CHAPTER VI

TREATY OR MAKARRATA?

It was scarcely surprising, given the judgments in the legal cases, that the word 'treaty' was unwelcome to some (though not all) of the lawyers to whom we sent the Draft Agreement and invitation to sponsor it. We were uncertain ourselves of the legal implications of the term, which had recently been defined under the UN Charter as applying only to agreements between sovereign nations, but which we knew was still in use for the agreements with Canadian and American Indian peoples. We had suggested alternative terms — covenant, or convention — with equally little definition of their national and international implications; but we continued to prefer the term treaty as better understood by most people and carrying stronger associations. The question of what the final agreement might be called did not concern us much; what mattered was that it should be seen by the dominant society as binding, in the same way as any international agreement, on the Commonwealth.

But the legal possibilities clearly had to be examined. One of our first decisions was to involve academic lawyers and perhaps historians of law in a series of seminars to tease out those possibilities. Funding would certainly be an immediate need for all the programmes we proposed. We wanted to advertise not only in the national press, but in professional journals, quarterlies, and even overseas; we wanted to attract enough attention to be able to command radio and TV interviews, articles, and discussion in political and public-affairs programmes and by public-interest organizations. We would need to print and distribute pamphlets as well as the book we proposed, and which Stewart Harris had undertaken to write. In brief, we needed the kind of monetary support from private donors which would launch a really effective campaign.

The advertisement which appeared in the *National Times* of 25 August 1979 was preceded by the press conference. It was well attended — the names of the Committee's core members, as well as the novelty of the initiative, gave us weight, and the articles and news items which followed it were generally sympathetic and well-briefed.

Nugget and other members asked a number of Aborigines, in the NAC and elsewhere, to comment on what we had done; he reported at a Committee meeting on 3 September that they were pleased with the wording of the advertisement and the publicity gained through the press conference. It was agreed that separate campaigns, with exchange of information and of publications, offered the best chance of success.

The Federal Labor Party subcommittee on Aboriginal Affairs issued a document stating that 'such a treaty properly concluded' would establish the status and rights of Aboriginal Australians. On 28 August, Dr Doug Everingham, as spokesman on Aboriginal Affairs, asked the Prime Minister whether the proposal we had circulated to all Members and Senators was consistent with stated

government policy and whether a Committee of the Parliament would be asked to investigate the proposal and report to Parliament with recommendations. For the time being the question remained unanswered.

Perhaps more influential with the coalition government was the agitated reaction of the Premiers of Queensland and Western Australia. Telexes went to the Prime Minister from both, opposing any concession to the NAC approach or our own circular, and citing legal opinion that a treaty could not be concluded anyway.

Their anxiety was not surprising. At the beginning of August Prime Minister Fraser attended the Commonwealth Conference at Lusaka, which had provided him with a forum on the question of racism and an influential vantage point in discussions over the future of Zimbabwe and South Africa. This had earned him international applause. But it was not only Aborigines who pointed to a lack of consistency between his statements there and the domestic situation of Australia's first inhabitants. He was clearly in some embarrassment over that contrast.

When he returned to Australia, an open letter addressed to him was circulated from a new Tent protest, which had set up a 'National Aboriginal Government' headquarters of tents and shelters on Capital Hill in Canberra. The letter, signed by the Aboriginal writer Kevin Gilbert, was a further assertion of Aboriginal rights to self-determination, of the urgency of their needs, and of the injustice of the 'legal fiction' which deprived them of rights to land. It challenged the Prime Minister to take real action on all these matters against the states' recalcitrance. This too was embarrassing.

But the government was said to be already looking seriously at the NAC's proposal. This troubled the Capital Hill protesters, who feared that the government-funded and supported body would come under pressure to conclude an agreement without proper arrangements for consultation

with Aborigines throughout Australia, and that it would result in yet another empty gesture which betrayed Aboriginal hopes.

'Treaties', declared Gilbert's letter, 'are often broken at political whimsy. There can be no "treaty" unless the descendants of the 500 nations and their grassroot government [are] consulted with'. The letter demanded, instead, a Bill of Aboriginal Rights to be included in the Australian constitution, as 'an unbreakable guarantee that we be accorded our land rights, our human rights and a future for our children that will ensure for them a heritage far different from the heritage of despair and genocide imposed upon them'. This was to be accompanied by an Aboriginal Land and Compensation Bill, and these were to 'ensure justice throughout each of the States of Australia'.

