

Address by the Minister in Charge of Treaty of Waitangi Negotiations

Hon D A M Graham*

My father was Robert and his father was Arthur and his father was Robert who came out to New Zealand from Scotland in 1842. His father was William, his father was Robert and then Walter. And nowhere, unfortunately, can I find the link that gives me the ability to claim a Maori heritage. But I have been interested in issues of the Maori for many years and when I was asked to become involved in the Government's endeavours to address the Treaty grievances, that have been outstanding for far too long, I did so with some enthusiasm and I still have it - a surprise to all.

I thought it was wise to reflect on these little bits and the differences in attitudes that occur between different cultures. Rather than refer specifically to any writings or sayings of the Maori because that might be selective. Can I just share with you some comments that many of you may know were made by a Chief in the United States in the last century when the land purchases were taking place. I think it sets out very beautifully the attitude of them, the Indians as a First Nation people, and I suspect the attitude of Maori as well to the sales and the effect of those on their culture. This Chief wrote the following words and I have been selective here because we haven't got time for the whole thing:

How can you buy or sell the sky, the warmth of the land? The idea is strange to us. If we do not own the freshness of the air and the sparkle of the water, how can you buy them? Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The sap which courses through the trees carries the memories of the red man. If we sell you land then you must remember that it is sacred, and you must teach your children that it is sacred, and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father. There is no quiet place in the white man's cities, no place to hear the unfurling of leaves in spring, or the rustle of an insect's wings. And what is there to life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell in the wind of itself, cleaned by the midday rain, or scented with the pinon pine.

When you read words such as that you realise that there is obviously a gulf between attitudes that that personifies, and many of the things that I was taught as a young New Zealander in school not so very long ago. We have to somehow or other when we approach these rather difficult questions in our context, approach them with a willingness to understand where the other party is coming from, and hopefully they will

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understand where we are coming from. Without that we are not likely to make a great deal of progress.

The topic is "Treaty Claims: Unfinished Business". I am not certain that we'll ever finish in that sense. I am not certain I want it to. It is not a matter of reaching some conclusion, as the Prime Minister said, closing the book and putting it to one side - forgetting about the rest. It's not like that at all. This is a reflection that we have two distinct cultures, in fact we have a number of cultures, but two distinct cultures that need to respect one another. That needs to be developed and maintained and worked on all the time. It can only be worked on with understanding, tolerance and patience.

However, there are some things that we can do in the foreseeable future to try and improve where we were perhaps 10 or 15 years ago. Having said that I think we have come a very long way in the last 20 years in many areas. And there is certainly, unquestionably, a much greater understanding within the Government, and I suspect all New Zealanders, of these issues to which they rarely turned their minds in the past, and which they are now turning their minds and addressing, some more than others, some better than others. And there is an attempt in the Government circles to try to ensure that the cultural differences are in fact heeded, and that the lessons of ignorance in the past are learned.

I just want to make four points if I may, very briefly, as to what I think the unfinished businesses are as at today, and what we might be able to do, or need to do in the next few years.

The first one is that I think we need to work very hard to try to reconcile the rights and obligations that exist under the Treaty by the Crown and by Maori. Not always are you going to gain great insight by reading the English version or the Maori version of the Treaty, you gain it from meditating on what was meant, what the parties were trying to say, what is, in the words of the Court of Appeal¹ "the spirit", of the Treaty. But there is obviously, as we all know, the debate about the Article I rights of the Crown or Kawanatanga as it is frequently called, and Article II rights, or Tino Rangatiratanga. There is nothing new about that. But I have to say having addressed some of the grievance claims as best I can that there seem to be very large gaps between which is which, and which prevails if there is conflict. In many areas there doesn't seem to have been much wrestling with the topic in the first place, and the loud cries from one side or the other that their views should prevail are not going to be terribly constructive. In a much more intelligent way we need to look at those things quite carefully and we have to at the end of the day say "Well what is best for the nation?" That, after all, was what the two parties said, "We will work together to develop the nation." That's the first thing I think we have to turn our mind to, and I'll come to that in just a moment.

