

## BEFORE THE INDIAN CLAIMS COMMISSION

THE ONEIDA NATION OF NEW YORK,	)	
THE ONEIDA TRIBE OF INDIANS OF	)	
WISCONSIN, THE ONEIDA NATION BY	)	
JULIUS DANFORTH, OSCAR ARCHIQUETTE,	)	
SHERMAN SKENANDORE, MAMIE SMITH,	)	
MILTON BABCOCK, BERYL SMITH, AND	)	
AMANDA PIERCE,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 301
	)	(Claims 1 and 2)
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 19, 1976

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact, which are supplemental to findings of fact 1 through 41, entered herein on December 29, 1971, 27 Ind. Cl. Comm. 583, 592:

42. New York Policy on Indians and Indian Lands.

In its first constitution, adopted in 1777, the State of New York expressed its intention to maintain control over the disposition of Indian lands within its borders. Article 37 of the constitution provided that no purchase of Indian lands would be valid without the consent of the state legislature. This policy was deemed necessary to insure that unscrupulous land speculators did not provoke Indian hostilities against New York settlements.

Settlement in western New York became possible with the shift of British military operations to the South. New York began its policy of acquiring Indian lands within the state in 1782.

43. Military Land Bounties.

To encourage enlistments in the Continental Army during the Revolutionary War, both Congress and New York State promised land bounties to those who served. To fulfill these promises, New York, by the Act of July 25, 1782, Sixth Session, Chapter XI, set aside certain lands in the western part of the state to be used as bounties for New York citizens who had served during the war. Lands belonging to the Six Nations were included within those set aside, but the lands of the Oneidas and the Tuscaroras were specifically exempted from the operation of the act.

44. Effect of the Treaty of Paris on the Six Nations.

The Treaty of Paris of September 3, 1783, 8 Stat. 80, established a boundary line between the United States and Great Britain which left the lands of the Six Nations within the United States. George Clinton, Governor of New York, expressed his desire to confiscate the lands of those tribes which had allied with England during the war. General Washington opposed this policy, as he feared it would lead to renewed hostilities with these tribes. Washington urged his views on the Continental Congress, which adopted them and invited the Six Nations to return to their lands in New York.

45. Congressional Knowledge of New York Bounty Law.

On October 3, 1783, the federal Committee on Indian Affairs reported to Congress that New York was granting Indian lands within its bounds to its officers and soldiers as bounties. A resolution was proposed that Congress recommend to New York that it repeal its land bounty legislation in the event the implementation of such legislation threatened continued peace with the Indians. On motion of a New York delegate to Congress, the resolution was defeated.

46. Settlement on Indian Lands Outlawed.

On September 22, 1783, Congress adopted a proclamation prohibiting settlement on lands, outside the boundaries of any state, inhabited or claimed by Indians, and prohibiting anyone from purchasing or receiving a cession of those lands without the express approval of Congress. The proclamation declared void any title to such land obtained in violation of its provisions.

47. Appointment of Federal Indian Commissioners.

On March 22, 1784, the President of Congress issued instructions to the commissioners who had been appointed to treat with the Indians in the Northern and Middle Departments, which included the Six Nations. The Commissioners were instructed that the purpose of their negotiations would be to receive the Indians into the favor and protection of the United States, and to establish a boundary between white settlements and Indian lands.

A copy of these instructions was forwarded to New York Governor Clinton with the admonition that its contents should be kept secret.

48. Federal Knowledge That New York Would Interfere With Treaty.

Congress received information that New York was determined to interfere with federal peace negotiations with New York Indians. On August 4, 1784, Arthur Lee, a federal commissioner appointed to treat with the Indians, wrote to the Chairman of the Committee of the States <sup>1/</sup> that Governor Clinton was at Albany preparing to treat with the Six Nations. Lee suggested that the Committee determine whether New York had the authority to treat with the Indians. Lee noted that if the Indians realized that there were rival powers attempting to negotiate with them they might take actions contrary to the welfare of the confederacy.

49. Indians Instructed not to Treat with New York.

During the summer of 1784 the federal Indian commissioners warned the Oneidas and Tuscaroras not to sell or exchange any of their lands. The commissioners also informed all of the Six Nations that Congress had the ultimate authority to treat with Indians, and that a treaty with an individual state without the sanction of Congress would be invalid. The Indians were further notified that Governor Clinton was not authorized by Congress to treat with them.

