CHAPTER VII

EARLY WARNING SIGNS

For us, 1980 had provided much encouragement. We were finding new Treaty Support Groups an enthusiastic auxiliary. In Townsville, a separate committee had begun work. This was inaugurated at a meeting on 1 October 1980, organized by Townsville's One World Week Committee, at which the 'Makarrata' was discussed. The speakers were Mr Bill Bird, then a member of the NAC's Makarrata subcommittee, Mr Mick Miller, Chairman of the unofficial North Queensland Land Council, and myself, representing the Canberra committee; and a good number of Aborigines and Islanders were in the large audience. At this meeting, Dr Noel Loos of the then Townsville College of Advanced Education, a historian and educator, became convenor of the new group. It was to make a strong contribution later, as will be told.

At this meeting emerged an early warning sign for the 'Makarrata' proposal. Miller warned that it would take a

government's apparent acceptance of the NAC's proposal.

Early in September 1980 the Prime Minister and relevant Cabinet Ministers met the executive of the NAC, before holding discussions with industry groups on the question of mining and petroleum exploration on land involving Aboriginal interests. To quote from a letter dated 9 September 1980 from the Acting Prime Minister, J. D. Anthony, to the Chairman of the NAC:

> There was a large degree of agreement on the need for measures to avoid any possible future difficulties between Aboriginal and mining and petroleum interests. It was agreed that the real challenge is to allow development projects, so essential for the benefit of all Australians, to proceed, and, at the same time, to properly provide for accommodation of Aboriginal interests... AMIC and APEA indicated their willingness to co-operate with the Commonwealth, the States and the National Aboriginal Conference, in developing these procedures.

But the October 1980 issue of the Aboriginal publication *Identity*, just before the November election, asked 'A Treaty — Commitment? Or just a golden handshake?' It was being rumoured that pressure was on the NAC to produce a document quickly. But in view of the government's reception of the points put forward by the NAC committee on its return from Geneva — on none of which it had taken any action, and to none of which it had publicly replied — it seemed unlikely that any document produced under pressure of haste and with a possible view to soothing international censure would provide the kind of agreement Aborigines needed.

Nor had the government attempted to prevent the states from taking yet more oppressive action. At Gordon Downs in the Kimberleys, the new leaseholder, one Peter Sherwin, ordered about sixty of the Djaru people to leave the cattle station on which they had long lived and worked. They took refuge in a fringe camp at Hall's Creek, to wait for some

long time and much consultation before Aborigines were agreed on presenting any document to the Federal Government (a view we also took); but Mr Bird took the view that a document might be produced within the term of the then Federal Government. This difference of opinion was to widen fast in later months.

Other Queensland support groups which came into existence during 1980 were at Boonah-Kalbar in southern Queensland, in Brisbane itself, and on the Gold Coast where Mrs Sylvia Monk and Miss Dorothy French, at a November meeting, formed a group which was to be most active. In Sydney two groups, on the northern beaches area and in the northern suburbs, were working with support from church study groups. In Western Australia during October 1980 a strong support group was formed through the Mount Lawley branch of Community Aid Abroad and the Quaker Race Relations Committee, when Dr Diane Barwick of the Canberra Committee spoke to a public meeting.

Diane's speech emphasized that a treaty was not 'a matter of charity. It is an agreement with people who have rights'. In North America, she pointed out, treaties were 'not a grant of rights from the invaders to the native peoples, but rather a grant of rights from the tribes to the sovereign government whose protection they accepted. The terms of the treaty should not be decided by us, the trespassers. The terms and methods of negotiating any settlement must be decided by the Aboriginal people, the original owners.'

The Western Australia support group was to be extremely active, with its own 'Treaty News'; Nugget addressed a second meeting there in December, with the Aboriginal poet Jack Davis. At this meeting he again emphasized the need for adequate resources and time to be given before any agreement could be concluded, and the dangers of premature action for Aborigines, for we continued to share the distrust of Aborigines over the

response to their application to be granted land — some of which formed part of the Gordon Downs lease, some vacant leasehold. The Commonwealth Government supported their application; but the Western Australia Government opposed it. The Commonwealth took no action. Mr Reg Birch, a representative for the Kimberleys and an NAC member who had been to Geneva on the first appearance there over Noonkanbah, flew there again (on an invitation to attend a meeting) during January 1981; he lodged a second complaint against the treatment of Aborigines. This second-strike registration of a complaint marked a persistence in the international forum which might, in the end, carry weight with the Human Rights Commission.

That January was memorable for the Aboriginal Treaty Committee, not only for the large injection of funds for our programme which came from the exhibition of paintings that month, but for happenings elsewhere. The Gold Coast support group had enlisted the help of the Mayor of the Gold Coast, and on Australia Day — just nine years after Prime Minister McMahon's disastrous speech and the setting up of the 1972 Tent Embassy — both the Mayor of Gold Coast and the Lord Mayor of Brisbane publicly sponsored the treaty idea. On the Gold Coast, the new group co-operated with the Mayor's office to stage a ceremony at which the Aboriginal flag was raised, Aboriginal and Islander dancers performed, and at the request of the dancers, a minute's silence was observed 'as a mark of respect for our people who were killed during the settlement of this country' (a somewhat ironic phrase perhaps). The whole audience stood, it was reported, in profound silence. Though the performers emphasized that their attendance was to recognize the establishment of a new cultural centre for Aborigines, not in recognition of Australia Day — a day which Aborigines had no cause to celebrate — the ceremony was marked by enthusiastic appreciation of their presence and performance.

Summing up the achievements and failures of the treaty idea during 1980, Stewart Harris wrote in a special article:

> The Government's compliance with what happened at Noonkanbah does not suggest any serious Commonwealth commitment to the negotiation of a treaty Makarrata which might be acceptable to Aboriginal Australians... The NAC has no funds to employ professional consultants... Meanwhile (the Prime Minister) is pressing the NAC to reach a completely different agreement with his Government, State Governments, the Australian Mining Industry Council and the Australian Petroleum Exploration Association to allow the development of land where Aboriginal people live. Of course, they *own* no land worth mentioning in the two States where development is most threatening, Queensland and Western Australia, which means that they lack the power which comes from property... There is, however, growing support for Aboriginal Australians within this country and also overseas, as the Aboriginal Treaty Committee has found.[1]

As to support for the treaty idea in Australia, Harris pointed to the 'more than 2500 individuals, families and groups who are committed supporters' on the Aboriginal Treaty Committee's lists and who had then given more than $35,000 to the campaign. 'None of the donations has been big. The Aboriginal Treaty Committee has neither canvassed nor received money from business.'

