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Aboriginal Rights and Land Claims in New Zealand

Canada is not the only commonwealth country addressing aboriginal self-government and land-claims issues. In Australia the commonwealth government passed national aboriginal land-rights legislation in 1993 following a High Court decision disavowing the doctrine of Terra Nullius—that Australia was unoccupied when the British arrived in the late eighteenth century. This decision and subsequent legislation provide a framework for aboriginal Australians to gain title to land they use and occupy or that has special significance to them. Constitutional renewal—to coincide with Australia's centenary in 2001—provides another means for them to further their rights and interests.

Tamati Waka Nene had been closely associated with the Wesleyan missionaries in the Hokianga in the 1830s. A year or so before the treaty signing he had become a Christian. This portrait is by Gottfried Lindauer.

Courtesy of Alexander Turnbull Library with permission of Auckland City Art Gallery.

The situation in New Zealand is also similar to that in Canada. British authorities signed a treaty with the Maori in 1840, the terms, conditions, and purpose of which continue to be discussed and interpreted. While aboriginal Australians look to new agreements to provide for their rights and interests, New Zealand Maori look to the implementation and renewal of their historic treaty to do the same.

Both New Zealand and Australia are well aware of Canada's history of making treaties with its aboriginal peoples and are particularly interested in the modern treaties concluded in Yukon and the Northwest Territories. We have much to learn from one another, but our information exchanges are haphazard, done on a shoestring, and seem to be dependent on the personal interests and commitment of a few. Our academics occasionally work together—sometimes facilitated by the Commonwealth Geographic Bureau— and aboriginal leaders occasionally visit one another to provide encouragement. For the benefit of all three countries, we need to commit ourselves to information exchange and to better organize our sharing of ideas and experience.

Canada should seek to put aboriginal rights and interests on the agenda for the meeting of commonwealth leaders later this year in Wellington, New Zealand. And Prime Minister Chretien, who has noted the long-term economic and social importance of the Pacific Rim to Canada, should

propose ways and means for commonwealth countries—particularly Canada, Australia, and New Zealand—to exchange information on aboriginal issues.

This issue of *Northern Perspectives* on the Treaty of Waitangi promotes such an information exchange. Peter Jull, an author well-known to our readers, makes the case for greater attention to comparative public policy research with emphasis on aboriginal issues. Claudia Orange examines the issues associated with the Treaty of Waitangi and makes specific reference to the different interpretations given the treaty. Finally, the Honourable Maurice McTigue, New Zealand High Commissioner to Canada, outlines the perspective of the Government of New Zealand.

Two different sets of aspirations have been on a collision course for some years. One is largely Pakeha; the other largely Maori. The first is embarked on a search for symbols of national identity and cohesion and looks to events where these can be expressed. The second is pursuing a fight to have the treaty recognized by government in ways that acknowledge the Maori understanding of the agreement. Waitangi Day and Waitangi itself provide the focus for both sets of aspirations—one charged with an emotional need to celebrate (or, at the very least, to commemorate peacefully), the other with an urgency to be heeded. Conflict is inevitable.

This could have been foreseen in 1932 when GovernorGeneral Lord Bledisloe donated the Waitangi property to the nation. In 1934 the first commemorative event was held there, and Bledisloe composed a prayer that became the accepted expression of of ficial sentiment for some fifty years: "the sacred compact made in these waters may be faithfully and honourably kept for all time to come." Most New Zealanders no doubt had the impression that the terms of the treaty had been satisfied, even if few had actually read it. Public awareness of its terms and its making had been minimal since the 1870s. In 1890 its fiftieth anniversary had passed almost unnoticed.

The Maori viewpoint was markedly different. From 1840, the treaty had been the basis for gauging their relationship first with the Crown and later with the New Zealand government. Unsatisfied with that relationship, they had pursued various courses in seeking redress, with little success. To them, Waitangi and the treaty were indeed symbols of nationhood but for reasons other than those generally held by the New Zealand public. In 1834 northern tribes had gathered at Waitangi to choose a national flag, and the next year, as the Confederation of United Tribes, had issued a declaration of the country' s independence that Britain recognized and accepted. A great *hui* (gathering) at Waitangi in 1934 marked the centenary of these events. as well as Bledisloe' s gift.

He iwi tahi tatou

For the 1940 centennial of the treaty's signing the government chose to mount a great display of national pride and unity at an event in Waitangi. The country' s newspapers headlined fitting expressions: Waitangi was the "cradle of the nation"; the treaty was the Maori "Magna Carta" and the "foundation of nationhood." Dissenting Maori voices went largely unnoticed. Nurtured in the public consciousness was the belief that the treaty had secured British sovereignty, that British

colonization had been a civilizing mission, and that the Maori—more shrewd and more capable than other indigenous races—had wisely grasped that benevolent hand and had benefited. The aspiration voiced by William Hobson, the British consul who secured the treaty, became entrenched as both ideal and perceived reality: *He iwi tahi tatou* (We are now one people).

The Second World War gave this cry the semblance of substance as the country united in a major war effort with a substantial Maori component. After the war, Waitangi ceremonies set into a pattern that was to last to the 1980s. Each year of ficial speeches stressed the legendary good relations said to exist between Maori and Pakeha. Speakers either were ignorant of historical grievances and current impediments affecting Maori communities or chose to ignore them. But Maori were not prepared to be silent, and in the 1970s and 1980s, as television and radio broadcasts carried Waitangi events to the nation, protest became a strategy in Maori efforts to influence government policy and public opinion.

Unaware of the extent of divergence between Maori and Pakeha views of the treaty and of the of ficial record in failing to honour its terms, many New Zealanders were shocked or incensed by what seemed like Maori ingratitude or, even worse, a lack of comrnitment to building a unified national identity, a rejection of the one people aspiration, and a disquieting departure towards separatism (often equated irrationally with apartheid). Although such views would long survive, the assumptions on which they were based were soon challenged.

The perceptions of many New Zealanders were radically altered by information on the treaty and on New Zealand history that began to emerge from academic research and writing in the 1970s. Until then, most writers had emphasized the humanitarian concern in the treaty negotiations rather than how the treaty was used to serve British and settler interests. Moreover, the few who had read the treaty would almost certainly have looked at the English text. That there was also a Maori text of paramount importance was generally not known. More than 500 Maori leaders had signed the Maori text; only 39 had signed the English text. The essential differences between the texts provide insight into Maori understanding and show why there is a divergence of Maori and Pakeha opinion on what the treaty promised and what it now means.