The second thing is I think we need to give much more emphasis to policies to ensure the development and the protection and preservation of the Maori culture. Again

¹ *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641.

I am somewhat heartened in that regard because wearing the hat of Minister of Cultural Affairs for the moment, there are a lot of things happening with relation to the protection of taonga and the development of skills of curators in museums. Indeed one, I hope, result of any settlement of Treaty claims will be the ability of Maori people to establish their own museums and reclaim their own taonga so that they have control over them. But it's not of course just artifacts, it is the language, the attitudes, the cultural differences and they are valuable in the ultimate, and we have to listen to them and we have to draw from them.

The third area I think we need to do something about is a bit academic, and that's the legal status of the Treaty. I don't propose to go into that very much today at all. I sometimes have heard it said that we ought to place the Treaty itself in domestic legislation because whilst it sort of sits out there on its own, it hasn't got any teeth. Now we will all have different views on that, and I have heard it argued, and Sir Geoffrey Palmer would be far better placed to argue this than I am, that if it became domestic law Parliament could happily change it, though nobody really wants that to happen. There are pluses and minuses with that argument but I think it's worthy of further debate.

The last thing I think we have to turn our mind to, and again this is an issue which is obviously debated strongly amongst Maori, but of course very rarely in an intelligent way by non-Maori, is the issue of Maori self determination and "sovereignty" whatever that is. Many other countries around the world are spending an inordinate amount of time and energy trying to work out what that means for them, and we will be doing the same. Now some people get very frightened about that. I don't think it's a matter of getting frightened about it. I think we have to look at the thing quite calmly and rationally. No two countries are the same. What is self government or self determination or sovereignty for the Inuit in the Arctic circle is a little different from downtown Auckland. Their ability to manage their own affairs is unchallenged with nobody else there to challenge it. The right to pass laws for themselves, and to even enforce it against others might be quite all right if you have these people living somewhere in remote areas. But it's a difficult concept when applied in Wellington or Christchurch. Those are issues which we have to quietly work through together. I think the sooner we turn our mind to that the better. I am not being critical of anybody I am just saying that it is a difficult topic. The United Nations is trying to cope with it at the present time. A draft has been circulated thousands of times, and I rather suspect the Australians are making greater advances in that area than we are, and nobody likes to be second to Australia.

Can I refer to the first point I made: Article I and Article II. I want to say that it is my view, and the view of the Government, to be fair to all claims, and I am now talking about grievance claims for the redress, the taking of land, and matters of that kind. I am not now talking about Maori sovereignty or generic claims or the protection of language which affect all Maori. I am talking about hapu or iwi based claims for the return of land. It was our view, still is, that it is necessary for the Crown to have a consistent policy. We cannot sensibly deal with one hapu in one way, and then refuse to deal with another hapu applying the same principles. That doesn't make any sense. It is unfair. We have to try to be consistent across claims where the issue is the same.

Whether it relates to the conservation estate, what can be done about that, or whether it relates to natural resources and what can be done about those, it's no use the Crown having an ad hoc policy, or a hundred of them.