Nor had we asked for or received money from political parties or organizations of any kind. In fact, the donations to that time represented mostly small sums from people who, like ourselves, were anxious to find some way of making reparation to Aborigines and of holding the Commonwealth to its word. As one of them wrote: 'I did not realize that no treaties had been concluded. There must be many like me'.

By the beginning of 1981 the book, *It's Coming Yet*, was

1 *Canberra Times*, 17 December 1980.

virtually sold out, and was to be reprinted later in the year. Its sales as well as the sales of paintings and of cards printed for Dymphna's fundraising subcommittee, and subscriptions to *Aboriginal Treaty News*, allowed us to begin the year with confidence and to plan further programmes. It was as well we had this funding, for 1981 was to prove a very hardworking year for us.

At an executive meeting in Canberra on 24 November 1980, the NAC had decided by a majority vote to support Aboriginal protests at the Commonwealth Games if the Federal Government continued to avoid its responsibility to override the states on Aboriginal rights. In March 1981 the President of the Supreme Council for Sport in Africa was scheduled to arrive in Australia to look at the preparations for the Commonwealth Games and consider the participation of African countries. There was also to be a visit later in the year by a delegation from the World Council of Churches, which had supported the Aboriginal appearance in Geneva and was now investigating the situation of Australian Aborigines. And in April, the Third Assembly of the World Council of Indigenous Peoples would be held in Canberra. It was no wonder that some pressure was at last being put by the Commonwealth on the Premier of Queensland, whose defence of the two 1971 Acts had been spirited until then, to repeal the offending legislation.

Already the Aborigines and Islanders of Queensland were highly suspicious of the Premier's intentions. The Acts were hated and oppressive; but it was rumoured that their abolition would also involve the abolition of the Queensland reserves on which Aborigines had lived for so long, though under conditions of supervision and dependence which they also hated. The reserves, they felt, represented their only chance of obtaining land at all. If their status was abolished, land developers, miners and resort operators were likely to move into them, and their

former occupants would be far worse off than before.

The land rights question was now to spring to the fore throughout Australia. The 'Makarrata' in which Aborigines had put some hope during 1980 now seemed just another distraction and frustration. In Queensland and the Torres Strait, reserve land was now in jeopardy, and the Premier's announcement on 1 March 1981 of the abolition of the Acts seemed likely to be less a triumph than the foreshadowing of a disaster. The 'Makarrata' proposal was clearly going to be of little use as far as the situation in Queensland was concerned. On 26 March the Federal Minister for Aboriginal Affairs, Senator Baume, made it clear that three of the preliminary proposals (see Appendix) put forward by the NAC sub-committee were not on. There would be no seats reserved for Aborigines in the Parliament. There would be no set percentage of Federal funding from the Budget — the Aborigines would be left, as before, at the mercy of the whims of successive governments in the matter of finance. Nor would there be positive discrimination in favour of Aborigines applying for government employment. There had still been no response to the demands of the NAC on the return of its delegation from Geneva in the previous year. As we wrote, in the first issue of *Aboriginal Treaty News* (published in April 1981 as a successor to our earlier *Newsletter*), we feared there might even be a danger that the Federal Government would opt out of its constitutional duty for all Aboriginal affairs, including any Treaty or Makarrata negotiations, by stressing state responsibilities under Mr Fraser's 'new federalism'.[2]

Our own programmes were now taking shape. We had decided to concentrate our main work for the year on the production of informational pamphlets and of tapes which could be used as a basis for discussions of the treaty idea

2 *Aboriginal Treaty News* 1, p.6.

both by Aboriginal and other organizations and groups. We already had our own copy of *On Sacred Ground* and had shown it successfully in Canberra; it would be circulated for showing by Treaty Support Groups at their own meetings and in public. We had a grant from the Myer Foundation to produce the pamphlets on land rights in all states, and a new Committee member, Mildred Kirk, volunteered to assemble these with Charles Rowley and Stewart Harris. Stewart was editor of *Aboriginal Treaty News*, now registered as a quarterly. We had funds for advertisements in the press, and we were getting good publicity through Stewart's, Charles Rowley's and Nugget's articles and talks, as well as through the series of reviews of *It's Coming Yet* and through letters to the press from support group members. We had our own small office in the old University buildings in Canberra, with part-time office help, for which the Committee could now pay. We had also a number of volunteer helpers for emergencies and rush jobs such as sending out issues of *Treaty News*. The Melbourne *Age* on 27 March devoted a leader to urging the need for a treaty, as 'a resolution, both material and symbolic, of the past and present mistreatment of a race'. And Nugget's efforts to stimulate and organize seminars on aspects of the treaty issue and of Aboriginal relations with the Commonwealth Government were showing results.

Our resource information was being used well, with Diane Barwick's article on *Making a Treaty: The North American Experience*, and reprints of Nugget's articles, as well as the pamphlet series as they emerged, being sent free to Aboriginal organizations and at a minimum charge to others. We had money enough to guarantee the continuance of both the pamphlet series and *Aboriginal Treaty News* through the year. The first issue of the *News*, an eighteen-page professionally edited and printed publication, covered events of the past six months, with photographs and cartoons. It was to become a historic source of information

on events, as well as on the development of the treaty issue, for the three years of its production.

The Queensland issue was crucial. In the *National Times* of 8 March 1981, following the Premier's announcement, we published an advertisement drawing attention to the question of the possible abolition of the reserves. We wrote:

> The reserves were poor compensation for tribal country forcibly taken, but in the circumstances the reserve Aborigines must in justice have established residential rights. A second expulsion from homes and property would continue to make nonsense of Commonwealth and Queensland Government claims for their Aboriginal policies, and might be a greater cause of shame than the expedition to Noonkanbah.

