental law practice and theory.

The high-level roundtable dialogue provided an opportunity for the conference attendees to hear from international, regional and national experts on what they view as emerging environmental law needs in the Pacific that need to be progressed in this next decade and beyond. This session addressed pressing environmental issues and discussed the role of law in contributing to solutions for the Pacific. In addition, speakers addressed an emerging environmental law and governance issue.



Ms Kiji Vukikomoala

The chair, opened the high-level roundtable dialogue by highlighting the opportunity it presented for the conference attendees to hear the views of international, regional and national high-level experts on emerging environmental law needs in the Pacific that need progressing in this next decade and beyond. She then introduced the speakers, who had been tasked to address pressing environmental issues, discuss the role of law in contributing to solutions for the Pacific and address an emerging environmental law and governance issue.



Blue-ring octopus. Photo credit: Jayne Jenkins



Dr Georgina Lloyd

Regional Coordinator (Asia and the Pacific) of Environmental Law and Governance for the UN Environment Programme, started her presentation by declaring that while the COVID-19 pandemic induces trends of rollbacks of environmental safeguards across the Asia-Pacific region, it is now more than ever critical to emphasise that the environmental rule of law is essential to address the existential crises of climate change, biodiversity loss and pollution, and that pandemic recovery plans must be rights-based and environmentally-sustainable. Dr Lloyd then addressed the question of environmental law needs in the Pacific by stimulating discussion on five critical questions for the Pacific, with reference to the environmental rule of law.

“Let us acknowledge that the climate crisis is a child rights crisis.”

The first question was: what can we do to increase the enforcement of environmental law in the Pacific? Dr Lloyd encouraged the participants to review how we can increase enforcement through partnerships, especially with civil society and smart monitoring systems.

The second question was: how do we protect civic space and the role of environmental human rights defenders in environmental decision-making, and what can be done to support environmental human rights defenders as positive factors in the environmental rule of law? Dr Lloyd highlighted UNEP’s recognition of the fundamental role of individuals and groups to protect the environment, and emphasised the role of community organisations and individuals in civil society as key partners in addressing the disproportionate impacts of environmental harm on already vulnerable groups and in the work to protect the environment.

The third question was: how do we ensure that legal pluralism and customary law are reflected and recognised, and the basis for environmental law, in Pacific countries as appropriate? This flows from the acknowledgement

that customary law and traditional belief systems are a fundamental part of environmental law globally and in the Pacific.

The fourth question was: how can we protect our children and all those who are not yet born? Dr Lloyd highlighted the interlinkages between human rights and climate change and encouraged the participants to clarify what role environmental law and adjudication could play in addressing environmental justice for future generations within the Pacific.

The fifth question was: how do we enable access to justice, access to information and public participation? Dr Lloyd noted that despite being one of the region’s most vulnerable to environmental harm, there is relatively little environmental jurisprudence stemming from Pacific Island Countries.

Dr Lloyd concluded by emphasising that building the capacity of parliamentarians, enforcement agents, lawyers, judges, community groups and others in environmental law remains a fundamental need, particularly for climate change law.



Mr Kosi Latu

Director-General of the Secretariat of the Pacific Regional Environment Programme, acknowledged that many environmental issues in the Pacific are covered by multilateral environmental agreements (MEAs), and that SPREP supports their implementation. He also highlighted the presence of gaps, with MEAs not always addressing the peculiar situations and challenges in the region. Addressing these gaps is the purpose of regional environmental agreements and instruments. Mr Latu shared some examples such as the Waigani Convention, which is the regional response to the Basel Convention on the transboundary movements of hazardous waste.

“... it’s fine to develop legislation and lead them with the countries, ... but we need to provide tools ... and put them in the hands of whether it be government officials, a civil society, private sector, and so forth.”

On the issue of plastics, Mr Latu announced that SPREP is looking at submitting a regional declaration on plastic pollution signed by Environment Ministers, that will not only complement the efforts at international level, but that is peculiar to the Pacific region.

Moving to the issue of implementation of environmental law, Mr Latu emphasised that at the national level, implementation cannot be just left to governments. The governments should lead, but others should also contribute to the solutions, such as civil society, local communities and villages, and even the private sector, including small and medium enterprises and local associations, where

appropriate. He stressed the importance of engaging with local communities because they have traditional knowledge and understand the environment they live in.

On the question of capacity building, Mr Latu acknowledged the importance of building capacity through training and highlighted the need to provide the tools for implementation, including through partnerships.



Dr Christina Voigt

Professor of Law at the University of Oslo, addressed the session's theme from an international environmental perspective, highlighting three key challenges:

- 1) Rising global temperatures, causing inter alia rising sea levels and loss of arable land.
- 2) Higher carbon dioxide (CO₂) concentration in the marine waters and associated ocean acidification.
- 3) The growing ocean pollution with plastics and microplastics.

“The marine environment and the human communities within it have always been exposed and vulnerable to the forces of nature, but now they're also vulnerable to the forces of man. Current challenges supersede past challenges.”

Prof. Voigt said these challenges have three things in common: they cannot be solved by the island States of Oceania alone, they are a result of collective action by actors worldwide and the legal solutions under international law are still partly missing.

Regarding sea level rise, she noted that liability for harm is excluded from the Paris Agreement on Climate Change, but the International Law Commission is working on exploring other instruments, especially the international customary law principle of prohibition of significant transboundary harm and harm to areas beyond national jurisdiction.

Further, Prof. Voigt highlighted the issue of displacement and migration of people due to loss of livelihoods in vulnerable and exposed regions. She noted that the 1951 Refugee Convention may not be the right instrument to govern cross-border movement of individuals seeking protection from climate change-related impacts, but that legal and intellectual developments have begun, including with the Human Rights Committee decision in 2020 in *Teitiota v. New Zealand*.

In relation to carbon dioxide (CO₂) emissions, Prof. Voigt said the damage caused to the marine environment is widely dispersed; therefore, it is hard to qualify and quantify, and hard to claim under the territoriality principle under which the United Nations climate treaties, such as the Convention on the Law of the Sea, operate.

Regarding marine plastics and microplastics pollution, Prof. Voigt noted there is no international agreement addressing it, and the work initiated towards such a treaty is still at a very early stage.

In her concluding remarks, Prof. Voigt said international law will have to play a crucial role in addressing the challenges faced in Oceania, but its progress is “snail slow” and she hoped that this conference would contribute both to the development of the ideas and their future impact.



Prof. Klaus Bosselmann

Professor of Environmental Law at the University of Auckland, highlighted that the Pacific region is affected by climate change, ocean acidification and biodiversity loss, and that all these three issues are deeply interrelated. He suggested adopting a new approach to environmental law, rather than thinking of environmental laws around each of these three issues.

“In essence, ecological law frames our thinking in a way that reflects Indigenous values of connectedness with nature, but equally leading-edge science such as ecology, earth system science, or health sciences ...”

The suggested new approach is based on the reality of one single ecological system that we are all a part of, the earth system, and can therefore best be described as ‘earth system law’ or ‘ecological law’. Ethical principles are the basis of a new legal framework that recognises the rights of nature, the integrity of ecological systems, and its corresponding trusteeship responsibilities, both of people individually and collectively, and of governments.

He argued that the Pacific region is particularly well-equipped to think along these lines, mainly because the Pacific has been shaped by two different cultural traditions, Indigenous cultures on one hand and Western culture on

the other. Prof. Bosselmann further emphasised that any prospect for a sustainable future depends on our ability to sustain the integrity of ecological systems and he spoke about New Zealand’s environmental laws and international instruments supporting this new approach.

The problem, he said, is that this approach has been widely overlooked in the past 30 years’ discourse around sustainable development and yet more than 25 international agreements refer to the obligation of States to cooperate in order to protect the integrity of the earth’s ecological system.



Ms Rosamond Bing

CEO of the Ministry of Lands and Natural Resources in Tonga, shared some of the challenges and solutions for environmental law in Tonga, in particular with regards to the development of the Ocean Management Bill, from her perspective as Co-Chair of the Technical Working Group on Ocean Management and Planning, also known as the Ocean 7.

“Partnerships have been very much critical to the work that we’re doing at the national level and [so has] consultation and the local knowledge and engagement [with communities] ...”

She explained that the idea and rationale behind both the plan and the Bill is to strengthen oceans governance within Tonga, take a more holistic approach towards institutional responsibilities and mandates, and through the legal and policy review, identify where the strengths are, where the opportunities lie, where the gaps are and how to address those gaps within an Ocean Management Bill. One of the key institutional responsibilities under the legislation is to

establish an oceans authority for Tonga, with various roles and responsibilities. She also spoke of the partnership with IUCN and their collaborative work since 2015 on developing a marine spatial planning, as well as with other government agencies and international partners as a critical part of Tonga’s national efforts to draft and finalise the Bill for parliamentary deliberation.



Dr Alifereti Tawake

Council Chair and Technical Advisor of the Locally Managed Marine Areas Network (LMMA) International, began by sharing the background of LMMA, which was created in 2000 and is active in the Philippines, Indonesia, Papua New Guinea, Micronesia, Palau, Fiji and Solomon Islands. An NGO since 2018, LMMA's vision is "vibrant, resilient and empowered communities who inherit and maintain healthy, well-managed and sustainable marine resources and ecosystems."

"There are more than 10,000 coastal communities in the Pacific and at present about 40% of our communities are actively using traditional management strategies and governance."

On the topic of environmental law needs, Dr Tawake shared three points. Firstly, he suggested that locally managed areas or community conserved areas need to be legally recognised for sustainable use and protection strategies in our national policies and legislations. Secondly, he emphasised the need to strengthen environmental and social safeguards, boost the resources allocated to policy

and implementation of environmental impact assessments, and improve the capacity to train communities. Thirdly, he said that national policy and legislation on access and benefit sharing is needed in the next few years, which would provide an enabling environment for the continuation of community work and efforts in contributing to national targets, biodiversity protection and sustainable development.



Prof. Denise Antolini

Professor of Law at the University of Hawai'i, began by highlighting that Hawai'i is part of Oceania and belongs in Oceania and although technically part of the United States, Hawaiians' hearts and culture are in the Pacific.

“Legislation allows the judges to sentence the offenders to community service, that allows the defenders to be sentenced to mandatory education course that is culturally based.”

Prof. Antolini spoke about the various opportunities for capacity building and advocacy initiatives. Firstly, she gave an overview of the environmental law speciality programmes offered at the William S. Richardson School of Law, which include the unique Native Hawaiian Law programme, and highlighted the growing number of individuals who become qualified and experienced in the area of environmental law for both the public and private sectors.

Secondly, Prof. Antolini briefly outlined the Hawai'i Environmental Court that was established in 2015. One of the Court's important features is that its judges are regular

judges, who go through the normal appointment process and then they are assigned by the Chief Justice. The University of Hawai'i has a partnership with the Court and a fellowship programme with the Department of Land and Natural Resources to train students as in-house counsel as well as in the area of enforcement within such agencies. She said these are only some of the initiatives that are part of a broad engagement strategy through the law school, and there are many more partnerships and networks. Prof. Antolini concluded by inviting the participants to visit the school's website to learn more.



Mr Peter Cochrane

IUCN Regional Councillor for Oceania, focused his presentation on the ocean, starting with the four key messages that came out of the Ocean and Climate Change Dialogue held under the auspices of the UN Framework Convention in Climate Change in late 2020:

“I would like to acknowledge the Pacific Island community has really been at the forefront of raising awareness globally and promoting and encouraging global action.”

1. The ocean is a fundamental part of the climate system and the global response to climate change.
2. Ocean action and climate action are intrinsically linked, but must be strengthened through breaking down silos, integration, and collaboration.
3. To date, the ocean has been a critical buffer against climate change, but tipping points are being reached and ocean risk is increasing.
4. Science provides the basis for understanding the action needed and must be strengthened in parallel with action moving forward.

Mr Cochrane also highlighted the critical role of traditional knowledge in helping us deal with these complicated challenges that lie ahead, and he echoed what some of the other speakers had mentioned with regards to incorporating and respecting traditional knowledge, the importance of modernising environmental laws, improving compliance and enforcement, and the need for additional resources and capacity building.



Hon. Aiyaz Sayed-Khaiyum

Fiji's Attorney-General and Minister for Economy, Civil Service, Communications and Climate Change, highlighted that the pandemic has given an insight into the type of widespread socio-economic disruptions that we will face if the impacts of climate change are allowed to accelerate unchecked, and that addressing climate change means addressing, directly or indirectly, environmental measures and laws. He stressed the need to ensure that Fiji can capitalise on opportunities to protect the environment and build socio-economic resilience.

“The draft [Climate Change] Bill is a ground-breaking piece of legislation as many of its provisions address concepts that have not previously been given treatment in national legislation, and some of those are international legal firsts.”

Hon Sayed-Khaiyum emphasised the importance of the Climate Change Bill², a significant step forward to address climate change, which has until now been based on the Environmental Management Act. The Climate Change Bill was revised after a second round of consultation with a wide range of stakeholders, and it will be the legal framework for advancing Fiji's climate adaptation objectives, promoting and enabling activities to further our progress towards achieving the 2030 Sustainable Development Goals. He also highlighted the uniqueness of the Climate Change Bill in its scope and implications. It addresses critical issues such as plan relocation for communities affected by sea level rise, carbon markets, oceans and maritime boundary issues, and

meeting the net zero carbon target. The Bill also sets out Fiji's intention to retain its sovereignty over existing maritime boundaries irrespective of the future impact of sea-level rise.

Hon. Sayed-Khaiyum emphasised that environmental law in Fiji and the Pacific, and indeed in other parts of the world, will evolve to respond to dynamic economic needs and complement national climate change ambitions, particularly in the context of helping facilitate climate adaptation and encouraging investments in climate mitigation. He also affirmed his fundamental belief that NGOs and civil society, and indeed organisations like IUCN, need to complement government work.

² The Climate Change Bill (No. 31 of 2021) was passed into law on 23 September 2021 and is now the Climate Change Act 2021 (Act No. 43 of 2021).

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DAY 1
14 July 2021

1.4. Special event: Introduction of the UNEP curriculum and bench book for environmental lawyers and judges

Chair: Ms Kiji Vukikomoala, Executive Director, Fiji Environmental Law Association

Speakers:

Lloyd, Regional Coordinator (Asia and the Pacific) of Environmental Law and Governance, UN Environment Programme

Ms Kiji Vukikomoala, Executive Director, Fiji Environmental Law Association

Rapporteur: Ms Pauline Macalikutabua, Intern, IUCN Oceania Regional Office

This special event introduced the UNEP training curriculum on environmental and climate law for Pacific lawyers and judges, which is being developed in partnership with the Fiji Environmental Law Association and will be available on UNEP's InforMEA online platform³.

3 This training curriculum titled 'Introduction to environment and climate law for Pacific lawyers and judges – Training curriculum with a focus on Fiji and Papua New Guinea' is nearing completion and will be available on UNEP's InforMEA online platform in 2022.



Dr Georgina Lloyd

Dr Georgina Lloyd introduced the UNEP training curriculum on environmental and climate law for Pacific lawyers and judges, developed in partnership with the Fiji Environmental Law Association. UNEP has been committed for many decades in supporting judges and other legal professionals in upholding the environmental rule of law and recognising that the legal community has a key role to play in the protection of the environment, the promotion of the right to live in a safe, clean, healthy and sustainable environment and the achievement of the Sustainable Development Goals.

“This training curriculum will be an introductory course on environmental and climate law for lawyers and judges in the Pacific Islands.”

Dr Lloyd highlighted that this training curriculum for Pacific lawyers and judges comes at a critical time, when global environmental crises seriously threaten the ecosystems, livelihoods and health of local communities. The goal of this course is to promote the protection of the environment and natural resources, and to promote sustainable development through improved implementation, adjudication and enforcement of environmental and climate law, which, as was discussed in earlier sessions of this conference, appears in need of strengthening in the region. This training curriculum has been discussed with numerous stakeholders and has been tailored to meet current challenges and fill the gaps in this area.

Dr Lloyd then recalled the Asia-Pacific Judicial Conference on Environment and Climate Change held in Fiji in 2019 under the banner of the Asian Judges Network on the Environment and convened by the Supreme Court of Fiji, in partnership with the Asian Development Bank and the UN Environment Programme. Some key priority areas for Pacific judges were identified during the conference, which included the establishment of a network of judges, the feasibility of a regional environmental court or bench, support for the establishment of national environmental courts and capacity building on environmental law. This new curriculum, an introductory course on environmental and climate law for lawyers and judges in the Pacific, with a focus on Fiji and Papua New Guinea, is a direct response to the latter.



Ms Kiji Vukikomoala

Ms Kiji Vukikomoala further detailed this training curriculum, stating that it was tailored for the intended audience of judges and lawyers in the Pacific in general, but had a special focus on Fiji and Papua New Guinea as a starting point. The course will be available on the UNEP InforMEA digital platform and the intent is for it to be handed over in time to a training institute like the University of Papua New Guinea, the University of the South Pacific or another accredited institution. This would be ideal given the development of environmental law and policy and jurisprudence, especially in Fiji and Papua New Guinea, which is useful to further enhance the understanding of the application of laws and principles discussed in the training content.

Dr Lloyd then spoke about the UNEP InforMEA online portal and the resources it contains. It serves as an e-learning tool with over 35 introductory courses on multilateral environmental agreements as well as on generic topics of environmental law. These courses and resources were developed in collaboration with local partners, both nationally and regionally. She then shared a brief explanatory video on the InforMEA portal.

InforMEA provides a bird's eye view of all major environmental treaties across key topics and how they relate to every country and region in the world. Environmental decision

makers can use this unrivalled database to explore best practice and design their countries' policies in line with global environmental legislation. All UN member countries have signed up to one or more multilateral environmental agreements, with a growing trend for more countries to ratify and implement more agreements, and these countries would benefit from the e-learning platform. InforMEA provides free self-paced introductory courses on each multilateral environmental agreement, and at the end of each course a certificate of completion can be obtained.

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DAY 1
14 July 2021

1.5. Session 1 plenary: Regional dispute resolution mechanisms for environmental and climate change disputes in the Pacific – Facilitated dialogue of judges, lawyers, practitioners and regional actors

Chair: Ms Briony Eales, Judicial Capacity Building Team Leader: Environmental and Climate Change Law, Asian Development Bank

Speakers:

Mr Matthew Baird, Director for the Asian Research Institute for Environmental Law (ARIEL); Consultant for the Asian Development Bank

Justice Ambeng Kandakasi, Deputy Chief Justice, National and Supreme Court of Papua New Guinea

President Fleur Kingham, President of the Land Court of Queensland, Australia

Rapporteur: Mr Gregorio Rafael Bueta, Legal and Policy Specialist, Law and Policy Reform Programme, Office of the General Counsel, Asian Development Bank

The objective for this session was to create a space for networking and discuss judicial capacity in the region for the effective implementation and enforcement of the environmental rule of law, and to discuss ideas in relation to the feasibility of establishing a regional environmental dispute resolution mechanism or 'green bench' in the Pacific.



Ms Briony Eales

Environmental and climate change lawyer for ADB's Law and Reform Policy Program, opened this session by highlighting the high level of expertise of the speakers, representing both sides of the bar to address a question that for many years judges, activists and lawyers have all asked: what are the benefits of an environmental dispute resolution mechanism for the Pacific and how might we actually make it happen?



Lagoon and forest, Pacific Harbour, Fiji. Photo credit: Andrew Foran



Mr Matthew Baird

Director for the Asian Research Institute for Environmental Law and Consultant for the Asian Development Bank, set the scene by recalling that this dialogue arose from the Asia-Pacific Judicial Conference on Environment and Climate Change held in Fiji two years ago for 110 judges from the Asia-Pacific region. That conference explored options for advancing a Pacific environmental tribunal and it received an overwhelmingly positive response.