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<sup>1/</sup> Under the Articles of Confederation, the Committee of the States was authorized to exercise powers delegated to it by the Continental Congress when the latter body was not in session.

50. Report to Congress on the Success of the Stanwix Negotiations.

In late October 1784, the federal commissioners forwarded to the President of Congress the articles of the Fort Stanwix Treaty and an account of the negotiations which preceded it. They stated that they had been much troubled by the attempts of Governor Clinton to frustrate the treaty and by the conduct of certain citizens of New York. They related that federal military officers had become involved in a dispute with local law enforcement officers which resulted in process being served on Lieutenant John Mercer, a federal officer.

In a second letter, dated November 20, 1784, the commissioners further explained to Congress the confrontation with New York authorities. During the treaty negotiations the commissioners became aware that New York citizens were selling rum to Indians present at the treaty council. The commissioners ordered federal troops to confiscate the rum and remove its sellers from the treaty grounds. The owners of the rum complained to the local sheriff who served process on Lieutenant Mercer. The commissioners informed Congress that they had instructed Mercer to ignore the process, and had notified justices of the county court that such process was in violation of the Articles of Confederation and that federal officers could not carry out their responsibilities if they were subject to state process.

51. Congress Transfers Seat of Government to New York City.

On December 23, 1784, Congress adopted a resolution that commissioners be appointed to select the site of a new federal city to

54. New York Commissioners Prepare for Treaty with Oneidas and Tuscaroras.

On May 1, 1785, New York Governor Clinton wrote a letter to the New York Indian Commissioners informing them that they had been instructed by the legislature to obtain cessions of Indian lands. Clinton requested that the Commissioners convene a meeting for the purpose of making plans for the treaty.

On May 11, 1785, the New York Indian Commissioners met at Albany. The Commissioners adopted a resolution that a treaty be held with the Oneidas and Tuscaroras only. On May 13, 1785, the Commissioners reconvened and adopted a proposed speech to the Oneidas and Tuscaroras in the following language:

Brothers of the Oneida & Tuscarora Nations:

The Governor of this State (at the Meeting of the Legislature last Winter) laid before them a Message from the Grasshopper delivered by Colonel Lewis, in Presence of Capt David and Captain Hendrick, from which it appears that John Harper has lately been in the Oneida Country, and by Misrepresentations and other unjust and unlawful Means obtained a Writing for a large Tract of Land in the Neighbourhood of Onaguaga and extending on both Sides of the Susquehannah River: That the Grasshopper and other Chiefs desired that the said Writing might be destroyed, that the White People might be prevented from coming among You to cheat You out of your Lands: That it might be made known through the Country that Harper has no Right to the said Lands, so that the People might not be deceived and that You looked up to this Government to take Care of your Rights. Of all these Things the Legislature were informed last Winter. We are very much surprized at Harper's Conduct. We informed You at the Treaty last Summer that he had deceived You, and We then gave You a caution against attempting to sell Lands to any Person, who had not an Authority and Licence from the Government, and yet We find that some of You have notwithstanding have suffered yourselves to be again imposed

upon by Harper, who has obtained a Writing for a large Tract of Land without the Authority or Knowledge of the Government, and therefore the Sale and Writing are void and good for nothing, and although Application was made to the Legislature last Winter to have this Purchase of Harper's confirmed, it was refused because it was made without Authority from the State and against the Constitution. We hope You will be more cautious for the future and not make any Sales or Writings of Lands to any Persons who cannot show You a good lawful Authority from the State to make a Purchase from You. As We understand that You are disposed to sell some of your Lands, We now inform You that You have an Opportunity to do it to the Governor and Commissioners who were with him at Fort Stanwix last Summer. The Legislature have passed a Law last Winter giving the Governor and Commissioners Authority & Licence to purchase Lands from You. And We have received a Letter from the Governor a few Days ago on that Subject, who hath requested Us to inform You that he and the Commissioners will hold a Treaty with You at the German Flatts, in Order to buy Lands from You. And We now send Mr. Ryckman to You to deliver You this Letter and to bring back your Answer, that We may inform the Governor at what Time he and the Commissioners may meet You. We have requested Mr. Ryckman to agree with You about the Time. The Governor has Business of Importance to transact the Beginning of July, which will require his constant Attendance, the remaining Part of the Season. It will therefore be necessary to hold the Treaty as soon as possible. We mean to hold a Treaty for this Purpose only with You, and not with the Onondagos, Cayugas and Seneca Nations: they have in the late War done us much Injury, for which We expect they will hereafter give us a proper compensation in Lands.