The other thing I want to say is that when determining Article I and Article II rights it would be wrong in our view to say this is a matter between the Government and Maori and that's all. In fact, non-Maori are as affected by some of those issues as everybody else. We're not going to make much progress if non-Maori people aren't able to have their say. They do have their say. They come barging into my office regularly with some quite vitriolic demands as to what ought to be done - particularly those conservation groups who will never cease until the whole of New Zealand is protected. It is a matter of all New Zealanders becoming seized of the issues and trying to work their way through them and being satisfied. I have no reason to doubt that rational people can do that when they put their mind to it. There are all these difficult issues about ownership and the customary rights relative to traditional English concepts that we inherited from the United Kingdom and they are very different. I know anybody who has appeared in any of the cases, or those of us who actually have to read the results, will know how difficult some of these concepts are. There is little point leaping up and shouting away about something or other when it may have taken a Court of Appeal Judge twenty five pages to actually get to the root of the issue. We have to just take it calmly and work our way through it. That is really what we are trying to do. It's not easy, and it's a difficult area, but I hope that New Zealanders will accept that we've tried, and we've tried with as much goodwill as we can have. I am not suggesting anything's perfect. I am not suggesting the procedure necessarily is perfect or acceptable to everybody. But it would be wrong to think it was dreamt up in half an hour and that's it. We have been working on these issues now for almost three years. We have had hundreds of people involved. We have listened to views as much as we can from all over. We know what Maori people are saying because we are negotiating with them. The Crown has to respond, so we thought the best thing to do was to develop some talking points and there are others still to come, and say to people "Here are talking points we now want to discuss with you, and here are some suggestions as to topics to debate". There are certain items, if I'm going to make progress with settling claims, where I have to have the answer, and I have to get it approved by Cabinet and Caucus and everybody else. And I have to sell it to the rest of the country. If I can't do that we're not going to make any progress at all.

There are I think one or two issues where I differ on some of the claims that have been made recently. One is, and the Prime Minister touched on this, that somehow or other if we settle a Treaty claim we are cancelling Treaty rights. I have heard this said many a time, but I have never been able to understand it. We are not cancelling the Treaty right. We are trying to endeavour to work out what the Treaty right is, and having worked out what the Treaty right is, and hopefully having it agreed to, then to fulfil it. That is what we are trying to do.

Another thing I want to say relates to "full and final" which comes up invariably. It comes from Maori "What is this full and final?", "How can things be full and final?" I have to say to you that it is my belief, and the belief of the Government, that non-

Maori New Zealanders will have to be satisfied, if they are going to support the process, that these matters are full and final.

Now I don't know what the next generation is going to do. None of us do. I don't know what the next Parliament is going to do. We can't bind the next Parliament anyway. We have to try to reach an agreement and if we can, then so far as the Government's concerned the matter has been fulfilled and we can put it behind us and develop from there.

I think it is unfortunate also that there has been so much emphasis on money. I remember one from the earlier negotiations I undertook where I went to great lengths, and I thought I was very clever, in trying to establish a trust fund for the education of a small hapu and the members of the hapu who had no money at all and not much future, as part of an overall quite complicated negotiation. After a long time we arranged, I think, for a couple of hundred thousand dollars to be put into a trust fund for that purpose. I was pleased as punch with myself and very grateful to the company that did it. When I went to the negotiators of the hapu they declined. They didn't want any money, it was a wahi tapu issue, and it would be tainted if there was any suggestion of money. I respect that. Perhaps it was naive of me to even consider, but it seemed to me worthwhile at the time. I learnt from that and I do get a little upset when people talk endlessly about money. In the negotiations with Waikato-Tainui, the apology from the Crown was very, very important indeed. Then having got the apology, having the apology given, we worked at how redress could be made to the tribe over time to satisfy the grievance.

We have to resolve on the one hand Article I rights of the Crown, to govern in the best interest of all New Zealanders, to protect natural resources so that we all benefit from them and on the other hand, the historical customary rights of Maori to resources that they had long before the Europeans even thought of using them. We need to work those out together. And I hope we can have some intelligent debate on some of these proposals that we have put forward as people say "They're unfair, they're pro-Crown, they don't take into account our rights enough." Well, come and talk about it and let's see if we can't get it better. Those are issues for debate and discussion.