We too were worried by the government's suspicious alacrity over the NAC demand. But we continued to doubt whether Commonwealth legislation would prove trustworthy in the face of what had happened in the Northern Territory case.

The Prime Minister's reply to this open letter was rather more immediate than the reply to Dr Everingham's question. His assertion that 'over the past ten or so years the legal discrimination against Aboriginals has been dismantled', and that 'major programmes aimed at removing the inequities of the past' were under way, depended for its degree of truth on the Whitlam Government's initiatives and legislation, such as the Racial Discrimination Act.

He did not refer to the question of overriding the states. In view of the fate of his own Act when he had attempted to come to the rescue of Aurukun and Mornington Island, and other failures, it was a sore topic. But he pointed to the government's consideration of the NAC proposal; he 'would be pleased to discuss the concept of a treaty with the National Aboriginal Conference at a mutually convenient

time, if they wish to do so'.

It was this apparent degree of concession to Aboriginal demands which had so frightened the state premiers. But given their influence, and that of the mining companies on which the states' hopes were founded, it seemed very unlikely that the discussions with the NAC would be wholly unbiased.

The Prime Minister's calculations, however, were also influenced by international factors. The next meeting of the Commonwealth Heads of Government was to take place in Australia, in two years' time. Before then, if Aborigines persisted in embarrassing tactics such as the Capital Hill Tent Government represented, some gesture towards progress in Aboriginal affairs would be necessary.

This could well be represented by those 'discussions' Mr Fraser spoke of. In that case, once again, an Aboriginal initiative would have been dexterously turned to the government's own account, with as little actual concession as possible.

However, our own job was no less important for the government's possible doubletalk; indeed it was more so. We needed not only to continue to emphasize the need for guaranteed long-term and generous funding before those 'discussions' took place, and for consultation with Aboriginal communities everywhere, but to press on with our own programmes of legal seminars and papers, of issuing information pamphlets, of advertising and speaking engagements and of attempting to muster as much informed support as we could for real commitment to the Aboriginal cause.

Our advertisements continued to appear in professional and other journals (some of which gave us free space); requests for speakers and for information on the treaty idea were coming in from all over Australia. We sent copies of our documents to the World Council of Indigenous Peoples and to the UK Minorities Rights Group, asking for support.

Stewart Harris was working extremely hard to complete the small book we were funding from the support of donors after the first advertisement. We needed more funds for its publication; but Stewart finished the book, *It's Coming Yet*, in remarkably quick time with long hours of after-work concentration, and found a designer, John Reid, who volunteered to see it through the press.

As our chief fundraiser, Dymphna Clark suggested we organize a collection of donated paintings for sale. Several artists had already responded to our circular by offering paintings — Arthur Boyd, Neil Douglas and Sidney Nolan were three. This was, apart from our advertisements, the chief fundraising project for the year ahead.

Our second advertisement appeared in November 1979. It coincided, or nearly so, with the government's first definite response to the NAC request and to Dr Everingham's question.

There was much to worry us in the announcement. Senator Chaney, the Minister for Aboriginal Affairs, 'welcomed the initiative' taken by the NAC with reference to a proposed 'national agreement' between Aborigines and the Commonwealth. (The initiative of the National Aboriginal Government was not mentioned.) During the next eighteen months the NAC would be funded to travel around Australia to get Aboriginal opinion on the idea; but the proposed agreement was to be titled, not a Treaty, but a 'Makarrata'. This was said to be a Yolngu word and to signify the end of a dispute between communities and the resumption of normal relations. The idea of the change in title was said to have come from the NAC itself. Apart from the question of the title neither the amount of funding, nor the time allowed, seemed to us to indicate real goodwill on the government's part.

Our second advertisement too produced a very good response in finance and support, and we now had a healthy surplus of funds with which to pay for the printing and

production of the book, and enough to plan for a book-launching ceremony. Don Dunstan, no longer Premier of South Australia, but well known for the work he had done for Aborigines during his premiership, agreed to speak at the National Press Club in Canberra; and on 17 January 1980 — less than nine months after the Committee's formation — we had a big launching party with plenty of publicity, and with the Aboriginal band No Fixed Address to help it along. Review copies of the book went to all the media and to professional journals.