The advertisement urged the public to protest both to the Queensland Government, and to the Western Australian Government over the Gordon Downs situation and over the Kimberley mining interests' activities, where Aborigines were again being dispossessed with reported disregard for their sacred areas and for their interests. We urged too that the Commonwealth Government be pressed to acquire the Queensland reserves if, indeed, the State Government persisted with its apparent intentions to abolish them.

The Premier of Queensland, with the 1982 Commonwealth Games in mind, made no unbreakable commitments either way. Indeed, it seemed unlikely that he would make any final move until the Games were over.

But an unguarded statement by a senior Queensland minister indicated in May that the Commonwealth Government was implicated in the question of the abolition of the reserves. Nugget accordingly challenged the Commonwealth Government on the issue, in a letter later published as another advertisement. The letter, written on 27 May 1981, read in part:

> reports indicate that, *at the request of the Commonwealth Government*, it is proposed within the next few months to

> amend the Queensland State land laws to abolish existing reserves, incorporating them into local government areas, and to repeal the State Aborigines and Torres Strait Islanders legislation. It is apparently hoped that this action, by formally ending the discrimination embodied in that legislation, would remove the justification for a boycott of the 1982 Commonwealth Games which may be imposed by some Commonwealth countries and by indigenous minorities in others... If the reports are correct the proposed action is, in our view, likely to justify and so increase rather than reduce the prospect of a boycott of the Games...

We continued to urge that the Commonwealth assert its power, and if states which had not yet legislated to establish Aboriginal rights to land refused to do so, they be informed that the Government would legislate for effect throughout Australia, and if necessary acquire the Queensland reserves compulsorily. Australia's international reputation, the letter ended, was *'within the responsibilities of the Federal Government. We urge you to protect it'.*

Mr Ordia, the president of the Supreme Council for Sport in Africa, had come and gone without committing himself on the question of African participation in the Commonwealth Games.

But our reference to 'indigenous minorities' in other Commonwealth countries was timely. The Third Assembly of the WCIP, held from 26 April to 2 May 1981, produced much support among its delegates for the Aboriginal cause, including a march on Parliament House by the delegates in common cause with an Aboriginal demonstration.

The WCIP Assembly had been funded to the extent of $90,000 by the Commonwealth Government (not a remarkable sum, considering the expense to which it went over the meeting of Commonwealth heads of Government later that year). The NAC newsletter issued before the Assembly took place appealed for donations and assistance to bring the funding up to the needed sum of $130,000

more.[3] We ourselves published in the issue of *Treaty News* which appeared before the Assembly an encouragement to our own supporters to donate to the fund. We explained that, though so far we had used our own donated funds solely for the purpose of 'information and influence' on the 99 per cent of Australians who were not Aborigines or Torres Strait Islanders, we considered it so important that Aborigines from the unfunded land councils should be able to attend the Assembly that we would finance fares for representatives from the Kimberley and North Queensland Land Councils. (In the event, an air strike prevented them from reaching Canberra in time for the Assembly.)

We also published a report on the appeal launched by the Kimberley Land Council for funds to employ a lawyer. Not one of the 250 biggest mining and industrial companies in Australia had responded with a donation to individual letters sent by the impecunious Council. 'Plainly,' the *Treaty News* commented,

> the mining and other big companies do not want to encourage in any way the strength, independence and professional skills of the Kimberley or North Queensland Land Councils. They want ... to work with the State Government's support and without the proper constraint of having to negotiate with an experienced Aboriginal body, acting on behalf of individual communities in order to protect them.

In fact, the situation faced by Aborigines *vis-à-vis* the mining companies in the Kimberleys was a further extension of the Noonkanbah situation which had roused world interest in Geneva in 1980. But the Aborigines who were now being removed for the miners' advantage had not only little legal representation, but little chance of being heard in their own country. A hush had fallen. The five-day Assembly of the WCIP in Canberra, with all its colour and fire, was scarcely reported at all in the media beyond

3 *Aboriginal Treaty News* 1, pp.3–4.

Canberra itself.

Delegates from twenty-seven countries met at the Assembly. Northern, Central and Southern American indigenes, Maoris, Inuit from northern Canada and Alaska and from Greenland, Sami people from Finland and many others debated and worked on a proposed international covenant on the rights of indigenous peoples, and other questions. On 30 April 1981 they joined the Aboriginal-organized protest march and demonstration. But there were clearly splits on the Aboriginal side.

A separate Aboriginal forum was set up in a building near the main Assembly. Only three Aborigines had speaking rights in the Assembly itself, and all three were NAC representatives. But the NAC's acceptance of governmental direction and conditions on the Makarrata proposal had displeased many Aborigines and Islanders.

Kevin Gilbert, Aboriginal writer and intransigent critic, had already cabled a warning to the WCIP's organizing committee, asking for accreditation of Aboriginal speakers from outside the NAC. That body was, he said, 'formulated by and acts under the auspices of the Australian Government'. The choice of the word 'Makarrata', with its implications that a treaty would not be considered, the government's rejection of the claim that Aborigines constituted a 'nation' or nations, and the Minister's rejection in March of three of the preliminary points in the NAC's document, had set off a wave of distrust among Aborigines and others. Like ourselves, some believed that Colin Howard's warning in his review of *It's Coming Yet* the year before, that the whole issue might be manipulated by the government to cause confusion and frustration among Aborigines, was coming true.

Nevertheless, the NAC's prepared Position Paper[4], and

4 'The Makarrata: Some Ways Forward'. National Aboriginal Conference Position Paper, delivered to the World Council of Indigenous Peoples, Canberra, 1981. Aboriginal Treaty Committee pamphlet, 1981.

other papers presented during the conference, were dignified, strong and significant documents. In the Position Paper, the differences between the Federal Government's view of the Makarrata and those of Aborigines were clearly stated:

> We the Aboriginal people plainly think of it as a treaty with the Aboriginal nation... [The government] hopes to have the Aborigines accept from the outset of the negotations... that they are part of the Australian nation as a whole, and thus by implication to waive the effect of the Aboriginal concept of nationhood and its consequent effect upon the form the Makarrata should take. However, we as Aborigines maintain that our nationhood is a matter both of fact and of law.