“The Environmental Tribunal should have provisional measures; issues that focus on prevention of damage rather than reparation. The idea of preventing environmental harm, being able to review decisions that are going to have an environmental impact before those decisions are actuated or enter into effect.”

Mr Baird acknowledged that strengthening the environmental rule of law in the Pacific is a considerable challenge, but it is essential as it underpins productive sustainable societies and sustainable ecosystems. He drew attention to the ARIEL briefing paper (available in the ‘Additional resources’ section of this publication), summarising the status of the findings on this matter thus far, and setting the scene for the ongoing discussion.

He highlighted that Sustainable Development Goal 16 calls for strengthening institutions, accountability, participation and global governance. In the Pacific region, the Nouméa Convention may provide a framework opportunity for developing a regional environmental dispute resolution mechanism. He added that there are examples of established multinational tribunals in the field of human rights, such as the Inter-American Court of Human Rights and the Aarhus Convention Compliance Review Mechanism.

Framework principles for an environmental tribunal identified include, among others: operational independence from the bodies or institutions that it can review, consider or challenge; freedom to craft its own rules and procedures; and liberalised standing requirements to allow any person or organisation to bring cases, but to also promote and support bringing public interest environmental litigation.

Other issues to consider include an appellant or voluntary jurisdiction of the tribunal; provisional measures for issues that focus on prevention of damage rather than reparation; the power to issue orders such as continuing mandamus; ensuring that the judges are completely independent from the system, or the adjudicators are appointed by all parties; the use of experts and evidentiary rules; issues of strict liability; the role of customary and Indigenous rights and processes; alternative dispute resolution (ADR); and anti-SLAPP (Strategic Lawsuits against Public Participation) provisions.



Justice Ambeng Kandakasi

Who also chairs the PNG Judiciary ADR Committee overseeing the successful implementation of court-annexed mediation and alternative dispute resolution, shared his knowledge and experience of environmental dispute resolution in Papua New Guinea that may assist in the design of a regional dispute resolution mechanism or institution.

“Mediation is preferable in this environment and climate change area because we are looking at more about forward thinking and future plans and future actions. Judgments, tribunals only talk about what has happened and they make a decision right and wrong. Mediation looks at how people can live with what has happened and how they can live better with themselves moving forward.”

In relation to the challenges in initiating environmental proceedings, Justice Kandakasi highlighted the fortunate position that Papua New Guinea is in because of section 57 of the Constitution, which empowers judges to initiate proceedings for the enforcement of human rights of their own initiative, a power that was recently affirmed in a recent Supreme Court criminal case.

On the topic of a regional environmental tribunal, Justice Kandakasi pointed to the highly hierarchical societies in the Pacific that could hinder challenges in court against people of higher societal ranks. Considering the Pacific people’s traditional way of settlement of disputes – sitting down and having a discussion over what the problem is and finding solutions – he concluded that mediation should be given a prominent role in any model of environmental dispute resolution.

Justice Kandakasi then addressed some other practical issues to consider, such as access to a regional tribunal or court. He suggested following the path of having an e-court,

which was done in response to the COVID-19 pandemic and has proved to work very efficiently in Papua New Guinea, with a satellite network which runs through the Papua New Guinea Centre for Judicial Excellence. Justice Kandakasi suggested that all chief justices of the Pacific could become ex-officio members of this regional tribunal, a position that they could delegate.

On the issue of funding, Justice Kandakasi suggested that chief justices could make provisions in their judiciary budgets for contributing to the regional environmental tribunal, and that some international and regional partners such as the Asian Development Bank and the UN Environment Programme could also assist in addressing the funding issue. Justice Kandakasi concluded by emphasising the need to bring all judges on-board and for all to be on the same page, and that would require building the capacity of the judiciary on environmental and climate law.



President Fleur Kingham

Fleur Kingham, of the Land Court in Queensland, Australia, focused her presentation on some of the issues that she encountered with alternative dispute resolution (ADR) and expert evidence at the Land Court and what was done to try to address them, which she believed to be relevant to other domestic or regional stage. She referred the audience to a paper she has written on the topic (available in the ‘Additional resources’ section of this publication).

“[A] regional tribunal that has a focus on those [ADR and expert evidence] procedures could really build up that capacity that’s already there and give it more strength and in a way, the domestic courts could in effect outsource the supervision of those processes to a regional tribunal.”

In her presentation, President Kingham itemised the key issues that the Land Court had identified in relation to alternative dispute resolution (ADR). Firstly, distrust. A mediator chosen and paid by a mining company was understandably distrusted by the landowners and environmental groups, whether the mediator was neutral or not. Secondly, lack of expertise. Even good mediators didn’t necessarily understand the impacts on the ground of some projects or the intricacies and complexities of environmental law, or the issues that are raised by complex environmental disputes. Thirdly, a reluctance to mediate, or what could be described as an ideological objection to, for example, coal mining. President Kingham invited the participants to read her paper for more details on how the Land Court addressed these issues.

Moving to the question of expert evidence, the main issue identified by the Land Court related to the integrity of the evidence – is the expert’s opinion truly independent of, and uninfluenced by, the interests of the parties who have engaged them? – and to the utility of the evidence. She explained that the issues relating to the utility of expert evidence are about its comprehensibility and whether an expert is properly engaged with the issues that the court has to consider and also with the opinion of any other experts who expressed an opinion on the same topic.

President Kingham addressed these expert evidence issues by introducing a procedure called Court Managed Expert Evidence (CMEE) in 2018. The CMEE brings together two very commonly used features in civil litigation, namely case management and the meetings of experts to prepare a joint report, under the supervision of one judicial officer who acts as a CMEE convener. The system operates in a ‘without

prejudice’ environment, so it is confidential and evidence of what is said in these processes can’t be used in court. The role of the CMEE convener is expert, neutral, procedural, and facilitative. The convener facilitates the parties and the experts in navigating the pre-trial preparation of expert evidence.

President Kingham further detailed the features of the CMEE system that successfully addressed the issues of expert evidence identified. She encouraged the consideration of such procedures and ADR procedures for a regional tribunal, and to consider building up on procedures that already exist in the region. President Kingham also encouraged taking a staged approach to a regional body, starting with the pre-trial processes that will promote resolution and will better prepare the parties for evidence for hearing in a domestic court. She concluded by stating that the countries that support and use a regional tribunal would have the benefit of this concentration of expertise and a consistency of practice in ADR and preparation of expert evidence that would really enhance the way these complex environmental disputes are dealt with in the region.

Lack of expertise was an issue in complex environmental disputes. President Kingham said the CMEE initiative was a way to address the challenges faced earlier, narrow the legal issues, clarify complex scientific issues with experts and ensure that processes within disputes are streamlined and contribute to the administration of justice and a resolution of disputes in a fair, equitable and timely manner. She concluded her presentation by saying that she hoped some of the experiences she had shared would be considered in the pursuit of establishing a regional environmental tribunal for the Pacific.

INAUGURAL IUCN OCEANIA ENVIRONMENTAL LAW CONFERENCE

DAY 2
15 July 2021

2. DAY 2

Understanding the challenges of the implementation and enforcement of the environmental rule of law in the Pacific was the common theme explored on the second day of the conference. After setting the scene with a session on the environmental rule of law, the following sessions brought together representatives from Pacific Island Countries who shared the challenges they face in the implementation and enforcement of environmental law in their respective countries, and the approaches they take to address them.

2.1. Setting the scene: The environmental rule of law

Chair:

Ms Maria-Goreti Muavesi, Senior Environmental Legal Officer, IUCN Oceania Regional Office; Member of the WCEL Steering Committee

Speakers:

Mr Clark Peteru, Legal Counsel, Secretariat of the Pacific Regional Environment Programme

Justice Antonio Benjamin, Justice of the National High Court of Brazil; Chair of the IUCN World Commission on Environmental Law; Secretary-General of the International Advisory Council for Environmental Justice

Rapporteur:

Mr Filimoni Yaya, Geo-Spatial Information System Officer, IUCN Oceania Regional Office



Mr Clark Peteru

Head of SPREP's legal team in Samoa, spoke about the response of environmental law to environmental harm in the Pacific. He began his presentation with an analysis of the reasons why the law is at times unable to address environmental harm. It may be because the law is poorly worded, ambiguous or missing elements. Or a good law may not be able to address environmental harm because of a poor analysis of the problem or poor policy guidance. Addressing environmental harm first requires a good understanding of the harm that needs to be remedied. For this, a firm scientific basis followed by a firm policy basis is needed before a law is drafted. Then the law needs to be implemented and enforced and its impacts need to be monitored

“We need a firm scientific basis, followed by a firm policy basis, before we can begin the exercise of drafting a law.”

Moving to the theme of the session, understanding the challenges of the implementation and enforcement of the environmental rule of law, Mr Peteru proceeded to explore its first element: understanding the rule of law. He noted that the recent political events in Samoa illustrated that there is no common understanding on its meaning. He went on to quote the UN definition of the rule of law and its key features, commenting that all but one Pacific Island Countries have fundamental rights and freedoms enshrined in their Constitution, and that the countries have integrated the features characterising the rule of law in their legislation. He conceded that there were “hiccups” in their application in some instances, but emphasised that these cases were increasingly becoming the exception rather than the norm as our Pacific Island Countries are adopting more transparent systems. He added that the Christian foundation and cultural values and norms in these countries give the rule of law an added resilience.

Regarding the environmental rule of law, Mr Peteru said that it sits upon the rule of law, and that it in turn provides the foundation for environmental justice. He said the World Declaration on the Environmental Rule of Law contains 13 principles facilitating the achievement of environmental justice, and that environmental justice is about more than the protection of nature and the environment.

Commenting on the status of environmental law in the Pacific region, Mr Peteru said that although there has been continuous progress to improve the environmental legal framework and build a robust environmental rule of law, “countries in our region are struggling to enact their main environmental law or a more modern version of their environmental law.”

Addressing the question of the challenges in the implementation and enforcement of environmental laws, Mr Peteru said that as developing countries, Pacific Island Countries experience an accelerating “push towards development and the environmental and social safeguards are often lagging.”

He emphasised the need for well-drafted laws and the need for the public to be aware and understand them in order to comply with them. Regarding implementation, he said there is a need for functional and effective institutions and administrative processes. While for enforcement, there needs to be a clear way for detecting and prosecuting offences, and this means that environmental offences need to be mainstreamed within the current justice system, and enforcement officers need to be well trained and properly resourced.



Justice Antonio Benjamin

Justice Antonio Benjamin, gave the audience a guided tour of the main aspects of the IUCN World Declaration on the Environmental Rule of Law Declaration. The Declaration was discussed by over 100 experts including academics, judges, environmental prosecutors, lawyers for NGOs and legal experts that work for the government and then in Rio De Janeiro in 2016 with over 350 people as participants, after which the sitting Committee on the World Commission on Environmental Law finally approved it. It has already been sighted by supreme courts around the world.

“Environmental rule of law is affiliated with the theory or concept that the rule of law requires [not only] procedure, formality, but also substance and, with substance, ethics.”

Justice Benjamin went on to describe the structure of the Declaration, which has four parts in addition to the preamble:

- 1) Foundations of the environmental rule of law
- 2) General and emerging substantive principles for promoting and achieving environmental justice through the environmental rule of law
- 3) Means of implementations of the environmental rule of law
- 4) Appeal to the world community

While describing the evolution of the concept of the environmental rule of law, Justice Benjamin noted that the environmental rule of law is affiliated with the theory that the rule of law requires not only procedure and formality, but also substance and, with substance, ethics. He highlighted the Declaration’s statement that “the rule of law is understood as the legal framework of procedural and substantive rights and obligations,” highlighting the implication that the rule of law and the environmental rule of law is not just a circle of rights but also a circle of obligations: “We have individual obligations towards our other fellow citizens in protecting

the environment or their environment, but also we have obligations towards future generations and obligations towards nature itself.”

Justice Benjamin then listed the key governance elements of the environmental rule of law upon which the Declaration is premised, some procedural such as fairness and inclusive process, some substantive such as human rights. While reviewing the key provisions of the Declaration, he made special reference to the “new kid on the block” principle of *in dubio pro natura*, which is similar to the precautionary principle, but speaks better to judges who are already familiar with the criminal law *in dubio pro reo* pro defendant principle.

Justice Benjamin concluded by stating that the World Declaration on the Environmental Rule of Law is an exceptional document that “brings together the best formulations developed around the world for the protection of the environment.”

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**DAY 2
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2.2. Setting the scene: The environmental rule of law

Session 1 plenary: Understanding the challenges of the implementation and enforcement of the environmental rule of law in the Pacific – Fiji, Palau Kiribati and Samoa

Chair:

Mr Paul van Nimwegen, Protected Areas Programme Coordinator, IUCN Oceania Regional Office

Speakers:

Mr Joshua Wycliffe, Permanent Secretary, Ministry of Waterways and Environment, Fiji

Ms Rebecca Schuster, Assistant Attorney-General; Legal Counsel of the Environmental Quality Protection Board (EQPB), Palau

Ms Nenenteiti Teariki-Ruatu, Director, Environment and Conservation Division, Kiribati

Ms Gillian Shirley Malielegaoi, Manager, Legal Services Division, Ministry of Natural Resources and Environment, Samoa

Rapporteur:

Ms Marian Gauna, Marine Programme Officer, IUCN Oceania Regional Office

This session focused on the challenges of the implementation and enforcement of the environmental rule of law, with leading experts in this field from Fiji, Palau, Kiribati and Samoa sharing their knowledge, experience and strategies to advance environmental law.



Mr Joshua Wycliffe

Permanent Secretary for the Ministry of Waterways and Environment in Fiji, has been instrumental in establishing sustainability programmes through public-private partnership models and he is passionate about developing climatically and economically resilient community solutions involving newer technologies.

“Another ... challenge is improving ourselves, updating ourselves with environmental law, having exclusive resources for people with environmental specialisation and environmental expertise.”

In his opening remarks, Mr Wycliffe emphasised that the environment is not bound by territories, hence the need to globally benchmark environmental laws, adding that Fiji’s environmental laws are very much comparable to international environmental laws. However, Mr Wycliffe conceded that there were challenges, particularly with regards to its application. He said the ‘push and pull factor’ of the Ministry of Environment playing the dual role of regulator and service delivery agency was a challenge. He noted the need for economic growth especially during pandemic times, and the willingness of the business community to fast-track developments, sometime through ways not aligned with environmental law.

Mr Wycliffe shared his view that taking a long-term perspective is needed as the role that the environment will play is not just promoting but leading to a great economy. He affirmed the Department of Environment’s determination to implement and enforce the law, illustrated by a few legal precedent cases from Fiji. Mr. Wycliffe also assured that the Department of Environment is prioritising environmental

awareness and education, through business and community roundtable events, community consultations and through environmental impact assessment (EIA) clinics for problematic developments to raise the level of EIA reporting.

A key challenge faced by the Department of Environment is the geography of small remote islands that allows environmental crimes to go unnoticed and unreported. Staffing and capacity remain an issue in the context of a growing workload, which the department is addressing by working in partnership with NGOs and CSOs, government departments and academia, and through internal capacity building. They have also trained environmental inspectors and prosecutors within the department to capture and report environmental crimes in real time and prosecute them.

In closing, Mr Wycliffe said that as environmental issues evolve, so should the law. He added that EIA regulations and resource management laws are being revised as the Department of Environment is working to stay relevant with updated laws and regulations to meet emerging needs.



Ms Rebecca Schuster

Palau's Assistant Attorney-General and the Environmental Quality Protection Board's Legal Counsel, began her presentation with an overview of Palau's environmental legal framework. The framework supports the environmental rule of law, including the Palau National Code Annotated (PNCA) Title 24 - Environmental Protection Code, which established the Environmental Quality Protection Board (EQPB); Title 27, which is the Fishing and Palau National Marine Sanctuary Code; and Title 11, which is the Business and Business Regulations Code. In terms of environmental governance, the national government has shared responsibility for the protection of the environment with the 16 states of Palau, some of which have adopted their own environmental laws.

“The major challenges we have is the lack of sufficient personnel to adequately monitor and surveil the illegal activity and to engage in enforcement.”

Ms Schuster highlighted the Protected Areas Network (PAN) legislation, which aims to enhance state-based conservation, and catalyse and enable communities, states and the national government to protect and sustainably manage the Palau's natural and cultural heritage in perpetuity.

She also highlighted the challenges of balancing the need for development versus regulatory requirements. She said the pressure to develop the lacking in-country regional infrastructure, which relies largely on private sector development, was a challenge in the application of the environmental rule of law.

Ms Schuster raised concerns about the inability to meet financial and human resource needs that are necessary to enhance and efficiently conduct monitoring and surveillance, prevent poaching in terrestrial protected areas, and prevent illegal fishing throughout the huge national marine sanctuary, which covers 80% of Palau's exclusive economic zone. She also drew attention to the need for updating, and the timely promulgations of, laws and regulations to effectively administer the regulatory mechanisms.



Ms Nenenteiti Teariki-Ruatu

Director of the Environment and Conservation Division in Kiribati, shared that environmental management legislation was first passed in 1999 and amended in 2007 and in recent years, the Environment and Conservation Division has been working towards updating this legislation with the enactment of the Environment Principal Act.

“Coordination within ministries and between ministries is a major problem because the key staff concerned in other ministries have their own priority tasks.”

The priority of the Kiribati Government is to ensure resiliency in the environment and enhanced integrity for present and future generations. However, there are challenges to implement the environmental rule of law. One issue stems from the number of governmental portfolios concerned with environment-related matters, which calls for strengthening the coordination of legislation enforcement within the ministry and with other ministries. Compliance with environmental law, monitoring and enforcement in Kiribati is, as in most Small Island Developing States, challenged by the small number of enforcement officers, who are unable to cover the large marine areas and all the scattered islands that form Kiribati.

There are also institutional capacity issues, with no designated environmental inspectors in the outer islands, which could be addressed with a 24-hour public hotline to assist in the reporting of environmental crimes, which currently cannot be reported outside of office hours. The training of community environmental inspectors would also assist in monitoring and surveillance.

Ms Teariki-Ruatu acknowledged the technical assistance provided by regional and international partners, including the Council of Regional Organisations of the Pacific (CROP) agencies and the secretariats of multilateral environmental agreements.



Ms Gillian Shirley Malielegaoi

Manager of the Legal Services Division for the Ministry of Natural Resources and Environment in Samoa, is very active in the legal reforms pertaining to environmental management and climate change. In her presentation, Ms Malielegaoi explained that in Samoa there are 14 Acts relating to the environment, administered by a number of ministries. This requires them to collaborate with the Ministry of Natural Resources and Environment on any issue stemming from their implementation and enforcement. For example, the Ministry of Natural Resources and Environment is mandated under the Forestry Management Act and the Water Resource Management Act for ensuring the sustainable management of these precious resources.

“One of the challenges identified is the lack of a special court to deal specifically for environmental issues ... so having an environmental court will be in the pipeline to better address environmental offences.”

Ms Malielegaoi highlighted Samoa's pioneering work in the development of a policy and legislative framework for the better management of waste, in particular plastic waste, which resulted in the enactment of the Plastic Bag Management Regulations 2018, which banned some single-use plastic products like shopping bags, straws and Styrofoam containers.

In terms of enforcement, Ms Malielegaoi shared examples of the successful prosecution of environmental crimes and offences by the Office of the Attorney-General for environmental offences such as logging of forest resources without a licence and pollution of water resources.

Other challenges identified by Ms Malielegaoi include:

1. High staff turnover and lack of staff commitment, which is addressed by continuously conducting training of new and current staff.
2. The lack of capacity of technical focal personnel for multilateral environmental agreements, which

doesn't prepare the ministry to fulfil its obligations and commitments under the agreements, such as reporting and the integration of international commitments into domestic law.