English-Maori Texts

The treaty has three articles. In the English text, the first records the cession of sovereignty to Queen Victoria. In the second, the Maori people, collectively and individually, are confirmed in the "possession of their lands and estates, forests, fisheries, and other properties." The third article extends protection and imparts "all the rights and privileges of British subjects." In the Maori text, however, the first article gives the Queen simply "te kawanatanga katoa," the right to govern and to make laws. The second confirms that Maori will retain "te tino rangatiratanga," chiefly power or the right to possess and exercise control over lands, villages, and valued property of all kinds. The third promises crown protection and the same rights and duties of citizenship as British subjects. By

this understanding, neither the Crown nor the Maori have absolute rights; each has conceded authority and rights to the other.

The divergence of aspirations in the two texts is clear: The Crown sought sovereignty over a country that Britain had previously recognized as independent. Hobson assumed he had secured it and was not going to be deterred from proclaiming so before several copies of the agreement had travelled the country and despite its rejection by a number of Maori leaders. He was prepared to make concessions to get agreement. But neither he, his translators, nor the interpreters of the agreement (mainly English missionaries) at some fifty meetings were disinterested parties. They were bound to emphasize what a boon the treaty would be and to play down the implications of British colonization.

Maori made their decision on the basis of the Maori text. They wanted regulated settlement, trade, and income from employment, and they needed support in controlling land sales. The new partnership would also enable them to avoid the inter-tribal warfare that had escalated in previous decades. Although aware that they would have to make concessions to a colonial administration to allow it to exercise power, Maori leaders were assured by of ficials that their own authority was left in place by the second article (in Maori). This suggested that a shared authority would evolve and would be enhanced, to Maori advantage, by other treaty articles. But Maori were suspicious of the Crown's intentions, and their fears were confirmed as the young colony developed its administrative infrastructure. While goodwill and a desire to honour the treaty were not absent from early government dealings with tribal groups, the first two decades after 1840 showed that the treaty would be interpreted largely on the basis of the English text and that the government could choose to ignore the treaty. Statements by government agents—that the treaty gave protection and guarantees—were in conflict with official practice in law and land issues.

> *We want to build a social and political consensus on the settlement of Treaty grievances so New Zealanders will soon be able to put the injustices of the past behind them. We will then be in a better position to fulfil the positive intentions inherent in the Treaty of Waitangi.*
>
> Hon. D. A. M. Graham
> Minister in charge of Treaty negotiations
> Press statement, 8 December 1994

Paper Entitlement

Although the treaty gave settlement a relatively easy ride by providing a paper entitlement to the country, it was the substance of power and authority that a colonial legislature, set up in the 1850s, sought. Moreover, the legislature did not intend to share such authority with Maori leaders, especially in the Waikato, where leadership had adopted the title of king with an objective of withholding land from sale. Fighting over land commenced in Taranaki in 1860. The 1863 invasion of the Waikato by British troops and the escalation of warfare to the Bay of Plenty and other areas

was officially labelled as a move against rebellion, on the basis of the third article of the treaty. In elfect, it was a war to assert British supremacy and it was increasingly fought by colonials as British troops withdrew.

Government confiscation of Maori land in the Waikato, Taranaki, the Bay of Plenty, and Hawke's Bay grievously undermined Maori economic resources in those areas, leaving a legacy of bitterness. It also affected Maori who had fought on the government side as well as Maori elsewhere, since the government's actions called into question all Maori rights. So too did legislative provision to free Maori land for sale and settlement by clearing its title through land court investigation. Tribal groups were often enticed into selling by underhand methods. The collective interests of a tribe or *hapu* (sub-tribe) were undermined by the individualization of land interests, making land easier to sell. A series of legislative enactments and amendments through the nineteenth and twentieth centuries continued to provide the structures for separating Maori

from their lands . By the 1870s the South Island had been almost completely alienated; by the early 1890s, about two thirds of the North Island.

As land loss struck hard in the 1870s Maori debated treaty promises at numerous conferences. Land, law, and authority were the issues. The inroads on the treaty's fishing rights through the expansion of settlement—rights less defined and easier to lose—were also noted. Various strategies were adopted in an effort to stem the tide and regain control of Maori affairs. Several deputations (in 1882, 1884, 1914, and 1924) appealed unsuccessfully to the British Crown and government—the 1840 treaty-makers—to intervene on Maori behalf. The New Zealand Parliament, responsible for internal affairs since the 1860s, denied breach of treaty terms and clearly had no intention of assuming responsibility for upholding the treaty as Maori understood it. Nor could four Maori members of Parliament, allowed after 1867, exert influence on the floor of a house dominated by settler politicians.

The *Kotahitanga*

Other options were tried. In the 1890s a pan-tribal Maori parliament—the Kotahitanga—hoped that a unified Maori voice might be heeded by the national Parliament. But the Kotahitanga was easily ignored, for the Maori people numbered fewer than 50,000 in a total population that rose to more than 800,000 in 1900. (In a recent estimate, the Maori population in 1840 numbered, at most, 90,000 against 2,000 Europeans.) Earlier predictions that the Maori were a dying race appeared to be correct. A well-established pattern of socio-economic disadvantage was evident in most of the tribal areas, where the people, mainly rural, were existing generally at subsistence level. And yet the cultural richness of the Maori world remained intact, supported in part by a continuity of leadership, in part by an educated elite who were now participating comfortably in both Maori and Pakeha communities.

Representatives of that elite played a significant role in bridging the two worlds as the Maori population began to expand in the first decades of the twentieth century. Most prominent was

Apirana Ngata, MP for Eastern Maori from 1905 to 1943, who initiated government-funded development schemes for Maori land and the consolidation of land holdings into viable economic units. For the 1940 centenary, Ngata shrewdly encouraged the building of a carved meeting house at Waitangi—to be a symbol of the partnership of the two peoples in the one land.

The gains to be made in focusing public attention on Waitangi and the treaty were also recognized by other Maori MPs, affiliated to the religio-political Ratana movement and to the Labour party. Through their efforts, 6 February was to become the national day and a holiday in 1973. This was achieved because the objective accorded with the country's growing aspirations for expressing national identity. The Ratana-Labour MPs' aims went further, however: They wanted the treaty to have statutory recognition (sometimes called "ratification"), since the treaty was said to have no legal standing unless incorporated into domestic law. In 1975 the third Labour government took the first step towards this legislative recognition by passing the Treaty of Waitangi Act, by which the Waitangi Tribunal was established.