[Def. Ex. J-56, Comm. Ex. 1: Proceedings of the Commissioners of Indian Affairs in the State of New York 72-74.]

The Commissioners resolved that Mr. Peter Ryckman, an interpreter, deliver the message to the Indians.

On May 14, 1785, the Indian Commissioners wrote to Governor Clinton informing him that they had decided to treat with the Oneidas and Tuscaroras and that they had decided to send Mr. Ryckman to invite the Indians to the

Treaty. The Commissioners explained to Clinton that they had decided to treat only with the Oneidas and Tuscaroras because their land was of more value to the state than that of other tribes and because the allowance from the legislature would be insufficient to purchase more than the lands of these two tribes. The Commissioners also informed the Governor of the preparations being made for the treaty.

At a meeting of the Indian Commissioners on May 26, 1785, Mr. Ryckman reported that he had delivered the message to the Indians and that the Indians had expressed their willingness to meet with the Commissioners on the subject matter of the message. On May 27, 1785, the Commissioners informed Governor Clinton that the Indians had agreed to attend the treaty.

55. Fort Herkimer Treaty Proceedings.

a. June 23, 1785. The Fort Herkimer Treaty Council commenced with a speech by Governor Clinton. Clinton stated that he was aware that unauthorized white people were attempting to purchase lands from the Oneidas. He reminded the Oneidas that previously they had been cautioned not to sell their lands except to the State of New York. Clinton stated further that he believed that the Oneidas wished to sell some of their land and that accordingly he had called this treaty so that the state could purchase land from them.

The Grasshopper, an Oneida leader, replied to the Governor's speech. He stated that the matter proposed for discussion by the Governor was of great importance to the Oneidas. The Grasshopper stated that one of the



influential chiefs of the tribe had not yet arrived at the council and that the Oneidas could not reply to the Governor's talk until he arrived.

b. June 24, 1785. No formal meeting was held on June 24 because the Indians were not yet prepared to answer Governor Clinton's speech. The Commissioners spent the day trying to ascertain the views of the Oneidas. It was discovered that most of the Indians were opposed to selling anything other than a small mountainous tract of land between the Delaware and Susquehanna rivers. During the evening a private conference was held with the principal chiefs of the tribe. At the conference the Governor described the much larger tract that the State desired to purchase. From the record of the proceeding, the tract New York wanted to acquire had approximately the following boundaries: Beginning at the mouth of the Unadilla River, then up the Unadilla twenty miles, then west to the Chenango River, then down the Chenango River to the Susquehanna River, then to the Line of Property, and along the line of property to the point of beginning. Clinton explained to the Indians that the State wished to purchase the lands to avoid the conflict that would arise should whites try to settle on those lands.

The "Line of Property" referred to in the above description was a boundary agreed upon at a treaty between the British and the Six Nations at Fort Stanwix on November 5, 1768. Each party to the treaty agreed not to claim title to land on the other party's side of the line. As relevant to this case the Line of Property is as follows:

. . . Across the Mountains to the East Branch of the Susquehanna, and thence up that Branch to the Owego; thence to the Delaware, and up that River to a point opposite where the Tianaderha (Unadilla) falls into the Susquehanna, thence along the Eastern Boundary of Broom County, Northward, across to and up the West Branch of The Unadilla to the Head of the same, and thence in a straight Line to the Junction of Canada Creek and Wood Creek, about seven Miles West of Fort Stanwix. 2/

c. June 25, 1785. At the June 25 session of the Fort Herkimer Treaty council Petrus (or Peter) the Minister delivered the reply of the Oneidas and Tuscaroras to Governor Clinton's speech. Petrus related that after hearing the Governor's speech the chiefs had agreed to sell a substantial tract of land. He stated that in offering this land to New York the Indians were acting in good faith. Petrus further expressed his regret that the Commissioners considered this particular land unworthy of their consideration.