3. The lack of available resources to increase the number of environmental officers participating in, and learning from, the many multilateral agreements' meetings, although the virtual meetings now conducted as a result of the pandemic has allowed for increased staff participation in these meetings.
4. The absence of a specialised environmental court, albeit it is in the pipeline, which would better address environmental offences and help with the flow of court matters.

Ms Malielegaoi concluded her presentation by stating, “Samoa remains steadfast in its commitment to preserve and conserve the health of its terrestrial and marine environment, which in turn will benefit the health of its people.”

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**DAY 2
15 July 2021**

2.3. Session 2 plenary: Understanding the challenges of the implementation and enforcement of the environmental rule of law in the Pacific – Tuvalu, Solomon Islands, Tonga and Vanuatu

Chair:

Mr Etika Rupeni Qica, Project Manager of the KIWA Initiative, IUCN Oceania Regional Office

Speakers:

Dr Eselealofa Apinelu, Attorney-General, Tuvalu

Mr Joe Horokou, Director, Environment and Conservation Division, Solomon Islands

Ms Rose Kautoke, Senior Crown Counsel, Office of the Attorney-General, Tonga

Ms Donna Kalfatak, Director, Department of Environmental Protection and Conservation, Vanuatu

Rapporteur:

Mr Rocky Guzman, Deputy Director, Asian Research Institute for Environmental Law

This session continued exploring the challenges of the implementation and enforcement of the environmental rule of law with leading experts from Tuvalu, Solomon Islands, Tonga and Vanuatu sharing their knowledge and experiences on addressing the challenges of implementing the environmental rule of law in their respective jurisdictions.



Dr Eselealofa Apinelu

Is the Attorney-General of Tuvalu with 20 years of legal experience, including in the fields of human rights and customary rights. In her presentation, Dr Apinelu shared the experiences of environmental degradation and the rule of law in Tuvalu.

“The many international and regional legislative approaches requiring countries to adhere to are way too much for small countries with limited resources.”

She noted that although environmental issues and challenges are a global phenomenon, and it is rightfully asserted that they are the responsibility of everyone, for a small country with limited resources like Tuvalu, this responsibility does not come easily. “The reality for Tuvalu is simple. Where hopes and aspirations may run high for countries to implement and enforce the environmental rule of law, the complexities and nuances of those laws may be easily understood by developed countries, but for Indigenous communities, it is not easily understood,” she said.

Dr Apinelu highlighted that the ‘leadership issue’ is one of the most important challenges in Tuvalu. She said the challenge is created by perception and human ideology. Moreover, Tuvalu is yet to consider granting rights to the environment. Attempts by interested Indigenous communities to pursue this have been disapproved by the courts. However, Dr Apinelu said that the increasing appreciation and recognition of Indigenous leadership must be recognised in discussions, including the risks that the legal recognition of Indigenous

governance carries such as increasing conflicts between the responsibilities, duties and rights of individuals in the island communities and the role of the central government. Dr Apinelu also spoke about the current reform of Tuvalu’s judiciary, with the removal of specialised courts and an increasing reliance on the use of assessors. She said that appropriate tools must accompany access to justice, and the Legal Practitioners Act was enacted to ensure that quality legal assistance is provided to the people and the government at all times.

In concluding her presentation, Dr Apinelu said that while we may speak in one language on environmental issues and have the same aspirations for addressing the rule of law in various countries, we must never underestimate our unique differences or individual cultures as they contribute significantly to the solutions of mitigating environmental degradation and enhancing the environmental rule of law.



Mr Joe Horokou

Director of the Environment and Conservation Division in Solomon Islands, drew upon his 20 years of experience in the environment sector to discuss the main challenges in implementing and enforcing environmental law in Solomon Islands, and his perspective on potential opportunities and solutions to address these challenges.

“It takes time and it causes frustration to officers when they knew that the law was broken, but then of the delay in instigating legal proceeding against the companies.”

Firstly, the enforcement challenge is caused by the lack of, or inadequate, capacity and skills for enforcement. There are no dedicated officers or legal officers within the division to assist in taking up cases with the Director of the Public Prosecution Office. The enforcement challenge is also aggravated by Solomon Islands’ centralised system, whereby most officers are in the capital, Honiara, and none in the field to conduct regular environmental monitoring. This is compounded by the field officers’ lack of deep knowledge of their duties.

The second key challenge in the implementation of the environmental rule of law is institutional compartmentalisation, or the lack of collaboration and coordination between ministries, exemplified by forestry officers focusing on their specific duties and neglecting to enforce the conservation provisions of their legislation.

The third challenge is the lack of support and funding to assist the Environment and Conservation Division in the prosecution of environmental offences, and the delays in instigating legal proceedings against companies cause a lot of frustration as officers attempt to enforce the law. Mr Horokou also noted that the penalties for environmental offences are not sufficient to be an effective deterrent.

Mr Horokou suggested several possible solutions to the challenges identified. These include:

1. Capacity building for field personnel.
2. Awareness and sharing between ministries.
3. Specific training on relevant legal procedures and processes to raise the confidence of officers in their enforcement responsibilities.
4. Improvement and incorporation of explicit environmental provisions in relevant laws, especially those regulating the extractive industries, mining and forestry.



Ms Rose Kautoke

Senior Crown Counsel at the Attorney-General's Office in Tonga, specialises in public and international law, environmental law and law of the sea. She spoke of the relevant environmental policies incorporated into development projects, resulting in the Tonga Environmental Framework which regulates land, oceans, water, marine conservation, biodiversity conservation, waste management and pollution.

“It is important that we take ownership and work towards improving our domestic legal framework.”

Ms Kautoke highlighted three important challenges facing the implementation and enforcement of Tonga's environmental laws, which include:

1. Gaps in environmental laws and the need to update the laws, including mainstreaming climate change resilience to various pieces of legislation. This was highlighted in Tonga's first State of Environment report last year, and Ms Kautoke noted that the review is to be guided by the World Declaration on the Environmental Rule of Law.
2. Resource constraints resulting in the government's inability to progress good environmental governance.
3. Capacity constraints, particularly the need for lawyers specialising in environmental law.

Ms Kautoke concluded by emphasising the importance of Tonga taking ownership of the review of their environmental legal framework, and of developing home-grown expertise, including through the establishment of an environmental law association in Tonga.

Ms Donna Kalfatak, Director of the Department for Environmental Protection and Conservation in Vanuatu, started her presentation with a brief overview of the current environmental legislation administered by her department, which consists of five laws. She highlighted the department's success over the last two years in increasing compliance through raising awareness of environmental legislation, especially the plastic ban regulations, throughout Vanuatu. She noted that a key challenge is enforcement as the department has only one enforcement officer. She addressed this issue by exercising the powers vested in the Director by the Environmental Protection and Conservation Act to appoint authorised officers to assist the enforcement officer.

Ms Kalfatak then described some cases that were prosecuted by the department, mainly against developers for breach of the EIA regulations. In terms of conservation measures, Vanuatu's Protected Areas Act and Environmental Protection and Conservation Act provide for the registration of community conservation areas (CCA).



Ms Donna Kalfatak

Director of the Department for Environmental Protection and Conservation in Vanuatu, started her presentation with a brief overview of the current environmental legislation administered by her department, which consists of five laws. She highlighted the department's success over the last two years in increasing compliance through raising awareness of environmental legislation, especially the plastic ban regulations, throughout Vanuatu. She noted that a key challenge is enforcement as the department has only one enforcement officer. She addressed this issue by exercising the powers vested in the Director by the Environmental Protection and Conservation Act to appoint authorised officers to assist the enforcement officer.

“I have decided to make additional appointment of authorised officers to assist the one Enforcement Officer within the Department of Environment to help with the enforcement and compliance of the legislations.”

Ms Kalfatak then described some cases that were prosecuted by the department, mainly against developers for breach of the EIA regulations. In terms of conservation measures, Vanuatu's Protected Areas Act and Environmental Protection and Conservation Act provide for the registration of community conservation areas (CCA).

Nine community conservation areas have been registered, most of them on customary lands. She highlighted that “most of the conservation areas in Vanuatu have incorporated customary rules and practices in their management or governing systems; although they're legally registered, their management processes and practices are partially informal in terms of governance.”

Each community conservation area has a management plan, which contains processes and procedures that the department must follow in cases of breach of the plan.

Typically, an offence is brought to the CCA Management Committee, the next level is the Village Court, and only when all other avenues have been exhausted, the cases are brought to the national court system. Ms Kalfatak highlighted that due to the communal nature of land ownership, and in spite of the governing procedures and the disciplinary measures, one of the major challenges encountered with the registration process of protected areas or conservation areas in Vanuatu is the land dispute.

She concluded her presentation on a positive note, with the current review of the organisational structure of the department, which includes the establishment of an enforcement and compliance division.

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2.4. Session 3 breakout session: Potential opportunities and solutions – The challenges of the environmental rule of law in the Pacific

Chair:

Breakout Group 1: Ms Kiji Vukikomoala, Executive Director, Fiji Environmental Law Association

Breakout Group 2: Mr Clark Peteru, Legal Counsel, Secretariat of the Pacific Regional Environment Programme

Breakout Group 3: Ms Alisi Rabukawaqa, Project Liaison Officer, IUCN Oceania Regional Office

Solomon Islands Conference Hub: Ms Senoveva Mauli, Chair, Solomon Islands Environmental Law Association Executive Committee

Vanuatu Conference Hub: Mr Colin Leo, Chair, Vanuatu Environmental Law Association Executive Committee

Breakout Group 4: Mr BJ Kim, Managing Lawyer, International Environmental Defenders Office

Rapporteurs:

Breakout Group 1: Mr Filimoni Yaya, Geo-Spatial Information System Officer, IUCN Oceania Regional Office

Breakout Group 2: Ms Vani Tosokiwai, Law student, The University of the South Pacific

Breakout Group 3: Ms Marian Gauna, Marine Project Officer, IUCN Oceania Regional Office

Solomon Islands Conference Hub: Ms Kenya Kenieroa, Coordinator, Solomon Islands Environmental Law Association

Vanuatu Conference Hub: Mr Vatumaraga Molisa, Project Liaison Officer, IUCN Oceania Regional Office

Breakout Group 4: Ms Cheryl Lee Strangio, Legal Administrator, Environmental Defenders Office, Australia

The aim of this session was to have facilitated discussions among conference participants in breakout sessions to address the themes raised during the sessions held earlier in the day.

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The chair of each breakout group guided the discussions with the following questions.

1. What are the challenges of environmental law and its enforcement in the Pacific?
2. What are the potential solutions that you see?
3. (a) What are the opportunities for the Pacific in addressing the challenges and solutions?
(b) What already exists that can be strengthened?
4. (a) What opportunities and solutions do not exist, but can be useful and relevant for the Pacific?
(b) What is working in other regions?
5. What are the challenges on the ground for environmental lawyers and what support do they need?

The Solomon Islands and Vanuatu Conference Hubs' breakout groups focused on the issues and challenges in their respective countries.

The questions they discussed were:

1. What are the challenges of environmental law and its enforcement in Vanuatu/Solomon Islands?
2. What are the issues with environmental laws in Vanuatu/Solomon Islands?
3. What needs to change in these laws?
4. What role can custom play in conservation and in the effective enforcement of conservation measures in environmental law?
5. What institutions need to be strengthened?

2.5. Session 4 plenary: Presentation of outcomes

Chair:

Mr Hans Wendt, Marine Programme Coordinator, IUCN Oceania Regional Office

In this plenary session, the chairs of each breakout group reported on the key points raised in their group discussions during Session 3.



Ms Kiji Vukikomoala

Reported on the discussions of Breakout Group 1. She noted that they focused on the issues faced in Fiji, where most of the group's participants were based. One of the main issues discussed was the practicality of the laws, and whilst there may be some good laws, the issue was whether they were actually effective. For example, where there are breaches of the Environment Management Act such as an unlawful development or a waste issue, a stop order or a prohibition notice may be issued. It rarely went to the next stage of enforcement, which would be going to court, because of the time and the resources that court actions involve. Some companies or developers who are aware of that fact tend to disregard the prohibition notices and continue with their illegal operations.

The challenges are:

- 1) Have our laws been reviewed since their implementation?
- 2) Do we know how well they work?
- 3) What has been done to improve the process?

Ms Vukikomoala further reported that another challenge that came out very strongly in the group's discussions was the government's will and priority in terms of budget allocation to provide the resources needed for enforcement and to enhance the skills of enforcement officers. Do the

international commitments and the national strategies for sustainability match commitments on the ground?

In terms of solutions, the group discussed how to involve more community inputs to strengthen enforcement, whether there has been progress, and do conservation officers have the necessary 'teeth' to be able to do more? Another solution proposed was to explore further the development of alternative dispute resolution in order to fast-track the resolution of some of these issues.



Mr Clark Peteru

Summarised the discussions of Breakout Group 2. Capacity was an issue identified, including human capacity, human resources and financial resources. The solutions identified included training for personnel and funding for training, which could be better supported by donors. Issues around institutional structures, whether they are established and if they are, whether they are functioning well, were highlighted.

There seems to be a lack of environmental litigation in many of the Pacific Islands' jurisdictions, raising the question of access to justice. The causes of this situation were discussed: whether it was because the communities aren't aware of their rights, or whether there are other barriers preventing the communities from accessing legal assistance. These are some of the examples of solutions that were shared: public interest litigation, green benches, tribunals and clinics held in various localities to inform community leaders on the rights and remedies available and how their communities could be more involved in environmental justice issues.

Sustainable Development Goal 16 was mentioned in relation to access to justice and participation of grassroots organisations. Regarding work at the international and regional levels, there were discussions on how approaches could be standardised to make procedures within the region and internationally more comprehensible and easier to put into practice.

There were also discussions about environmental impact assessments and the issue of access to information on EIAs. Finally, it was noted that a lot of the legislation was old, lacked relevance and needed updating.



Ms Alisi Rabukawaqa

Reported on the discussions of Breakout Group 3, pointing out that there were quite a number of similarities in what was discussed by previous groups. She said their group had pondered on the issue of providing resources to enforcement officers who are trained, but often lack the resources to effectively carry out their tasks.

Another point raised was in relation to having sufficient data/information and the challenges of accessing information platforms such as InforMEA and others. The group also identified the need to train judges and lawyers to enhance capacity in environmental law, encourage awareness at the national level and provide enforcement training for litigants to build capacity. It was also suggested to have more courses on environmental law in universities.

Importantly, the group sought discussion around the issue of funding from international bodies and larger corporations to create a consolidated fund to assist communities with environmental litigation.



Ms Senoveva Maui

Reported on the discussions of the Solomon Islands Hub. The group had deliberated on the need for change in environmental laws and there was consensus on the lack of awareness initiatives within communities. To address this problem, the Solomon Islands Environmental Law Association has developed a Community Awareness Toolkit, which enables awareness drives throughout the communities.

Other challenges discussed include lack of funding, corruption and the geographical location/remoteness of communities across the nine islands, which hinders easy access to justice and information.

measures in environmental law, raising the question of how to bridge the gap between customary laws and national laws.

The group also discussed the role that custom plays in conservation and in the effective enforcement of conservation

Finally, the group discussed how to strengthen institutions and properly coordinate between the ministries and agencies.



Mr Colin Leo

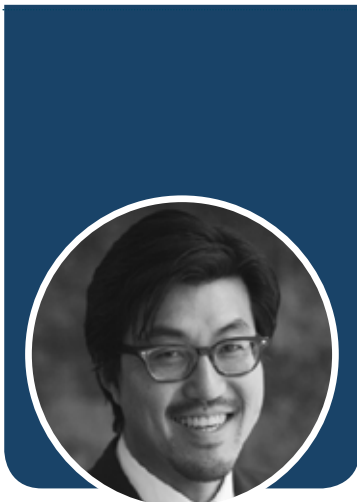
Chaired the Vanuatu Hub discussions but delegated the reporting to Mr Vatu Molisa. Mr Molisa highlighted that their group discussions echoed many of the issues and solutions already brought up by previous groups. Specific recommendations from this group included the following.

In relation to increasing community awareness, they recommended building upon civil society networks that already exist within the islands and the provinces.

In relation to the problem of finance, they suggested an Environment Trust Account under the Ministry of Finance to accommodate environmental-related revenue to create a reserve for the Department of Environmental Protection and Conservation and relevant partners to work with the annual

budget to support ongoing awareness on environmental laws throughout Vanuatu.

Much emphasis was placed on determining and employing reasonable alternatives to harmful products causing degradation such as plastics. Discussions were also drawn towards the principle of free, prior and informed consent (FPIC), and linking resource owners and the rights of nature.



Mr BJ Kim

Reported on the discussions of Breakout Group 4. He mentioned that as the last group to report, many of the issues they had discussed had already been highlighted by the other groups, including the importance of awareness and understanding in the community, monitoring and compliance, and free, prior and informed consent.

The need to empower resource owners to be frontline protectors of the environment and the importance of education, exposure and getting young children in the communities to be aware of their resources and their rights and responsibilities was also highlighted. In addition, the group raised the issue of investment and investment for alternatives, such as alternatives to plastics and alternatives to fuel.

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2.6. Special event: Pacific launch of the ADB report series on climate change

Chair:

Ms Briony Eales, Judicial Capacity Building Team Leader: Environmental and Climate Change Law, Asian Development Bank.

Speakers:

Mr Grip Bueta, Judicial Capacity Building and Knowledge Management Expert (Consultant), Asian Development Bank

Ms Maria Cecilia T. Sicangco, Senior Legal Officer, Law and Policy Reform, Asian Development Bank

Rapporteur:

Uraia Makulau, Legal Consultant, IUCN Oceania Regional Office

This special event was the Pacific launch of the ADB report series titled *Climate Change, Coming Soon to a Court Near You*.



Ms Briony Eales

Who led the research, writing and production of the ADB four-part report series on climate change launched in the Pacific at this special event, introduced the *Climate Change, Coming Soon to a Court Near You* report series.

The report series was written for judges and lawyers in Asia and the Pacific, where people who are hurt by climate change or who are really concerned, and rightly so, by inaction on climate mitigation or adaptation are taking the matter to the courts. The report series aims to meet the judges and lawyers' need for resources that help them talk about things that are localised to their challenges. It is available on the ADB website.



Mr Grip Bueta

Presented a brief overview and background of reports 1 and 2 of the report series, as summarised below.

Report 1 – This publication series is a recognition of judges' crucial role in addressing climate change, especially in our region where most of the climate vulnerable people are. It is also a recognition that with the increase in climate change litigation, judges need access to climate law resources and information. Importantly, this report series is a continuing effort of ADB and its development partners like IUCN and the UN Environment Programme to support judges in Asia and the Pacific to build their capacity in dealing with climate litigation. Report 1 also contains an introduction to climate science, looking at the intersection of law and other sciences that are critical to climate change. Lawyers and judges need to familiarise themselves with concepts and terminologies, especially in the very complex subject of climate change.

It is also in recognition of the need for continuous capacity building for judges in the region, a need which was highlighted in the previous sessions of this conference.

Report 2 is on climate change litigation, which is increasing not only in the global North but also in Asia and the Pacific, notably since 2017 when the work on this report series started. The report looks at the intersection of environmental litigation and climate litigation in the context of both mitigation and adaptation cases and presents jurisprudence with the type of cases and issues involved, within and outside our region. Tied with climate justice, the report highlights the varying impacts of climate change on women and other vulnerable groups.



Ms Maria Cecilia T. Sicangco

Gave an overview of reports 3 and 4 of the report series, as summarised below.

Report 3 is on national climate change legal frameworks. It looks at the trends in Asia and the Pacific and found that only 25% of the 32 countries surveyed have an umbrella framework climate change law. This means that 75% of these countries regulate climate change law in a sectoral manner, that is agriculture, forestry, energy, transport and so on. This approach makes it difficult for judges, lawyers and stakeholders on the ground to understand or to have a holistic perspective of the government's climate change response. The report also surveys the constitutional rights pertinent to climate change, in a way that provides a useful tool for judges and lawyers.