A sitting of the Waitangi Tribunal in 1988, showing some of the tribunal's members: from left, Manu Bennett, Monita Delamere, William Wilson, Edward Durie, Georgina Te Heu Heu, and Keith Sorrenson.

Waitangi Tribunal

The tribunal is empowered to investigate Maori claims against the Crown respecting infringements of treaty rights through crown action or lack of action. It makes recommendations to the Crown on an appropriate course of redress, if needed. It must "give practical application to the principles of the treaty" by taking into account the meanings of both English and Maori texts. The act makes the tribunal responsible for determining what those principles are. In the early 1980s, under the chairmanship of Chief Judge E. Durie, the tribunal began to release reports that were informative on the treaty and on the country' s history. Of considerable interest to Maori leaders, the reports initially had a limited circulation among Pakeha, but their ideas and main thrust gradually

influenced a wider public—members of the public service, the legal profession, the churches, and groups and individuals committed to justice and indigenous rights.

The development of this informed body of public opinion came at a critical time. Maori protests in the 1970s and early 1980s were pitched against an uncomprehending political establishment and played out before a largely incredulous, bemused public. They provided excellent material for media coverage, and the media broadcast it all. A 1975 land march from the far north swelled to 3,000 by the time it carried its banner—"Not one more acre of Maori land"—into Parliament grounds. And in 1978-79, Auckland's Bastion Point was occupied by protestors for more than 500 days before police forced eviction.

But from the late 1970s it was Waitangi Day and Waitangi itself that annually became the focus of increasingly confrontational protest. Protestors branded the government' s commitment to the treaty fraudulent and called on government to honour the treaty and to grapple with the bicultural relationship it founded, before using it as the basis of an idealized multicultural national identity. They called on government to acknowledge openly that Maori had a special status as the country's *tangata whenua* (indigenous people). Some called for a boycott of the day. Official speakers became more cautious in stressing the often-repeated one people theme. The range of opinion among both Maori and Pakeha was wide, but a substantial body in each camp saw the celebratory character of Waitangi Day as offensive and dismissive of unfinished treaty-related business and was committed to ending the celebration.

A Re-evaluation

The need for fruitful and rational dialogue between Maori and Pakeha communities was urgent. Many were aware of this and conscious that elements of the international scene were impinging on New Zealand affairs—in particular, United Nations activity on human and indigenous rights, the assertiveness of indigenous leaders in nation states newly independent of colonial bonds, and the Afro-American struggle for justice in the United States. For sections of both Maori and Pakeha communities, these events and trends presented a new context for a re-evaluation of government' s dealing with Maori and the treaty.

This re-evaluation came when the fourth Labour government took of fice in July 1984 and pledged to deal with treaty issues. A commitment to introduce legislative recognition where appropriate set in motion a series of events that radically changed the position of the treaty in the nation's life. In 1985 the government extended the powers of the Waitangi Tribunal so that it could investigate grievances dating back to 1840 and made better provision for research to support claims. Ministers and of ficials were required to consider implications for recognizing the treaty's principles in drafting legislative proposals. And government departments and agencies were urged to become more bicultural in their operations and to consult with Maori leaders on significant matters affecting application of the treaty.

The issues involved in all of these moves were complex and baffling to those affected, and only gradually were educative seminars made available. At the same time the Waitangi Tribunal continued to generate reports that had considerable public impact. That the tribunal's work on a claim could affect the whole country and not merely one locality was first evident to the public when a 1986 report resulted in recognition of Maori as an official language and in the establishment of the Maori Language Commission.

In 1986 government aims to re-structure the economy gave urgency to treaty issues. These efforts were bound to conflict with treaty policies sooner or later, and such conflict has been most marked in matters relating to management of land, fisheries, water, and mineral rights. Under the State-Owned Enterprises (SOE) Act 1986, a group of state-owned commercial enterprises was to manage a range of state assets such as land and forests, coal, and electricity services with the aim of eventual privatization. This mandate placed at risk the government's treaty policy of investigating grievances that could be brought only against the Crown. If the Crown shed its assets, they would not be available for possible tribunal recommendations for remedy. Protection was built into the act, including the clause, "Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi."

The extent of protection was in doubt and was tested in a 1987 Court of Appeal case that rendered a landmark decision. The court came to two major conclusions: the principles of the Treaty of Waitangi override everything else in the SOE Act, and those principles require the Pakeha and Maori treaty partners to act towards each other "reasonably and with the utmost good faith." This interpretation of the significance of the treaty's principles supported the work of the tribunal, which had been steadily defining the principles as it was required to do. Above all, the case showed that the duties of the treaty partners—the Crown and the Maori people—could be enforced if necessary by the courts in any legislation that included treaty principles. By 1995 this would affect legislation covering a very wide range of public interests. Judicial interpretation of the treaty is bound to continue to play an important role in public affairs. Between 1987 and 1993, for example, there were at least eleven Court of Appeal decisions on treaty-related matters.

Maori and Pakeha Key Historical Events

1835 - Declaration of Independence of New Zealand by a group of Maori leaders accepted by British government

1840 - Treaty of Waitangi signed

1852 - Constitution Act: New Zealand a self-governing colony—Maori participation excluded in practice

1860 - Government re-affirms treaty promises at conference of Maori leaders

1860s - Control of Maori affairs passes from governor to settler parliament

- War to assert sovereignty leads to land confiscation

1865 - Native Land Act establishes court to determine title to Maori lands, ending crown pre-emption and leading to direct settler purchase

1867 - Four Maori members of Parliament allowed but cannot stem loss of Maori land and resources

1870 - Continuing breaches of treaty by land legislation and other measures through l9th and 20th centuries

1877 - Wi *Parata v. Bishop of Wellington:* Supreme Court states that treaty is a "simple nullity"

1882 - First of several Maori appeals to the British Crown

1927 - Sim Commission admits crown responsibility for 1860s confiscations and limited compensation paid in 1940s

1941 - *Hoani Te Heu Heu Takino v. Aotea District Maori Land Board:* Privy Council lays down principle that treaty is unenforceable in courts unless incorporated in statute

