BOOK REVIEWS

The Australian Yearbook of International Law 1968-1969, edited by H. B. CONNELL, (Butterworths, Australia, 1971), pp. i-x, 1-244. Australian Price $12.50.

Introducing the latest volume of the *Yearbook,* Mr Justice Starke, the consultant editor, examines a concept used by practising international lawyers and by judges of the International Court of Justice. This concept has come to be known as 'opposability' and occurs in a dispute between two States when one seeks to invoke or oppose as against the other—which is supporting its case by reference to some principle or institution—either a particular institution or régime under its own domestic law or even the terms of a convention or treaty, alleging that this must prevail. Mr Justice Starke presents an incisive explanation of the concept and sets out its relevance and utility in logical fashion.

Following this, the bulk of the articles are oriented towards the Australian experience, the first of which examines Australian bays. W. R. Edeson contributes a scholarly article on an unsettled topic which is being propelled into a crucial position principally by the growth of the off-shore mining industry. He identifies and analyses the two pertinent issues: (1) whether the States possess jurisdictional rights over offshore areas and (2) if so, whether they own the solum of these areas. Constitutional law and common law, as well as international law, figure strongly in this dissertation, which also includes special reference to Shark Bay, St. Vincent and Spencer Bay.

Australian practice is given further emphasis in H. B. Connell's article, 'International Agreements and the Australian Treaty Power'. The difficulty apparent after accord on an international treaty or convention has been reached is its implementation at the municipal level. In Australia, the Commonwealth government may rely on a few specific powers given it under the Constitution or on the external affairs power, which harbours considerable potential use not heretofore exclusively relied upon, or even subjected to political debate. In this context, Connell's well-structured article attempts to demonstrate the extent of the Commonwealth external affairs power, despite potential conflict with State powers. The author sets out useful comparisons with other federal nations—Canada and the United States—and carefully examines Australian case law. He cogently argues that States should not adopt a parochial attitude in opposing the external affairs power, an attitude which may prevent the Commonwealth from carrying out its international obligations, and concludes by submitting the very credible proposal that, where no other provision exists, the external affairs power be employed to support ratification by the Commonwealth of a convention, with certain limitations. On the whole, this contribution contains the kind of internationalist perspective which should be encouraged in all aspects of Australia's external relations.

Dr Pryles in his article, 'Proof of Sister State Laws in Australia and the United States', studies the problem of raising the law of another State, statutory or common, in the State courts of the two named countries. He criticizes the practice of treating sister State laws as foreign, a treatment which necessitates, in the courts of the respective nations, the resolution of questions of fact through the testimony of expert witnesses—a time-consuming and cumbersome procedure. Only a few jurisdictions in the United States have altered usual practice, and this article impresses the reader as being a strong plea for less complicated means of proof. The operation of full faith and credit provisions may provide a possible solution. It is an area to which greater attention should obviously be given.

A desirable feature in a publication dealing largely with Australian practice in international law has been inserted under the heading 'Commonwealth Practice', which is sub-divided into three sections dealing with international law, the United

Nations and individual States and Territories of the Commonwealth. Together with the report of the Australian Branch Committee of the International Law Association, it updates the reader regarding recent Australian activities relating to international law.

Two articles in the *Yearbook* which are directed to a general rather than to an Australian level are Merrill's 'Two Approaches to Treaty Interpretation' and Holder's 'Towards Peaceful Settlement of International Disputes'. The former is based on the dichotomy of views which surfaced in the 1968 Vienna Conference on the Law of Treaties; the conference adopted a textual approach to treaty interpretation despite vociferous argument by the United States that a treaty should be viewed integrally with the parties' intentions. These opposing views are appraised in terms of efficacy, both in international and, interestingly, in domestic forums. Although the author tends to favour the Vienna rules at the domestic level, he subscribes more readily to the United States approach internationally. This approach achieves a great deal, according to Merrills, by eliminating the use of a concept of ordinary meaning as a barrier to the consideration of other evidence. Although there are myriad misgivings to this proposition, they are all carefully considered but then outweighed, principally by the realist's position that the court's judgment will reflect accurately the reasoning process. Although the debate raised by the issues contained in this article is at the least evenly weighted, and a conclusion favouring the Vienna rules could be easily justified, the contribution is meritorious in that it presents the case fairly and reaches conclusions logically.

The latter article, despite the potential wealth of information suggested by its title, is concerned to an excessive degree with politics of interaction after the fashion of McDougal. The reader is taken from a dismal picture of the 'cold war' clogging up possible peace settlement mechanisms through a framework of peaceful settlement (in which elements such as objectives of peaceful settlement and strategies are discussed academically and philosophically rather than substantively), to an exposition of 'structures of authority for dispute settlement' in which the expected structures—the I.C.J. and the U.N.—are discussed. The author omitted to mention, or only paid cursory attention to, the importance of the network of other international institutions designed for the judicial settlement or conciliation of disputes, such as the organs of regional political organizations, the regional organizations themselves, economic organizations of a largely regional character, regional economic organs of the U.N., or even regional defence organizations. At best, such a broad topic demands rigorous research and documentation in order to do it justice. What is produced in this volume is a largely philosophical view of the problem, with emphasis on policy, and a brief, traditional survey of the most common means of settlement in the familiar esoteric McDougal terminology.

The *Yearbook* is described on the title page as an 'annual survey of current problems of public and private international law with the digest of and commentary on Australian practice for the period July 1967 to June 1969'. This description is accurate in that: (1) most of the book is given over to actual problems rather than to academic debate; (2) it contains a review of recent cases in private international law; and (3) much of it deals with Australian practice. The description is inaccurate in that the book is concerned more with public than with private international law, which is a good thing. Also, strictly speaking, it is not an annual publication. We are told in the preface by the editor that this fault is soon to be remedied. In the reviewer's opinion, the sooner this can be effected, the better.

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