Leaving aside the travel information already referred to, the book consists of the lectures delivered by Dr. Brown at various places *en route*. These covered such matters as Natural Law, Equity, International Environmental Law, Outer Space, Extradition and Legal Education. In Puerto Rico Dr. Brown pressed into service a natural law concept of the United States Constitution which would make Puerto Rico a state, though unincorporated under positive law, nevertheless "incorporated under natural law", from which, he claimed, mutual benefits would follow.

Dr. Brown's visit to Australia and New Zealand was marred by the fact that it took place in December, leading the author to refer to "deserted campuses". However, it is gratifying to note that he refers especially to the kind reception he received from the University of Sydney, in particular from Professor Stone who is complimented for his friendly attitude toward the naturalist point of view. In Sydney Dr. Brown lectured on "International Environmental Law and the Natural Law", making the point that the positive law was incapable of dealing adequately with the crisis of impending global deterioration and that the best hope lay in the implementation of the natural international law of the environment.

D. H. N. JOHNSON*

South West African Mandate, by G. M. Cockram, Cape Town, Juta & Company Ltd., 1976, 531 pp. $19.50.

The problem of South West Africa — increasingly referred to as Namibia, after the practice of the United Nations — has been before the United Nations continuously since the inception of that Organization. It has involved the International Court of Justice in giving four Advisory Opinions[1] and two Judgments.[2] In the Judgment of 1962 the Court decided by eight votes to seven that it had "jurisdiction to adjudicate upon the merits of the dispute" brought before it by Ethiopia and Liberia. In an action against South Africa, they were asking the Court to declare *inter alia* that, notwithstanding the demise of the League of Nations, South West Africa was still a mandated territory under the system outlined in Article 22 of the Covenant of the League of Nations; that the Union (as it then was) of South Africa continued to have the obligations stated in Article 22 "as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised

* Professor of International Law, University of Sydney.
[1] I.C.J. Reports 1950, 128; 1955, 67; 1956, 23 and 1971, 16.
[2] I.C.J. Reports 1962, 319 and 1966, 6.

by the United Nations, to which the annual reports and the petitions are to be submitted"; that the Union, by practising apartheid in South West Africa, had violated its obligations; that the Union was under a duty to cease the practice of apartheid in South West Africa forthwith; that the Union had failed to promote to the utmost the material and moral well-being and social progress of the inhabitants of the Territory and thus was in violation of its obligations under Article 22; that generally the Union had attempted to modify substantially the terms of the Mandate without the consent of the United Nations; that such attempt was in violation of South Africa's obligations under the Mandate and under the Covenant; and that "the consent of the United Nations is a necessary prerequisite and condition precedent to attempts on the part of the Union directly or indirectly to modify the terms of the Mandate".

After the exchange of voluminous written pleadings and extensive oral hearings the Court decided, however, in 1966 "to reject the claims of the Empire (as it then was) of Ethiopia and the Republic of Liberia". This decision was taken on the casting vote of the President, Sir Percy Spender (Australia), the Court being equally divided, 6-6. It is not surprising, therefore, that the case became something of a *cause célèbre,* the more so because the ground on which the Court decided to reject the claims of the Applicants was that "the Court finds that the Applicants cannot be considered to have established any legal right or interest appertaining to them in the subject-matter of the present claims". The Court was criticized on a number of grounds; first, the decision was said to be wrong in itself; second, it was argued that, even if the decision was right, the Court should have so decided in 1962, thus sparing the parties, and the Court itself, four years of travail; third, that the Court had in effect already decided in 1962 that the Applicants had established a legal right or interest in the subject-matter of their claims since it had rejected a South African objection to the Court exercizing jurisdiction based on the argument that "no material interests of the Governments of Ethiopia and/or Liberia or of their nationals are involved" with the consequence that this point was already *res judicata;* and fourth, that if there was any doubt on this point, the Court should have requested the parties to submit further argument on it, which however the Court did not do. The General Assembly of the United Nations reacted to the Court's negative conclusion by adopting on 27th October 1966 a resolution in which it decided "that the mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is . . . . terminated, that South Africa has no other right to administer the territory, and that henceforth South West Africa comes under the direct responsibility of the United Nations". The General Assembly followed up this action by establishing a Council for Namibia, which would be responsible for the administration of the territory. The eleven members of the Council proceeded to Lusaka on their way to discharge their duties, but were unable to obtain transport to go any

further. The South African Prime Minister had made it clear that his country would not allow the Council to enter South West Africa and a statement by the Council's President that he and his colleagues would enter Namibia "by camel, if necessary", proved to be an empty threat.