1975 - Treaty of Waitangi Act: Tribunal established to investigate claims against Crown arising after 1975

1985 - An amendment expands the tribunal's powers to allow it to make recommendations on claims dating back to 1840

1986 - State-Owned Enterprises (SOE) Act, section 9: nothing in the act to permit the Crown to act in a manner inconsistent with the principles of the treaty; section 27 provides protection for claims currently before the tribunal

1987 - Court of Appeal decision that transfer of crown lands to SOEs without consideration of Maori land grievances would be inconsistent with the treaty's principles and so unlawful in terms of SOE Act

1988 - Treaty of Waitangi (State Enterprises) Act ensures no present or future claimants are prejudiced through transfer of land to SOEs

1989 - Crown Forest Assets Act provides for transfer of crown forest assets and for protection of Maori claims under Treaty of Waitangi Act 1975

- Maori Fisheries Act provides interim settlement; Fisheries Commission set up

- Other acts contain provisions requiring that decision makers "have regard to" and/or "take into account" the principles of the treaty

1992 - "Sealord Deal" and Treaty of Waitangi (Fisheries Claims) Settlement Act

1994 - Crown proposals for the settlement of treaty claims

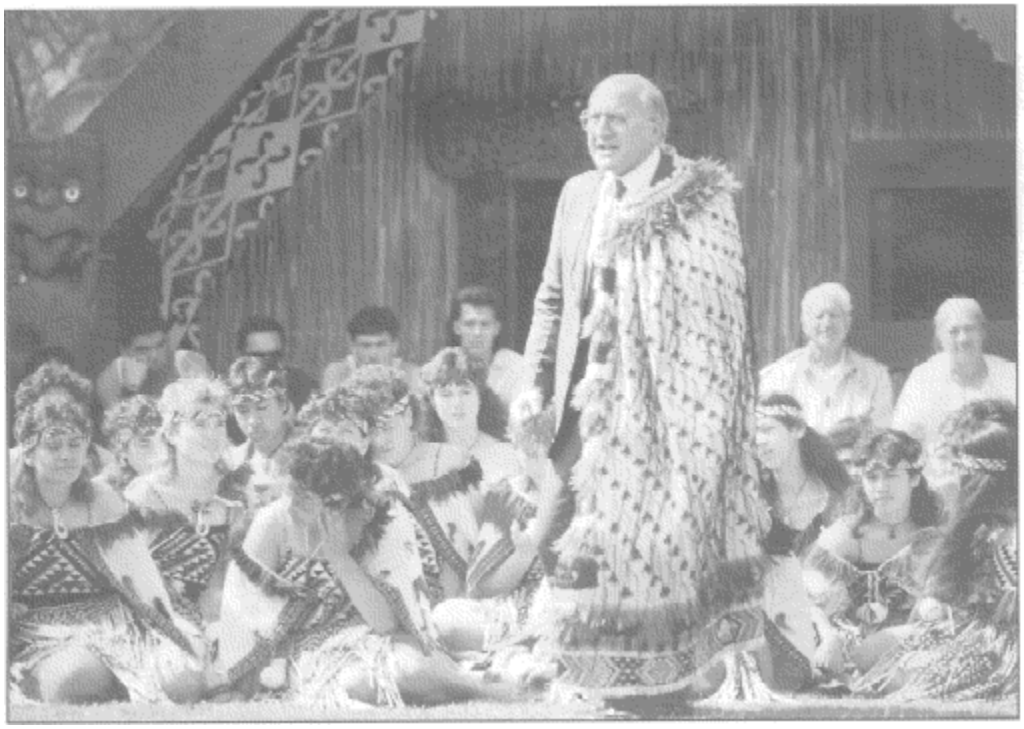
Treaty of Waitangi Policy Unit

In the late 1980s, the treaty' s profile remained high as the Labour government continued to pursue its policies of commercialization of crown assets while at the same time dealing with treaty issues. In 1988 the Treaty of Waitangi Policy Unit (TOWPU) was established in the Justice Department to advise on the process of negotiated claims settlements. The tribunal was expanded to allow more hearings so that the growing number of claims could be more speedily shifted along. Hearings on major

claims captured media attention, in particular the Ngai Tahu claim, which covered most of the South Island, and the Muriwhenua claim, which involved the far north. Both claims raised issues of treaty guarantees in relation to publicly owned resources.

Decisions on land, forestry, and fishing rights were especially urgent in view of government commercial proposals that would affect them. The Crown Forest Assets Act 1989 answered the immediate concerns of both crown and Maori negotiators about development of commercial forestry and gave protection to the interests of all involved, while deferring a solution of problems.

Fishery rights posed more difficult problems, yet the government was compelled to take action. It was adopting a policy of fishery management based on Individual Transferable Quotas—tradable harvesting rights for certain species—that ignored Maori rights. Convinced by a Law Commission report that indisputable rights existed and that it should make provision for recognizing them, the government passed the Maori Fisheries Act 1989. The Fisheries Act aimed to accommodate Maori rights within an efficient fishing industry structure, but its provision for a transfer of 10% of the commercial fishery to Maori over a four-year period— criticized by both Maori and the fishing industry even as implemented—was an interim solution only.



Tipene O'Regan speaking at Waitangi commemorations at Okains Bay, Banks Peninsula, 1988.

The aim of these proposals is to establish a framework to resolve the historical grievances of the Maori people. Together the proposals form one of the most significant steps in recent years to settle Treaty of Waitangi claims.

Hon. D. A. M. Graham
Minister in charge of Treaty negotiations
Press statement, 8 December 1994

The "Sealord Deal"

Further fuel for debate was provided in 1992 when crown and Maori negotiators entered into what is commonly called the "Sealord Deal." The Crown financed for Maori a joint-venture acquisition of Sealord Products Ltd. and made provision for the allocation of 20% of all new quota species. In return, Maori agreed to the repeal of legislation that had given some recognition of Maori fishing rights, to the restriction of the tribunal's ability to inquire into commercial fisheries claims, and to the discontinuance of all fisheries litigation against the Crown. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 provided the legislative basis, stating that it was "a full and final settlement of all Maori claims to commercial fishing rights." That Maori interests by 1995 control a very substantial portion of the country's fishing industry has created heated debate among Maori on how it is to be used and, more generally, on the wisdom of the government's moves when Maori negotiators did not have a full mandate from Maoridom.