When the reviews came in, they were all we could have hoped. Stewart had done the work splendidly and the book's presentation was praised. Our worries over the reception of the word 'treaty' were set at rest when Professor Colin Howard, in the *Age*, praised the competence and effectiveness of Stewart's handling of the legal materials. There were other reviews to come, which were equally heartening on that score; but we could not help agreeing with Professor Howard's warning on the need to ensure that the preliminary negotiations were not abused, and that the techniques of 'discouragement and confusion' to Aborigines which had so often been employed before were not used this time.

Sales of the book were very good, providing a further source of funds, and with the publicity from the launching and from the reviews themselves, we felt the treaty idea had gained a much stronger hold than we could have anticipated a year before.

But we had lost one Committee member: Bill Stanner's health was failing fast, when at the end of 1979 he resigned. Dr Diane Barwick, replacing him, brought us a new component of contact with the developments in North America, especially Canada. She also provided a useful paper reinforcing Professor Howard's warnings, and outlining the history and problems of North American indigenous peoples in their relation with governments over

treaties.[1] This we distributed to Aboriginal organizations, as we did with the book and other publications, and sold to other inquirers.

But by this time, we were in urgent need of office space, at least part-time staff, a telephone, and storage room. We had much spare-time help from the staff of the Centre for Resource and Environmental Studies who had filled the gap with splendid voluntary work; but now that we were fairly on our way and correspondence was heavy, we had to look around for ways and means to organize the project. The book *It's Coming Yet* had been sent to all our sponsors and donors, we were now envisaging more publications and perhaps a programme of radio interviews to be distributed to community and other radio stations. And we had certainly gained acceptance through the book. On 3 April 1980 the *Age* argued in a leading article for nationwide support of the treaty proposal; and in May, the *Australian Law Journal* reviewed the book warmly, recommending the treaty idea as meriting serious consideration.[2] Since that Journal was edited by Professor J. G. Starke, Q.C., consultant to the Australian Law Reform Commission on international law aspects of human rights, this seemed to set the seal on the practicability of the proposal.

But we were still a spare-time, voluntary, small group dependent entirely on support from sponsors of the idea and donations, and the sale of *It's Coming Yet*. And by this time, demands on the time of the members were much increased by speaking engagements and interviews. Nugget and Stewart in particular were taking on much work in both fields and writing articles as well.

All these developments convinced us that we must somehow finance an office and information centre. We found one in the former University College buildings in

1 D. Barwick, *Making a Treaty*.
2 *Australian Law Journal* vol. 54, May 1980.

Canberra, and moved in with donations of used furniture and borrowed typewriter. Dr Joe Swartz, who had been for some years a registrar of sites with the Australian Institute of Aboriginal Studies but was then unemployed, agreed to set up a filing system and compile more information pamphlets, and to answer our new telephone until he took up another research post. We produced a first, duplicated, newsletter and sent it out to a growing list of sponsors and Aboriginal organizations. On 4 June Professor Rowley spoke to an ANU Convocation meeting on the treaty subject. We sent out copies of this address and of a *National Times* article by Nugget.

So far the Minister had maintained a severe reserve as far as the Aboriginal Treaty Committee was concerned. In July 1980, however, we had some indication that government thinking was proceeding. The NAC's subcommittee on the 'Makarrata' was already in the field, travelling — with far too little funding — among Aboriginal communities, when our own first official communication with the Department of Aboriginal Affairs and the NAC itself took place.

We had not attempted to lobby the NAC or the Department, other than sending them our publications and informing them of what we intended doing. As Stewart Harris later wrote, 'we would not want to be seen as influenced by any particular Aboriginal body, however eminent, simply because we must appeal to as wide a body of non-Aboriginal opinion as possible — which means that we cannot afford to go beyond developing a consensus in Australia in favour of a firm, effective Treaty'.[3] In May 1980 we wrote to Mr Jim Hagan, then Chairman of the NAC, letting him know of our project to invite Aboriginal spokespeople to record their views on the treaty idea on tape, so that these could be circulated to Aboriginal groups for their own information and discussion, as a further step

3 *Aboriginal Treaty Committee Newsletter* 2, 1 October 1980.

to spreading the question more widely among the isolated communities and reserves. (We had good cause to suspect that the NAC's funding would not allow them to do this.) Whether for or against the idea, Aboriginal opinions might be clarified by the project.

The NAC subcommittee returned to Canberra after its first visits: its first interim report was released at a meeting on 2 July which Nugget was asked to attend. Mr Hagan invited the Aboriginal Treaty Committee to attend the next meeting.

