

women lawyers. A challenge for the Bar is to pursue both equity and excellence. And in doing so, it is still served by its Declaration of intent adopted in July 1990. That statement may usefully be compared with United Nations Resolution 44/121, adopted on 14 December 1990.

What is finally to be said about the role of the Bar during the period 1960 to 1994? In these submissions we have endeavoured to present the facts we have sifted from our records. Nearly all our leaders from the earliest days are now dead; as regards more recent times, leaders who survive have helped to clarify matters not always clear from the records. We have tried to present our history, good and bad. Thus we expose for public record the racism which existed in certain Bars. We have also recorded the endless protests, objections, and delegations to Ministers seeking to combat yet further inroads in the administration of justice. In the circumstances which prevailed, there is an echo of what Alexis de Toqueville wrote in *Democracy in America*:

"No man can struggle with advantage against the spirit of his age and country, and however powerful a man may be, it is hard for him to make his contemporaries share feelings and ideas which run counter to the general rule of their hopes and desires."

Inevitably the record is imperfect. There is, the TRC has written to us, no judgment to be passed in these proceedings. But in the inquiry of how it was that gross violations of human rights could have occurred in South Africa during the years 1960 to 1994, there is inevitably an assessment of the Bar's role. In that regard, it is not for the Bar to pronounce upon itself. What however it would wish to do, taking pride in those instances in which it, in the ways and on the occasions described above, challenged inroads upon the administration of justice, is also to acknowledge and regret that there were occasions on which yet more could have been done. At times so impregnable did the legislative and executive fortress seem to be that Bar leaders despaired. Just ten years before a commitment to transition to democracy was announced, Kentridge SC wrote (in (1980) 128 *University of Pennsylvania Law Review* 621) quoting William the Silent:

"Is there any hope of restoring what has been lost? It would not be realistic to say so. But realism, however sombre, is not to be confused with silence or acquiescence. It is not necessary to hope in order to work, and it is not necessary to succeed in order to persevere."

The Johannesburg Bar Council has resolved not to retain the judgment striking Bram Fischer from the roll, and to

apologise to his family. The Pretoria Bar Council resolved in August this year to apologise to all victims of its colour bar. On 17 October 1997 that Bar went further. It approved the following press statement at an extraordinary general meeting of the whole Bar:

"...While other constituent Bars of the GCB voiced their concern, the Pretoria Bar failed to do so and, on more than one occasion, refused to join its fellow members in condemning executive excesses which brought the administration of justice into disrepute and prevented the courts from protecting civil liberties.

...We apologise to our colleagues, to the judiciary, the attorneys' profession, the public at large and in particular the victims of unjust laws for these failures.

As is the case with the apology which we tendered in regard to the racial discrimination which our Bar practised until 1980, we should have offered our expressions of regret at a much earlier stage. We apologise for this remissness..."

All advocates whom the GCB and its constituent Bars represent would wish to rededicate themselves to promoting the administration of justice in the future.

In Milan Kundera's phrase, the struggle against the abuse of power is the struggle of memory against forgetting. 

## *The International Bar Association*

Report on the conference of the Section on Business Law and the Section on General Practice of the International Bar Association held in New Delhi in November 1997.

Peter Hodes SC, chairman of the GCB

THE International Bar Association (the IBA) has three sections, namely the Section on Business Law (the SBL), the Section on General Practice (the SGP) and the Section on Energy and Natural Resources Law (the SERL). It also has certain specialist subject fora. The SBL and SGP held a conference in New Delhi, India from 2-7 November 1997. As is customary, the SERL staged

a programme during this conference and various fora also held meetings.

On 1 November, the day before the start of the conference, I attended a Bar leaders' meeting with the IBA president, Desmond Fernando PC, and the senior office bearers of the IBA where matters of mutual interest were discussed by Bar leaders from around the world. An important topic for consideration on this

occasion was the threat to the independence of the legal profession worldwide from the advent of the multi-disciplinary partnership, in particular between practising lawyers and accountants, a phenomenon which has been accepted in certain countries, but is anathema to the legal profession in others.

A wide variety of topics which were discussed during the week made it diffi-

cult to choose which meetings to attend, and which to miss. My choice of subjects ended up being somewhat eclectic.

### Disputes with the state

The first meeting I attended dealt with access to justice for indigent persons in civil disputes with the state or government agencies, which happened to be chaired by Milton Seligson SC. The discussion concerned the problems associated with providing access to justice to communities and individuals lacking resources to pursue legitimate claims in civil disputes with the state and other public bodies. The programme explored the legal procedures and mechanisms, including class actions, which are available to assist such persons in obtaining access to justice.

Next I attended a discussion on professional negligence which was a review of the key practical and legal issues which arise in different jurisdictions in negligence claims against accountants and lawyers. The session was chaired by a South African attorney and one of the speakers was a well-known South African forensic accountant.

I spent the whole of the following day at the Judges' Forum. The first half of the day was spent discussing judicial education, a relevant topic in South Africa, bearing in mind the first orientation course for judges who were appointed since April 1994 which was held in July 1997. It is clear from the discussions at the morning session that the benefits of continuing professional development for judges are increasingly recognised around the world. The speakers, an American woman practitioner who lectures at the National Judicial College at

the University of Nevada, and an Australian barrister who consults in various parts of the world on judicial education, devoted the discussion to the skills and techniques required to train judges to enable them to teach and train other judges. It was clear from the speakers' contributions as well as that from the floor that any process of judicial education has to be judge-led and court-owned. The afternoon session, on the subject of judicial management, discussed skills and techniques of case-flow management. The speakers were the immediate past chief justice of India and a supreme court judge from Queensland, Australia. In the light of the proposal contained in the third and final report of the Hoexter Commission that case management should be instituted in South Africa, the discussions were of particular interest to a South African practitioner.

### Litigation

Next I attended a meeting of the Committee on International Litigation on transnational tort litigation. What was discussed was, *inter alia*, the fact that transnational torts also raised issues of justice at a private international level amongst competing fora and legal systems, bearing in mind the possible impact on developing countries. Legal tools for cross-border cases were discussed and the day's meeting ended with a debate; the topic which was proposed being that the world is ready for a global jurisdiction and judgments convention.

Of particular interest was the inaugural meeting of the Forum for Barristers and Advocates (the FBA). Up until now there has been no discussion at IBA meetings of the problems peculiar to

lawyers who practise as a referral profession, as do South African advocates and barristers in countries such as the United Kingdom, Australia, New Zealand and Hong Kong. A three-person steering committee – including Malcolm Wallis SC – was appointed to get the FBA off the ground. It was decided to formally launch the FBA at the biennial IBA conference to be held in Vancouver from 13-18 September 1998.

### Human rights

The last session I attended was that of the Human Rights Institute at which a former Chief Justice of India, who is currently chairman of the Human Rights Institution of India, in a masterly address, discussed the role of the Indian Human Rights Commission and human rights issues in India against the backdrop of similar international issues. The general secretary of the Burma Lawyers' Council, in exile in Bangkok, Thailand, then spoke about the military dictatorship in Burma, the absence of an independent judiciary and legal profession, the summary trials, extra-judicial killing, systematic rape of women, ill-treatment of prisoners, the situation of refugees and displaced persons and various constitutional matters, including the violation of the rule of law.

I have attended several IBA conferences over the years and was enriched by renewed contacts and friendships and the chance to meet new people, with new ideas. I left the conference with the feeling that I had learned much and had come away with ideas which were of great relevance to the Bar and the administration of justice at this time in our history. 

### Women at the Bar...



From Stuart & Francis Queen's Counsel (London)