Fishery rights are part of a much wider Maori-Pakeha debate about the treaty and the place of the Maori people in the national life. Discord, although muted on Waitangi days in the late 1980s, was not an impediment to the 1990 sesquicentenary commemoration of the treaty, but the debate was bound to emerge again. The national government took office in late 1990 pledging to redress grievances and to unite the country— a message to Maori claimants and to the wider electorate. It was also to continue policies of economic rationalization. Reconciling such potentially explosive and possibly conflicting aims places the government in a highly vulnerable position. The decision to introduce radical changes in the political arena in 1996, through adopting an electoral system of multi-member proportional representation (MMP), has made the situation even more uncertain.

In 1995 there are many shades of opinion on the treaty in both Maori and non-Maori populations. From the viewpoint of Maori involved in treaty claims, the government's record over the last four to five years has been less than satisfactory. Not that the Waitangi Tribunal is not valued for its bicultural mode of operation and its assessment of redress of grievances: it is.

But its work, though necessarily cautious, seems unduly slow. Its recommendations, by and large, have not brought the hoped-for results, for it has no power to enforce them (a point largely forgotten by its detractors). Nevertheless, the government, to avoid further antagonizing public opinion, assured New Zealanders in a 1993 amendment that the tribunal would not threaten private interests. Impatience has made a number of tribal groups move straight to negotiation. To deal with this business, the Treaty of Waitangi Policy Unit was superseded at the end of 1994 by an Of fice of Treaty Settlements (OTS). But whether this negotiation process is preferable and of lasting satisfaction remains to be seen. At least one major claim—that of Waikato—has been concluded in a NZ$170-million deal signed in May 1995.

Rangatiratanga

For the Maori people as a whole, securing adequate economic resources through government processes is crucial to ensuring development. In fact, some say that the focus on treaty grievances distracts them from the major challenge—constructing an effective policy for Maori development. A history of resource loss has combined with urbanization since the 1950s to produce a disproportionate number of Maori at the bottom of the socioeconomic scale. Problems associated with health, education, and crime bedevil many Maori communities. There is some divergence of opinion on how government resources can best be used, but there is a broad consensus on the urgency for adequate allocation and on the need to exercise the *rangatiratanga* guaranteed in the treaty to ensure that resources are used appropriately.

> ***The Crown acknowledges that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi in its dealings with the Kingitanga and Waikato in sending its forces across the Mangatawhiri in July 1863 and unfairly labelling Waikato as rebels.***

Part of crown apology in settlement package
22 May 1995

Variously expressed in the 1990s as autonomy, selfdetermination, or sovereignty, rangatiratanga is not easily won. The Runanga Iwi Act of 1989 promised devolution to tribal authorities, but the act was repealed by the national government, which favoured a ministry—Te Puni Kokiri (TPK)—charged with (among other matters) providing policy advice and with monitoring delivery of services through mainstream departments. But TPK lacks power to enforce either acceptance of the advice or delivery of services. Not that it is alone in providing a Maori voice within government. Most departments and ministries developed Maori advice sections in the early l990s, and legislation such as the Resource Management Act 1991 makes provision for Maori to be significant participants in local affairs and resource use.

The terms of the Government's Proposals for the settlement of Treaty of Waitangi Claims give little reason to believe that there has been any fundamental move awayfrom a colonial mind set and towards a system of laws and policies which encompass modern New Zealand's unique heritage and origins.

The amount necessary to ensure a just settlement is in fact not known. Estimates vary but even highly conservative estimates suggest that the sum of 1 billion dollars falls well short of a reasonable and fair settlement price. Hui delegates concluded that the approach taken in the Proposal, emphasising political expediency rather thanfairness and justice, is at best irresponsible. Not only is the size of the envelope a source of concern but thefailure to disclose the manner in which the [financial1 cap has been determined suggests a rigidity if not an arrogance which has done little to uphold the principles of honour and good faith.

Report on Government proposals,
from proceedings of a hui at Turangi, 29 January 1995
M.H. Durie and S. Asher

A Maori Voice

For years a Maori voice has spoken also in a number of other forums, most notably the government-funded New Zealand Maori Council, the Maori Women' s Welfare League, and a more recently established independent Maori Congress. But there is no representative body to which all tribal groups accord a mandate. Some say that decisions can be made only at tribal level anyway, but others point to the urbanized Maori population— 70-80% of the total Maori population of around 500,000 who claimed Maori ancestry in the 1991 census—for whom tribal ties are either non-existent or not strong. (No tribal affiliation was stated on 144,000 census returns.) If a body did emerge—pan-tribal or pan-Maori—many would say that it could exercise rangatiratanga only if it were independent of government and accountable only to its constituents, and that Maori must decide on a suitable structure.

The issue of Maori sovereignty and what it means was in the fore in Waitangi Day 1995 protests. The word "sovereignty" produces a strong adverse reaction in government circles as well as in the wider public arena. Perhaps this is because claims for Maori sovereignty appear to challenge government authority and to threaten the cohesion of the nation state. And yet sovereignty, or rangatiratanga—if it means for Maori the right to control resources and determine policy thereto—is not unreasonable. A representative body with a widely acknowledged Maori mandate could be advantageous to government for consultation. But if an independent Maori body posed a threat to government authority, then it probably would be unacceptable. And yet a genuine sharing of authority and a partnership role in decision-making is exactly what Maori leaders have been seeking since 1840. The challenge is to find a solution that will satisfy both government and Maori—structures that will accord satisfaction of both the kawanatanga and the rangatiratanga of the treaty.

No Consultation

That is no simple matter, given entrenched attitudes on the one hand and increasing assertiveness on the other. When government released new proposals for treaty settlement in December 1994 these elements came into conflict. The proposals caused intense irritation with Maori at all levels. Among many criticisms several are central to the treaty process: First, that over a threeyear period government had worked on a framework for negotiation and had done so without formal consultation with Maori leadership seemed a disregard for the treaty's partnership relationship. The proposals themselves, though said to be just a framework for negotiation, were setting the terms of that negotiation. And they are a very mixed bag. Limits are laid down on the extent of any settlement—both availability of resources and funding for compensation. The latter—set at one billion dollars—has become known in its Treasury-speak terms as the "fiscal envelope" or "cap." Although perhaps necessary for government policy planners, the crown proposals appear to be an attempt to limit government accountability .

