
In this engaging book the eminent South African human rights lawyer John Dugard, who was born in 1936, reflects on his involvement with legal issues relating to three countries: Namibia, South Africa and Palestine. His book, he says, is not an autobiography but “a personal memoir” of the way in which the injustices of apartheid in Namibia, South Africa and Palestine “touched my own life” (p. x).1 His book, in three parts, moves from Namibia, to which much of his early career as a legal academic was devoted, to South Africa, where he spent most of his career, and then to Palestine, with which he became involved via the United Nations (UN) when teaching at Leiden University. Though it was the Namibian issue that set him on the path to his illustrious career as an international lawyer, the section of his book dealing with Namibia is, unfortunately, the thinnest of the three parts. It nevertheless throws light on his role as a legal scholar/activist in matters relating to South African rule in Namibia.

As a young law lecturer at the University of the Witwatersrand, Dugard submitted an article to the *South African Law Journal* (SALJ) in which he wrote favourably of the decision by the International Court of Justice (ICJ) in 1962 to dismiss South Africa’s objections to the court hearing a case brought by Ethiopia and Liberia. In this case they sought to have the court declare South Africa to be in violation of the League of Nations mandate of 1920 and that it should therefore withdraw from the territory. In 1966 Dugard, along with SWAPO and most observers, expected the court to rule on the matter, but instead it in effect reversed its 1962 ruling and threw out the case on a technicality. Again Dugard wrote a substantial article for the SALJ, this time critical of the 1966 ruling. After some difficulty he eventually persuaded the SALJ editors to publish it. Another article he published in the *American Journal of International Law* featured in the arguments before the ICJ in 1971 (p. 32).2 During a visit to the United States in 1969 it was suggested to Dugard that he gather together writings on Namibia and this resulted in the publication in 1973 of one of his three major books, *The South West Africa/Namibia Dispute: Documents and Scholarly Writing on the Controversy between South Africa and the United Nations* (Berkeley, University of California Press, 1973).3

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1 Some of the personal material in this book, including an encounter with Ernest Hemingway in Spain, are recounted in the interview he gave for the LRC Oral History Project, available at: <http://www.historicalpapers.wits.ac.za/inventories/inv_pdf/A63298/A63298-1-040-text.pdf>  
In this landmark volume Dugard dealt extensively with the League of Nations mandate and the earlier ICJ judgments relating to Namibia, and was able to include discussion of the ICJ’s famous advisory opinion against South Africa in 1971. Though in his acknowledgements he modestly described his book as essentially “a collection of other men’s flowers” (p. xv), in the long run Dugard’s scholarly academic and legal work, supportive of, and publicising, in South Africa and elsewhere, the idea of the illegality of the South African occupation of Namibia, undoubtedly contributed to the eventual end of South African rule in Namibia.

His other claim to fame from a Namibian perspective is that he helped save Namibians from death. He did this first in connection with the Namibian equivalent of the Rivonia trial. When Toivo ya Voivo and the other SWAPO leaders were brought to trial in South Africa under the Terrorism Act, Dugard advised the lawyers to argue that the Terrorism Act was null and void as far as South West Africa was concerned because the Act had been passed after the UN General Assembly resolution terminating the South African mandate over the territory. Dugard knew this argument was unlikely to succeed, but it did, he claims, help internationalise the trial and make it “a political trial involving the self-determination of the people of South West Africa and the confrontation between South Africa and the UN over the territory” (p. 30). In the event, after a visit by Joel Carlson, the lawyer representing the SWAPO leaders on trial, to the UN, the judge hearing the case did not impose the death penalty.4

Having attended a major conference on human rights in Namibia held in Senegal in 1976, Dugard became involved in the issue of whether captured members of PLAN could be regarded as prisoners of war.5 After the adoption of the Geneva Convention in 1977, his argument that such captured guerrillas were entitled to be so treated was accepted and he is able to write that “no member of SWAPO was ever sentenced to death by a South West African court for military activities”, because “the internationalization of the case deterred judges from imposing sentences of death” (p. 35).

Dugard concludes the Namibian section of this book by saying that he “remained involved in the Namibian cause throughout the 1970s and 1980s, advising SWAPO on questions of international law, attending conferences and working with the office of the UN commissioner for Namibia” (p. 35). Anyone interested in the story of Namibia’s move to independence will be disappointed that he has not elaborated further on this involvement.6

In 2001 Dugard became UN Special Rapporteur on human rights in the Israeli-occupied Palestinian territories of

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the West Bank, Gaza and East Jerusalem. Writing of this, Dugard points to the similarity between what the UN called the Occupied Palestinian Territory (OPT) and Namibia. Both, he says, were internationalized by a League of Nations mandate and in both the occupying force was judged by the international community to be applying apartheid (p. 207), which was declared a crime against humanity by the UN General Assembly in 1973. Dugard does not, however, explain the differences between the two situations. In the Namibian case the major powers in the UN Security Council all opposed South Africa’s occupation, though they differed on how to bring it to an end. In the case of Israel, by contrast, the United States in particular has been a staunch ally and does not accept that Israel is applying apartheid policies in Palestine. Dugard ends his book on what some will see as a wildly optimistic note. He believed that apartheid in South Africa would end in civil war, he writes, but instead, “both parties came to their senses under wise leadership”. The land of Israel and Palestine, he says in his last sentence, is “the land of miracles” (p. 268).

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