BOOK REVIEWS

THE LAW OF THE SEA AND AUSTRALIAN OFF-SHORE AREAS. By R. D. Lumb. Queensland University Press, 1966. Pp. 86. $2.85, paperback edition.

The discovery of natural gas in the area of the Bass Strait, and the presence of oil in the Australian continental shelf have spurred a deeper interest in the law applicable to Australian off-shore maritime areas, particularly the matter of rights of jurisdiction in these areas.

In this book, Dr Lumb has rightly recognized from the outset that the crux of the matter is the precise current legal status of the sea-bed, in the light of recent developments in international law, when examined in relation to the traditional principles of the common law and Admiralty law applying to the sea-shore and to coastal waters. At the same time, upon this there impinge difficulties both of definition and of delimitation so far as concerns the constitutional powers of the Commonwealth and of the States, individually and *inter se*, with regard to the Australian territorial sea and off-shore areas beyond territorial sea limits. Certain of these difficulties appear at first sight almost insoluble in any intelligible sense, and could not have been forseseen when the Commonwealth Constitution was originally drafted in the era of the sacerdotal maintenance of the three-mile territorial sea belt. There have been fundamental changes as a result of the Conventions concluded at the Geneva Conference of 1958 on the Law of the Sea, recognizing *inter alia* that the coastal State has sovereign rights of an exclusive nature for the purpose of exploring and exploiting the natural resources of the continental shelf, and may have certain rights of control in a contiguous maritime zone up to a limit of twelve miles from the baselines from which the breadth of the territorial sea is measured.

Particular problems arise with regard to the reconciliation of the jurisdiction of the Australian States at common law with the new rules of international law governing the exploration and exploitation of the sea-bed.

The first part of the book is devoted to the international law position concerning the law of the sea, considered in close relation

to certain special features of Australian law, e.g. the Governor-General's Proclamations gazetted 11th September 1953, as to the continental shelf, and the Commonwealth Pearl Fisheries Act 1952-1953. The author has found it necessary to set aside one chapter on the problem of the incorporation into Australian law of the Geneva Conventions of 1958, referred to above. The difficult point here is that these Conventions are not merely law-making instruments containing entirely new treaty provisions, but are to some extent a codification of established customary rules of international law. Under Anglo-Australian law, there is a recognized difference between customary and treaty rules; as to the former, these may be applied by Australian courts *per se* as part of the law of the land unless there is a conflict with some existing statutory provision, while as to the latter, the principle is that treaty provisions effecting an alteration of the private law rights of Australian citizens require specific legislative implementation if the Courts are to give effect to them. The problem is not one confined to the Geneva Conventions of 1958 on the Law of the Sea, but will arise in regard to the Conventions, to be concluded in the future on the basis of the work of the International Law Commission, to the extent that such Conventions reproduce generally recognized rules of customary international law.

In the second part of the book, the position under the Australian constitutional structure is specifically examined. The author's treatment is lawyer-like, and he does not dogmatize. His analysis is useful also as referring to some of the potential problems; for example, at page 67, he asks, 'what would be the position if there were a conflict between the national maritime boundary established by the Commonwealth and a boundary established by a State for purposes within its constitutional power, which although conforming with international law as laid down in the Convention[1] nevertheless exceeded the limits set by the Commonwealth executive if the latter decided not to claim the maximum limits permitted by international law?'

In the context of his discussion, Dr Lumb has dealt with the United States "Tidelands" constitutional case-law, involving issues between Federal and State Governments as to jurisdiction and rights of control over sea-bed resources. It was precisely to avoid such litigation, and in addition to provide certainty of title for operators in off-shore areas that the Commonwealth and State Governments reached agreement, as announced on 16th November 1965, to pass complementary legis-

[1] Referring here to the Geneva Convention of April 28th 1958 on the Territorial Sea and Contiguous Zone.

lation on gas and oil resources in off-shore areas, which will include a mining code governing the rights and activities of off-shore operators. The text of the joint statement announcing the agreement, and a summary of modifications agreed to in July 1966, are given in the final chapter. However, it is relevant to point out that since the book was published, some further outstanding matters, including the subject of interstate sales of gas, were dealt with by supplementary terms, agreed to jointly on 7th April 1967. As at the date the present review was written, the complementary Federal and State legislation still remains to be introduced and passed.

Some of the Gordian knots of constitutional law have been cut, and many of the difficulties by-passed through this achievement of a joint Federal-States agreement and the preparation of complementary legislation, but it would be rash to predict that *all* constitutional litigation will be precluded. Even if the Commonwealth and States have estopped themselves from raising points of constitutional validity, there still remains the possibility that an unlicensed off-shore operator may dispute the title of licensed operators, and claim some free right of exploration or exploitation.

In addition to the supplementary agreement of 7th April 1967, there has been another development since the book was published. This was the announcement by the Commonwealth Government on 15th March 1967 through Mr Adermann, Minister for Primary Industry, that the Government had decided to extend from three miles to a distance of twelve miles the limit of coastal waters within which fisheries, whether by Australian or foreign citizens, are to be subject to the exercise of sovereign rights by the Commonwealth. Although Australia has adopted this twelve-mile fisheries limit, it will continue neo-platonically to adhere to a three-mile all purposes limit.

Dr Lumb is to be congratulated on a lucid and competently written work, of value to constitutional and international lawyers alike, while indispensable also for those interested in the growing field of Australian oil and gas law.

J. G. STARKE

THE TREATY-MAKING POWER IN THE COMMONWEALTH OF AUSTRALIA. By Günther Doeker. Martinus Nijhoff, The Hague, 1966. Pp. xxviii, 262 and 23 (tables and index). 35 guilders.

In this book the author 'aims to present a comprehensive study and analysis of actual treaty-making procedures and practices in Australia