From the interim report it was clear that the NAC subcommittee had not been able to establish any firm basis for their proposal and that there were a number of questions they had not been able to clear up in the minds of Aborigines — including what, if any, benefits the 'Makarrata' might bring, and why that name had been chosen. Dr Coombs made three firm points in the discussion at the meeting:

- that the NAC should develop an effective communication process with other Aboriginal groups and organizations;
- that there should be plenty of time for effective discussion in a two-way process with all organizations, groups, associations and communities — something we thought essential;
- and that the NAC's resources were completely inadequate both to carry out those processes and to fund proper research into legal questions and provisions for any treaty or agreement.

For these tasks, he argued, a very substantial government grant, to be used at the NAC's own discretion, would be necessary. The Commonwealth Government of course had the whole range of the Public Service at its disposal, and the capacity to commission special studies. The NAC could not hope to negotiate from strength without considerable independent funding.

It was already clear that the 'Makarrata' proposal was troubling Aborigines. The Central Australian Aboriginal Congress (CAAC), for one organization, after listing a number of demands, wrote on 29 July to the Makarrata subcommittee asking for an assurance that it would not approach the government until a consensus had been won among Aboriginal people on the need for a treaty and its pre-conditions. Like ourselves, many Aborigines feared that the NAC might be rushed into some agreement. The CAAC pointed out that an enormous amount of work had to be done before Aboriginal people understood the issues:

> We cannot see how all this can be done in less than five years of hard, persistent work. We will be forced to resist any attempts to push through concepts, even if we agree with them, if we believe they have not been fully ratified by the people.[4]

Other comments, quoted in a document from the NAC called 'Other Views on the Treaty' (*sic*), emphasized the dangers of a treaty secured only by legislation, which could be altered or rescinded under different governments. A referendum, thought the Tasmanian Aboriginal Centre, would be far more secure, and pointed out that 'Aboriginal consciousness' was only beginning to develop:

> it cannot be said that the Aborigines are currently at a stage where all our people are aware of what has been done to us, and what the solution is. This will eventually happen, but it has not yet happened.[5]

Paul Coe, chairman of the Aboriginal Legal Service, originally took the view that the treaty idea held advantages other than those of rectification of wrongs, since the Aboriginal people's 'pride in their own capacity and

4 *Other Views on the Treaty*, NAC undated document.
5 ibid.

purpose would be increased immeasurably' in the achieving of a treaty. He declared that the idea of the treaty grew 'out of the struggle for the recognition of Aboriginal land rights in Australia. In particular it was discussed at the Aboriginal Tent Embassy in Canberra in 1972 that Aboriginal people have never given up our sovereignty'. He now supported a referendum to add a Bill of Rights to the constitution, which would 'constitute the main points of the Treaty'.[6]

All in all, the events of July and early August 1980 might have seemed to represent a surprising degree of acceptance of the treaty idea, at least on the side of the dominant society. Several seminars were being organized in the series we hoped would stimulate and increase discussion on the legal, historical and economic aspects of a treaty; we had sold or distributed more than 4000 copies of *It's Coming Yet* and good reviews were still coming in, including mentions in overseas media; we already had support groups operating, or sponsors volunteering to start them, in all states and the Northern Territory; we were overwhelmed with requests for speakers at meetings; and though we had had little sign that the Commonwealth Government was in any way enthusiastic we had good support from both Labor and the Democrats. The *Age* continued to follow up its leader of 3 April with favourable comments; other influential newspapers chimed in; we had had letters from many people, including the Bishops of Rockhampton and of Carpentaria, supporting the idea. (Both these dioceses, and that of Bendigo, had passed resolutions supporting the treaty concept.)

But in Western Australia, there was trouble. In that state, as in Queensland, Aborigines owned no land at all; but purchases had been made of pastoral leasehold properties by the Aboriginal Land Fund Commission, that fund provided by the Commonwealth under the Department of

6 1 August, meeting at Surry Hills, NSW, reported in *ATC Newsletter* 2.

Aboriginal Affairs and later administered by the Aboriginal Development Commission. In 1976, when Charles Rowley was chairman of the Commission it had purchased Noonkanbah, a big though much run-down pastoral lease near the Fitzroy River in the Kimberleys. The Premier, Sir Charles Court, had permitted this to be occupied by Aborigines (as Queensland had not done in two other cases of Commonwealth purchase through the fund). The Aborigines on Noonkanbah, the Yungngora community, had for a number of years survived in poor fringe conditions at Fitzroy Crossing, after a walk-off from Noonkanbah Station in protest along the lines of the Gurindji action. They moved back to Noonkanbah after the purchase as pastoral leaseholders, and re-established a cattle project with 12,000 head of cattle.