Report 4 explores the international climate change and environmental law architecture, as well as regional agreements and human rights global instruments, and analyses how these instruments impact climate litigation. In addition, this report describes the States' obligations stemming from the treaties they have signed or ratified, noting that under article 18 of the Vienna Convention on the Law of Treaties a country that has signed but not yet ratified is obliged not to defeat the object and purpose of that treaty. Report 4 also reviews the customary law that's applicable for environment and climate change law.



**Leatherback turtle hatchlings, Solomon Islands.
Photo credit: Helen Pippard**

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**DAY 3
16 July 2021**

3. DAY 3

3.1. Session 1 plenary: Law, custom and conservation

Chair:

Ms Fleur Ramsay, Special Counsel, International Program, Environmental Defenders Office, Australia

Speakers:

Mr Atu Siwatibau, Managing Partner, Siwatibau & Sloan Lawyers, Fiji

Ms Jacqueline Evans, Founder of the Moana Foundation; Director of Pacific Environmental Consultants Ltd, Cook Islands

Mr Emmanuel Peni, Coordinator, Project Sepik, Papua New Guinea

Rapporteur:

Ms Cheryl Lee Strangio, Legal Administrator, Environmental Defenders Office, Australia

This first session of the third and final day of the conference focused on the relationships and interlinkages between law, custom and conservation, and particularly the role of law and custom in conservation in the Pacific.




Ms Fleur Ramsay

Chair, in her opening remarks highlighted one of the strategies developed by the Environmental Defenders Office and partner organisations across the Pacific, namely a custom and customary law approach to environmental protection. Ms Ramsay emphasised that across the Pacific, traditions, practices, customs, stories and law are a form of environmental law, and the task of environmental lawyers is to ensure sufficient understanding of the importance of the relationships between communities and nature to support local environmental initiatives.

She acknowledged the tensions between Pacific legal frameworks – which are often colonial legacies – and customary laws and stressed the need to ensure that when we’re advocating environmental legal solutions, we are not erasing or marginalising environmental practices on the ground of the local communities. Ms Ramsay warned against “reducing the extraordinary complexities of customary law.”

Finally, she predicted that these kinds of sessions will become a major feature of Pacific environmental law conferences in the future as we work towards decolonising environmental law and seeing the richness of our local environmental governance come through and become something that we discuss strongly as part of environmental jurisprudence in the Pacific.

An aerial photograph showing a vast, intricate coral reef system. The water transitions from deep blue to vibrant turquoise and light green, indicating shallow depths and diverse coral structures. The reef extends from the bottom right towards the top left of the frame. In the bottom right corner, a small portion of a lush green island with dense vegetation is visible.

Western Province, Solomon Islands.
Photo credit: Helen Pippard



Mr Atu Siwatibau

Managing Partner at Siwatibau & Sloan Lawyers, is a legal practitioner with a lot of expertise in advising traditional resource owners in Fiji on best practices in the management and conservation of their resources.

“When we go and advise the native land-owning communities [that they have] been ascribed that [land] but [they] still need to organise [themselves] in a way that shows good governance, transparency and accountability because ... not many parties will be willing to deal with a loose affiliation of persons.”

At the start of his presentation entitled ‘Harnessing traditional knowledge and systems in Fiji and the Pacific’, Mr Siwatibau praised the objectives of this session, which examines the relationship between law – meaning the Westminster legal system inherited from the British – and custom – meaning the traditional cultural systems of governance and decision making – and explores how to harmonise traditional knowledge systems.

He addressed two main points of focus in his presentation. The first was to make it clear that law and custom are two fundamentally different systems. The second was to explore how to structure or build a mutually beneficial relationship between the two systems.

On the first point, Mr Siwatibau described how law and custom are significantly different in terms of how they view ownership. While ‘modern law’ assumes that the smallest group capable of owning property or resources is the individual, by contrast, in many Indigenous communities, including in Fiji, the community holds ownership of property and resources.

Another way in which ‘modern law’ and custom are different relates to authority and decision-making. In a customary communal system, the community has the authority and decision-making power for the transfer, management and use of its resources. Being aware of this is vital when dealing with communal systems interlacing with this form of ownership, authority and decision-making.

In contemporary societies, property is a commodity, an item of value that is used, traded, divided, exploited and monetised for the sole benefit of the individual owner to the exclusion of others. On the other hand, in Indigenous communities, property and resources are for the benefit of the community as a whole. Property is owned, managed, developed and inherited through generations by the community. Quite often, resources are also tied with traditional knowledge and the management of its use and preservation. These traditions and knowledge feed into the culture and are far more valuable than the monetary value of the resource itself. Mr Siwatibau, on this point, referred to the writings of the

17th century British philosopher John Locke to explain the value system of community ownership.

He then moved on to address the question: how can we harmonise these two systems when working with local communities? In his experience as a lawyer in Fiji, Mr Siwatibau said he found that when working with community structures, the issue is getting that structure developed or organised in a way that not only reflects the custom’s principles but that is also recognised by modern day legal principles.

Mr Siwatibau then referred to a legal precedent as an example: the case of *Kaliavu v Native Land Trust Board*, where a lease was issued by the government without the alleged consent of the owners. Five members of the clan (mataqali) brought an action to court which was rejected on the grounds that they could not sue in their personal capacity. However, cases developed over the years since then have provided a better understanding of such issues in land or property disputes.

Mr Siwatibau said that an issue for various clans (mataqali) is that they have been ascribed ownership, but they need to organise themselves in a way that shows good governance, transparency and accountability because it is unlikely that many parties will be willing to deal with a loose affiliation of people.

Mr Siwatibau concluded with some practical recommendations that, in his experience, have proved to be successful in making the two systems – law and custom – work together and accomplish mutually beneficial objectives. He recommended the establishment of a legally recognised structure within the community, such as a Trust, and to ensure that this structure reflects the governance, authority, structure and values of the customary resource owning unit. He further stressed the need to educate both sides – the community and legal professionals – on the two different value systems, as well as the need to record them in terms of the trust deed.



Ms Jacqueline Evans

Founder of Moana Foundation and Director of Pacific Environmental Consultants Ltd, has a lifelong commitment to the protection of the marine environment in the Cook Islands and is a gold medal recipient of the 2019 Goldman Environmental Prize for Islands and Island Nations for her work in establishing a multiple-use marine protected area (MPA), Marae Moana.

“It’s really important to have a very healthy partnership between the traditional leaders and the Ministry of Marine Resources so that they can coordinate the survey of fish stocks so that we can monitor whether these ra’uis were effective.”

In her presentation entitled ‘Can we strengthen the effectiveness of ra’ui (traditional MPAs) while maintaining their mana (power)? A Cook Islands case study’, Ms Evans said her purpose was to make a point that developing culturally appropriate legislation to support the post-2020 Biodiversity Framework can be part of the transformative action that is needed to reverse biodiversity loss and to achieve life in harmony with nature by 2050. She based her presentation on a case study in Rarotonga and addressed the issues of traditional marine protected areas and legislating traditional practice.

In response to the question of why marine protected areas are needed, Ms Evans started by setting the scene with an overview of Rarotonga and of the issues affecting fisheries which, similar to those faced globally, include overfishing, plastic pollution, trawling, development, reef damage and bleaching from climate change, invasive marine species such as crown-of-thorns starfish, and land-based pollution. She said these issues were compounded in the Cook Islands by a four-decade absence of restrictions to fishing.

Ms Evans described the successive unsuccessful proposals made to the government to establish marine reserves. The reasons for this failure included the need to develop regulations, long processes, bureaucracy and politics, as well as, in some cases, communities’ lack of trust in government departments.

Ms Evans then described the four mediums for establishing marine protected areas in the Cook Islands: 1) the Environment Act; 2) section 41 of the Protected Areas Act; 3) the Marine Resources Act 2005; and 4) the ra’ui traditional system of management. Ra’ui is the customary practice of banning the harvest of resources in an area for a specific period, which is declared by the chiefs of a tribe (the ariki or mataiapo).

Ms Evans recounted how after a consultation with stakeholders as part of a feasibility study for establishing parks, reserves and ra’ui in Rarotonga, there was an overwhelming support for establishing/re-establishing the ra’ui – after having none for decades – and the stakeholders had no desire for legislation as they wanted to use customary practice to establish the ra’ui.

Ms Evans highlighted the positive conservation outcomes achieved by the ra’ui, documented in a survey conducted two years after their establishment. There were also challenges, such as the absence of laws to control the harvest with modern fishing methods and overharvesting. Another issue was that no repeat surveys were conducted, which could have been achieved through community-based assessments, but the sustainability of this option is an issue due to the small population and because assessments depend very much on the individuals leading the process.

Ms Evans concluded her presentation with this assessment: the ra’ui must continue to be led by traditional leaders to retain the mana (power) of the ra’ui as it is part of the Cook Islanders’ identity and culture and it shouldn’t be lost. If the government was to use the word ‘ra’ui’ and develop legislation using it, it would remove that practice from traditional leaders and make it a government practice. The meaning of the word would decline, and the communities wouldn’t respect it as much as they respect the traditional leaders. She stressed that traditional leaders must lead the ra’ui in consultation with both their communities and the Ministry of Marine Resources for marine resource surveys and for ra’ui rules.



Mr Emmanuel Peni

Is a graduate in applied science who set up a community-based microfinance organisation in the West Sepik province of Papua New Guinea. He is also the author of the book Sibona.

“We felt that the FPIC was sabotaged and used only to benefit the company, and it gave the company and the government a better head start in the conversation around setting up the mine and didn’t give us enough opportunity to be in the race, in the conversation, in the debates and the discussions around it.”

Mr Peni welcomed the opportunity to talk about his work based in Wewak, supporting leaders to raise their concerns and fears about the possible destruction of the Sepik River basin in Papua New Guinea from a proposed copper and gold mine in the headwaters of the Sepik River. He acknowledged Dr Nairokobi’s philosophies around Melanesian values, which informed their work and shaped their experience while working with leaders along the Sepik River.

He shared that the Sepik River is the lifeline and lifeblood of about 400,000 people and part of the identity of about 600,000 people in the province. Moreover, the Sepik River has a biodiversity that is almost equal to the Amazon and has a cultural diversity second to none.

Mr Peni spoke of the importance of connectedness to the rivers, lakes, forests and land from the perspective of being a Papua New Guinean. Connectedness to the land was also inclusive of the spirits of their ancestors, spirits of the place itself, the land and the river.

Project Sepik’s strategies include advocacy and legal strategy. They have successfully promoted advocacy at all levels, organised with leaders influential in villages and at the provincial and international levels as well. With regards to legal strategies, they have been working with lawyers from the Centre for Environmental Law and Community Rights (CELCOR) Inc. in PNG and the Environmental Defenders Office in Australia on a legal strategy for the protection of the Sepik River through legal personhood or the rights of nature. Legal personhood would give the right to the river to sue and to be sued. Other strategies considered include creating parks, national reserves, wildlife management and conservation schemes, forest management areas and having the site listed as a World Heritage Site.

In conclusion, Mr Peni talked about Project Sepik’s work around questioning the use of free, prior and informed consent because while it is still celebrated at the United Nations level and has helped people in communities win some legal battles, they feel that it could still be strengthened and decolonised to be less biased in favour of companies and government.

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**DAY 3
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3.2. Session 2 plenary: Environment and judges

Co-Chairs:

Justice Antonio Benjamin, Justice of the National High Court of Brazil; Chair of IUCN World Commission on Environmental Law; Secretary-General of the International Advisory Council for Environmental Justice

Justice Kamal Kumar, Acting Chief Justice of Fiji⁴

Speakers:

Justice Michael D. Wilson, Associate Justice, Supreme Court of Hawai'i; former Director of the Land and Natural Resources Department; Chair of the Board of Land and Natural Resources; Trustee of the Kaho'olawe Island Reserve Commission

Justice Ambeng Kandakasi, Deputy Chief Justice, National and Supreme Court of Papua New Guinea

Ms Briony Eales, Judicial Capacity Building Team Leader: Environmental and Climate Change Law, Asian Development Bank, Philippines

Justice Brian Preston, Chief Judge, Land and Environment Court of New South Wales, Australia

Rapporteur:

Ms Kristine Joy Argallon, Lecturer, School of Law, University of Cebu, Philippines

This session proposed a panoramic discussion on the role of judges in environmental adjudication, an exploration of regional and international collaboration of judges such as the Global Judicial Institute on the Environment, and a discussion on the main legal issues that judges face in environmental adjudication in Oceania.

⁴ Justice Kamal Kumar was sworn in as Fiji Chief Justice in August 2021.



Justice Kamal Kumar

Co-chair, Fiji's Acting Chief Justice, spoke from Fiji's perspective on the protection of the environment. Quoting section 40 of the Constitution, he pointed out that it is clear that every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of the present and future generations. He also pointed to the undisputed fact that the environment and climate change are issues that affect us all, irrespective of whether we are a developing or developed nation, but small island nations are particularly vulnerable.

Justice Kumar also reminded of the important role of judicial officers in protecting the rights of all individuals to have a safe and healthy environment, subject to certain limitations such as national security, national policy, availability of resources and, at the present time, the COVID-19 pandemic. He concluded by drawing attention to two precedent environmental cases to illustrate his points.



Justice Antonio Benjamin

Co-chair, Justice of the National High Court of Brazil and Chair of the IUCN World Commission on Environmental Law, made brief opening remarks. He welcomed all to the session and shared a few words about each of the panellists who would discuss the role of courts in the interpretation and development of the environmental rule of law

“It is our duty to interpret legislation or international instruments and to develop principles that ensure that the intention of drafters and legislature, international instruments, are given full effect.”



Justice Michael Wilson

Associate Justice at the Supreme Court of Hawai'i, highlighted the extraordinary importance of the Inaugural IUCN Oceania Environmental Law Conference to our part of the planet.

“... we are facing a kind of calamity that requires courts to continue to apply the rule of law and we can potentially do it if we recognise that this is an emergency.”

Justice Wilson set his presentation's agenda to introduce the emergency remedies that are available to judges and shared that perhaps these are the remedies that judges have a duty to apply in the context of the future of Pacific Islands affected by climate change. He quoted Justice Benjamin: “that the single most important legal issue facing judges globally is climate change.”

Justice Wilson emphasised that, as history has shown, the courts and governments are vested with power in situations of emergency. He argued that the rule of law is the strongest force for a good civilisation. He added that there is a risk of the unavailability of the rule of law in 40 to 50 years' time, around the time of the collapse of major ecosystems and the loss of major breadbaskets of the world, such as the rice

fields of Southeast Asia, which will bring about the concept of emergency.

Justice Wilson expanded on the power of influence vested within the courts and governments to implement change. He also provided examples from a recent judicial case on the issuance of injunctive reliefs related to environmental offences.

In closing, Justice Wilson expressed his sincere appreciation for the rapid development of law in various areas including environmental rule of law and said he was privileged to be in the community of judges that is global, adding that he hoped that this conference would sprout future collaborations.



Ms Briony Eales

Is a climate change and environmental lawyer working for the Asian Development Bank's Law and Policy Reform Program. She spoke about the vital and positive role that judges play in supporting behavioural change because court decisions can prompt reform.

“What we ask of judges is that they uphold the law, protect rights, balance interests and rely on scientific evidence and do so within the framework of ethical lawyering ... These kinds of ethical lawyering can support behavioural change nationally in the implementation framework.”

Ms Eales said that judges are an objective voice of reason and judicial fact-finding on environmental and climate change challenges and usually influence public discussion. Further, courts are amongst the most respected public institutions as the critical function they play is to uphold people's fundamental rights to have matters adjudicated consistently.

She acknowledged the precept that sustainable development is complex and that the Pacific Islands region is dominated by countries with small and remote populations, limited land areas, some limitations in natural resources and a very high need for development. Therefore, she argued, new ways of thinking were needed, including new technologies and new ways of doing business. She said the challenge is to foster a community of environmentally conscious lawyers to uphold rights and sustainable development. Ms Eales also highlighted that domestic legal and policy frameworks form the backbone of global action on climate change and biodiversity frameworks because local frameworks underpin local actions.

Ms Eales raised concerns over what actions could be undertaken by judges in minimising the impacts of climate change and environmental degradation. She suggested that judges could address this by ensuring that everyone in the economy complied with their legal obligations and that by upholding the rule of law, judges could support the legislative and policy intents of national governments. Ms Eales referred to a previous discussion during this conference on the benefits of establishing a regional tribunal or green bench, noting that these issues are detailed in the ADB report series *Climate Change, Coming Soon to a Court Near You*.

Ms Eales concluded her presentation by emphasising that climate change and environmental degradation threaten the future prosperity and resilience of our families, children and future generations, and the role of ethical lawyering in supporting behavioural change.



Justice Ambeng Kandakasi

Deputy Chief Justice of the Supreme Court of Papua New Guinea and Chair of the Judiciary's ADR Committee, opened his presentation by stating that he considers the climate change situation as "the next pandemic in waiting" and the discussion is now about the climate adaptation and mitigation measures we are taking.

"What is it that we're contributing to society and taking up the environmental challenge and doing what we can within our limited term is the best call one should answer."

Justice Kandakasi emphasised the need for judges to be at the forefront of understanding the science, environmental law principles and relevant procedures that accord with the accepted principles and the rule of law.

He highlighted section 57 of the Constitution of the Independent State of Papua New Guinea, which empowers the courts, only on suspicion of a possible violation of a human right, to initiate proceedings in their own right, either out of completely new proceedings or in existing proceedings.

Justice Kandakasi also pointed to the factors that may inhibit judges from making decisions against people higher up in the social ladder as a consequence of the hierarchical society in Papua New Guinea. He gave some examples of cases where he made decisions to support compliance and highlighted the vital importance for the judiciary to be trained on the relevant emerging principles and frameworks.

In concluding his presentation, Justice Kandakasi said: "what is it that we're contributing to society and taking up the environmental challenges and doing what we can within our limited term is the best call one should answer."



Justice Brian Preston

Chief Judge of the Land and Environment Court of New South Wales in Australia, started his presentation by stating that in the context of the global climate and environmental crises, the 70s slogan “think globally, act locally” is still relevant. However, he said, we don’t only want to act locally, we need to act at all levels of government and there is a need for all branches of the government to take action: the legislature, the executive and the judiciary.

“The judiciary has a vital role to play. It’s a different role to the other branches government need to play, but it needs to be played and we can’t stand off and let’s do the heavy lifting.”

On the role of the judiciary, Justice Preston outlined the four key functions. First, the judiciary’s core business is adjudication. This means finding the applicable law and in the common law system this includes judicial decisions, and it may also include international law. Adjudication is also about interpreting the law, applying the law to the fact and determining remedies or relief for breaches of the law.

The second function of the judiciary is to uphold the law. This includes upholding the executive into account, as well as upholding the rule of law, the environmental rule of law and access to justice.

The third function of the judiciary is to execute the law, an area where there is a little crossover between the role of the judiciary and that of the executive.

The last function of the judiciary is law-making, either directly through adjudication or indirectly when law reform is prompted by court decisions.

Justice Preston concluded by emphasising that all the functions he described could be assisted by trans-jurisdictional dialogue. This dialogue could influence domestic law through a ripple effect of international law or foreign decisions on domestic decisions. International collaboration of judges is assisted by portals such as ECOLEX and InforMEA, judicial portals, training and capacity building opportunities, as well as by informal networks.

