

1984 And All That

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Opening Address

EmpowerNZ Workshop: Drafting a Constitution for the 21st Century

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Introduction

After that warm introduction from Paul Goldsmith, I should immediately set the record straight and confess that I'm not a professional diplomat. I started out as a lawyer, but I found that wasn't very popular; so I became a politician, and found that wasn't very popular; so I became an investment banker (and we know how popular bankers are!).

It's 25 years - almost to the day – since I walked out of this place to discover if there is a life after politics; eventually, to emerge as New Zealand's Ambassador to the United Nations; a diplomatic assignment which basically requires me to do two things–

- First, to lead a team of experts – and, when I say "experts", I really mean experts – real specialists in international peace and security, disarmament (nuclear and conventional), human rights, development, environment, funding, legal, oceans,

¹ The opinions expressed in this address are mine alone and do not represent the views of the New Zealand Government or the Ministry of Foreign Affairs and Trade. I gratefully acknowledge the assistance of a number of friends and colleagues who either scrutinised and commented on early drafts of this address and/or offered specific comments for inclusion; notably, Marcy McLay, Denis McLay and Sir Geoffrey Palmer. All added greatly to the substance of this text. Any errors and omissions, however, remain solely my responsibility.

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conclusion; and later wrote³⁰ that, "It can be argued that a constitutional convention was either restated or emerged³¹ in the context of the events of 16 and 17 July [and] thus [he said] the apparent constitutional impasse was resolved".

And so, as Palmer and others have said, before July 1984, there was no such constitutional convention.

Invented in the dark hours

If a convention did "emerge", then I can only adopt the original "Streaker's Defence": It seemed like a good idea at the time³². If a new constitutional convention was (to put it more colloquially) "invented", it was necessary in order to force Muldoon to do the right thing (to "force his hand"); and, even though I now acknowledge stretching things to achieve that outcome, I make no apology for that – it certainly seemed like a good idea at the time.

Later the law was changed³³, introducing procedures for quickly swearing in a new government; but the "caretaker" issue was not resolved by that legislation - and continues to be covered by an unwritten constitutional convention, still known as the "Caretaker Convention". Invented in the dark hours of Monday 16 July 1984, it remains as I told Muldoon that following morning, and is now an accepted part of our Constitution - formally set out in Paragraph 6.24 of the *Cabinet Manual*, in almost identical language to the press statement of 17 July 1984³⁴.

³⁰ Geoffrey Palmer; *Unbridled Power*; Oxford University Press, Second Edition, 1984.

³¹ My emphasis.

³² The story goes that, when of the first streakers was prosecuted in Sydney, Australia, in the 1960s, and was asked by the Magistrate why he had done it, the young man mumbled that "It seemed like a good idea at the time".

³³ The Constitution Act 1986.

³⁴ Paragraph 6.24 of the New Zealand *Cabinet Manual* provides that "Where it is clear which party or parties will form the next government but Ministers have not yet been sworn in, the outgoing government should: a. undertake no new policy initiatives; and b. act on the advice of the incoming