In support of this, the paper advanced that

> ...a growth of international law on the issue of self-determination... is now established... in the face of a concept of international law as a regime which only governed relations between established nation states... The Aboriginal people therefore require that the Australian Government recognize their international standing.

And it added:

> It is still arguable that there is no impediment to the Australian courts recognizing in due course that, in accordance with principles espoused by the International Court of Justice in the Western Sahara Case, sovereignty has always resided in the Aboriginal people. This would permit the negation of the idea that Australia was settled by Europeans on the basis that it was unoccupied land or what lawyers call *terra nullius*... The impact on Australia's constitutional law of a declaration by the Government or a court that Aboriginals may treat as an Aboriginal nation, will be to allow the enactment of the proposed Makarrata as a law having effect throughout Australia by virtue of the Government's paramount power over matters concerning external affairs. No doubt such a result would not be without challenge in the national courts

but, as it is one important effect of the nationhood which we assert, it must be followed up and cannot be jeopardized at this stage by compromising our international status.

The paper went on to emphasize that, short of such a declaration

> . . . the only other source of power which we presently see as possible . . . is the idea of a constitutional referendum . . . The constitutional issue arises because at the moment the main obstacles to the Makarrata are the Australian States . . . We believe that given the way in which the Makarrata has captured the imagination of Australians and is continuing to generate their support, such constitutional authority will be granted as it was in the 1967 referendum on Aboriginal matters . . . Accordingly, if negotiations are to commence, we at least require recognition as a domestic nation in a manner similar to the legal recognition accorded to American Indians over a century ago [in the Cherokee Nation case of 1831]. Alternatively, if we are to negotiate without obtaining such recognition, then we may have to expressly reserve in the Makarrata the issue of our international status. We cannot surrender such status, either expressly or by implication, due to our responsibility to future generations who may wish to assert this nationhood in national or international forums.

This proud and uncompromising statement, and others which followed, gave little apparent cause for fear of over-influence on the NAC by the government. But if the Prime Minister was not prepared, the paper insisted, to begin by legislating for corporate standing and statutory functions for the NAC and an assured source of funding 'which is not subject to political limitation', then

> . . . his good faith must be queried and we wonder whether his offer to entertain a treaty is only a ploy to defuse the Aboriginal issue, promote his own international standing in the Black nations of the world, and to further the status of the NAC as an organization set up by his own government.

Some may have raised their eyebrows at the latter part of that sentence, supposedly put forward by the NAC itself. Moreover, there were other inconsistencies. The NAC, in putting forward its original demand for a treaty in April 1979, had nominated itself as the sole body to negotiate and conclude a treaty, on the ground that it was the only Aboriginal national organization recognized by the Commonwealth Government. But in the Position Paper, the question of negotiating procedures was differently put. On 22 September 1980 Coombs had answered a question from the NAC Chairman, J. P. Hagan, as to who, or what body, on the Aboriginal side should be considered representative in negotiations. His answer was along the lines we had suggested in the Draft Agreement. Now, with a footnote reference to this letter, the Position Paper suggested that six consecutive steps be followed:

Step 1 The NAC commission, from the best persons available, 'position papers' setting out the options which need to be considered before negotiations begin...

Step 2 The NAC commission simply expressed summaries of the best papers, for circulation in print and on tapes among Aboriginal organizations and communities.

Step 3 The NAC calls a Convention of representatives chosen by recognized Aboriginal organizations, communities and traditional groups to discuss the Position Papers.

Step 4 The Convention representatives should return to their organizations to report to their constituents.

Step 5 The NAC recalls the Convention to consider a first draft of the Makarrata or Treaty for submission to the Government.

Step 6 The Convention then stays in existence so that it can be recalled as necessary, before and during negotiations, to consider issues as they arise (possibly by resort to the same steps as above) and finally to approve or reject the agreement provisionally made by the negotiators.

Finally, before leaving the matter of the process to be used, it is important to observe that the consultation, research and

> negotiations would take place over a period of several years. There must be no quick solutions or political pressure to achieve a solution which could be presented as an achievement by any Government. Although it is inevitable that individual reputations will become associated with the concept of a treaty and its negotiation, we wish to avoid the conciliatory trap involved in seeing the achievement of conducting negotiations as an end in itself. The negotiations will only be a means to our Aboriginal ends.

These preconditions seemed strongly enough put to be, in effect, non-negotiable. Certainly they covered adequately the need for thorough consultation and representation beyond the NAC itself.

The government's view, however, was decidedly different. In the Senate on 25 March 1981, the Minister for Aboriginal Affairs replied to a question on the Makarrata on the government's behalf. He defined the word 'Makarrata' as meaning 'in general terms, a resumption of normal relationships at the end of a period of disagreement'. (Apart from the fact that no generally accepted translation of the word had been found even by the NAC, and that some Aborigines questioned both its meaning and its applicability as a description of the process, it seemed a little too smooth to import the idea of 'a resumption of normal relationships' between the Commonwealth and Aboriginal Australians — when those relationships had been so one-sided in terms of power and so disadvantageous to the Aboriginal side.) 'The word is being used in relation to a move to develop an understanding between Aboriginal people and other Australians', he continued.

> The discussions to develop a Makarrata will involve both the Commonwealth Government, which will deal with national Aboriginal bodies, and also State governments, which will deal with those areas which relate to their own activities.
>
> The meeting last week between State and Commonwealth Ministers responsible for Aboriginal affairs was attended by

representatives of the National Aboriginal Conference, who asked the States whether they would open up discussions on the question of a Makarrata. So, the direct approach has come from the elected representatives of the Aboriginal people to the States regarding the Makarrata... I do not use the word treaty for reasons which have to do with the precise legal meaning of the word. The approach came from Aboriginal people and was taken up by most of the States and the Northern Territory. At this stage no State has indicated that it will not discuss the matter.