Petrus informed the Governor that the Oneidas could not sell the tract requested by the Commissioners because it was important hunting land which they could not part with. Petrus suggested instead that the object sought by New York--the avoidance of conflict between the Indians and white settlers--could be obtained by the Oneida leasing a tier of farms along the Property Line to serve as a buffer against further white encroachment. Petrus concluded his speech by presenting to the Governor

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2/ The above description of the 1768 "Line of Property" is taken from Plaintiff's Exhibit 64, "Proceedings of the Commissioner of Indian Affairs in New York," page 45, footnote 1, published in 1861. It should be noted that as of 1768 when the "Line of Property" was established by the 1768 treaty between the Six Nations and the British, there was no area known as "Broom County" despite the fact that such county is mentioned in the 1861 description.

several Oneida claims concerning violations of the 1868 Fort Stanwix Treaty between the Six Nations and the British.

In the course of his speech, Petrus made the following statement:

. . . Were We to listen to all the Overtures that are made to Us for the Purchase of our Lands . . . , We should have none for our Posterity, who would have Reason to blame Us. Since last Winter We had determined not to sell any of our Lands, and that the Boundaries fixed should remain. The United States have informed Us that the Soil of our Lands was our own, and we wish your Assistance to prevent your People from coming among Us for that Purpose. We accept of your wise and salutary Advice, and if we are not foolish We will follow it. We look to the Eastward. The Indians who lived there are now settled among Us and We have been obliged to give them Lands. This will be our Case should We sell our Lands as they have done. [Pl. Ex. 7b, Comm. Ex. 1: Proceedings of the Commissioners of Indian Affairs in New York 91-92 (1861). (emphasis in the original).]

d. June 26, 1785. Governor Clinton began the June 26 council with a reply to Petrus' statement. Clinton stated that the friendship between the Oneidas and New York was one of long duration and would not be effected by trivial matters. However, to preserve that friendship it was necessary that truth and candor be observed in all their dealings. Clinton continued that it would be unreasonable for New York to be displeased with the Oneidas for not wanting to sell their lands. However, it was the Oneida's failure to honor the state's request not to deal with individuals, thus causing great confusion in New York, that necessitated the convening of the treaty.

Clinton stated further that in inviting the Indians to the treaty New York had given them ample notice of its intent to purchase lands. The Commissioners had the right to expect that the Oneidas would deal openly and candidly with them, and that if the Oneidas did not desire to sell their land they should have notified the Commissioners and saved them the long trip to Fort Herkimer.

With regard to the lands offered by the Oneidas, Clinton remarked that they must be aware that it was mountainous and therefore of no use to New York. Moreover, because this land was less in quantity and inferior in quality to the lands the Indians had offered to sell to individuals, the Commissioners doubted the seriousness of their offer. Clinton rejected the offer by the Oneidas to lease their lands as an insult to the state. Clinton then stated,

Brothers! We must now dismiss this Subject with only repeating that We are sorry We cannot agree, and We are the more so because your Conduct in bargaining with some of our White People has put in their Minds, to look for Settlements in that Quarter, and as it is remote from our old Settlements and where We have too little Lands to form new ones, large enough to give Force and Energy to our Government, We are afraid it may be productive of Disorder and Mischief which it may be difficult to prevent and that Uneasinesses may thereby be created between You and Us. Should any thing of this Kind happen, which We sincerely wish however may not be the Case, We now entreat You Brothers to remember that We aprize You of our Apprehensions, and to obviate them We propose to purchase those Lands from You which from your own Conduct might occasion Disputes, and that if this is not now done it is your Fault and not ours, for We now again repeat our offer to You. [Pl. Ex. 76, Comm. Ex. 1: Proceedings of the Commissioners of Indian Affairs in New York 97 (1861).]

Petrus the Minister replied to Governor Clinton. He said that the Indians had misunderstood the message delivered by Mr. Ryckman. They believed that the state merely wished to settle the difficulties which had arisen out of the attempts by whites to purchase their lands. The Oneidas had not understood that New York wanted to purchase land from them.

Petrus stated again that the Oneidas could not part with their hunting lands. Petrus hoped that the Commissioners would not be offended by the Indians refusal to sell.

During the evening of June 26, 1785, the Commissioners engaged in private conversations with several chiefs and warriors of the Oneidas and Tuscaroras.

e. June 27, 1785. On June 27, Petrus the Minister, expressing his belief that Governor Clinton did not trust him, announced that he would speak no further at the council.

Peter the Quarter Master revealed to the Commissioners that the Indians had decided to sell to New York that portion of the land requested by the Commissioners lying south of the mouth of the Unadilla River. He expressed his expectation that this would be the final request for land by New York.