At a series of meetings between February and April 1995, the crown proposals were rejected by both tribal and urban groups. The rejection says as much about the process adopted by government as about the terms offered. Speakers have taken particular issue with the points that any settlement be full and final and that no further claim on it be brought to the courts or the tribunal. How, they asked, could they bind future generations? Moreover, the proposals seem to negate the continuing partnership relationship between the Crown and Maori present in the treaty and explicitly developed in the treaty principles.

Not surprising therefore was the extent of anger and impatience shown on 6 February 1995 at Waitangi, which was followed over subsequent weeks by a number of land occupations around the country. In time there will no doubt be shifting interpretations of these events; however, the immediate impressions seem clear enough. Among a wide spectrum of the Maori people—leaders at national and tribal level, younger people, and urbanized groupings—there is extensive disillusionment with recent government policy trends. As TPK's head, Wira Gardiner, noted, for those with least to lose, protest is a cry for help and a cost-effective mechanism of drawing

attention to a grievance. For some sectors it also represents a vote of no confidence in a Maori leadership seen to be enjoying the fruits of success while others are still on the economic battle front.

One People

All this has caused immense media interest and intense private and public debate. Despite a recent small flood of information on the treaty and related issues, the attitudes of New Zealanders at large are predictably varied. Some remain convinced that the treaty is irrelevant to l995 and should be buried in the mists of history. A step away from this is the assertion that there should be equality of all citizens—we are all one people—which usually means no affirmative action regardless of injustices or impediments. Sometimes the fear that "Maori are getting away with something" leads to a cry for one law for all New Zealanders. Many are averse, as they put it, to taxpayers bearing the burden of transgressions of their forefathers.

But there are other positions. Those who admit that things have not always been fairly carried out by past governments are often ready to agree that grievances be settled. But many are impatient to see the job done and no more heard about the treaty. Others have dug deeper into the issues and are working through the implications of finding practical implementation of treaty rights. Important members of this last group are those with knowledge of overseas developments in indigenous rights—especially in Canada and in Australia, where structures and funding to deal with land claims appear to meet Aborigine and Torres Strait Islander hopes for self-determination. Such developments have some relevance to the New Zealand situation, as does a growing jurisprudence on indigenous rights that informs the country's law profession. There is also an awareness that the United Nations' work on a draft declaration on indigenous rights will ultimately affect the local scene. But these matters circulate among a relatively small informed sector of the populace.

Meanwhile, many New Zealanders continue to ask if and when it will all stop. Most probably go on hoping that treatyrelated problems will just subside. Hard to grasp is the fact that New Zealanders are, as one commentator has said, "finally beginning the long and necessary process of decolonizing ourselves from within." No such process happens without talking through issues, and such talk brings conflict. The fear that such conflict will irreparably corrode the fabric of social cohesion might well lead to that very end if Maori and government leaders talk past each other.

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The Treaty of Waitang

[This is the text which has become the official English version. It was signed in March and April 1840 by 39 chiefs. It is reproduced here as it was written with no changes to spelling or punctuation.]

Her Majesty Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favor the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederation and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the first

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation of Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

[signed] W. Hobson Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being

assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.

The Chiefs of the Confederation

[This English translation of the Maori treaty text, made by Professor l.H. Kawharu, was printed in Report of the Royal Commission on Social Policy, Wellington, 1988, pages 8788.]

Victoria, The Queen of England, in her concern to protect the chiefs and subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come.

So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

The First

The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The Second

The Queen of England agrees to protect the Chiefs, the subtnbes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasure. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The Third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

[signed] William Hobson
Consul and Lieutenant-Governor

So we, the Chiefs of the Confederation and the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.

The Chiefs of the Confederation

Canada and the Antipodes: Mirror Images?

by Peter Jull

New Zealand's current land-claims politics resemble those of British Columbia, but may be less well prepared. On the other hand, the indigenous autonomies of Cook Islands and Niue are ahead of Canada, even if issues of economic sustainability are no less challenging, especially in Niue. (Niue's long-time indigenous premier has a legal background; he has argued that as Magna Carta still applies in his land, no further rights laws are needed!)

Australia' s Northern Territory (NT) government is preparing a constitutional smash-and-grab when a gullible Thatcherite Right government takes office in Canberra later this year or early next. While national Right leaders are impeccable on matters of the visible minorities from Asia or Black America, some travel North to sit at the feet of an indigenous-unfriendly Territory government to imbibe techniques of aboriginal relations. Their gullibility—to use a polite term—will cost them dearly if they take office and their actions lead to an immediate world perception of a return to the white Australia policy.

Specifically, the NT government hopes to take over the federal aboriginal rights law and gain statehood by a package of measures that appear to give favourable consideration to aboriginal rights. The reality of course is that the white authorities want the same sort of regional control on

their own terms that Canada rejected when white-run Northwest Territories and Yukon governments tried a similar move in the 1970s and 1980s.

Australia's "other" indigenous people, the Torres Strait Islanders, feel much like Inuit—too often forgotten and relegated to second place. They know, however, that Inuit and Scandinavia' s Sami are also concerned with and taking action on similar marine issues and seeking more regional power.

In early 1993 a visit to Central Australia by Inuit national and international head, Rosemarie Kuptana, left local politicians quoting her admiringly and eager to follow up some of her insights from Canada's northern and national indigenous experience. But until recently Australia lacked the habit of international co-operation and comparative study in indigenous policy and politics. Now its national ombudsman for indigenous peoples, Mick Dodson, may be changing that. In two reports published in early 1995 he outlined a philosophy, an approach, and some start-up subjects for work that notably included issues that have occupied northern Canada peoples and governments for the past 30 years(1).

For example, he highlighted, as have the authors of other official advisory body reports, the approaches of Yukon, NWT, and northern Quebec indigenous peoples in their landclaims settlements—now increasingly well-known in Australia as *regional agreements.* He recommended that Inuit, Sea Sami, and coastal British Columbians be invited to a workshop with Torres Strait Islanders and coastal aborigines to share the problems and experience of marine rights and management. He proposed also that they consider the usefulness of continuing a network for co-operation and exchange visits.

In a special section of his report he examined aspects—good and bad—of Canada's national indigenous constitutional work, a subject Australia is only now embarking on.