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**DAY 3
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3.3. Session 3 plenary: The nexus of climate and oceans

Chair:

Ms Maria-Goreti Muavesi, Senior Environmental Legal Officer, IUCN Oceania Regional Office

Speakers:

Prof. Nilufer Oral, Director, Centre for International Law, National University of Singapore

Mr Clement Mulalap, Legal Adviser, Permanent Mission of the Federated States of Micronesia to the United Nations

Ms Patricia Parkinson, Founding Director, Environmental Law Oceania Consultancy, Fiji

Rapporteur:

Mr Semisi Seruitanoa, Membership Officer, IUCN Oceania Regional Office

The Pacific Islands are not only separated by the ocean, they are also connected to each other by the ocean. The Small Island Developing States are now commonly referred to as Big Ocean States because of the vast ocean spaces across the Pacific region. The ocean is at the heart of Pacific Islanders' livelihood at the community, national and regional levels. However, climate change and its impacts threaten this livelihood. This session focused on the interlinkages of oceans and climate, its importance to the region and the responses or potential responses to addressing the crises faced.



Prof. Nilufer Oral

Director of the Centre for International Law at the National University of Singapore, delivered her presentation entitled ‘The ocean pathways and nationally determined contributions (NDCs): The Paris Agreement and beyond’, via a recorded video.

“The climate system is defined as meaning the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions. The hydrosphere does include the oceans.”

Prof. Oral started with an overview of the impacts of climate change on the oceans. Firstly, sea level rise caused by ocean warming and expanding, and the melting of the ice sheets in Antarctica. The second impact is ocean acidification due to the ocean absorbing the excess atmospheric carbon dioxide. The third impact is a change in the ocean’s chemistry. The fourth impact is deoxygenation.

Prof. Oral then raised the question of whether the UN climate regime – the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement – were capable of addressing these very serious issues. On this point, she found that the UNFCCC refers to the oceans and coastal and marine ecosystems only in their role as a carbon sink and carbon reservoir, and in the provision calling the Parties to promote the sustainable management of oceans. The Kyoto Protocol made no mention of the ocean and referred to the IMO Conventions for that matter. The Paris Agreement refers to the ocean, but only in its preamble and refers to the UNFCCC to incorporate the oceans’ functions of carbon sink and reservoir.

Prof. Oral argued that the oceans should be part of the ultimate objective of the UNFCCC regime as it is part of the climate system. The Paris Agreement defined quantified goals of limiting global warming to well below 2°C and pursuing efforts to achieve 1.5°C below pre-industrial levels.

She then questioned how the oceans would fit into this, other than as a beneficiary. Examining the advancements in integrating the oceans into the climate regime since the 2015 Paris Agreement at COP20. Prof. Oral highlighted the 2016 decision for a “Special Report on Oceans and Cryosphere

in a Changing Climate” (IPCC 2019). Another landmark was the launch of the Ocean Pathway at COP23 under Fiji’s Presidency. The Ocean Pathway, co-chaired by Fiji and Sweden, is an ongoing process with a two-track strategy to support the goals of the Paris Agreement: increasing the role of the ocean in the UNFCCC process and significantly increasing action in priority areas impacting or impacted by oceans and climate change.

At COP24, the Paris Rulebook for the implementation of the Paris Agreement was launched. At COP25 (Blue COP), the ocean–climate change nexus was highlighted. COP25 also requested the Subsidiary Body for Scientific and Technological Advice (SBSTA) to convene in 2020 an Ocean and Climate Change Dialogue to consider how to strengthen adaptation and mitigation actions in this context.

Prof. Oral then explored how the oceans fit in the nationally determined contributions (NDCs) for mitigation and adaptation action introduced by the Paris Agreement. A study found that 70% of the 161 NDCs analysed involved marine issues, including 103 ocean-related issues. The Global Stocktake of NDCs, which will assess the progress made towards the goal of the Paris Agreement and inform future climate action, is scheduled to take place in 2023.

Prof. Oral concluded by saying that progress was being made in the consideration of oceans in the climate regime, and she acknowledged the very important role played by the Oceania region since 1989 in raising awareness on the impact of climate change on the oceans, in particular sea level rise.



Mr Clement Yow Mulalap

Legal Adviser to the Permanent Mission of the Federated States of Micronesia to the United Nations, presented on the subject 'The BBNJ instrument – Major priorities for the Pacific SIDS'.

“There is no global coordinated approach to area-based management tools such as MPAs in areas beyond national jurisdiction, how to address marine genetic resources of biological diversity of areas beyond national jurisdiction, whether we should have global standards for environmental impact assessments for activities that impact areas beyond national jurisdiction and the sort of capacity building and transfer marine technology that would be necessary to put all of this into action.”

Mr Mulalap started with an introduction to the Biodiversity Beyond National Jurisdiction (BBNJ) instrument, an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, which is currently being negotiated.

He identified the four major elements considered in the BBNJ instrument: marine genetic resources; area-based management tools, which could include marine protected areas; environmental impact assessments; and capacity building and transfer of marine technology. In addition, there are a number of cross-cutting issues including institutional arrangements.

The geographical scope of the instrument is the high seas, which consists of the water columns of the high seas, and the sea bed and ocean floor underneath the high seas, which is also called the 'area'. The areas beyond national jurisdiction (ABNJ) represent two-thirds of the oceans, and include a wealth of fish, genetic resources and mineral resources. In addition to its importance as climate regulator, with half a billion tonnes of carbon dioxide (CO₂) captured by ABNJ per year, the high seas and the ABNJ also feature migration routes for many marine species including those, such as whales, turtles and sharks, with major cultural significance for Indigenous people.

Mr Mulalap said some of the major threats to the health of the oceans and its ecosystems include pollution, overfishing, ocean acidification and deoxygenation. He then expressed concerns about the fragmentation of the legal regime governing the activities impacting the ABNJ, including fisheries, shipping and deep-sea mining gaps, and the implementation gaps in regulating activities impacting ABNJ. However, he noted the long-term effort in trying to overcome this fragmentation. He also highlighted that in the ABNJ, there is no legal framework for area-based management tools such as marine protected areas for marine genetic resources and biological diversity.

Next, Mr Mulalap gave an overview of the Pacific SIDS' priorities for the BBNJ instrument. These priorities include, among others, strengthening implementation, climate change and ocean acidification, and the 'notion of adjacency', which means that if you are a coastal State and your maritime jurisdiction is adjacent to the area beyond national jurisdiction, then you should be actively consulted on BBNJ activities. He also highlighted the need for decision-making to be based on the best available science and the relevant traditional knowledge, and on an equal basis.

Mr Mulalap then drew attention to the use of area-based management tools, including marine protected areas, to restore and maintain healthy, productive and resilient oceans, especially in response to climate change and ocean acidification. His next point was about the Pacific SIDS' priorities relating to environmental impact assessments, including the need to establish global standards, criteria and thresholds for all activities potentially impacting ABNJ.

In conclusion, Mr Mulalap emphasised the need to use the BBNJ instrument to the extent necessary to integrate and mainstream climate change and ocean acidification considerations more closely across relevant ocean sectors and activities like deep-sea mining, fisheries, shipping and in conservation measures for marine protected areas. He described the institutional arrangements priorities for Pacific SIDS, including the characteristics of an intergovernmental decision body and of subsidiary and other entities to have in place, such as a clearing house mechanism and a compliance committee.

Finally, Mr Mulalap outlined the challenges to a BBNJ regime, including the need for higher level of coordination between the Council of Regional Organisations of the Pacific (CROP), regional fisheries management organisations and governments, among others. The opportunities, he said, include robust financial and conservation benefits that can stem from (sub) regional coordination, as the Parties to the Nauru Agreement's experience showed, and closer integration of climate change and ocean acidification in ocean sectors and activities.



Ms Patricia Parkinson

Is an environmental law and international law specialist and Founding Director of Environmental Law Oceania Consultancy in Fiji. She previously held the positions of Senior Environmental Legal Officer with IUCN Oceania Regional Office and Environmental Legal Advisor with Fiji Environmental Law Association. The theme of her presentation was ‘Plastics, oceans and climate: Global legal solutions for global crises – A Pacific Islands’ perspective’, an issue that she had been exploring recently while working as Pacific Consultant in the Oceans Program of the Environmental Investigation Agency (EIA).

“Plastic pollution is a transboundary global issue and as much as we can progress in waste management or do beach clean-ups, as we say: if you don’t turn off the tap, the bathtub will keep overflowing and we could be mopping forever.”

Ms Parkinson started her presentation with the topic ‘Drowning in plastics’, by outlining the scale of the plastic crisis and sharing some statistics, such as the production of plastics – up to 300 million tonnes annually and growing; and mismanaged plastics – only 9% are recycled. She highlighted that the Pacific Islands are vulnerable to plastic pollution despite contributing to only 1.3% of the plastics in the ocean. She illustrated this point with a short video by the Environmental Investigation Agency that showed the impacts of plastic pollution in the Pacific Islands, as experienced by local fishers, which concluded with the key message that the Pacific Islands, or any country or region, cannot address the plastic pollution crisis alone as it is a transboundary issue that needs an urgent and concerted global response.

Ms Parkinson then presented on the topic ‘Plastic tides’, which focused on the nexus between plastics and oceans. She shared that an estimated 100 million tonnes of plastics are polluting our oceans and an additional 12 megatons leak into the oceans each year, with 80% of it sourced from land. She mentioned the ‘Great Pacific garbage patch’, which is the largest gyre of marine debris, and spoke about the ‘invisible threat’ of microplastics and the impacts of marine plastic pollution on fisheries, coastal communities and human health.

Her next topic was ‘Plastics heating the planet’, where she focused on the nexus between plastics and climate change. Ms Parkinson spoke about the greenhouse gas emissions that result from plastics, from the extraction of fossil fuels used to produce plastics and at all stages of its lifecycle up to its end of life. Another aspect of that linkage is the impact of plastics on the health of the ocean, reducing the carbon capture and storage capacity of the planet’s largest carbon sink. She highlighted that from a regional perspective, as with the climate crisis, while the Pacific Islands contribute little to the problem, they are disproportionately affected by its impacts. She referred the audience to the Centre for International Environmental Law’s report *The hidden cost*

of a plastic planet for more details on the climate change impacts of plastics.

Having established these linkages between plastics, oceans and climate change, Ms Parkinson then outlined the international legal framework relating to plastics, which includes conventions relating to waste and hazardous substances, and shipping and marine activities. She highlighted the findings of UNEP’s assessment of the effectiveness of international and regional strategies and approaches, which concluded that the “current governance strategies and approaches provide a fragmented approach that does not adequately address marine plastic litter and microplastics.” This prompted the United Nations Environment Assembly (UNEA) decision to appoint an Ad Hoc Open Ended Expert Group (AHEG) on marine litter and microplastics to consider response options, including a legally binding global agreement.

Ms Parkinson then provided an overview of the regional conventions, policies and plans addressing plastic pollution. She also briefly outlined the work process of the AHEG and the UNEA and noted that environment ministers from around the world are expected to decide at the UNEA 5.2 meeting in February 2022 on the establishment of an Intergovernmental Negotiating Committee for a global plastics agreement. She emphasised the growing momentum around the world in support of such a global agreement, through regional declarations, including by the Alliance of Small Islands States and the Pacific SIDS Declaration that was to be tabled at the upcoming SPREP Members’ meeting in September 2021.

She concluded by highlighting the work being done in defining possible elements of a legally binding agreement to prevent plastic pollution and referred the audience to publications by the Environmental Investigation Agency, Centre for International Environmental Law, World Wildlife Fund and other organisations on the subject of plastic pollution prevention

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3.4. Session 4 plenary: Sustainable development – The role of environmental law in regulating development activities

Chair:

Prof. Rose-Liza Eisma-Osorio, Professor of Law at the University of Cebu, Philippines; Chair of the IUCN Academy of Environmental Law; Member of the WCEL Steering Committee; Member of the Environmental Law Alliance

Speakers:

Dr Pio Manoa, Legal Counsel, Pacific Islands Forum Fisheries Agency

Mr Akuila Tawake, Deputy Director, Georesources and Energy Programme, Pacific Community

Mr Gregory Barbara, Environment Planning and Policy Officer, Secretariat of the Pacific Regional Environment Programme

Mr Anthony Talouli, Acting Director for the Waste Management and Pollution Control Programme and Pollution Adviser, Secretariat of the Pacific Regional Environment Programme

Mr Shaofeng Hu, Senior Montreal Protocol Regional Coordinator – Asia and Pacific, OzonAction, Law Division, UN Environment Programme

Rapporteur:

Ms Kristine Joy Argallon, Lecturer, School of Law, University of Cebu, Philippines

This session discussed the legal issues relating to controlling and managing development activities and the role of law in advancing regulatory frameworks to contribute towards the global sustainable development goals.



Prof. Rose Liza Eisma-Osorio

Is a law professor at the University of Cebu in the Philippines, Chair of the IUCN Academy of Environmental Law, Member of the Steering Committee of IUCN WCEL and the Environmental Law Alliance. She is also a co-founder of the Philippine Earth Justice Centre and one of the two lawyers recognised by the Supreme Court of the Philippines as a Human Steward of the Whales and Cetaceans of Tanon Strait Protected Seascape, one of the largest marine protected areas in the country.

She chaired the session, opening with a welcome note to the guests and attendees, and then introduced the speakers for this session.



Waya Island, Fiji. Photo credit: Helen Pippard



Dr Pio Manoa

Is Legal Counsel for the Pacific Islands Fisheries Forum Agency (FFA) and former Legal Officer for the United Nations Food and Agriculture Organization. He specialises in international legal matters, including oceans, fisheries and the law of the sea. His presentation was entitled ‘Legislative trends in the effective regulation of fisheries in the Pacific Islands region’.

“In the Southern Bluefin Tuna cases of 1999, the International Tribunal for the Law of the Sea said that ‘the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment.’”

Dr Manoa set the scene with a brief historical background of FFA, which was established in 1979 to provide technical advice and support for the conservation and management of fisheries in the Pacific Islands region. Its 17 members are collectively responsible for approximately 30 million square kilometres of ocean, which is “home to the largest and best managed tuna fisheries in the world,” providing a third of the world’s global supply of tuna.

The first part of Dr Manoa’s presentation was a historical overview of fisheries legislation. He pointed out that early fisheries statutes were enacted to address concerns on issues at a given time. Accordingly, the legislations from the early to mid-1900s were generally characterised by a narrow definition of the term ‘fish’ and ‘fishing’, with a focus on fishing from the shore around small crafts and on basic gear types, and with a rudimentary licensing regime, basic compliance provisions and very modest penalties. In the Pacific region, the legislation also included some recognition of the protection of customary fishing rights. The fisheries legislation evolved and from the late 1970s, there was a marked shift to accommodate the new maritime zones and the formalisation of exclusive economic zones (EEZ), and the elaboration of licensing and monitoring, control and surveillance regimes.

The second part of Dr Manoa’s presentation outlined the international legal instruments that influence fisheries legislation, starting with the 1982 UN Convention on the Law of the Sea (UNCLOS). The UNCLOS provides for the rights and jurisdictions of States in various maritime zones as well as over certain activities and uses of the sea. The UNCLOS shaped the national fisheries policies and legislations around the world, and so did the non-legally binding 1995 FAO Code of Conduct for Responsible Fisheries.

The Earth Summit in 1992 prompted the 1995 UN Fish Stocks Agreement (UNFSA) for the conservation and management of straddling and highly migratory fish stocks. The UNFSA complements the UNCLOS and elaborates on the principles of fisheries governance such as the application of the precautionary approach, provides for strong compliance and enforcement provisions including high seas boarding and inspection and, for the first time, identifies the violations that are to be considered serious violations.

The UN Fish Stocks Agreement was followed by regional fisheries management organisations including the Western and Central Pacific Fisheries Commission and the South Pacific Regional Management Organisation. Additionally, a range of regional and sub-regional treaties were adopted such as the Nauru Agreement, among others. Dr Manoa acknowledged the contribution of adjudicatory bodies such as the International Tribunal for the Law of the Sea, which linked the responsibilities of States in the governance of living resources with a general duty to protect and preserve the marine environment.

In the third part of his presentation, Dr Manoa focused on the legislative trends in the regulation of fisheries in the Pacific region. The trends in the region and around the world include a broad definition of ‘fish’, which no longer only refers to aquatic animals but now also includes aquatic plants such as seaweed. The definition of ‘fishing’ has also expanded and now includes not only the act of taking or catching fish, but also searching or attempting to fish and any activity in support. The regulation of related activities is something that is increasingly prominent in legislation, for example, the bunkering or the transfer of fuel from one vessel to another. Dr Manoa also mentioned the extraterritorial applications of fisheries regulations giving the international dimensions of fisheries legislation.

Other contemporary trends of the continuously evolving fisheries legislation include: robust regimes that deal with every type of fishing or related activity, including the trade in fish and fish products; a broadening scope of conservation and management; monitoring, control and surveillance mechanisms to combat illegal, unreported and unregulated (IUU) fishing; and strong provisions for offences, with hefty penalties for serious offences which can be in excess of USD1,000,000 and including imprisonment and forfeiture.

In the region, the regulation of fishing activities continues to evolve, while fundamental coastal fisheries provisions, such as customary fishing protections, are being maintained. Dr Manoa also noted the increasing interest in aquaculture legislation and the ongoing need to review and strengthen offshore fisheries legislation.



Mr Akuila Tawake

Deputy Director for the Georesources and Energy Programme at the Pacific Community (SPC), presented on the topic 'Deep sea minerals management in the Pacific Islands region'.

“Cook Islands have all three: DSM policy, legislation and regulations, and some other countries like the FSM, Fiji and Kiribati just have their legislation while some countries have theirs in draft.”

Mr Tawake started by highlighting the expanse of the Pacific Island Countries' jurisdiction on sea areas, a ratio of 52:1 to their landmass. He noted that the Pacific Islands' jurisdiction could be expanded by an additional 2 million square kilometres if the UN accepts the Pacific Islands' claim for extended continental shelf around the Clipperton Island.

Mr Tawake described the three main deep sea mineral resources found in the Pacific Islands region: seafloor massive sulfides (SMS), manganese nodules and cobalt crust, and their distribution across Pacific Island Countries' jurisdictions. He then talked about the mineral resources located in the region's area beyond national jurisdiction (the 'area') and the foreign partners and Pacific state-owned enterprises which have expressed interest in the exploration of the 'area'. He also described the technological developments for deep-sea mining (DSM) related activities.

Mr Tawake then gave an overview of the SPC-EU Deep Sea Minerals Project (2010-2016) and the activities conducted in the region as part of this project: stakeholder consultations, awareness and training activities, publications, the development of a DSM Framework, a cost-benefit

analysis, and assistance to Pacific Island Countries in data management and in developing national DSM policy and legislation. A draft Regional DSM Agreement has also been developed, but it is on hold pending the finalisation of the International Seabed Authority's mining regulations.

Mr Tawake also reviewed the potential opportunities and risks of deep-sea mining activities in the region. Opportunities and potential benefits include monetary and non-monetary benefits due to the growing global demand for metals. Challenges and potential risks that this new and untested industry may carry include financial risks – as seen in the collapse of the Nautilus Solwara 1 Project in Papua New Guinea – and environmental risks, especially the suspension of sediment plume in the water column, which could have a huge impact on fisheries and other oceanic living resources, and local communities.

Mr Tawake concluded his presentation with a snapshot of recent deep-sea mining activities in the region and the ongoing technical support and advice provided by SPC to its members.



Mr Gregory Barbara

Is the Environmental Assessment and Policy Officer at the Secretariat of the Pacific Regional Environment Programme. He is responsible for providing strategic, technical and policy advice and assistance to SPREP member countries and territories on environmental impact assessment and management issues for sustainable development, which also includes providing support to the Pacific Islands Forum Secretariat in the drafting of the Biodiversity Beyond National Jurisdiction instrument under the UN Convention on the Law of the Sea.

“As those of us who practise EIA, we understand that it’s there to actually promote sustainable development.”