The second item I mentioned was the protection of indigenous culture. I don't want to talk too much about that. I just want to say this. It's not protection because it's a nice thing to do, or because we have an indigenous culture and therefore it needs protection per se. The indigenous culture to New Zealand is unique. We are part of that culture in our own way for more or for less. The blending of that indigenous culture with other cultures gives us the national identity that we all seek, so it is not only a nice idea but it is essential in my view that we develop up and protect indigenous Maori culture. That's difficult because we went through a period, as we all know, of assimilationist policies where it was stamped out. I was not one of those whose school enjoyed instruction that we would now expect, and I was not one to have any personal contact with Maori until quite recently. I regret that and I think that is very sad. I hope it's not going to happen in the future. There is much to be done in that area.

The third area I mentioned briefly related to the Treaty of Waitangi and its status in law. It is difficult. I have heard it argued from both sides more than once. But I think that the way it ought to be approached is not to regard it as the Treaty of Versailles or the Treaty of Utrecht. But to see it as a symbol of unity and aroha. If we see it as that, don't worry too much about what the last word is here, or the last word is there, you can argue that in a rather arcane way for months. If we approach things in the right spirit it seems to me we could make some progress. That of course, the status of the Treaty itself, and whether it's part of domestic law, or should be, or isn't, or whatever, brings into direct question the ability of the people's representatives to decide what it means. That is quite a big issue in itself. It is not easy for the courts, and it is not easy for the politicians. But at the end of the day it will be the general will that comes through and guides us all.

I just want to mention the issue of self determination and sovereignty. Of course there has been a lot said about that in recent days. I can understand that given the advent of MMP and the Maori seats and the option and all of these things, how many seats, Maori parties are we going to have some or not, how will we hear the Maori voice in the corridors of Parliament? Those are issues which are still developing. How do we ensure that Maori people manage their own affairs? The government in the past has always tried to do it for them, and generally speaking, failed dismally. We want to move away from that to allow Maori people to arrange their own affairs and we want to provide them with the wherewithall and the certainty so that they can and they've got something to manage. Similarly, in the devolution of benefits and Government assistance in health and all these other areas it seems to me that Maori people have a very major role to play in how those monies are applied and in what circumstances they are available. Similarly, when it come to justice issues I am one of those who believes there needs to be one law for all New Zealanders. But I certainly agree that when it comes to working out what to do with an offender for example, then the cultural background is of great importance. What might be done in a much more constructive way than sending somebody off to prison is something that we need to look at very carefully, and I am very much in favour of this and I am trying to do a lot more work on it.

I am not one of those who believe that somehow or other there needs to be a Maori Parliament with veto rights against the other. I don't think that in a country the size of New Zealand and the structure we have that would progress the relationship very much, but it is probably true to say that the Maori voice has not been heard as well as it might have for far too long.

Finally I just want to say that it has been my view for a long time, and it has been my experience as Treaty Negotiations Minister, that one of the difficulties I have is to be asked by Cabinet to go and consult with Maori: and I have consulted with the various Maori organisations - the Maori Council, Congress, Maori Women's Welfare League; I have consulted with these people who might be directly involved; but as for consulting with Maori in the generic sense, it is an impossibility. I regret that there is no organisation which seems to have generated the respect of all Maori, or the support of all Maori. I am bold enough to say this but I suspect the Maori Women's Welfare League has it more than anybody else. But having said that I have thought that one of

the issues that Maori should address because we cannot do it, nor would we attempt to, is to see whether some sort of "Kaumatua Council", or "Assembly", that has the support of Maori would mean that we could make much greater progress. However, that is a matter for Maori, it's not a matter for the Crown. If we try and impose yet another Pakeha structure it would not succeed in Maori.

So both sides are developing. The future in my view is quite bright. I never get too deterred, there are stumbles along the way, but it is sometimes better to go around the mountain than to try and push your way through the middle of it.

My hope is that over the next few years, and I am grateful for the support from David Caygill in this, we can look at some of these grievances and say "Look let's get on with it". These people have been waiting and waiting and waiting with nothing. We don't have to try to resolve all of these difficult issues of constitutionality before returning the urupa to the hapu. So let's see if we can do those that we can and work together on those that we find difficult.

And if the goodwill is there, the aroha is there, there is nothing to stop us.