However, the growing spirit of indigenous-government bilateral and multilateral co-operation in circumpolar regions has no equivalent in Australasia. This is a tragedy, and may mean that, denied such a workable and rewarding outlet for the sharing of ideas, New Zealand and Australia will find themselves playing catch-up politics. Both countries have shown that they are capable of remarkable surges of progress, but, as Canada's Inuit, Indian First Nations, and Metis know too well, *sustaining* government reform in such policy areas is a big problem.

All three countries would benefit from co-operation networks. New Zealand and Australia have much useful experience and many valuable precedents for Canadians. Perhaps the most amazing result of international co-operation, however, is the hope it provides. It breaks down indigenous peoples' feelings of isolation and powerlessness, as much in scattered hinterlands as in white cities. It reminds them that others have won similar struggles for recognition, rights, and territory.

It also breaks down the isolation of governments who then cannot hide behind terse upbeat press releases in international forums, masking their indigenous failures with effusions of of ficial *good intentions.* Instead, their problems are revealed, and national governments are brought to where Inuit and other peoples have brought the Canadian government—to the stage of mutual problem-solving. When governments and indigenous peoples co-operate, they can achieve great things.

In Australasia, as in Canada, it is time for indigenous leaders and governments to move beyond recriminations and denial to the real problems to be solved. Their problems cannot be solved either by anyone working alone or by governments that do not give an equal political role to indigenous peoples. In Australia, especially, old habits of government dominance die hard; too often in the Australian north, centre, and west they have not died at all.

In northern Canada, and to some extent nationally, we learned that intelligent discussion and a genuine wish to solve problems could help overcome deep-rooted racism and ethnocentric policies. Today, as New Zealand debates the meaning of two ethnic nations within a single territory and Australia deals with a well-developed "states' rights" movement, the most hopeful sign is that both countries are optimistic and forward-looking. One hopes that in the ugly area of race relations a positive spirit will triumph over racial anxiety.

Likewise, Canada has much to learn from the realities that Australia and New Zealand face daily. In the *real* new world order—where European peoples can no longer call the shots or define the realities and where prickly ethnicities and new nationalisms resent any comment by Europeans on their "domestic" affairs—human rights improvements begin at home. I recall a Clark government ministerial aide noting that Canada supported indigenous rights in then white-ruled countries of southern Africa that it resisted in the Northwest Territories. Such inconsistencies are no longer possible when one has outspoken Malaysian, Singaporean, and other public figures keeping notes on Australian and New Zealand national debates and outcomes.

Canada has come through the early days of its time of trial on indigenous issues rather well and sealed its commitment to indigenous internationalism with the appointment of Inuit leader Mary Simon as circumpolar ambassador in October 1994.

Yet the two countries most like Canada are not in the circumpolar world, but in the South Pacific. Shared political traditions, law, ethnicity (for the national majorities, at least), and socio-cultural values make closer links on indigenous, constitutional, and hinterland policies and politics desirable and practical.

The law, politics, and practice of indigenous marine management is one obvious issue for co-operation. Mining in indigenous territories, the practicalities of self-government, ethno-regional

political settlements like Torres Strait and Nunavut, and the accommodation *(reconciliation*, in Australia) generally of indigenous and non-indigenous peoples in society are others.

The point is to see circumpolar and British Commonwealth connections not as competing but rather as part of a larger reality—to see that "first world" indigenous hinterland and urbanization experiences are everywhere the same. First world governments have the means, public support, and official ideologies that other countries lack for overcoming such problems. They have no excuses for not doing so and will have no moral allowances made for them by the non-European Commonwealth or United Nations for not succeeding. Nor should they.

Putting their heads together—both governments and indigenous peoples—may be the best way to make and sustain progress.

1. Dodson, M., 1995, "International Perspectives," *Second Report, 1994,* Aboriginal and Torres Strait Island Social Justice Commissioner, Human Rights and Equal Opportunities Commission, Commonwealth of Australia, Sydney, pp. 203-218; and "International Connections," *Indigenous Social Justice, Vol. 1, Strategies and Recommendations,* Submission to the Parliament of the Commonwealth of Australia on the Social Justice Package, pp. 41-48.

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Progress towards Settling Maori Land Grievances: A New Zealand Government Perspective

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This paper, by the Honourable Maurice McTigue, New Zealand High Commissioner in Canada, was written in response to CARC's request for a New Zealand Government perspective on Maori land rights.

International Comparisons

The situation concerning aboriginal land rights in New Zealand is different from that in Canada or in Australia. In Canada, a number of different treaties covered parts of the country but left large tracts of territory over which there were no treaties. The indigenous people were disparate and included first nation Indian tribes and Inuit.

Australia does not have treaties with the aboriginals or with the Torres Strait Islanders and, at least until the decision in the *Mabo* case, the prevailing Australian view was that Australia was *terra nullius* and had belonged to no-one until the British declared sovereignty. Both

Canada and Australia have adopted federalism, with governmental responsibilities shared between provinces or states and a federal legislature.

In New Zealand one treaty—the Treaty of Waitangi— covered the entire country, one indigenous population and one central structure of government, except for a brief experiment with provincial governments from 1853 to 1876.

The Treaty of Waitangi: Early Days

The Treaty of Waitangi was signed in 1840 by authorized representatives of the British Crown and more than 500 Maori chiefs on behalf of *iwi* (tribes) and *hapu* (clans). The Treaty's three articles provided a national government with general lawmaking powers, guaranteed that Maori would retain their lands and other material and cultural treasures for so long as they wished, and assured Maori that thev would enjoy equal rights with all other New Zealanders.

At the outset, the Crown's representatives in New Zealand attempted to adhere to the instructions from the London Colonial Office that the honour of the Queen required fair dealings with Maori and that Maori land rights were to be recognized and respected—a position reinforced shortly afterwards by the Supreme Court. Whatever other problems have arisen, this basic position has never been rescinded of ficially. For some two decades after 1840, this was further recognized in practice as the Crown exercised its pre-emptive right to purchase land from Maori customary owners.

Tensions rose, however, as a continued influx of colonists created a constant pressure for more land for settlement. Crown agents entered into agreements with Maori to purchase land, but often the government failed to honour its side of the agreement. For instance, prices were inadequate, surveys were inaccurate, promised reserves never materialized, and land Maori had thought to be excluded from sale was subsequently found to be included in Crown grants to others. Increasing Maori reluctance to sell more land raised tensions and eventually culminated in the Anglo-Maori wars that were fought intermittently during the 1860s.