Governor Clinton noted that the land being offered was only half what the state requested and that accordingly the state would not pay the full price it had proposed. Peter replied that the Oneidas had agreed to sell

the land not for a pecuniary reward, but rather to maintain their friendship with New York. He added that the Oneida would not part with any more land. The council was then recessed until the following day.

f. June 28, 1795. Governor Clinton noted that the Oneidas had agreed to sell land as far as the mouth of the Unadilla River, and that the Commissioners desired to purchase lands twenty miles up the river. He suggested that the parties split the difference by the Indians agreeing to sell as far as ten miles up the Unadilla and the Commissioners agreeing to pay the full consideration for this tract. The Oneidas accepted the Governor's proposal. The parties then executed a deed of cession and the treaty council was adjourned.

56. New York Legislation Deposited With Congress.

On July 26, 1785, the congressional delegates from the State of New York presented to the Congress a copy of the laws which had been enacted by the New York legislature during its 1785 session.

57. Acquisition of Oneida Land Reported in New York Newspaper.

On July 9, 1785, the Independent Journal reported that Governor Clinton and the other Commissioners had returned from Fort Herkimer having obtained a cession of lands from the Oneidas and Tuscaroras. On July 23, 1785, the Independent Journal contained an advertisement by the New York State Commissioners of the Land Office that lands obtained

from the Indians at Fort Herkimer on June 28, 1785, were open for settlement, and that locations on that land would be accepted after September 26, 1785. The notice contained a complete description of the lands obtained from the Oneidas and Tuscaroras.

58. Massachusetts Claim to Lands in Western New York.

The Commonwealth of Massachusetts maintained a claim, based on its colonial charter, to lands in New York west of the Hudson River Valley. This claim applied to the lands which New York intended to open for settlement under the Act of April 11, 1785 (Finding 53, supra).

59. Correspondence Between Rufus King and Eldridge Gerry, April 1785.

Rufus King, delegate to Congress from Massachusetts, read of the creation of the New York land office in the New York Packet of April 18, 1785 (see Finding 53, supra). The same day he wrote to Eldridge Gerry, also a Massachusetts delegate, then in Boston, about the establishment of the land office. With his letter King enclosed a copy of the newspaper account. King advised Gerry that, if the Massachusetts legislature was still in session, it would be wise for it to adopt a resolution instructing the governor to proclaim that Massachusetts would not be bound by any New York land sales within the area claimed by Massachusetts. King also informed Gerry that he was considering moving Congress to adopt a resolution on the subject.

On April 28, 1785, Gerry replied to King. He advised King to communicate officially with the Massachusetts legislature concerning the opening of the New York land offices.

60. Reaction of Massachusetts Legislature and Governor.

During June 1785 the Massachusetts legislature received and debated a letter from Rufus King concerning the establishment of the New York land office. The legislature completed its debate by adopting an order which directed the Governor of Massachusetts to inform the Governor of New York that Massachusetts considered the opening for sale of lands within the territory claimed by both states to be improper, and that such action would be likely to cause the relationship between the two states to deteriorate.

On July 18, 1785, James Bowdoin, Governor of Massachusetts, wrote to George Clinton, Governor of New York. In his letter Bowdoin included the order of the legislature. Bowdoin informed Clinton that Massachusetts considered New York's action to be improper, and requested that New York not finally dispose of the lands purchased at Fort Herkimer until the dispute between the two states was resolved.

61. Congressional Knowledge of New York-Massachusetts Dispute.

The controversy between New York and Massachusetts over the lands in western New York was one of long standing and was well known to the delegates to the Continental Congress. Prior to the 1785 Fort Herkimer Treaty, the dispute had been referred to Congress to be settled by a federal court to be convened under Article IX of the Articles of Confederation.

62. Settlement of the New York-Massachusetts Dispute.

The federal court proceedings under the Articles of Confederation proved to be complex and time consuming, and, accordingly, in 1786 the legislatures of New York and Massachusetts authorized their agents to



settle the dispute without resort to the court. In December 1786 representatives of New York and Massachusetts met at Hartford, Connecticut, to work out a settlement. On December 16, 1786, the Hartford Compromise was signed by the agents of the states.

The area included in the compromise was roughly that part of New York State west of a north-south line from Lake Ontario to the northern boundary of Pennsylvania, located about eighty-two miles west of the northeast corner of the State of Pennsylvania. Such a north-south line runs approximately through the center of Seneca Lake. Within this area New York retained jurisdiction and sovereignty but granted to Massachusetts the right of preemption.