On 12th August 1969 the Security Council of the United Nations declared that "the continued occupation of the territory of Namibia by the South African authorities constitutes an aggressive encroachment on the authority of the United Nations" and gave notice to South Africa to quit by 4th October. The following year the Security Council took the unusual course of requesting of the Court an Advisory Opinion. All previous requests for Advisory Opinions in relation to South West Africa had emanated from the General Assembly. It may have been thought appropriate for the Security Council to be the requesting organ on this occasion because the question put was "what are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding the previous resolution of the Security Council . . . ?"

When the first Advisory Opinion was requested of the Court in 1950 it is reasonable to suppose that the General Assembly genuinely wanted an answer to the difficult question of the legal status of South West Africa in the light of the demise of the League of Nations. A number of different solutions could all be supported on plausible legal grounds. It could be argued, for instance, that the Mandate had come to an end (the view favoured by South Africa); or that the Mandate persisted, with supervision over its administration now to be exercised by the United Nations (the solution favoured by the majority of the Court); or that the Mandate persisted, but without United Nations supervision (a view favoured by two members of the Court); or even that South Africa was under a duty to conclude a trusteeship agreement for the territory (a view favoured by six members of the Court). In 1971, however, it was made clear by the United Nations to the Court that only one answer was expected of it, and moreover that it should produce that answer with quite extraordinary haste in view of the complexity of the issues put before it. The Court, which between 1960 and 1966 had taken six years to decide that the claims submitted to it were inadmissible, on this occasion arrived at a number of sweeping conclusions concerned not only with Namibia but with the powers of the United Nations itself within the space of eleven months.[3] Nor can this change of pace be explained by the fact that all the judges were familiar with the problem, although of course some were. Rather it was the fact that a number of new judges had been elected to the Court in the meantime that encouraged the Security Council to try the judicial road again. The Court had already indicated which way the wind was blowing by making some remarks *obiter* in the *Barcelona Traction* case which were quite unnecessary for the

[3] I.C.J. Reports 1971, 16.

purpose of deciding that case, but which were evidently designed to assure the Court's many critics that the 1966 Judgment was an aberration. In *Barcelona Traction* (a case in which Belgium sought to protect Belgian shareholders in a Canadian company) the Court stated that "an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-a-vis another State. . . . By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection . . . ."[4]

In its 1971 Advisory Opinion the Court held that the continued presence of South Africa in Namibia was illegal; that States Members of the United Nations were obliged to recognize the illegality of that presence and to refrain from any acts implying recognition of that presence; and even that States which were not Members of the United Nations were obliged to assist action taken by the United Nations with regard to Namibia. Powerful dissenting opinions were rendered by Sir Gerald Fitzmaurice, the British judge, who covered the whole range of issues involved, and by Judge Gros (France) who concentrated mainly on two procedural points, though very important ones. One was that the Court had not applied Article 17 of its own Statute so as to disqualify one of its members who had taken a consistent and active part in the proceedings against South Africa in the United Nations. The other was that the Court had erred in not dealing properly with South Africa's request to be permitted to appoint a judge *ad hoc*. On both these points Judge Onyeama (Nigeria) agreed with Judge Gros. Leaving aside the particular issue of Namibia, the most extraordinary feature of the 1971 Opinion was the decision of the Court that both the resolution of the General Assembly revoking the Mandate, and the resolution of the Security Council declaring South Africa's continued presence in Namibia to be illegal (though clearly not made under Chapter VII of the Charter), were binding upon South Africa, and indeed upon all States. It is not surprising that when discussion was resumed on the matter in the United Nations, many prominent Members of that Organization made reservations with regard to those findings at least. As Judge Gros pointed out, the powers being claimed for the General Assembly would turn it into a "federal parliament" whilst those being claimed for the Security Council would have the effect of turning the United Nations into a "super-State".

In this review the unusual course has been taken of setting out at some length the principal legal issues involved in the work under review because these issues, with which some readers of this Law Review may not be familiar, not only cover a protracted period of time but are also intricate in detail and wide-ranging in their effect. It is to the author's credit that she has told the whole story in a manner which is never boring and which does not wander off into unnecessary digressions.