Mr Barbara’s presentation focused on best practices for environmental impact assessment in the Pacific Islands. He highlighted that EIA is an often-misunderstood planning tool and it is perceived as a permit to develop and a roadblock to development. In fact, he said, EIA is meant to be a proactive and strategic planning tool to promote sustainable development. Legislative planning tools are needed to minimise the environmental impacts of development activities.

Most Pacific Island Countries have EIA legislation. Unfortunately, too often in the Pacific the implementation of EIA legislation is not very strong and development activities commence before an EIA is requested. SPREP is assisting Pacific countries in addressing these issues by providing capacity building opportunities.

Mr Barbara emphasised that an effective environmental impact assessment must include positive impacts of the development on the environment. It must also address impacts of the environment on development, for example, flooding, climate change and coastal erosion. For instance, the assessment can be used to design developments that are resistant to climate impacts, such as sea level rise.

He stressed the importance of knowing the national definition of environment in EIA law. He said that EIA is not only about the physical elements, it is also about the protection of certain species and land resources, and weather and climate impacts. In the Pacific, cultural and traditional systems are built into the definition of environment in the law, so there is a need to consider the social implications of a project since the cultural expectations of Pacific Islanders are interwoven with the natural environment.

Mr Barbara further stated that environmental impact assessments are meant to identify immediate measures to enhance positive impacts and avoid rehabilitating or

compensating for negative effects, using the mitigation hierarchy. Far too often, developers reach straight for the cash book to compensate for impacts, but the long-term impacts of development must be considered as they often outlive monetary compensations. EIA has to be a participatory process that includes all proponents, the government, stakeholders, landowners, CSOs, businesses and all interested parties in the development area. It needs to support informed decision-making, so a development that hasn’t seen some alterations or changes that have been influenced by the findings of environmental impact assessments shouldn’t go ahead.

Mr Barbara then outlined the main steps of the EIA process, which are defined in national legislation but tend to be similar in all jurisdictions. He highlighted that a key component of any EIA is the environmental management plan (EMP), which is often neglected. The EMP outlines how the development plans to manage its impacts, both in the construction and operation phases, and potentially the closure of the development. Without an EMP, enforcing the conditions on a development is very difficult. He also stressed the importance of considering cumulative impacts, for example, with other developments in the area or within a water catchment, as well as the consideration of any protected areas that may be affected by a development or activity.

In conclusion, Mr Barbara spoke about the work of SPREP in creating a community of practitioners, the Pacific Network of Environmental Assessors (PNEA). It is an online platform for experience and skills sharing to assist in producing better EIAs within the region. The PNEA has resources, including several guidelines. The EIA guidelines set a specific guideline for tourism developers, as well as a guideline for strategic environmental assessment.



Mr Anthony Talouli

Acting Director for the Waste Management and Pollution Control Programme and Waste Advisor at the Secretariat of the Pacific Regional Environment Programme, presented on the topic 'Waste legislations in Small Island Developing States'.

“... there is a shipping agreement called the Moana Taka Partnership ... assisting to move low-value non-commercial waste from Pacific Islands to destinations within the Swire Shipping network group in the Asia-Pacific that's quite unique to the Pacific and it's quite unique to the world.”

He began with a high-level perspective on waste, outlining the international and Pacific regional conventions addressing waste, chemicals and pollution. Mr Talouli pointed out that none of these conventions adequately address the issues of waste, particularly land-based waste management, and that the gaps in international agreements cause barriers in the implementation of legislation across the Pacific Island Countries in terms of addressing issues such as waste generation, land-based waste, recycling, reuse and recovery operations of wastes, and threatens economies.

Mr Talouli highlighted the many steps taken by SPREP in the Pacific region to address waste management, including the regional conventions and codes of practice that help countries to manage waste and model laws.

He also emphasised the good regional leadership in terms of outcomes statements and declarations from our leaders' meetings and other events, which are used as a form of mechanism for carrying work forward. He highlighted regional strategies addressing waste, such as Cleaner Pacific 2025, a 10-year integrated waste management strategy that was adopted by SPREP member countries and covers 15 waste streams, including hazardous waste, oil pollution and plastics, among others, and tries to address the priority waste streams in countries. It has a clear vision of a cleaner Pacific environment and the aspiration to help countries enforce and build capacity.

Mr Talouli praised the great leadership at the national level regarding waste management legislation, particularly around the refuse or ban or levies on certain wastes such as plastics. However, he said there was a lack of uniformity in waste legislation caused by the absence of a convention that adequately addresses the issue of land-based pollution.

Another challenge that he highlighted is the growing abundance of waste that is accumulating because of the

high volume of waste that is coming through imports and almost none is going out, so it mostly ends up in landfills and compounds, with the issue of limited physical space that countries have for providing adequate management facilities. An additional challenge is the enforcement and compliance with the regulations.

Mr Talouli concluded his presentation by identifying opportunities. These include opportunities for: sharing best practices and model laws within the Pacific region; addressing early on what the waste issues from developments could be; the export and recycling of many of the products and waste streams that come out of national development projects; and establishing regional hubs.



Mr Shaofeng Hu

Is the Senior Montreal Protocol Regional Coordinator (Asia and the Pacific) of the UN Environment Programme. His presentation was on ‘National law for the implementation of the Montreal Protocol – Lessons learned from HCFC phase-out and ways forward for HFC phase-down’.

“We look forward for the next 20 years of HFC control and we really want to promote the principles and to strengthen the implementation and the enforcement of the environmental rule of law for the Montreal Protocol’s implementation.”

While introducing his programme, Mr Hu explained they are one of the agencies for the enforcement of national laws or regulations for the implementation of the Montreal Protocol. They have regional teams in all regions and networks of National Ozone Officers who are working on the ground. They also work very closely with the countries directly for the implementation to mirror their country programme.

Mr Hu began with an outline of the Montreal Protocol and its obligations. The Montreal Protocol is considered to be one of the most successful multilateral environmental agreements. All countries have ratified it and it has already succeeded in phasing out 99% of ozone-depleting substances (ODS), including hydrochlorofluorocarbons (HCFCs). The Montreal Protocol also contributes to the Sustainable Development Goals by mitigating climate change because ODS are a thousand times more powerful greenhouse gas (GHG) than carbon dioxide (CO₂). The first obligation of the Parties to the Protocol is to control the consumption of ODS, the production being not so relevant as most countries don’t produce ODS. The second obligation is to report the consumption of ODS, which is assisted by a licensing system.

Mr Hu noted the efforts made by Pacific Island Countries in the establishment of a National Ozone Unit, with at least one full-time officer for the implementation of the Montreal Protocol. Another achievement is having the HCFC licensing and quota system in place and they will also ban ODS-based refrigeration or air conditioning equipment. There are also efforts for capacity building for Customs and Ozone Officers and for the technicians servicing the refrigeration and air conditioning units.

In terms of the implementation of the regulations, Mr Hu highlighted the good achievement of the HCFC licensing and quota system that has been put in place. However, there are issues with enforcement, loopholes that need to be filled, and the monitoring, reporting, verification and enforcement system that could be improved with clear procedures for

licensing and clear principles for quota allocation, and regular reporting from importers. In addition, the legislation could be improved and clearly define the powers of the influential body and the like for the inspections.

Mr Hu highlighted the good collaboration between stakeholders and the training of national Ozone Officers, Customs and Enforcement Officers. He concluded by stating his intention to seek more cooperation and support from the Attorney-General’s Office and from judges, and with colleagues at the national and regional levels.

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3.5. Session 5 plenary: The role of lawyers in advancing the environmental rule of law in the Pacific

Chair:

Mr Nicholas Barnes, Assistant General Counsel, Natural Waters of Viti Ltd, Fiji

Speakers:

Dr Sangeeta Mangubhai, Director, Fiji Country Program, Wildlife Conservation Society

Mr James Sloan, Partner, Siwatibau & Sloan Lawyers, Fiji

Justice Vergil Narokobi, Justice of the National and Supreme Court of Papua New Guinea

Dr Bal Kama, Solicitor, Environmental Defenders Office, Australia

Mr William Wylie Clark, President, Fiji Law Society

Rapporteur:

Ms Miriam Bhurrah, Geo-spatial Information System Officer, IUCN Oceania Regional Office

Lawyers play a key role in the effective implementation and enforcement of the environmental rule of law in the Pacific, be it in environmental or climate change litigation, defending the human rights of environmental defenders, drafting contracts to support the implementation of environmental and conservation projects, providing legal advice on environmental legislations, ensuring environmental standards on social and environmental safeguards, representing communities that are dealing with pollution or environmental crises in their communities. This session focused on the role of lawyers in a broad range of environmental issues and in advancing environmental law in the Pacific.



Mr Nicholas Barnes

Assistant General Counsel for Natural Waters of Viti Ltd, welcomed the guests and attendees and introduced the speakers of this session.



Coral reefs in Beqa, Fiji.
Photo Credit: Helen Pippard



Mr William Wylie Clarke

Is President of the Fiji Law Society, Legal Adviser to Westpac Fiji, and on the governing board of the International Federation of Red Cross and Red Crescent.

“... in my view, just being a lawyer and knowing what the law is does not make you very useful. I think you need that broader experience in context and qualifications that come with having a more well-rounded knowledge of the world and how life works than just knowing what the law is.”

In his presentation, Mr Clarke considered what the rule of law is and the role of lawyers in advancing the environmental rule of law in the Pacific region. He shared a generally accepted definition of the rule of law principles: “everyone is accountable under the law; the laws are just, so that they apply evenly; open government and accessible; and impartial justice.”

Mr Clarke emphasised that in the context of the Pacific Islands – which are small, physically remote, with few natural resources, highly reliant on natural resources for income and livelihoods and subjected to external forces and environmental consequences outside of their control – upholding the rule of law is fundamental to people’s well-being but it is an international and collaborative process, not a local and closed one.

On the role of lawyers in advancing the rule of law and what it means in relation to the advocacy of the environmental rule of law, Mr Clarke shared his view that lawyers must act as advocates and educators, not only of clients but also with their communities where it is possible. He said this also means that lawyers have to advocate law reform. He then referred to Fiji’s Environmental Management Act which is 16 years old and said it needed updating.

Mr Clarke also highlighted that another role and responsibility of lawyers is to work with the government and, where possible, to try and encourage the government to dedicate more resources to the administration and enforcement of environmental law.

He then spoke about the responsibilities that are placed on lawyers in the Pacific. He emphasised the responsibility and duty of care that lawyers have, both as individuals and as

part of the Fiji Law Society, in advocating the principles of the rule of law and the environmental rule of law, and to call out the practices and systematic issues which undermine the principles of open and transparent government, law making and enforcement, and the equal application of law.

Mr Clarke moved on to address the obstacles in the path of making lawyers more effective advocates. Apart from limited resources, he highlighted the issue of knowledge and said that in the Pacific, we simply don’t have enough opportunity to practise and gain experience.

He said there are also issues associated with the education system, with law students in Fiji entering the workforce straight after completing their LLB, whereas in Australia and New Zealand a combined degree or a postgraduate law degree is required before starting work as a lawyer. Having broader experience in context and qualifications that come with having a more well-rounded knowledge of the world and life experience would make better lawyers, Mr Clarke said.

Another challenge that he highlighted was the severe under-resourcing of courts, resulting in their inability to administer and adjudicate quickly, and he noted that these delays could contribute to environmental damages.



Justice Narokobi

Is Justice of the Supreme Court of Papua New Guinea and former President of the Papua New Guinea Law Society. He specialises in constitutional law, legal theory and litigation.

“A number of Constitutions around the world, when they were enacted, did not wish for the Constitution to be a legal document for only lawyers to interpret and have the courts enforce. Instead, they wanted the law to say something more, about their identity, culture, environment and the direction they wanted their country to go in the future.”

In his presentation, Justice Narokobi focused on ‘The enforcement of constitutional provisions for environmental protection’ and drew upon his experience in Papua New Guinea to consider the space where law, policies and politics intersect.

He pointed out that a number of Constitutions around the world did not wish for the Constitution to only be for lawyers to interpret and for the courts to enforce, but they wanted it to reflect the national identity, culture and environment, and the direction that country should go in the future. In some countries, including Fiji, the Constitution provides for the right to a clean environment as a substantive right. In other countries, such rights are in the preamble. On that point, Justice Narokobi noted that the legal status the preamble occupies is a matter of debate when it comes to enforcement in various jurisdictions, especially in the common law jurisdictions, which is certainly true for Papua New Guinea.

Justice Narokobi quoted the fourth national goal declared in the 1975 Constitution of the Independent State of Papua New Guinea: “We declare our fourth goal to be for Papua New Guinea’s natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.”

He stressed that section 25 of the Constitution also confers the legal status of the National Goals and Directive Principles (NGDP). Justice Narokobi then discussed the issue of justiciability of the NGDP and the way to give it prominence through a contextual method of interpretation. He gave the example of a case that attempted to give prominence to the NGDP for the protection of the environment and succeeded in the first instance. This case involved persons who had customary interest in the province and were concerned about the potential environmental damage to marine life by the planned waste disposal system from a mining company. However, the Supreme Court took a different view on appeal.



Dr Sangeeta Mangubhai

Is the Director of the Wildlife Conservation Society’s Fiji Country Program. She holds a PhD in coral reef ecology from Southern Cross University, Australia. Her presentation was entitled ‘Considering the rights of local communities through an intersectional lens’.

“... we often talk about having equal rights for all or an equal society ... but in reality, our individual social identities actually create a lot of inequalities and as a society we need to look at these things through an intersectional lens and really think about how institutions, the processes and the structures we might put in place, including the laws and policy, affect the rights of people in different ways.”

Dr Mangubhai clarified that in the context of her presentation, ‘local communities’ meant any group of people and not just Pacific Islanders or Indigenous communities, and she defined ‘intersectional lens’ as “a framework for understanding how aspects of a person’s social identity combine and create different levels of discrimination or privilege.” Aspects of a person’s social identity may include gender, ethnicity, culture, caste, education, economic status, disability, colonial history and resource or property access rights. Intersectionality is considered crucial when working, or having an interest, in social equity or social justice issues.

Dr Mangubhai said that in her presentation she used Fiji as a case study, but that most observations would be relevant to other Pacific Island Countries.

In outlining the context of Fiji, Dr Mangubhai highlighted that the land and marine tenure systems underpin natural resource management. The iTaukei (Indigenous Fijian) land represents 88% of the land, with the remaining 12% being either state-owned land or private freehold land. The iTaukei Land Trust Board is responsible for securing the iTaukei land ownership rights and for managing the land for the benefit of their owners, for example, for commercial transactions or leases.

The land tenure system in Fiji is largely patriarchal and, from a gender perspective, the rights of men are generally more static compared to the rights of women, which might change throughout her life, for example, when she marries. This shows that gender matters in terms of land rights. In terms of ethnicity, approximately 38% of Fijians are of Indian descent, whose ancestors were brought to Fiji at the end

of the 19th century. They do not have an automatic right to land because they are not Indigenous Fijians.

Through an intersectional lens, access to land in Fiji is determined by the social factors of ethnicity and history. Dr Mangubhai highlighted the implications of social factors, such as gender and ethnicity, in marine and land resources management that are revealed by looking through intersectional lens. She said that environmentalists when expanding their field from biology to social research start having to think a lot more about social equity and fairness. When looking at natural resource management, the differences between gender and ethnic groups create very complex power relations and dynamics. Dr Mangubhai highlighted that this complex system of different rights creates different levels of privileges and vulnerability which can be exacerbated in times of crises, such as a big cyclone or a pandemic, as her research has shown.

She concluded by stressing the need to think about how the institutions, processes, structures, laws and policies that we put in place, including when aspiring to comply with international standards, affect the rights of people in different ways depending on their social identity.



Dr Bal Kama

Is a solicitor at the Environmental Defenders Office in Australia and works with partners in the Pacific. He has a PhD in Law, and previously he worked for Australian Commonwealth agencies, taught at the University of Canberra and the Australian National University (ANU), and was a legal consultant with UN Women in PNG and with the Tuvalu Law Reform Committee.

“Now more than ever, environmental law needs to be in the important place of the consciousness of the Pacific people, their leaders and the Constitution.”

The topic of Dr Kama’s presentation was ‘Towards a new Pacific constitutionalism’. He began by describing the ‘old Pacific constitutionalism’ that we live under, which was influenced largely by colonial notions and was based on decolonising our societies, creating a sense of stability and focused on development, so that environmental issues were peripheral. Dr Kama argued that by contrast the new Pacific constitutionalism and the vision of environmental law should be shaped around making environmental protection a centrepiece.

Dr Kama pointed to the three shifts that need to happen in legal terms. The first shift is a shift in definition and conception of environment and environmental law to reflect Pacific contexts and Indigenous ideas. He gave the example of the Western thinking, adopted in the Pacific, that humans are to use the environment as they please; whereas for Pacific societies, the relationship between the environment and people is “one of intimate coexistence and stewardship.”

The second shift is the way that courts and environmental law judges deal with environmental law issues, not through a narrow legalistic lens but as social issues that demand a socio-legal approach towards solving them. It, therefore, demands that judges be creative, apply judicial innovation, go beyond legalism and have an active social function.

Dr Kama referred to the presentation made earlier by Justice Kandakasi, highlighting section 57 of the Constitution of the Independent State of Papua New Guinea that gives judges the voluntary powers to have an active social policing function. Dr Kama suggested that the Constitutions of the

Pacific may need to adopt similar provisions as part of this new constitutionalism, towards having the environment as the centrepiece of all societies and its protection a priority. Dr Kama said that judges need skills and well-researched submissions from lawyers to give them the ammunition to protect the environment, and he argued that lawyers have to help judges on that front.

The third shift is to make environmental law an underlying and enforceable principle of Constitutions in the Pacific. These provisions should not merely exist in the preamble but should also be in the substantive text of the Constitution, with clear duties and obligations for the government to take environmental concerns into account when drafting policies and making decisions.

Dr Kama concluded his presentation with this statement: “If environmental law is to be the next pandemic, as Justice Kandakasi talked about this morning, then the need for a new Pacific constitutionalism where environmental law and environmental protection are elevated as the benchmark for Pacific development is even more urgent.”



Mr James Sloan

Partner at Siwatibau & Sloan Lawyers and former Chair of the Executive Committee of the Fiji Environmental Law Association, addressed the subject 'The role of lawyers in advancing environmental law in the Pacific' from his perspective as a Fiji lawyer. He highlighted that he would talk about the things that all lawyers in the Pacific can do, not only specialised environmental lawyers. Given that environmental law is such a specialised area, Mr Sloan said, every lawyer should be an environmental lawyer.

“... personnel seems to be the main challenge ... I would say there may be not enough environmental lawyers, judicial training and, perhaps, judicial protocols ...”

The first role of lawyers in advancing environmental law is to support good decision-making. Mr Sloan suggested ways in which lawyers can do this, including assisting to explain the laws through outreach and training. He gave the example of the Fiji Environmental Law Association, which he assisted in creating in 2008 to raise more awareness on environmental laws at a time when the Fiji Environmental Management Act was coming into force. Lawyers can also encourage citizens' involvement in decision-making, he said, and this is best done by grassroot-level NGOs. Lawyers can also do pro bono work and they can advise their clients to encourage higher standards.

Secondly, lawyers can uphold and encourage good decision-making processes, and he suggested that this could be done by ensuring that those who have environmental or property rights are heard, and that the processes are complied with. Thirdly, lawyers can assist in bringing cases before the court. Finally, lawyers assist the Director of Public Prosecution, where appropriate.

With regards to the situation in Fiji, Mr Sloan listed Fiji's assets, which include: the constitutional right to a clean environment; the Environmental Management Act, which he argued is still a modern piece of legislation; an established Environmental Tribunal; an active Ministry of Environment; CROP agencies and the Pacific Islands Forum Secretariat with the Office of the Pacific Ocean Commissioner. In addition, Fiji has a very active environmental NGO sector, with the likes of the Fiji Environmental Law Association, IUCN, World Wildlife Fund, Wildlife Conservation Society, Conservational International and others. Increasingly, international development organisations are active in the environmental field in the Pacific. Fiji also enjoys a good level of education, which is important for understanding rights, and customary rights are well recorded. The common law system in Fiji and most Pacific Islands also encourages due process.