As a consequence of those wars, the Crown confiscated vast areas of land from a considerable number of iwi as punishment for their perceived rebellion against its authority. This confiscation *(raupatu)* has been a major source of grievance against the Crown ever since.

In 1865, the Crown attempted a peaceful determination of Maori land title with its establishment of the Native Land Court. The Court's main task was to individualize communal, tribal title—a double-edged policy that provided theoretical legal protection for Maori land owners but undermined the communal nature of their land holding and social structure and exposed them to the predations of both private land sharks and Crown land purchase agents. From the late nineteenth century, a series of royal commissions of inquiry, government development schemes,

and settlements with some tribes attempted to investigate, analyze, and rectify Maori land grievances and to give Maori a viable economic base.

While reaffirming the underlying common law doctrine of native title, the Treaty of Waitangi went much further and created an obligation on the part of the Crown to act in a fiduciary relationship with its Maori Treaty partner. Maori faith in the Treaty, however, particularly after the 1860s wars, gave way to disenchantment as they perceived the Crown's disrespect for its terms.

Response of the New Zealand Government

The New Zealand Government responded to growing pressure to address Maori concerns in a co-ordinated and structured manner by passing legislation in 1975 to establish the Waitangi Tribunal. The Tribunal's mandate was to hear and report on Maori grievances against the Crown under the Treaty of Waitangi where the cause of action arose after 1875. Its taskwas to receive claims for Treaty breaches from Maori, report on historical findings of fact, and make recommendations for resolution of the grievances. In 1985, the Tribunal's jurisdiction was expanded to enable it to hear all grievances dating back to 1840. Both the Tribunal and the law courts in New Zealand have viewed the Treaty as a living document to be interpreted in accordance with broad principles.

Establishment of Special Agency

In 1988, the government established the Treaty of Waitangi Policy Unit within the Department of Justice to address Treaty issues. This unit became the Office of Treaty Settlements in January 1995, a government agency that reports directly to the Minster in Charge of Treaty of Waitangi Negotiations. It is responsible for the development of policies for the Crown concerning the settlement of Treaty of Waitangi claims, and it negotiates and implements settlements of the claims.

Negotiations Process

The Waitangi Tribunal and the Of fice of Treaty Settlements are separate organizations that perform different functions. The Waitangi Tribunal investigates and reports on Treaty Claims, and then the Office of Treaty Settlements uses the Tribunal's reports as a basis for negotiating and settling claims.

Claimants may also bypass the Waitangi Tribunal hearing process and seek direct negotiations with the Crown. When a claimant seeks direct negotiations, the Crown analyzes the historical basis for the claim and seeks assurances on appropriate representation for the claimant. The operations of Treaty negotiations are undergoing review following the establishment of the Office of Treaty Settlements, but the government' s current intention is that after preliminary

discussions the claim will be entered into the Negotiations Work Programme. Acceptance of a claim into this programme is important, for it means that the Crown acknowledges the nature and significance of the Treaty breach and that both the Crown and the claimants are willing to negotiate a resolution to the grievance. The Minister in Charge of Treaty of Waitangi Negotiations then seeks a negotiating brief from Cabinet, which, after setting out the facts of the claim and any important issues that may arise, provides authority for negotiations to begin. Once negotiations are successfully concluded, a draft deed of settlement is drawn up. This deed is then ratified and signed by the claimants and the Crown and becomes the Final Agreement.

Statutory Protection of Maori Interests in Land Formerly in Crown Ownership

For the most part, the Waitangi Tribunal has power to make recommendations only. There are exceptions, however, whereby certain statutory provisions enable the Tribunal to make recommendations that are binding on the Crown.

Land that the Crown has transferred to certain state enterprises and tertiary educational institutions and Crown forest land over which there is a forestry licence must, on appropriate recommendation from the Waitangi Tribunal, be purchased by the Crown for transfer to Maori to redress a valid Treaty grievance.

There is additional statutory protection for land owned by a state enterprise that is deemed to be a *wahi tapu* (sacred site). This sacred land may be reclaimed by the Crown, on application by Maori, through an Order in Council and returned to the tribe. An application under this process exists independently of any Treaty grievance and does not require the involvement of the Waitangi Tribunal.

The Waitangi Tribunal is prevented by statute from recommending the return of privately owned land or the acquisition by the Crown of such land for return to Maori.

Mechanisms for Protection of Maori Interests in Crown Land

In 1993, the government set up a mechanism to provide for consultation with iwi when it desires to sell land that is surplus to Crown requirements. This protection mechanism recognizes three categories of land: non-substitutable sites of special historical, cultural or spiritual significance; land of special importance that is essential for settlement of a claim; and land not falling into either of the foregoing categories but that is particularly sought by claimants and will facilitate settlement of claims. In the case of non-substitutable sites, it is not necessary for iwi to have any claim concerning a breach of the principles of the Treaty of Waitangi for such land to be returned.

The protection mechanism is intended to ensure that land the Maori applicants claim and the government agrees ought not to be sold is either transferred to the claimants or retained by the Crown for possible future use by the claimants as part of their claim settlement.

Land banks established for claims that have reached an advanced stage of consideration hold and administer land set aside under the protection mechanism process pending transfer to the claimants in settlement or part settlement of their claim. Some land banks have also been established during the course of negotiations with specific claimant groups to hold surplus Crown properties that claimants identify as potentially part of their settlement package.

In May 1995, the government took steps to provide further protection for Maori interests in Crown land. In grievances concerning land that was confiscated, claimants usually seek the substitution of land still owned by the Crown. To allay Maori concerns that the Crown might continue to sell surplus land in the *raupatu* areas and thus reduce the amount of Crown land available for inclusion in settlements, the government agreed that surplus Crown properties situated within the outer confiscation boundaries would not be sold into private ownership. The government agreed to establish a Crown Settlement Portfolio to purchase and hold all surplus properties for possible use in settlements of Treaty claims.

Conclusion

The New Zealand Government has recognized the need not only to hear and report on Maori Treaty grievances but also to provide a means for negotiations and settlement of these grievances. With the Waitangi Tribunal and the recent establishment of the Office of Treaty Settlements, a suitable forum is now in place for this to occur.