[4] I.C.J. Reports 1970, 4, 32.

Nevertheless, it should be pointed out that she does not become involved in a detailed analysis of these legal issues. Indeed the book is not primarily addressed to lawyers, although within the limitations of space the author has certainly not neglected the legal issues. The blurb does not exactly help by telling us that the book is an account of the educational process of a territory whose status is similar to that of a juvenile delinquent "reared first by a parent, then by a foster-parent under state supervision and finally by the state itself in a state institution". The reference is to the origin of South West Africa as a German colony; its transfer as a League of Nations mandate to the Union of South Africa at the end of the First World War after conquest by the Union during those hostilities; and finally to the continuing friction between South Africa and the United Nations concerning the territory after the Second World War. However, the author has elicited some interesting information concerning the German administration of the territory; the difficulties faced by the Union in administering its ward, and particularly the Bondelzwarts rebellion of 1923; and the unsettling effect of quite serious proposals made during the 1930s that the territory, along with other previous German colonies, should be returned to Germany. These last discussions make interesting reading in the light of the remarks of some of the judges who have sat at The Hague during various phases of the South West Africa litigation. For example, Judge Bustamente referred to "the general anti-colonialist conscience" at work after the First World War and the assertion at that time of "the right of every underdeveloped people to fulfil its own destiny and aspire to political independence under the protection and with the respect and assistance of the international community".[5] Australasian readers in particular will find interesting certain comparisons the author makes between South Africa's administration of South West Africa, Australia's administration of New Guinea and New Zealand's administration of Western Samoa. While these comparisons are not necessarily to South Africa's disadvantage, the work in no way amounts to a whitewash of the South African administration. At the same time the author does not conceal her fear that a worse fate may be in store for the territory if it succumbs to an Angola-style Cuban takeover, as seems possible at the time of this writing. Nor does she conceal her contempt for the United Nations and the policies being pursued there by the Western Powers.

To sum up, it seems to the present reviewer that two lessons are to be learned from this entire story, so well recounted on the whole in this work. The first is the damage done to the International Court through its desire (save in 1966) to assist the United Nations in its political purposes by departing from a strict application of the rule of law. The second is the lack of understanding in the United Nations, not confined to the case of South West Africa, of the complexity of

[5] I.C.J. Reports 1962, 350-51.

colonial problems. In order to justify the ouster of the previous administrators, the fiction was resorted to that any territory (be it mandate, colony or protectorate) which could be said to be a "non-self-governing territory" within the meaning of Article 73 of the Charter, had a sort of embryonic international personality justifying its emergence as a single future Member of the United Nations, irrespective of the fact that its boundaries were usually just drawn on a map by the colonial powers and regardless of tribal and other divisions in the territory. Recently this error has been compounded by the habit of conferring, in advance of any elections, upon one of many factions striving for supremacy in the future independent country the dubious title of being "the authentic representatives" of the people concerned, as the General Assembly did for instance in relation to the South West Africa People's Organization (Swapo) in a resolution adopted on 12th December 1973. Such a procedure makes nonsense of the very principle of self-determination which the United Nations purports to uphold and to advance.

*D. H. N. JOHNSON**

Commentaries on the Australian Constitution, by Leslie Zines (ed.), Sydney, Butterworth Pty Ltd., 1977, xxiii + 275 pp. $20.00.

The eight essays of which this book is comprised were written in honour of Professor Geoffrey Sawer. In view of Professor Sawer's long association with the Australian National University, it is not surprising that at least six of the eight essays were contributed by people who are or have recently been associated with that University, the two exceptions (so far as I am aware) being the essays by Professor Campbell of Monash University and Dr. Lumb of the University of Queensland. Further, in view of Professor Sawer's long association with Australian federal constitutional law, it is not surprising that seven of the eight essays are (as the title of the book represents them *all* to be) commentaries on the Australian constitution, the one exception being Professor Stoljar's essay "Austin and Kelsen on Public Law". According to the book's preface, the essays "deal, in the main, with areas of constitutional law that have not received a great deal of attention in existing works. . . . "[1] What are their subject matters?

The first and longest essay is that by Professor Zines, who, as well as contributing an essay, edited the book. His essay traces the expansion of Commonwealth executive and legislative power consequent on Australia's growing independence from the United Kingdom. One noteworthy

* Professor of International Law, University of Sydney.
[1] P. v.