On the side of challenges, Mr Sloan mentioned the lack of resources, especially in government personnel, not enough environmental lawyers, judicial training and judicial protocols, as well as the current additional challenge of the COVID-19 pandemic.

Mr Sloan then addressed the issues of how we could improve environmental law in the Pacific and how to make polluters more responsible in the Pacific? He argued that we need more environmental judicial civil precedent. He reviewed the 2020 Fiji Court of Appeal decision in Ramendra Prasad v. Total (Fiji) Ltd, in which Total was found liable for a fuel leak and in which the Court of Appeal upheld the polluter pays principle from the Environmental Management Act.

Mr Sloan, who was involved in this case, summarised the key challenges faced that generally reflect the challenges faced in environmental litigation in Fiji. Briefly summarised, the challenges include:

- 1) The time it takes from the initiation of the case to the final judgment.
- 2) The number of technical reports that the judge must consider.
- 3) The conduct of the polluter, which appears different in other jurisdictions such as Australia where the fines for pollution are much higher than in Fiji and the polluters take immediate action to address any pollution incident.
- 4) The high cost of experts, even if legal work is pro bono, and this gives the large companies an advantage.

Mr Sloan shared some suggestions for solutions to the challenges identified, which include:

- 1) More people who stand up and uphold the environmental rule of law.
- 2) That lawyers and judges can help with establishing a fairer playing field.
- 3) That environmental cases should be given a higher priority.
- 4) That judges in the Pacific be given more technical assistance with expert reports as they can be very complicated.
- 5) The issue of case management protocols.
- 6) That the cost of independent assessment report be borne by the polluter.
- 7) That fines for pollution be updated to reflect the cost of pollution and prevent pollution fines to be absorbed in the polluting companies' profits and costs.
- 8) That more support be given to the plaintiffs.

**INAUGURAL
IUCN OCEANIA
ENVIRONMENTAL
LAW
CONFERENCE**

**DAY 3
16 July 2021**

3.6. Conference Closing

Chair:

Ms Maria-Goreti Muavesi, Senior Environmental Legal Officer, IUCN Oceania Regional Office

Speakers:

Mr Andrew Foran, Lead Rapporteur; Regional Programme Coordinator and Head of the Pacific Centre for Environmental Governance, IUCN Oceania Regional Office

Ms Patricia Parkinson, Lead for Conference Statement Drafting Team; Founding Director of Environmental Law Oceania Consultancy, Fiji

Closing remarks:

Mr Mason Smith, Regional Director, IUCN Oceania Regional Office

Dr Georgina Lloyd, Regional Coordinator (Asia Pacific) of Environmental Law and Governance, UN Environment Programme

Ms Maria-Goreti Muavesi

Rapporteur:

Mr Uraia Makulau, Legal Consultant, IUCN Oceania Regional Office



Ms Maria-Goreti Muavesi

welcomed all to the official closing session of the Inaugural IUCN Oceania Environmental Law Conference and highlighted the great amount of information and knowledge on environmental law governance, challenges and opportunities in advancing the environmental rule of law that was shared throughout the conference. She extended her thanks to the team of rapporteurs who worked in the background to record all the information shared during the sessions, and invited Mr Andrew Foran, Lead Rapporteur, to present an overview of the last three days.



Mr Andrew Foran

Mr Foran thanked the team of rapporteurs and shared a few highlights of the conference, noting that a full synthesis report of the conference was being prepared. Mr Foran then talked the audience through the three days of the conference, briefly outlining the key points of each session and presentation. (The full synthesis report can be accessed in the Additional Resources section of this publication.)



Ms Patricia Parkinson

Presentation of the draft Outcomes Statement. Ms Parkinson presented the draft Inaugural IUCN Oceania Environmental Law Conference Outcomes Statement that had been prepared during the conference by a team of distinguished experts that she had the honour to lead. They were Prof. Ben Boer of the University of Sydney Law School, Dr Georgina Lloyd of UNEP Asia Pacific, Ms Briony Eales of the ADB and Mr Kenneth Kassem of IUCN Oceania. She also thanked the team of rapporteurs led by Andrew Foran, whose reports contributed to inform the drafting of the Outcomes Statement.

Ms Parkinson highlighted that the Outcomes Statement was meant to reflect key points that had been discussed and the most serious concerns that emerged throughout the conference. It identifies the 10 priority areas for advancing environmental law in Oceania. She stressed that the Outcomes Statement was not a formal declaration, thus didn't contain any formal commitments. Rather, it was meant to be a blueprint for priority actions in the years to come to 2030 to address the most serious regional environmental concerns through advancing the environmental rule of law.

"We do not intend this Outcomes Statement to become just another piece of paper on the shelf, but a reference that can be used by IUCN stakeholders and partners to identify collaboration areas and to address the priority issues highlighted in the conference and highlighted in the statement," she said.

Ms Parkinson then briefly outlined the key points of the Outcomes Statement, including the recognition of the urgent need to advance environmental law in light of the environmental threats faced by Oceania's Small Island Development States.

She said: "The participants at the conference recognise that Oceania's Small Island Developing States, also referred to as Large Ocean Small Island Developing States, are facing urgent and existential environmental challenges as a result of extreme exposure to the impacts of the global environmental crises affecting the oceans and the climate. Advancing environmental law in Oceania, towards 2030 and beyond, is critical to addressing, adapting to, and mitigating the impacts of these challenges. Through collaboration, partnerships and resource and knowledge sharing, some positive developments are taking place."

She also outlined the 10 priority areas identified in the Outcomes Statement:

1. Strengthening the environmental rule of law is an overarching goal for good environmental governance.
2. Strengthening the environmental rule of law in Pacific Island Countries promotes Sustainable Development Goal 16.
3. Recognise formally the role of customary law and practices and of traditional knowledge in environmental and natural resources management.
4. Support the development of adequate and effective environmental legislation.
5. Strengthen equitable access to justice and improve environmental and climate change adjudication processes and institutions.
6. Improve compliance and enforcement of environmental law.
7. Enhance environmental legal awareness of communities and the capacity of enforcement officers.
8. Support the health, resilience and sustainable management of ocean and marine ecosystems through law.
9. Improve the legal framework for pollution control and waste management and strengthen the regional and global legal frameworks to prevent plastic pollution.
10. Strengthen partnerships at global, regional, national and local levels for improved environmental rule of law and conservation outcomes (Sustainable Development Goal 17).

Ms Parkinson concluded her presentation by saying that the full text of the Outcomes Statement would be finalised and shared online shortly after the conference.

Closing remarks



Mr Mason Smith
Regional Director, IUCN Oceania Regional Office

Thank you, good afternoon, good evening, and good morning, ladies and gentlemen. I have much pleasure in providing very brief closing remarks as we round off the three days of discussion and debates on the theme 'Advancing environmental law in the Pacific: Towards 2030 and beyond'.

For me personally, the past three days have been a fascinating journey listening in on some of these sessions and I'm sure we've all learnt something from the conference. I wanted to show you this slide to give you an indication of the effort that was put into planning and hosting the conference itself. Over three days, 24 hours, five donors, six partners and 17 rapporteurs, over 700 registered participants from 57 countries – that is amazing – 58 speakers, 12 chairs of the various 18 sessions, 16 support staff including my team here in IUCN Suva, but more importantly, our colleagues from Solomon Islands and Vanuatu, seven plenaries and I guess most importantly, the infographic on the bottom right of the screen which is the draft Outcomes Statement that Patricia has just outlined for us.

And I say it is important because I have no doubt that your collective experience and expertise will determine for us what is to be implemented in the coming months and I

hope that in the coming weeks and months, we will see the implementation of some of the priority areas that Patricia has mentioned to ensure that this conference is not only a talk fest, but that we have some actionable outcomes from it.

Having said that, IUCN and the Pacific Centre for Environmental Governance, we stand ready to assist in any of these areas and we will be reaching out to the environmental law associations in the region and, of course, our stakeholders to partner and collaborate with them in this area. I urge you all to remain in touch with Maria and her team at the Environmental Law Centre and, of course, with the team that has put together this conference.

It's been a long three days so allow me to again thank our sponsors, our partners, our distinguished speakers and panellists and, of course, all the participants for your active participation in the last three days. Finally, a big shout-out and vinaka vakalevu to Maria and the conference planning team. Thank you all for the fantastic work and I am sure we will all benefit from the outcomes of this conference. With that, thank you very much, stay safe, and vinaka vakalevu.

Some stats from the inaugural IUCN Oceania Environmental Law Conference in conjunction with the 2nd World Environmental Law Congress:



Closing remarks



Dr Georgina Lloyd

I want to simply say, the United Nations Environment Programme has been delighted to support this conference and huge congratulations to the IUCN Oceania Regional Office for hosting this Inaugural IUCN Oceania Environmental Law Conference.

It has been said many times and by many speakers over the last few days that this is an incredibly important achievement and a landmark event. So, thank you and well done to everyone in the IUCN team, Maria, Mason, John, Emily, Andrew, Ken and so many others for your tireless work. I also want to thank everyone at the hubs in Vanuatu and Solomon Islands and a special thank you to the translators who worked behind the scenes, a very exhausting work.

Also, our acknowledgements to all the partners and long-standing comrades in advancing environmental law, at IUCN World Commission on Environmental Law, the Asian Development Bank, the Pacific Network for Environmental Law, the Environmental Defenders Office and, of course, acknowledging the financial support of the United States Embassy in Fiji and the Pacific Islands Forum Secretariat.

In my remarks during the high-level panel on the first morning of the conference, I referenced the importance of the conference tackling the topic of enforcement, civic space and the protection of environmental defenders, customary law and traditional knowledge, intergenerational equity and procedural rights. I think we can say with confidence that this has been successfully achieved.

In addition, we've heard about other critical elements of advancing the environmental rule of law, which includes environmentally conscious lawyering. In the last session, we heard that every lawyer should be an environmental lawyer, that the role of judges in upholding the environmental rule of law and the potential for new approaches, particularly measures such as environmental tribunals and understanding the cultural context of local realities and solutions that are put forward to advance environmental laws and ensure their implementation.

There have been such rich discussions, we've also heard of the socio-legal approaches, the understanding of the public interest in all environmental cases, the need to uphold environmental rights and the role of local communities and, of course, environmental human rights defenders. And, of course, the need to build capacity, capacity of environmental lawyers, judges and the community, this has all been raised and importantly, they are echoed in the conference statement which really, as Mason said, is an important landmark. This

statement will be a benchmark as we move forward, it's a call to action and it is also a normative framework for that continued action.

What is clear from the conference is that we are all striving towards improved environmental justice, but our collective action is needed, and UNEP looks forward to working with partners to continue advancing environmental law within Oceania. We will be continuing our judicial capacity building and working with the Fiji Environmental Law Association and other partners in finalising the environmental law curriculum for the Pacific that will be available on InforMEA in the near future.

Thank you once again to everyone who has participated in these incredibly fruitful last three days. I really look forward to seeing as many colleagues and friends hopefully in person in the near future, but thank you so much and with that I hand back to Maria.

Thanks and closing



Ms Maria-Goreti Muavesi

It has definitely been a great and exciting three days. But before we leave, I would like to mention the great team we have here behind the scenes, that has been working around the clock for the past four months in putting this programme together.

To the chairs who have moderated each of the sessions fantastically – it was good to have them onboard. To all of our rapporteurs and also to the two who have been doing a great job behind the scenes helping all of our chairs in the questions that have been raised by the attendees and the participants straight to the speakers. Vinaka vakalevu to Uraia and to Akanisi and to the team of IUCN volunteers who had worked with you to ensure that questions raised were asked to the speakers by the chairs.

I also want to thank our IT team, they've done a great work and especially as this is the first time that we have facilitated and convened a conference and also to have it on webinar mode or virtually and also to the team that worked in the past few weeks from Solomon Islands and Vanuatu to ensure that their hubs were well set up for the conference.

Last, but not least, to our session managers: to Emily Gaskin, who's located in Seattle and has been with us for the full three days conference. She is the Executive Officer of WCEL, thank you so much Emily, you've brought so much knowledge with you to the team here at IUCN and we are grateful to the World Commission on Environmental Law for partnering with us to ensure that this conference was possible, especially through the virtual platform, for allowing us to use the Whova platform which has been very beneficial not only to us but to the staff here at IUCN.

Also, to John Kaitu and to Amelia Caucau, our staff here, thank you so much for all the help, for being the people who have communicated with our speakers and our chairs and ensuring that they were on time and doing practice runs to ensure that everything was in order when we started broadcasting. So, thank you very much to the three of you and especially as well, the many other staff here at IUCN who have been working in the background, and so I thank all of you also so much and I look forward to the next one. I hope it's a similar success, and it has been a success and so thank you so much to everyone.

To all our attendees, vinaka vakalevu for joining us these past three days and a special shout-out again to all our lawyers

here in Fiji, we have come to the end of the conference, so thank you very much for joining us and I hope that this conference, not only to the lawyers here in Fiji, but also the lawyers who have joined us for the past few days from around the globe and around the region, that we may have encouraged you to become environmental lawyers. We need more environmental lawyers who have passion for the environment, for our nature, to be here helping our communities here in the region.

So, thank you once again everyone. Vinaka vakalevu, I bid you all goodbye and a safe weekend. Vinaka and ni sa moce!



**IUCN WORLD
CONSERVATION
CONGRESS
MARSEILLE,
FRANCE**

**8 SEPTEMBER
2021**

4. Environmental law roundtable dialogue: The future of environmental law in Oceania

Chair:

Ms Maria-Goreti Muavesi, Senior Environmental Legal Officer, IUCN Oceania Regional Office, Fiji

Keynote address:

Dr Grethel Aguilar, IUCN Deputy Director General –Regional and Outposted Offices

Roundtable speakers:

Dr Georgina Lloyd, Regional Coordinator (Asia and the Pacific) for Environmental Law and Governance, UN Environment Programme, Thailand

Prof. Denise Antolini, Professor of Law at the University of Hawai'i; Member of the WCEL Steering Committee

Justice Michael Wilson, Associate Justice of the Supreme Court of Hawai'i

Ms Lolita Gibbons-Decherong, Programme Manager, Palau Conservation Society

Dr Christina Voigt, Professor of Law at the University of Oslo; Chair of the IUCN World Commission on Environmental Law, Norway

Mr Ayman Cherkaoui, Senior Manager, Mohammed VI Foundation for Environmental Protection, Morocco

Mr Mason Smith, Regional Director, IUCN Oceania Regional Office, Fiji

**IUCN WORLD
CONSERVATION
CONGRESS
MARSEILLE,
FRANCE**

**8 SEPTEMBER
2021**

This session focused on the opportunities for advancing environmental law in Oceania by drawing from the outcomes of the recent Inaugural IUCN Oceania Environmental Law Conference that was held from 14 to 16 July 2021 in conjunction with the 2nd World Environmental Law Congress (Oceania Environmental Law Congress).

The IUCN World Conservation Congress presented an opportunity for the IUCN Oceania Environmental Law Programme, in partnership with the IUCN World Commission on Environmental Law, to formalise and present the Outcomes Statement and showcase at this global stage the challenges that countries in the Pacific continue to face in effectively implementing the environmental rule of law and the solutions that were identified during the conference to assist these countries and the many organisations that work towards building and advancing environmental law in the region. The session consisted of an overview presentation of the conference and the Outcomes Statement and insights from the speakers on the strategic opportunities for implementing aspects of the Outcomes Statement.

The chair



Ms Maria-Goreti Muavesi

welcomed the audience and introduced the theme ‘The future of environmental law in Oceania’ and the context of this roundtable dialogue, an IUCN World Commission on Environmental Law and IUCN Oceania Regional Office joint event held at the Oceania-Hawai’i Pavilion at the IUCN World Conservation Congress.

Ms Muavesi said that the Congress and this event in particular provided a global forum to present and discuss the priority areas for advancing environmental law in Oceania that had been identified during the Inaugural IUCN Oceania Environmental Law Conference held in conjunction with the 2nd World Environmental Law Congress in July 2021.

The distinguished speakers on the panel had been invited to address certain aspects of the priority areas identified in the

IUCN Oceania Environmental Law Conference Outcomes Statement. She noted with regrets that both Justice Antonio Benjamin, Justice of the High Court of Brazil and outgoing Chair of the IUCN World Commission on Environmental Law, who was to be this event’s co-chair, and Dr Grethel Aguilar, IUCN Deputy Director General, had been held up in the IUCN Members’ meeting and were unable to join the event in person. Dr Aguilar’s intended address, however, is shared below.



Yellow-bibbed lory.
Photo credit: Jan vanderPloeg

Keynote address



Dr Grethel Aguilar
IUCN Deputy Director General –
Regional and Outposted Offices

Good morning, bonjour, buenos días, bula vinaka.

On behalf of IUCN, I am delighted and honoured to be invited to provide a keynote address by the session organisers and partners: our Secretariat office in Suva, Fiji, the IUCN Oceania Regional Office through the leadership of the Regional Director, Mason Smith, and by the IUCN World Commission on Environmental Law through the leadership of my good friend and colleague, Justice Antonio Benjamin. Thank you very much.

This session will prove to be an exciting one given the calibre of the esteemed speakers lined up to participate in this dialogue. I want to especially thank the partnership between the Oceania Regional Office of IUCN and Hawai'i Members of IUCN who, through their partnership and commitment to participating in the Congress, have made this pavilion a reality and so allowing for this session to come to fruition. It is a pity though that my colleagues from the Oceania Office, but one staff, were not able to make it to Marseille and be with us physically. I do understand though that they are joining us remotely but at a very late hour. I commend them for the perseverance and commitment to participate despite the huge difference in time zone.

My keynote address will focus on the topic 'Conservation of nature and the role of IUCN: Challenges and opportunities'. When we talk about conservation of nature, we reflect on what our biodiversity or our environment around us means to us. In the context of Oceania, a region rich in biodiversity and situated in the largest and deepest ocean basin on Earth, nature is viewed not only as its main source of livelihood, but as an ally that contributes to the economic prosperity of the region.

The State of Conservation of Oceania Report reported that while plants and animals that inhabit Pacific islands and seas are diverse and unique, they are also under pressure. The Pacific relies heavily on agriculture, fisheries and forestry; all key primary export industries that suffer from climate change impacts and unsustainable human activities, but where opportunities for climate adaptations and mitigation can be actioned, including carbon sequestration and sustainable agriculture and fisheries activities.

The ocean and lands of the Oceania people have deep-rooted connections to traditions and customs that are of time immemorial and which contribute to conservation

measures implemented at national and regional levels. Communities depend on nature's resources not only for food or job security, but also for healthy nutrition and physical and mental wellbeing. Oceania's global environment transcends borders. Protecting nature is therefore everyone's responsibility, no matter which end of the border we are in. Nature is important to people and people are important to nature. Mere words of conserving nature are no longer warranted but action is and time is of the essence. We have heard in the opening statements of this Congress how time is no longer a luxury for us in protecting our environment from the global impacts of climate change and so we must forge ahead and act.

The environmental rule of law is very critical in conserving nature and is an area where action must be undertaken to address the global environmental crises we are facing in the midst of the COVID-19 pandemic. There are concrete areas in which we need to advance:

- We need to address the shortfalls and gaps of environmental laws and institution and endeavour to have fair, clear and implementable laws.
- We must prioritise resources required to effectively implement and enforce environmental laws, including capacity development on emerging principles of environmental law such as in *dubio pro natura* and non-regression and precautionary principles in courts.
- We need to address the gaps that courts have in addressing environmental cases to ensure that there is accessible, fair, impartial, timely and responsive dispute resolution mechanisms.
- We must address the human rights violations that occur in environmental protection and conservation to ensure that rights to use and access resources are not denied; this includes protecting environmental defenders to ensure that those who are most vulnerable to environmental harms are not also left forgotten by a legal system that should protect and vindicate their rights.