On April 24, 1787, Congress was informed that New York and Massachusetts had settled their dispute and that the federal court proceedings would no longer be necessary. The exact terms of the compromise were read into the records of Congress.

63. Reorganization of the Indian Department.

On August 7, 1786, Congress adopted an Ordinance for the Regulation of Indian Affairs. Under the ordinance the Indian Department was divided into two districts. The Southern District included all Indians residing south of the Ohio River. The Northern District included "all other Indian Nations within the said territory [of the United States], and westward of Hudson river . . ." Pl. Ex. 1030: XXXI Journals of the Continental Congress 491 (1934).

The ordinance directed that a superintendent be appointed for each district. It was to be the responsibility of the superintendents to carry out congressional directives regarding Indian affairs, and they were to report to Congress through the Secretary for War. Richard Butler was appointed Superintendent for the Northern District.

64 Congress Directs that Treaty be Held with Northern Indians.

In October 1787 Congress directed that Arthur St. Clair, Governor of the Northwest Territory, and Richard Butler, Superintendent for the Northern District, hold a treaty with all the Indian tribes in the Northern District. The purpose of the negotiations was to remove any possible cause for controversy and hostility with the Indians, and to insure the continued peace and harmony between the United States and the Indian tribes.

65. Attempted Leases of Oneida Lands.

In late 1787 and early 1788, private land speculators attempted to obtain Indian lands and evade the prohibition of the New York Constitution (Finding 42, supra) by entering into 999 year leases with the Oneidas and with other New York Indians. The New York legislature learned of these leases, and, in February 1788, declared them to be sales and therefore invalid under the New York Constitution. The legislature warned the purported lessees that, if necessary, New York would use force to keep them from intruding on Indian lands. Pursuant to the resolutions of the legislature, on March 1, 1788, Governor Clinton issued a proclamation directing the lessees not to settle upon, improve, enter or otherwise intrude on the lands involved in the leases.

The New York City newspapers provided extensive coverage of the attempted leases and the reaction to them by the legislature and Governor. Throughout this period, and continuing through the remainder of 1788, the Continental Congress maintained its subscriptions to the major New York City newspapers (see Finding 42, supra).

66. Speech of Oneida Leaders to New York Legislature.

On March 20, 1788, the New York Journal and Weekly Register published the text of a "Talk" sent to the legislature by representatives of the Oneida Nation of Indians. The Oneidas expressed surprise that New York objected to the lease they had entered into. They stated that they much preferred a voluntary lease agreement to the sale of their land which the state had imposed on them at Fort Herkimer. The Oneidas expressed their determination not to sell any more of their land.

67. New York Appoints Commissioners to Treat with Indians.

On March 1, 1788, the legislature of New York passed an act appointing by name Commissioners to treat with the New York Indians. Eleventh Session, Chapter XLVII. The act initially appointed Governor Clinton, William Floyd, Ezra L'Homedieu, John Laurence, Richard Varick, Samuel Jones, and Egbert Benson as commissioners to hold treaties with the Indian tribes residing within New York. <sup>2/</sup> The commissioners were empowered to act in concert with agents appointed by Massachusetts or solely on

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<sup>2/</sup> At the time of their appointment, both Ezra L'Homedieu and Egbert Benson had already been elected as delegates to the Continental Congress. They each served as delegates during the summer of 1788.

behalf of New York. The purpose of the treaties was to preserve the friendship of the Indians and to purchase land from them.

The passage of this act, as well as its legislative history, was reported in the New York City newspapers.

68. Appointment of Peter Gansevoort as Indian Commissioner.

On March 5, 1788, Leonard Gansevoort, a delegate to Congress from New York, wrote to his brother Peter Gansevoort that he was using his influence with state legislators to have Peter appointed as a state Indian commissioner. Leonard informed Peter that he had the support of Alexander Hamilton in this endeavor. Hamilton was at that time also a delegate to Congress from New York. The efforts of his brother and Alexander Hamilton resulted in Peter Gansevoort being appointed an Indian commissioner under the Act of March 1, 1788, supra.