The Govenment proposes, with the help of the NAC, to pursue the concept of a Makarrata and also to provide assistance to the NAC to research and develop the proposal. In doing so, the Government is prepared to acknowledge prior occupation of Australia by Aboriginals. We are not prepared to act unilaterally in those areas where the States have an interest.

I have indicated to the NAC in a number of particular matters that the Government cannot negotiate a treaty which implies an internationally recognized agreement between two nations... that the Government cannot agree to any fixed financial committment to the future... that the Government cannot support the proposal for reserved seats in the Parliament for Aboriginals... that the Government does not believe that a system where Aboriginal employment is subject to a rigidly fixed formula is appropriate. Nevertheless, the Government has indicated a position from which it will negotiate. The Aboriginal representatives have now opened up the matter further with the State governments. It is up to them to take the next step.

We commented on this speech:

Several points are clear about the Government's position. It has refused, once again, to assume its total constitutional responsibility for Aboriginal affairs, even in the context of a treaty or Makarrata. It is also strongly implying that the initiative for the use of the word 'Makarrata' came from the Aboriginal people, which is not certain, and that the initiative for bringing the State governments into the Makarrata or treaty discussions came also from the Aboriginal people. That seems even less likely. Given the present policies of the

Queensland and Western Australian governments, is it likely that the NAC would really want them to be involved in negotiations?[5]

Certainly it was obvious that the strong stance of the Position Paper presented by the NAC to the WCIP Assembly would not be at all acceptable to the coalition government; and that some pressure at least was on the NAC's Makarrata subcommittee, perhaps to deliver at least a preliminary draft before the Commonwealth Heads of Government meeting due in the first week of October 1981. This would contravene the NAC's own expressed intention to carry out research and consultation over a period of 'several years' before presenting a document, and its repudiation of 'quick solutions' which could be presented as an achievement by any government. But those prior commitments might not count for much against the agile manoeuvres of a government determined to present itself as clean-handed in the matter of its relationships with Aborigines.

We had produced a number of land rights information pamphlets, copies of the UN Declaration of Human Rights and the Dene Declaration, as well as copies of the first issue of *Aboriginal Treaty News* published just before the Assembly, and had handed them out to all the Assembly sessions and to the alternative Forum. But our most important contribution at the time was to organize the first legal seminar on the treaty issue, on the day after the Assembly ended and while many Aborigines from distant areas were still in Canberra. The discussion was chaired by Professor Garth Nettheim of the University of New South Wales and Mr Bryan Keon-Cohen, who had recently contributed an exploratory article on the treaty to a *Current*

5 *Aboriginal Treaty News* 2, p.3.

Affairs Bulletin.[6] The seminar was crowded, many Aborigines attending as well as a number of lawyers, students and public servants.

This preliminary seminar discussed the possible procedures for concluding a treaty, mainly within the state of the law as it then existed. Contracts, legislation, a simple constitutional amendment enabling the Commonwealth to enter into negotiations and agreement with Aborigines, or a more complicated amendment embodying the actual agreement, were examined. The question of sovereignty raised in the Position Paper was also discussed; and Aborigines contributed strongly to the discussion.

It was already clear that Aboriginal interest in the treaty or Makarrata was more from the point of view of confirming a possible redress for their wrongs than as a symbolic starting point for that redress, and that this 'shopping list' approach indicated that they would continue to struggle on a few immediate points, especially the overriding issue of land rights. The question of a treaty as such was unlikely to engage their support as did the land question. Where we on the Aboriginal Treaty Committee saw it as an indispensable condition for consolidating any gains they might make on specific issues, and for holding the Commonwealth to an overall and unbreakable commitment, the immediate battle for land rights in which they were all engaged, with scanty resources and continual erosion of what they had won, was closer to their lives.

Some of the lawyers present were possibly a little uneasy at the implications of the Position Paper, and the rejection of any further recourse to legal action within Australia which it implied. As Marcia Langton said during the seminar:

6 B. Keon-Cohen, 'The Makarrata: A Treaty Within Australia Between Australians: Some Legal Issues;' *Current Affairs Bulletin* 57, 9, February 1981.

> Two tactics [were] open to Aboriginal Australians, either to go to the High Court and, through the white man's law, *legally* establish the claim to land, or, setting aside as irrelevant the whole of the white legal system, proceed to the negotiating table on the unnegotiable premise that the whole of Australia is Aboriginal land.[7]

The failure of the two previous legal cases seemed to make it unlikely that Aborigines would invite a further case which might only confirm the primacy of the 'white man's law', but the Commonwealth Government's stated position made it even more unlikely that it would come to the negotiating table under the second condition.

Through this seminar we gained a legal adviser, Peter Bayne of the Department of Law in the Canberra College of Advanced Education. He analysed for us the arguments of the seminar and provided a paper which we later published as a pamphlet: 'A Makarrata: The Legal Options'. We also published the NAC's Position Paper in a similar format, providing the NAC with as many copies as they wished.

We also gained another new Committee member: an oral historian, Peter Read, then working with Aboriginal groups in the Murrumbidgee–Murray area, who had taped the whole day's proceedings for us. Peter Read followed other new members: Mildred Kirk, who was already working on assembling and writing our various information pamphlets, and Paul Kauffman, then organizing a Canberra Treaty Support Group. This brought the number of the Committee to twelve. But we were by the time of the WCIP Assembly already seriously overcommitted, in spite of our new help in the setting up of the office and of a part-time employee. Heather was ill and would have to take some months sick leave. Mrs Jan Gammage took the job in her stead.

1981 seemed destined to go from crisis to crisis in the Aboriginal field. The Commonwealth Government was

7 *Aboriginal Treaty News* 2, p.3.

attempting to transfer responsibility for funding Aboriginal Medical Services to the states; the Services were resisting, and the Victorian Service was working meanwhile without pay in a field where the urgency of medical help was notorious. We arranged for advertisements to be published in various papers, asking for donations to be paid direct to the Services themselves. Meanwhile in Queensland fears for the reserves were running high, and in Western Australia the Kimberley Land Council remained beleaguered and unfunded against the powerful interests of the mining companies then exploring and seeking licences over what had been their land.

