

INTRODUCTION:

Michael Anderson was the research director for Treaty-Makarrata and International Political Issues for the National Aboriginal Conference from 1981 to 1985. He was responsible for organising National Community Consultations and Consultations between State, Territory and the National Government on the Treaty-Makarrata.

As part of his terms of reference he was required to travel overseas to the United States, Canada New Zealand and the United Kingdom to look at and study Treaty making processes in those countries.

At the request of the NAC sub-committee on the Treaty-Makarrata, Michael convened a committee of experts in the field of Political Science, Law and Economy who worked with the NAC Treaty-Makarrata Sub-committee on the development of an 'Ambit Claim' that was to form the basis from which negotiations would commence.

Michael resigned from this position when the National Chairman advised the Senate Standing Committee on Constitutional and Legal Affairs that the NAC would no longer be pursuing the Treaty-Makarrata.

TREATY - MAKARRATA - TREATY

A Reflection

Michael Anderson

My knowledge of the call for a Treaty was aroused when the Capital Hill Aboriginal Embassy protesters birthed the notion in 1979. At the time I was studying law at the University of New South Wales and employed as an instructing officer with the New South Wales Department of Public Prosecutions and Clerk of the Peace in the District Courts Criminal law division.

To the great surprise of many, the then Prime Minister of Australia, Mr Malcolm Fraser, publicly announced that his Government would enter into real and meaningful negotiations for a Treaty. He also made it very clear that his Government was only prepared to negotiate the same with the only nationally elected Aboriginal body in Australia the National Aboriginal Conference (NAC).

At this time Dr H. C. (Nugget) Coombs established a white Treaty support committee (The Aboriginal Treaty Committee). This body was to promote the Treaty proposal within the white community in order to educate and encourage national support.

In 1981 I accepted an offer from the former National Aboriginal Conference to be the Research Director, Treaty and National and International Political Issues. At the time of my appointment, the then National Aboriginal Conference had advanced the call for a Treaty to such a significant point that it had already begun extensive community consultations promoting a number of politically significant points for national discussion. (See the initial discussion brochure circulated by the NAC¹.)

Having taken up my position I soon realised that the NAC had had numerous discussions with the Government and that talks were well advanced on the topic. In fact, the Government had been provided with detailed legal advice on the political and legal ramifications of a Treaty.

In the advice of 28 July 1980, the Federal Attorney-General's Office argued that the Government should avoid the use of the term Treaty because of its International connotations. The advice went on to also say that the National Aboriginal Conference, being the only nationally elected body, represented national unity and that they could legitimately argue for acceptance as a federation of Nations using the American Indian models, thereby calling for a right of self-determination under international law.²

It was stated in the advice that in any agreement the Government must be explicit in their terminologies in order to ensure that such rights would not be automatic and that international law would not be applicable to this Makarrata/Treaty.

The first sub-committee of the NAC consisted of Mr W. (Bill) Bird [NSW] the then National Chairman of the NAC, Ms Lois O'Donoghue [SA], Mr Cedric Jacobs [WA], Peter (now deceased) from Galiwinku (Elcho Island) [NT], Mr Jim Beiundurry (now deceased) from the Kimberleys [WA].

1981 was also an election year for the NAC, the outcome of which not only witnessed a change in elected personnel, but it assembled a more aggressive, politically aware body of Aboriginal People.

The new Treaty sub-committee was confronted with a fairly modest set of Treaty discussion points and set about increasing the community consultations. What was to follow in the next three and a half years has never been equalled in terms of the number of communities visited individually. There were some regional meetings such as that which took place at Toowoomba. The other community consultations saw the NAC visit almost every community in Victoria with the only exception being that of Geelong and the Portland area. In the Northern Territory, we visited every Community from Docker River to Tennant Creek. The chairman of the Queensland Branch of the NAC Mr Steve Mam and his staff representative, Mr Bill Lowah, organised for us to visit several communities in the Torres Strait Islands, where I can proudly say that the notion of a territory controlled by the Torres Strait Islander peoples for the people and by the people was concluded.

In New South Wales numerous centres were visited but the more expansive consultations were planned for a later date.

Having conducted the community consultations, we assembled a number of eminent professors as our panel of advisers who were to work with us after we had analysed the data from the consultations. Members of this body were Professor Colin Tatz, Mr Brian Keon-Cohen (Barrister), and on some occasions Professor Garth Nettheim's advice was sought. Dr Coombs was approached to participate but he declined.