In 1979 the Western Australia Government gave permission to Amax Ltd, a Texas-based company, to explore for oil on Noonkanbah; and since the Aborigines did not own the land, they could do no more than protest. Their sacred sites were at risk and their lives, if oil were found, would be subject to the kind of invasion which the Aborigines of the Alligator Rivers were already suffering.

The people of the Noonkanbah community asked for a three-year moratorium on drilling on the station. But on 10 June 1980 the Western Australia Minister for Mines announced that the four-hectare area wanted for drilling would be excised from the lease and that the private road by which the Yungngora had access would be turned into a public road.

The community continued to resist and asked the Commonwealth Government to override the Western Australian decision. This, in terms of its 1967 mandate, it could have done; and in view of the legislation it had brought in — but not been able to use — over the Aurukun and Mornington Island reserves, some expected it to do so. But on 1 July, in Derby, the Prime Minister told the

representatives of the Aborigines of Noonkanbah and the Kimberley Land Council that the oil-drilling should go ahead and warned them not to impede the drillers in any way.

The area to be excised from the pastoral lease purchased by the Commonwealth itself for the Aborigines contained, so the Yungngora insisted, areas of special and sacred significance to them. These had not been identified or mapped by the Museum of Western Australia whose responsibility and whose advice in the matter was overridden by the state. The Perth Trades and Labor Council and the Australian Council of Trades Unions banned the movement of drilling rigs to the sites.

The State Government, evidently with the acquiescence of the Commonwealth Government, advertised for interviews with truck-owners, and hired a number of independent drivers. Their trucks (which they themselves provided) were issued with new licence plates, of which no record was kept, for fear of retaliation by the unions. Amax guaranteed high rates of pay, and about thirty-three semitrailers left Perth in the small hours on 7 August for Noonkanbah, with a large police escort and State Emergency Service backup. Some of the drivers disguised themselves in masks and false whiskers. Attempts to intimidate or stop reporters and cameramen were made, but failed.

There were more than rumours that oil was not the object of this extraordinary exercise, but that it was intended to clear the way for an even more destructive project — open-cut mining for diamonds, for which there had been a rush of applications. (More than 600 applications existed on the Noonkanbah land alone in 1980.) Said one observer:

> the real reason behind the drillers' invasion was that the Western Australia Government wanted to break Aboriginal resistance now if it is going to facilitate other mineral

> exploration on Aboriginal land. There are not less than 33 companies which have pegged almost 50 per cent of the Noonkanbah property, for diamonds principally. The mining companies are waiting to see what happens.[7]

The furore over Noonkanbah rose higher than either the Premier or the Prime Minister expected. In Canberra, the chairman of the (unofficial and unfunded) Kimberley Land Council, Jim Biendurry; the Chairman of the NAC, Jim Hagan; and the East Kimberley NAC member, Mr Reg Birch, led a march from the US Embassy to Parliament House, and later spoke at a public meeting organized by the Canberra Aboriginal Support Group and co-sponsored by the Aboriginal Treaty Committee. It was attended by hundreds of people, and among the speakers were Dr Coombs and Professor Rowley who had been involved in the purchase of Noonkanbah by the Aboriginal Land Fund Commission. Both hotly criticized the Commonwealth as well as the State Government, as having failed to honour commitments to the UN Declaration of Human Rights as well as the Australian constitutional provision that property could only be acquired 'on just terms'. We had advertised in the *National Times* of the previous week, to similar effect, adding that we believed the confrontation at Noonkanbah demonstrated that without

> a Treaty with Aborigines binding upon all Australian governments, not merely will Aborigines continue to be deprived of their just rights, but Australian governments, Federal and State, will continue to deny, for the sake of financial advantage, principles to which they are morally and politically committed ... No reference to the principle of the National Interest has been made. There has been no public or judicial enquiry and Parliament has not had the opportunity to debate the issue. Yet the Prime Minister has taken it upon himself to assert that drilling for oil must proceed.

7 Dr Jim Bowler, quoted in 'Court's Panzers Roll in the West', *National Times*, 17–23 August 1980.

We urged the public to write to politicians asking for a five-year moratorium on prospecting and mining in the Kimberleys. There was another remarkable response. But the most significant outcome, and one even more unwelcome to the government, was the Aboriginal international venture to the United Nations hearings of the Sub-Commission on Human Rights.