The Queensland Premier was, as usual, enjoying the embarrassment of the Commonwealth Government over the abolition of the legislation. When finally in July the Deputy Prime Minister, Mr Anthony, replied to our letter of 27 May (which we had also placed as an advertisement in the press four days later), the embarrassment was obvious. He pointed defensively to the Commonwealth's 'encouragement' of changes to legislation to improve the position of Aborigines and Islanders, and the extension of land rights to them:

> Neither I nor my colleague, the Minister for Aboriginal Affairs, have made any request for abolition of Queensland reserves... The Commonwealth appreciates that the proposed repeal of the Aborigines and Torres Strait Islanders Acts is of major importance to Aboriginal people and will therefore be maintaining a close interest in the issues you have raised.

(We published this reply, dated 10 July 1981, in the second issue of *Aboriginal Treaty News*.)

The treaty idea took hold of many people during that year, when the possible international exposure through the visit of the World Council of Churches, through any possible action to condemn the treatment of Aborigines during the Commonwealth Heads of Government meeting, and the foreshadowed protest by Aborigines at the

Commonwealth Games in 1982, gave the issue high media interest. The Bicentennial Authority, looking only a few years ahead at even more likely occasions for Aboriginal protest action and consequent embarrassment, felt the negotiation of a treaty in time for those celebrations would solve some of these embarrassments. The Authority even suggested that the re-enactment of the landing of the First Fleet might be a suitable occasion for the publication of its terms — the ships themselves might carry the document to Australian shores.

For us on the Aboriginal Treaty Committee, when they approached us with the idea, it seemed even more embarrassing than if there were no treaty at all; but in any case we felt there must be no kind of pressure on Aborigines in terms of a time factor. At best, unless the coalition government were out of office during the negotiations, such an agreement was not likely to be of any great value to Aborigines, and might indeed be damaging to their future.

Meanwhile, the second of the academic seminars which we had encouraged was held in Perth by the Anthropological Society of Western Australia. It practically coincided with the dates of the WCIP Third Assembly, and Nugget, who was to have spoken, was unable to go to Perth and had to contribute a later paper. (The proceedings of this seminar are reported in the Society's Journal for June 1981.) At the ANZAAS Congress in Brisbane, too, a half-day session on land rights was addressed by both Charles Rowley and Nugget Coombs, with Aborigines again contributing strongly; and both on the ABC radio programme P.M., and on TV news, Nugget was interviewed on the Queensland situation.

The demand for the ATC's land rights and other pamphlets and the rising interest in the whole issue kept us very busy. Hugh Littlewood was now unable to cope with all the paper landing on his desk, Nugget had been ill and was overworking, and we had many projects under way and

much more work ahead. Hugh became treasurer, and I, my book now with the publishers, became secretary.

The Townsville Treaty Committee was working with the Students' Union of James Cook University on the organization of a conference which was to take the place of our third projected academic seminar on historical aspects of the treaty, and would have a strong historical basis — both Dr Loos, the Townsville Committee's convenor, and Professor Henry Reynolds, of James Cook University, had worked on the history of Aboriginal and Islander contacts throughout the period of the invasion. The three-day seminar seemed likely to be well timed, for the delegation from the World Council of Churches had completed its tour early in July, to the accompaniment of loud condemnation by the Premiers of Queensland and Western Australia, who refused to meet or co-operate in any way with the team. Its report was due shortly. The Commonwealth Government was not likely to benefit from it.

Indeed the choices facing the government were difficult. If Queensland, in accordance with the Premier's and the State Minister's statements, were to abolish the reserves along with the legislation, interfere with their boundaries in favour of mining, tourist enterprises or other developments, impose unacceptable conditions on leaseholds if leases were to be allowed to Aborigines, or refuse to allow Aborigines self-management when the legislation was abolished, the Commonwealth had few courses of action. It might simply do nothing, leaving the situation to the state with or without condemning its policy. It might actually use its constitutional powers to resume the reserves or to purchase other land. Or, as it had done over the Aurukun-Mornington Island reserves, it could try once again to negotiate a compromise between the state and Commonwealth policies. In fact it was still doing this in the case of the Yarrabah Aboriginal community, which was continuing to hope that the Commonwealth's Self-

Management Act of 1978 might actually be applied in its case.[8] And the last seemed by far the likeliest course.

In the event, the three-day conference in Townsville was to be one of the most important and interesting events we participated in, not only because of its timeliness but of the high participation of Aborigines and Torres Strait Islanders, who chaired, spoke at and virtually took over most of the sessions. Except for Western Australia, there was representation from most of the states and territories. Nugget Coombs, as chairman, and I as secretary of the Canberra Committee, were there, Nugget speaking on behalf of the Committee and I commenting later on the trend of the discussion. The proceedings were published later under the title *Black Australians: The Prospects For Change* by the Student's Union of the James Cook University, edited by one of the chief organizers of the symposium, Erik Olbrei.

Perhaps the most striking new factor in the conference was the involvement of Torres Strait Islanders as participants in the land rights campaign. In previous years they had believed that the islands on which they lived, and where they had been, in many cases, from 'time immemorial', belonged to them. The negotiations over the border between Australia and Papua Niugini, with the Premier apparently so strongly supporting their claim to keep the few services Queensland provided rather than to be transferred to the new and untried government to the north, had made them feel secure in their claims. Now, with the pending abolition of the reserve status of their lands, they had begun to realize the implications of the fight for land rights by Aborigines on the mainland. As one Islander, Flo Kennedy, said:

8 See G. Nettheim, 'The possibilities for Commonwealth action in Queensland', in Olbrei (ed.), *Black Australians*, pp.169 ff.

> I have a lot of respect for the Aboriginal people and I feel very sorry for you, but more sorry since we've started our fight for land rights. I never really understood until we started, until we were faced with being homeless like you people.[9]

Others echoed her.