The primary function of this body was to sit with us and talk about the socio-economic, legal and political implications of the matters being proposed for the ambit claims that were being developed.

The NAC National Executive had met and were continually meeting with Government Ministers and on several occasions. They met with State Government Ministers on matters surrounding the formulation of issues that were being developed as the ambit claim. In fact the NAC were advised that all preliminary discussions on the points were to be put to the State Government for their consideration while at the same time providing copies for consideration of the National Federal Government.

At this time the NAC provided resources for me to travel overseas to study some of the Treaties that existed in other parts of the world, e.g. Canada, USA and New Zealand. I also went to England to look at the documents that assembled Scotland, Ireland, Wales

and England into a single State called the United Kingdom. The development of the United Kingdom provided the basis for an understanding of co-existence under a single Government. Things have changed now. However, the changes that have occurred in the United Kingdom, that is, the granting of independent state governments in Wales and Scotland represent the way in which the NAC were heading in terms of co-existence and independence, represented by a single National (Federal) Government.

The NAC had prepared 27 points for discussion and had circulated them widely. The points were to provide topics for in depth and thoughtful debate. Interestingly enough, a major point that represented pre-negotiation concessions was a point that contributed to the demise of the Makarrata/Treaty process.

"**Sovereignty**" was viewed by some Aboriginal leaders as an unrealistic ambition. The key opposition argument from these Aboriginal leaders said that "**Sovereignty**" was an issue that could bog us down in years of debate, and that other matters had greater need for representations. That was "**Land Rights**" and because the Aboriginal opposition refused to talk to the Makarrata/Treaty body they failed to realise that the NAC had been in the process of developing a Land Rights Regime for National discussion but this proposal never saw the light of day.

This opposition came primarily from the Federation of Aboriginal Land Councils. Dr Coombs had assisted in developing and arranging funding for the Federation which held its first meeting in 1981. Members of the Federation included land councils and yet to be established land councils from around Australia. This opposition known through individual and collective submissions to the appointed Senate Standing Committee on Constitutional and Legal Affairs National Enquiry into the Legal and Constitutional feasibility of entering into a Makarrata/Treaty between the National Government and the Aboriginal and Torres Strait Islander Peoples of Australia.³

The amount of lobbying and internal infighting within the NAC between the pro-Makarrata people and the supporters of the newly formed National Federation of Aboriginal Land Councils took its toll. Finally the whole of the NAC succumbed because of a power struggle between the few. Without the new Labor Government support the NAC met its fate and the members of the Federation of Aboriginal Land Councils were accepted by the Labor Government then to be a truer representation of National Aboriginal issues.

In conclusion I merely wish to add that the very fact that we are all independent nations and peoples with one law the "**Dreaming**" should not be ignored. It is this that makes us a unique people in being the oldest peoples and culture on this earth because we observed the 'rules'. Any future Treaty discussions and plans must be cognisant of this at all times otherwise we will create a recipe for disaster that can and will cause an implosion that we will never recover from.

Having made these reflections I squirm at an opportunity lost.

Looking at the current policies and policy objectives of the National and State Governments, it does not surprise me to realise that the talk of a Treaty proposal now takes centre stage because all else has failed.

Government policy objectives now see the implementation of most of the 27 points that had already been developed by the NAC. Only this time they have been appropriated by Government who now call them their own and implement them on their terms and conditions. Many of those who opposed a Treaty back in the early 80's are now supporting the call for a TREATY today.

In making these reflections I merely seek to have people think of our common objectives and not seek to locate differences. Personalities and egos should not and can not play a role in this type of development. We are losing in more ways than one and it is now time to once again look at our hopes and aspirations and seek to work together in the peoples' interest and not our own.

Notes

1. National Aboriginal Conference, Sub-committee on the Makarrata, *Makarrata Report*, Woden, ACT, 1980
2. Letter from Attorney-General's Department to Department of Aboriginal Affairs, 28 July 1980. MS 4000. National Aboriginal Conference Papers. Held at AIATSIS Library.
3. Parliament of Australia, Senate Standing Committee on Constitutional Affairs. *Reference : an examination of the feasibility, whether by way of constitutional amendment or other legal means of securing a compact or 'Makarrata' between the Commonwealth Government and Aboriginal Australians, 1983 : (official Hansard transcript of evidence)*, Canberra : Govt. Printer of Australia, 1983.

“Treaty - Makarrata – Treaty A Reflection”

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