The delegation was not, naturally, funded by the Commonwealth but by private donations; it consisted of the NAC chairman Jim Hagan, Jim Biendurry and Reg Birch, and it caused a remarkable sensation on the world news scene. As president of the ACTU, Bob Hawke had supported the overseas visit and arranged, through the International Confederation of Free Trade Unions, for maximum publicity. The World Council of Indigenous Peoples (WCIP) gave their speaking time to the NAC chairman. The result was, so a *National Times* reporter wrote, to establish an Australian Aboriginal presence with the Sub-Commission.[8]

But the Sub-Commission could not act directly on the issue, since the passage of the Racial Discrimination Act by Australia in 1975 provided a channel of redress in the member country which has to be used, and exhausted, before the Human Rights Commission of the UN can express concern.

Rather, it was the publicity gained through television and other media reporting of the issue which struck the news-sense of the world, and ensured, if nothing else, that the strongarm methods of the Western Australia Government were unlikely to be used so blatantly again.

The object of the mission to Geneva was to draw the attention, through the Sub-Commission on Prevention of Discrimination Against Indigenous Minorities, of the

8 A. McGregor, 'Great Goanna Spirit in Geneva'. *National Times*, 7–13 September 1980, p.5.

Human Rights Commission itself, the intergovernmental level of the UN Covenant. This the delegation certainly did, with the help of the World Council of Churches and the International Confederation of Free Trade Unions, as well as the WCIP. The point, for these organizations, lay in the mounting threat to indigenous people, not merely in Australia, of the activities of multinational corporations moving into traditional lands. The point, for Aborigines, was chiefly to reiterate the fact that both State and Commonwealth Governments were betraying their own commitments and responsibilities, and that it was the Aborigines who suffered. But in the international field there were now more and more possible openings for embarrassment on such issues and Aborigines were learning to exploit those openings.

Probably the Commonwealth and State Governments, with their contempt for Aboriginal ties to the land and their longstanding commitment to progress in the form of mining development, had not realized the publicity potential in the issue. Now they had been warned, but perhaps not convinced.

One of the lasting reminders of the Noonkanbah national disgrace was the appearance of the film *On Sacred Ground* — made, unexpectedly to both governments, by a Commonwealth filming team which had witnessed the invasion by the drilling rigs and trucks and the resistance by Aborigines in which fifty of the Noonkanbah owners were arrested, including Mr Biendurry himself. (The film was restricted from overseas distribution over the next three years. The Hawke Government released it in 1983.)

Another side effect of the UN publicity was to throw quite a different light on the presentation to Mr Fraser of the B'nai B'rith award for humanitarian services. This award, made after his speeches on the Zimbabwe issue at the Lusaka Conference, was presented in New York — coinciding with the events at the United Nations — but

passed almost without comment. The ATC itself, and no doubt others, sent a telegram of protest to B'nai B'rith International over the award, with copies to the Minister for Aboriginal Affairs and the Prime Minister. 'You should be aware,' we told the International, 'that many Australians are shamed that your award should be conferred on an Australian whose record in his own country denies his suitability for it'.

On the delegation's return to Australia, Mr Hagan and the two other members reported on their journey, and the NAC called on the government to take certain initiatives within 'a fixed time-limit'. These included:

- an immediate halt to drilling at Noonkanbah;
- emergency legislation at the next session of Parliament to prohibit mining on Aboriginal land in all states until proper negotiations have taken place between Aboriginal communites, mining companies and the state governments concerned;
- legislation at the next session to guarantee the continuance of the NAC;
- an initialled agreement to negotiate a Treaty/Makarrata with Aboriginal people;
- a budget allocation to the NAC befitting its status and increasing at an annual rate of 10 per cent in real terms; and
- funds for a research unit within the NAC to develop a Treaty/Makarrata proposal and other programmes.

The UN Sub-Commission, the delegation reported, had passed a resolution calling for an urgent study of discrimination against indigenous populations, 'bearing in mind the statements made at the current session concerning the situation of Aboriginals in Australia and in particular at Noonkanbah in Western Australia by the National Aboriginal Conference and the Government of Australia'. With the Commission on Human Rights to meet in February 1981, the NAC indicated it might approach the Commission itself if the government's policy did not satisfy it.