Eddie Mabo, of Mer (or Murray) Island, and Rev. Dave Passi explained clearly how their lands and water rights were inherited and under what age-long traditions the inheritance was determined. Ben Mills of Thursday Island told of the consultations between the Torres Strait Advisory Council and the Islanders, which had issued in a clear and unanimous demand for inalienable freehold title to the lands they claimed and for control of their own affairs. Eddie Mabo spoke for the Torres Strait Land Council, and presented the symposium with a draft summary of a proposal to transfer the whole of the area to Commonwealth administration as an autonomous region, with its own constitution and constituent assembly.

These sessions on the Islanders' claim were soon to give rise to a High Court case, based on Eddie Mabo's outline of the land rights inheritance system — a case which would perhaps benefit not only the Islanders themselves if it succeeded, but might lead to further claims, and to a challenge to the Blackburn judgment that 'communal native title' could not be recognized in Australia's common law.

During the conference news reached North Queensland of a sudden and entirely unexpected development in Canberra. The NAC had called a public meeting in Canberra, advertised the day before it took place, at which a draft Makarrata document was discussed for presentation to the Commonwealth Government.[10] It seemed that the NAC, as we had feared, had buckled in to demands for a draft document to be put forward before the

9 Oliver (ed.), *Black Australians*, p.163.
10 ibid. pp.60–4.

Commonwealth Heads of Government meeting to be held at the end of the following month, and that the confusion and frustration which Professor Howard had warned against was to follow.

In the Senate, a Bill was introduced on the same day, 27 August, that the Townsville symposium began. This Bill, prepared by Senator Susan Ryan, went by the name of the Queensland Aboriginals and Torres Strait Islanders Self-Management and Aboriginal Land Rights Act 1981, and was, as she said, designed only to deal with the proposal to abolish Queensland reserves, and to 'make possible the granting of freehold title to Aborigines for land which constituted Aboriginal reserves as at 31 March 1978' (thus including Aurukun and Mornington Island). For Aborigines and Islanders, however, with their proud claim to prior ownership, the Bill did not go far enough. A critique issued on 7 September by a body called Concerned Palm Islanders, perhaps drew on the material of the conference for its basis when it asserted 'our right to complete sovereignty over our lands and to complete right of veto over mining and other destructive proposals'.

As we wrote in *Aboriginal Treaty News* 3:

> This Aboriginal assertion is one which Australian superior courts of law are going to have to look at before long. International legal opinion is also interested. It is, indeed, an assertion which Australian people and politicians will have to face seriously.

Meanwhile, in Queensland the Premier and his ministers continued to prevaricate. Threatened by widespread Aboriginal protest during the Commonwealth Games to come, and by possible condemnation at the meeting of the Commonwealth Heads of Government which was shortly to be held, they took no further action. But they let it be known that they were considering other forms of tenure than the idea of a 50-year lease over land for Aborigines —

that proposal which had set off such widespread demands among the reserve and other Aborigines for nothing less than inalienable freehold over the reserves and self-management when the legislation was finally abolished. The Queensland National Party president now announced a policy for 'a new form of perpetual title to guarantee security to tenure for Queensland's indigenous people' — an apparent backdown on the Premier's hardline stance.

In the Northern Territory, where the Commonwealth land rights legislation had already been seriously eroded by amendments against Aboriginal interests, it was reported that the government was considering declaring all Crown land in the Territory alienated — thus blocking a number of pending and possible claims — and introducing draconian and extraordinary new legislation on alcohol-related offences which was clearly aimed at Aborigines. Since Aborigines generally have nowhere to drink except in public, their rate of conviction was already far too high, without the threat of banishment from towns on the third offence in a year. Another proposal for a draft criminal code on sedition provided for sentences of seven years with hard labour for 'knowingly causing disaffection between disparate groups in the community' — and this was to be a mandatory sentence. As the then Northern Territory Member for Arnhem Land, who outlined these proposals at the Townsville Conference, said: 'You don't have to wonder what the future of black–white relations is in the Northern Territory in the face of this kind of legislation'.[11]

It was clear that great efforts were being made by the Commonwealth Government to keep the issue of Aboriginal rights and treatment in as low a key as possible before the prestigious Commonwealth Heads of Government meeting at the end of the month. The report of the World Council of Churches, *Justice for Aboriginal*

11 Olbrei (ed.), *Black Australians*, p. 55.

Australians (WCC, 1981), had had considerable effect during the previous month, with its charges of what amounted to 'genocide by neglect' and appalling poverty and conditions. Aboriginal leaders were then lobbying in African countries for a boycott of the Commonwealth Games with Gough Whitlam accompanying them. At the same time, the Director of the Australian Institute of Criminology, Mr William Clifford, giving the J. V. Barry Memorial Address in Melbourne, quoted figures on Aboriginal conviction and imprisonment which showed rates which, he said, were

> dramatic by any standards ... You have to believe either that Aborigines are the most criminal of minorities in the world or that there is something inherently wrong with a system which uses imprisonment so liberally ...[12]

The law, and particularly the manner of its enforcement, he said, showed gross injustice to the Aborigines.

To corroborate all this criticism Professor Rowley's follow-up survey on the changes which had occurred in areas of the 1965 survey under the Aborigines Project appeared during October. His new report showed that no more than 10 per cent of Aborigines living in and around New South Wales country towns had passed the age of 49, that unemployment was worse than in 1965 and that a per capita weekly income of $38.63 was average. Health and housing had improved, but education had not.

Virtually at the same time, widespread publicity was given to a Criminal Court case in Brisbane in which a young Aboriginal of the Weipa South Aboriginal Reserve, Alwyn Peter, was tried for the manslaughter of his girlfriend. He was sentenced to a jail term but given immediate parole (having already spent 21 months in jail before the case). The

12 W. Clifford, 'An Approach to Aboriginal Criminology', John Barry Memorial Lecture, Phillip, ACT, Australian Institute of Criminology, 1982.

whole tragic history of his and others' life on the reserves, emerging in the course of the carefully prepared defence, once again illuminated the situation of Queensland's Aborigines. It has been told by Dr Paul Wilson in his book, ***Black Death, White Hands*** (Sydney, George Allen & Unwin, 1982).