Last July, IUCN and partners celebrated the Inaugural IUCN Oceania Environmental Law Conference in conjunction with the 2nd World Environmental Law Congress, creating an opportunity for the region to accelerate and strengthen partnerships. As a result of this effort, a roadmap in the form of a Conference Outcomes Statement was put together to inform and guide initiatives in the years ahead towards the achievement of environment protection and conservation

objectives through law. The Outcomes Statement outlines 10 key priority areas in advancing environmental law with the aim of aligning with and complementing the objective of multilateral environmental agreements at both regional and international levels, as well as global and regional strategies and much more.

IUCN plays a pivotal role in creating more opportunities for the advancement of environmental law in Oceania and globally. The World Commission on Environmental Law and the Environmental Law Centre in Bonn are key partners in this work and will contribute with their technical expertise to the region. Partnerships are necessary and it's great to have UNEP and IUCN as well as other regional and national partners work together to support this work.

In the last 50 years, we have seen progress in the development of environmental law at all levels. On the other hand, there is much to do and I am sure together we can achieve the desired goals of conservation and natural resources and well-being for all.

Allow me to finish by indicating that the Pacific Island Countries are stewards of immense and globally important ecosystems and host an enormously precious share of the planet's biodiversity. Communities are at the heart of environmental law in the Pacific Islands, where customary land tenure systems are essential, and natural resources are customarily owned, governed and managed by Indigenous and local communities, in partnership with government.

The effective implementation of legal frameworks depends on many factors: from enhancing the science and policy link to strengthening the judiciary, without forgetting the adequate protection of those who sacrifice their lives for the environment and putting at the centre the recognition of the rights of communities and Indigenous peoples.

So, IUCN is ready to support efforts to advance the implementation of environmental law in Oceania in partnership with our members, communities and governments.

I wish you all the best in your dialogue and please enjoy the IUCN World Conservation Congress!

Merci, thank you, vinaka vakalevu!



Mangrove planting in Lami, Fiji.
Photo Credit: Epeli Nakautoga

Roundtable dialogue

Following warm words of welcome by **Mr Mason Smith**, Regional Director of IUCN Oceania Regional Office, the chair, Ms Muavesi, briefly introduced the distinguished roundtable dialogue speakers, each coming from different backgrounds and expertise, but together having much to offer for the improvement and advancement of environmental law reforms in Oceania. The roundtable dialogue was carried out by each speaker addressing a specific set of questions provided to them prior to the session. (The questions may be found in the Additional Resources section of this publication.)



A crustacean spotted among the reefs, Fiji. Photo Credit: Ken Kassem



Dr Georgina Lloyd

Regional Coordinator for Environmental Law and Governance at the UNEP Regional Office for Asia and the Pacific, spoke of the role of UNEP as the leading authority that sets the agenda for global environment in advancing the environmental rule of law, and highlighted the alignment of this work with the Outcomes Statement of the IUCN Oceania Environmental Law Conference. This rule of law, she said, is critical for the protection of the environment, to deter and disrupt environmental crime and for the promotion of rights for all, including children and youth and future generations, to live in a healthy environment.

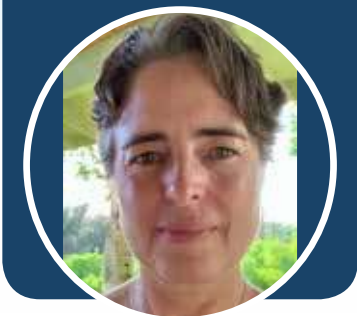
The Outcomes Statement adopted at the IUCN Oceania Environmental Law Conference sets forth the guidance and ambitions for the environmental rule of law in the Oceania region, and a key component to achieving this ambition is through partnerships. One of the vehicles through which UNEP can support the achievement of actions in the priority areas identified in the IUCN Oceania Environmental Law Conference is through the Fifth Montevideo Programme for the Development and Periodic Review of Environmental Law, also known as the Montevideo Environmental Law Programme.

Dr Lloyd highlighted four areas for UNEP to address in Oceania under the Montevideo programme. The first is supporting Member States to meet international environmental commitments supporting the development of adequate and effective environmental laws and regulations through technical legal assistance. The second is building

strong, transparent institutions to strengthen effective implementation of environmental law.

The third is promoting the environmental rule of law, supporting access to information, access to justice, and participation in decision-making for all stakeholders at all levels and supporting implementation of laws through assistance to enforcement agents. And the fourth area is advancing environmental law, a sustainable environment, and rights-based approaches to environmental law.

In conclusion, Dr Lloyd commented on the significant areas of alignment between the Fifth Montevideo Environmental Law Programme and the priority areas for advancing environmental law in Oceania, as identified in the IUCN Oceania Environmental Law Conference Outcomes Statement.



Prof. Denise Antolini

Professor of Law at the University of Hawai'i and Member of the WCEL Steering Committee, started her presentation by stressing that although Hawai'i is technically part of the North America, the island communities of Hawai'i and Oceania are embraced by the same ocean with deep bio-cultural connections and that Hawaiians' heart and soul are in Oceania.

Prof. Antolini then addressed the question 'how can we strengthen environmental law education in the region to attract more people and really build capacity?' with three suggestions.

The first was to really accelerate and amplify the partnership between the programmes in environmental law at the University of Hawai'i and the University of the South Pacific (USP). She stressed the common interests that bind together the two programmes, such as the Pacific Indigenous culture that is deeply rooted not only in their communities, but also in their legal system, and in the ocean and marine issues as well as in the climate and biodiversity crises that are changing the islands. She highlighted the possibilities opened by the virtual world, and the many wonderful exchanges, formal and informal, they already had between their two programmes, and their willingness to expand their focus on Pacific Islands work.

Prof. Antolini's second point in relation to building capacity was to offer the idea of the environmental fellowships model that they had created in Hawai'i. She explained how postgraduate environmental law fellowships grew organically, starting in 2006 with the placement of one recent graduate in a State Department as junior in-house lawyer,

and how its success led to the growth of this programme. She commented that this law fellowship model creates opportunities in the field for graduates in Hawai'i and for USP graduates who don't necessarily want to work in the private sector and may not be able to find some of those scarce NGO jobs.

Thirdly, Prof. Antolini shared her new idea of developing a formal partnership, to be called the Oceania Environmental Law Global Partnership 2020 to 2030, between the World Commission on Environmental Law, the Global Judicial Institute on the Environment, IUCN Oceania Regional Office, Hawai'i University William S Richardson School of Law, the University of South Pacific and UNEP. She explained that it would involve, in addition to the conventional ways of exchanging knowledge and partnerships, "doing things unconventionally" to better appeal to youth and re-energise themselves. She gave some examples, such as study tours in the field, meeting with communities, engaging their network in pro bono projects, and also developing pipeline and leadership programmes for youth undergraduates and even engaging in advocacy for the environmental rule of law at the national and international levels.



Justice Michael Wilson

Associate Justice of the Supreme Court of Hawai'i, talked about the role of a judge with respect to applying the law to the facts that are unique to the Oceania region. The most important factor in the Pacific region, said Justice Wilson, is the future. He stressed that Pacific communities are the most threatened by climate change impacts. He recalled extreme weather events impacts such as the 'rain bombs' in Hawai'i – the last one having left that part of the island unusable for an entire year – and commented that Oceania is at the frontline of sea level rise and some islands facing the elimination of their culture and their homeland.

Justice Wilson emphasised that this set of facts shaped the role of a judge. The young generations are going to experience the moment when global warming reaches 1.5 degrees Celsius, he said, and there will be an outreach to the courts. That outreach requires a kind of legal analysis that could be considered in terms of one word that has extraordinary legal consequences: emergency. Around the world, future generations of young people will come to the courts for climate change litigation. Justice Wilson stated: "if there is a small island State with a community that has already been facing the threat of having their culture maybe extinguished, that's a pretty serious emergency if it comes to the court."

Justice Wilson raised the question of the role of the judge in this situation, highlighting that the role of a judge is not just to assign blame or just to find fault, it is also to develop solutions. Judges have an obligation to make an analysis

under the law and science may well be involved. It entails that judicial education is something that is really important for judges in Oceania and not just traditional education in terms of the legal subject matter.

On that point, he praised the UNEP programmes mentioned earlier by Dr Lloyd, especially the training programmes that they have for judges. He then commented that some States find that the right to life goes along with the right to a stable climate capable of supporting human life, raising the question of when to apply intergenerational equity. He expressed his gratitude for the community created through the Congress, which is needed with the emerging serious and complex issues faced by judges. On that point, he welcomed the creation of the Oceania Environmental Law Global Partnership proposed by Prof. Antolini.



Ms Lolita Gibbons-Decherong

Programme Manager of the Palau Conservation Society, spoke on Indigenous knowledge systems and practices and the changes needed to current laws that would contribute to the effectiveness of customary conservation measures and tools implemented by countries in Oceania.

Sharing her personal experience of community-based management planning in Palau, she first raised the question of how to ensure that traditional knowledge, local knowledge and local experience are present during the planning process of an initiative or project, and that they are part of decision-making. In relation to protected areas' management systems and design, she highlighted the challenge of making sure that the plan of work or the indicators during the implementation reflect the use and results-based activities that are based on traditional or local knowledge.

The next point addressed by Ms Gibbons-Decherong was on how traditional knowledge and science could be formally incorporated in environment management. In the context of sustainable fisheries management, she gave the example of traditional knowledge and science working hand in hand for determining the minimum size of particular species of fish that could be caught to ensure their reproduction and the sustainability of the fish stock.

Addressing the question of the changes needed to the current legislations in the region to ensure that the law contributes to the effectiveness of customary conservation measures and tools implemented by countries in Oceania, Ms Gibbons-Decherong said there was a lot to be done, specifically with the foundational laws of the land, such as the Constitution of the land. She explained that in Palau there is the Constitution and there is customary law. In practice, people live with and through customary laws. For example, if they needed to harvest ironwood from the Rock Islands,

they would get approval from the chiefs, but would not apply for a permit from a state agency. An issue highlighted by Ms Gibbons-Decherong is that customary law and practices are unwritten and they are getting lost because younger generations take over, and the practices are lost if they are not in statutory laws or somehow formalised. This is what may be needed.

Finally, on the question of identifying the key issues in the implementation of free, prior and informed consent relating to Indigenous people and what IUCN's role is in addressing these issues, Ms Gibbons-Decherong said the key is that "IUCN's role is only as good as what the people ask for." The context is different in each Pacific Island Country, but the key is that the local people have to deliberately be part of resource management planning and enforcing conservation ethics and this needs to be formalised. In Palau, since independence, the chiefs' powers or authority over natural resources have been slowly eroding, not because they were explicitly taken away from them, but because there was a competing authority. As a result, the chiefs don't feel particularly responsible anymore. Ms Gibbons-Decherong concluded by saying that the issue now is "how do we change our foundational laws in our countries so that they can be informed by our traditional laws, our traditional values, especially our core values, and have it be the foundation of our statutory laws and what we enforce today?"

Closing Remark



Dr Christina Voigt,

Newly appointed Chair of the IUCN World Commission on Environmental Law, took the floor to deliver her closing address. She linked the knowledge and close relationship of Pacific Islanders to the ocean and the environment to their history of sea voyagers, when they had to understand and read the environment.

She pointed out that most of the current environmental threats that Pacific Islanders are experiencing are caused in places other than their homes, through long-range causation and cumulative impacts, and that in this context it is very important to facilitate and advance international cooperation and response in regional and multilateral fora. This is indispensable and the Pacific Islanders have accumulated a very strong voice in these fora, being climate change or ocean negotiations, they are visible and they work very hard for the integrity both of the process and the outcomes of these international processes. The challenges they face also need to be recognised in terms of adequate support for finance, technology and capacity building that need to come through these channels and are not always commensurate with the needs of the Pacific Islanders.

Prof. Voigt, mentioning that she was also Chair of the Paris Agreement Compliance Committee, pointed out that the Paris Agreement Implementation and Compliance Committee is a standing body under the Paris Agreement which allows parties to come forward and address the committee with any challenge they face in implementing their obligations under the Paris Agreement. It is not well known that the committee is open to facilitating and helping parties with implementation and compliance, a challenge faced by the Pacific Islands.

Prof. Voigt then identified some new challenges that are not easily addressed by the current international legal framework, such as baselines due to sea level rise and declining exclusive economic zones, noting that the Pacific Islands have been very innovative in this regard, pushing for freezing up baselines. Other aspects not yet adequately addressed at the international level include climate migration and fluctuation of people due to losing their homelands and living conditions on the islands.

Prof. Voigt concluded her address with these words:

The World Commission on Environmental Law is a forum which is meant to provide a platform, a basis for bringing environmental lawyers together from all over the world in order to share experiences, but also to enhance legal capacity both among students, practising lawyers, academics, judges, because we all have something to learn from each other and I hope that the World Commission on Environmental Law can be that convening place for us, for the legal community to have these discourses, these discussions as we've had here today, also in many years to come. But it is not only for sharing experience, it is also a platform to drive change, to push for legal developments, to push for legal innovations in the different regions, depending on what the local needs are, depending on what the national circumstances and requests are. So, we hope to work together very much with you for many years to come.



Ayman Cherkaoui

Deputy Chair of WCEL and Senior Manager for Strategic Development at the Mohammed VI Foundation for Environmental Protection, highlighted in his closing address that clearly there was a lot of room for enhancing collaboration, exchanges, capacity building, and experiences when it comes to the region of Africa, the region of Oceania and beyond. Recognising traditional knowledge, providing support, equitable access to justice, improving compliance and enforcement, environmental legal awareness, pollution control and waste management are but some of the topics that the IUCN Oceania Environmental Law Conference covered that are also discussed not just at the IUCN World Conservation Congress but also in the African Environmental Law Congress.

Mr Cherkaoui told the audience that he is one of the regional facilitators of major groups of stakeholders from Africa accredited to UNEP, and that the African Ministerial Conference on the Environment would soon be taking place and would pay specific attention to environmental issues of importance to the African continent. He said many of the

issues that were discussed in this roundtable dialogue would also be discussed in the context of that group, and it was highly expected that they would be part of the outcomes document.



Mr Mason Smith,

Regional Director of IUCN Oceania Regional Office, began his closing remarks by thanking the guest speakers and the attendees for their presence and contributions, and he acknowledged that strengthening the environmental rule of law is key to the protection, conservation and restoration of environmental integrity, not only in Oceania but also around the world. Mr Smith said that IUCN looked forward to collaborating with the conference partners – UNEP, ADB, the Pacific Network for Environmental Law, the environmental law associations of Fiji, Vanuatu and Solomon Islands, the Environmental Defenders Office and the conservation community in the region – not only to implement the priority areas of the Outcomes Statement, but also to ensure that the environmental rule of law is respected, promoted and implemented across the region through regional strategic partnerships.

He ended his remarks by reiterating that IUCN Oceania Regional Office looked forward to working closely with the World Commission on Environmental Law's new leadership and the IUCN global environmental law team, IUCN Members and Commission Members in the region to have a coordinated approach towards the implementation of the

Outcomes Statement. He concluded by saying that the next four years were going to be very exciting for environmental law, with the new momentum created for environmental progress in Oceania.

5. ADDITIONAL RESOURCES

1. IUCN World Commission on Environmental Law. (2016). IUCN World Declaration on the Environmental Rule of Law. Available at: www.iucn.org/sites/dev/files/content/documents/english_world_declaration_on_the_environmental_rule_of_law_final.pdf
2. Asian Research Institute for Environmental Law. (2021). 'Improving access to justice and environmental rule of law in the South Pacific: The case for an environmental tribunal for the Pacific', paper presented at the Inaugural IUCN Oceania Environmental Law Conference, Virtual conference, 14 July. Available at: www.iucn.org/sites/dev/files/content/documents/case_study_for_an_environmental_tribunal_for_the_pacific.pdf
3. Kingham, F. (2021). 'ADR and expert evidence options for a regional environmental tribunal', paper presented at the Inaugural IUCN Oceania Environmental Law Conference, Virtual conference, 14 July. Available at: www.iucn.org/sites/dev/files/content/documents/adr_and_expert_evidence_options_for_a_regional_environmental_tribunal.pdf
4. Inaugural IUCN Oceania Environmental Law Conference (2021) – Session recordings. Available at: www.iucn.org/regions/oceania/resources/events/inaugural-iucn-oceania-environmental-law-conference/resources
5. Inaugural IUCN Oceania Environmental Law Conference (2021) – Information on speakers, chairs and rapporteurs. Available at: www.iucn.org/sites/dev/files/content/documents/speakers_chairs_rapporteurs_.pdf
6. Inaugural IUCN Oceania Environmental Law Conference (2021) – Programme. Available at: www.iucn.org/sites/dev/files/content/documents/oelc_agenda_final.pdf

7. Inaugural IUCN Oceania Environmental Law Conference (2021) – Conference Information Document. Available at:
www.iucn.org/sites/dev/files/content/documents/oelc_-_information_document.pdf
8. Inaugural IUCN Oceania Environmental Law Conference (2021) – Outcomes Statement. Available at:
www.iucn.org/sites/dev/files/content/documents/conference_outcomes_statement_-_inaugural_iucn_oceania_environmental_law_conference.final__0.pdf
9. Inaugural IUCN Oceania Environmental Law Conference (2021) – PowerPoint presentations. Available at:
https://drive.google.com/drive/folders/19VZuC6xGCVixrdJV3R4TudOo0cQnR_Rg?usp=sharing
10. Environmental Law Roundtable Dialogue: The Future of Environmental Law in Oceania - IUCN World Conservation Congress, Marseille, France (2021) – Agenda. Available at:
www.iucn.org/sites/dev/files/content/documents/wcel-oro_event_-_environmental_law.250821.pdf
11. Environmental Law Roundtable Dialogue – Detailed agenda with questions for speakers. Available at: www.iucn.org/sites/dev/files/content/documents/questions_for_speakers_order_of_speakers_and_time_slots.mgm_.iucn_.pdf
12. Inaugural IUCN Oceania Environmental Law Conference (2021): Synthesis – Rapporteur Report. Available at:
<https://drive.google.com/file/d/1H-njvWXvdhpbvBGf5Ez00v5OwhL3-JfDI/view?usp=sharing>



Solomon Islands group photo. Photo credit: Solomon Islands Environmental Law Association



Breakout groups. Photo credit: Solomon Islands Environmental Law Association



Participants in Vanuatu. Photo credit: Vanuatu Environmental Law Association



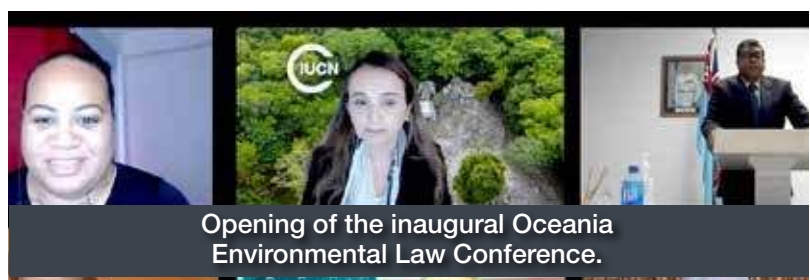
Final session of the 3-day Oceania Environmental Law Conference focussing on role of lawyers.



Virtual breakout room on Day 2 of the conference



Judges session at the Oceania Environmental Law Conference



Opening of the inaugural Oceania Environmental Law Conference.



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COMMISSION MONDIALE DE DROIT DE L'ENVIRONNEMENT
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