Perhaps under some pressure, the drilling rig and the miners moved out of Noonkanbah, having discovered no oil. The rest of the delegation's demands went unanswered. But the threat of the diamond venture and those 600 applications remained; and any credit which the Commonwealth Government might have gained among Aborigines over the Aboriginal Land Rights (NT) Act 1976, had been tarnished beyond repair. It was clear that, so long as the coalition government was in power, Aborigines would fear, rather than trust, any agreement with it, let alone a binding treaty.

Nevertheless, the Makarrata proposal remained on the NAC agenda and Mr Fraser's promise to discuss it had somehow to be honoured.

In a document dated 28 July 1980, the Attorney-General had responded to a reference from the Prime Minister and the Minister for Aboriginal Affairs, on the legal possibilities inherent in a treaty. The word, wrote the Attorney-General, was inapplicable. He quoted the opinion in Coe that the Aborigines did not constitute a 'domestic nation'. Unless there were explicit provisions against any agreement made being regarded as one between the Australian community and a separate community, he feared there would be a risk that the agreement accorded a status to which the Aborigines could refer in a claim to the right of self-determination as a 'nation'. On the question of obligations to Aboriginal Australians, the Attorney-General's opinion was that the Parliament could enact legislation *creating* such obligations, but on the basis of the two legal cases, no rights in land or obligations to compensation existed under British common law. 'Compensation' could also be provided under Commonwealth law for the treatment of Aborigines in the past; but the word would have to be used in a colloquial, not a legal sense.

As to the use of the words 'dispossession' and 'dispersal' in any possible such legislation, he deprecated

'dispossession' as implying previous possession. 'Dispersal', as a vaguer term, might be permissible. (It was ironic that the latter term had been specifically used by the officers of the Mounted Native Police in New South Wales and Queensland, to denote actions against Aborigines — which were well known to include killings; indeed the term survived for years in Queensland slang with that meaning. The word would not be popular among Aborigines who had survived those days.)

The 'Makarrata' was therefore already, from the point of view of Aboriginal demands for recognition and compensation, something of a dead letter.

Except for the international exposure, and the possibility that with a few more complaints to the UN Sub-Commission, international concern might be expressed by the Commission itself, the Noonkanbah affair had little effect on the fate of Aborigines in the Kimberleys. The Argyle diamond venture, with its glitter of international profit, absorbed the major attention of the Australian newspapers thereafter. The Kimberley Land Council remained unfunded, and the dispossessed Aborigines of the Kimberleys remained virtually without a champion.

The action which the ATC had taken over Noonkanbah — both in the nationwide advertisement and in speeches made at the Canberra meeting, and elsewhere, by Charles Rowley and Nugget Coombs — compounded our unpopularity with the Prime Minister, the Minister for Aboriginal Affairs, and the Fraser Government. Probably for the first time, the unanimity of that 1975 vote in the Senate on Neville Bonner's motion, with its wording on 'prior ownership' and compensation, was suddenly seen as compromising to the coalition parties. The international publicity over Noonkanbah was even more embarrassing. The possibility of further state action such as this, and the newly established international presence of Aborigines, could result in unpleasant consequences if further

complaints were made to the Sub-Commission.

And Noonkanbah had, as we had cause to know, set off a further reaction in the 'settler' community. Not even the supporters of Sir Charles Court could stomach quite such a blatant show of force as that event represented. With a visit from the World Council of Churches' committee foreshadowed, as well as the Third Assembly of the World Council of Indigenous Peoples which would take place in April 1981 in Canberra, on the theme of 'Indigenous Freedom Now', and the Commonwealth Heads of Government meeting to follow, the Commonwealth Government might well be anxious over further state jackbooting in the future.

The NAC had become affiliated to the World Council of Indigenous Peoples in 1979. It was this affiliation, and the WCIP's status as a United Nations recognized non-government organization, which had allowed the unofficial delegation speaking rights at the Sub-Commission's Geneva meeting. No doubt reluctantly, the Commonwealth Government was funding the Third General Assembly meeting of the WCIP to the tune of $90,000, which was scarcely a generous sum in comparison with the amount that would be spent on the meeting of the Commonwealth Heads of Government later, but did represent a concession that — without the publicity over Noonkanbah — might have been seen as surprising.

As the NAC's past Chairman, Jim Hagan, had said on his return from the Geneva visit, 'We are on the international scene now and I don't think we could retreat'.