This case had as one of its main witnesses for the defence Professor Bill Stanner, whose knowledge of the background of the violence endemic on reserves and the loss of the traditions which had once guided tribal Aborigines was deep. But the evidence he gave in the Peter case was among his last efforts on behalf of Aborigines. On 8 October Bill died at the age of 75. We wrote in *Aboriginal Treaty News* that 'Stanner's life is proof that Australian society has changed for the better...and that it can continue to change, when taught and pressed'.

His death came just after the Commonwealth Heads of Government Meeting (CHOGM) from which Aborigines had hoped for international interest in their situation — so well illustrated by all these happenings of the same year. But the Fraser Government's efforts to keep the issue quiet were effective. Prime Minister Mugabe owed much to the Lusaka Conference; he did not take up the issue, and though a few others such as Father Lini of Vanuatu mentioned it, the meeting issued no statement and Mugabe, on a later visit to Queensland, virtually brushed the issue under the carpet. There would evidently be no boycott of Brisbane's Commonwealth Games of 1982 unless both Mr Ordia and Mr Mugabe changed their views meanwhile.

The media covering CHOGM for the most part muted the issue of the situation of Australian Aborigines. But we ourselves put an advertisement in the *Age*, inviting the Heads of Government 'to concern themselves during their visit to Australia with the status and conditions of the Aborigines of the continent'. We urged them to study

1. the Report of the World Council of Churches team visit to Australia, June-July 1981;
2. The Reports of the NSW Parliamentary Select Committee on Aborigines, 1980 and 1981;
3. Report of the Commonwealth Parliamentary Committee on Aboriginal Health 1979; and on Aboriginal Legal Aid 1980;
4. Reports of the Commissioner for Community Relations 1980 and 1981; and the writings of independent scholars.

The referendum of 1967 gave the Commonwealth power to legislate in respect of Aborigines, yet the Fraser Government:

- has failed to insist that States grant land rights for Aboriginals in accord with the principles established by the Woodward Commission which were accepted by all political parties;
- has acquiesced in the Queensland Government's refusal to transfer to Aboriginal ownership land purchased for them by the Commonwealth;
- has acquiesced in the Queensland Government's current plans to convert Aboriginal reserves into short-term leaseholds subject to humiliating conditions;
- is collaborating with the Northern Territory Government to restrict the rights of Aborigines embodied in the Commonwealth Government's own land rights legislation;
- has acquiesced in the Western Australian Government's use of force to compel Aborigines at Noonkanbah to allow mining companies' activity in areas of religious and traditional significance to them on a property purchased for the Aborigines' use by the Commonwealth;
- has failed to act on the reports of the Commissioner for Community Relations which record gross and widespread discrimination against Aboriginal Australians.

We believe that international influence can help achieve justice for Aborigines. Our own commitment is to a freely negotiated treaty between the Commonwealth of Australia and the Aboriginal people. The concern and help of the indigenous people of the wider Commonwealth and their Governments could be invaluable in this just cause.

This advertisement, appearing on 30 September, perhaps reinforced the appeals of Aborigines themselves but brought no further moves from the wider Commonwealth.

But Aborigines were themselves making new moves. Towards the end of November, the Federation of Aboriginal Land Councils, which had been discussed by Aborigines during the Commonwealth Heads of Government Meeting, was set up, with ten land councils collaborating.

The sad splits in the Aboriginal movement were obvious from the Federation's first statement of its position. The wounds remaining over the NAC's Makarrata document of the previous August (though by this time the NAC had disclaimed that this document was in any way intended to be a final negotiating position) were to continue to fester. The Federation in its first statement, on 27 November 1982, condemned the Federal Government initiatives for a Makarrata as a 'confidence trick'; and rejected the idea of a treaty because of 'insufficient consultation with Aborigines, doubts of its significance and/or consequences, and because it would legalize occupation and use of Aboriginal lands by the Australian settler State'. It emphasized its claim that Aborigines, having never ceded sovereignty to that State, were and remained a nation in their own right, and declared that Aborigines were being pressured into signing some agreement before the bicentennial year. The statement reaffirmed that the Federation intended to 'mobilize for the 1982 Commonwealth Games' regardless of the threats of the Queensland Government and the new 'peacekeeping strategies' of the Police Minister, Hinze.[13]

The hectic year was ending with some things lost and some gained. Our funds had been heavily used, with so many major advertisements both in the state and national newspapers and in the Aboriginal journal *Identity* (see vol. IV, 4), and issues of *Treaty News*, pamphlets and posters. The Committee's funds had also provided airfares for some speakers to important seminars such as the August

13 *Aboriginal Treaty News* 4, February 1982, p.1.

symposium in Townsville. To try to continue raising money for the coming year, we started a Book Club, organized by a new member Paul Kauffman, selling books on Aboriginal issues published by the Institute of Aboriginal Affairs and the Australian National University Press. We were still selling copies of the second edition of *It's Coming Yet*, and the cards produced by Dymphna's fundraising committee; we were corresponding with Treaty Support Groups everywhere and providing advice on suitable films and speakers for meetings, and notes for speakers' reference. Articles by Committee members, especially Nugget Coombs, Charles Rowley and Stewart Harris, kept appearing in various newspapers and journals, and the material from the various seminars already held was becoming massive. In fact, as the third issue of *Aboriginal Treaty News* said in that November of 1981:

> One of the major problems in publishing this *News* is the growing amount of excellent material being produced, which we can only refer to . . . the volume of evidence and argument is too great as seminars, conferences and books on Aboriginal issues keep on increasing.

But in our final meeting for the year, on 3 December 1981, we recognized that the Federation's repudiation of the idea of a treaty, given wide publicity, would affect seriously what we were able to accomplish in future. Dependent as we were on donations, these would soon fall off as the Federation's opinion sank in.

Nevertheless, the setting up of a Senate Committee on Legal and Constitutional Affairs' inquiry into the possible methods of negotiating and concluding a treaty marked a step forward in the possibilities for the future. We would try to stay in operation at least until that committee's report was issued.