69. New York Commissioners Invite Six Nations to Treaty.

On March 3, 1788, the Indian Commissioners, appointed under the March 1 act of the New York Legislature, Finding 65, supra, met and resolved that they hold a treaty with the Six Nations at Fort Schuyler on July 10. At another meeting, on March 10, 1788, the Commissioners adopted a message to the Six Nations inviting them to the treaty. The message read, in part, as follows:

Brethren: We have heard that some of our People have been among you to purchase by taking a Lease of your Lands from you without the Consent of our great Council and contrary to the good old Rule and Custom which has always been between your Forefathers and ours and between you and us.

Listen to our Advice. This is one of the principal Matters about which we wish to talk with you, and we advise you as well for the Sake of yourselves and your Children and Children's Children as for our own Sakes, that you

will not suffer any of these People to come and settle on your lands.

Brethren: These People who have been to purchase your Lands have been disobedient Children to their Fathers, our great Council. [Comm. Ex. 2: Proceedings of the Commissioners of Indian Affairs 119-122 (1861).]

The Commissioners appointed John Taylor to deliver the message to the Six Nations.

On March 12, 1788, the Commissioners met again, at which time they drafted a response to the message the legislature had received from the Oneidas. See Finding 64, supra. The Oneidas were informed that the entire matter of the leases (see Finding 63, supra) would be discussed at the proposed treaty at Fort Schuyler, and that in the meantime the Oneida should not allow any whites to settle on their lands.

70. John Taylor Meets with Oneida Chiefs.

On approximately April 2, 1788, John Taylor, acting as an agent for the New York Indian Commissioners, met four Oneida chiefs and delivered to them the messages from the Commissioners. He also requested that the Oneidas forward to the remaining Six Nations the message calling the treaty at Fort Schuyler.

Taylor further impressed upon the Oneidas the importance of the forthcoming treaty. He told them that the white individuals who had leased the Oneida lands were not to be trusted, and that if the lease remained in force the Oneidas would lose all their lands. He stated that by entering into these leases in violation of the laws of New York the Oneidas would also lose the friendship of the New York Government. Taylor added that it was not too late to rescue the Oneidas from this situation

and that the Governor and the Commissioners would attempt to do so at the treaty to be held at Fort Schuyler.

71. Fort Schuyler Treaty Postponed.

On June 16, 1788, the New York Commissioners, having learned that most of the Six Nations would be unable to attend the scheduled treaty, as they planned to attend the federal treaty (see Finding 62, supra), resolved to postpone the Fort Schuyler treaty until September 1, 1788.

72. Knowledge of Planned New York Indian Treaty.

During the summer of 1788 it was known in New York City that New York planned to treat with its resident Indians. On August 18, 1788 for example, Philip Schuyler wrote to his son, John, as follows:

We have received a letter from Colonel Hamilton announcing the Intention of the French Ambassador to visit Albany and to make my home his quarters . . . His stay will be short as he intends to attend the treaty at Fort Schuyler . . . [Pl. Ex. 1036: Letter, Philip Schuyler to John Schuyler, August 18, 1788 (Schuyler Papers, New York Public Library).]

On August 21, 1788, William Knox, Acting Secretary for War, wrote to his brother Henry Knox that the French Ambassador and his party "have gone up to Albany on their way to the Treaty . . ." Pl. Ex. 1037: Letter, William Knox to Henry Knox, August 21, 1788 (Henry Knox Papers, Massachusetts Historical Society). Knox added, however, that it was generally believed in New York City that the treaty would not take place because the Indians would attend the federal treaty in Ohio.

73. Communications to Congress Concerning the Planned Federal Treaty and Negotiations Between the Six Nations and New York.

Federal plans for a treaty with the northern tribes, to be held in Ohio, continued during the summer of 1788. The treaty was to be held under the direction of Richard Butler and Arthur St. Clair.

On July 7, 1788, Secretary for War Henry Knox forwarded to Congress a letter from Richard Butler dated June 20, 1788. Butler reported that he had been informed by the Six Nations that they had been called to a treaty at Fort Schuyler by New York State. The Indians declined the invitation, preferring instead to attend the treaty called by the federal government.

On July 29, 1788, Secretary Knox presented to Congress another report from Superintendent Butler. Butler's letter was dated July 15, 1788. Butler stated that the opening of the treaty would be delayed because the Six Nations, who had been on the way to the treaty, had turned back to attend a council with the State of New York.

Secretary Knox again presented to Congress a report from Butler on August 1, 1788. Butler's letter was dated July 18, 1788. Butler stated that he had received communication from Joseph Brant that the Six Nations were leaving Niagara on their way to the federal treaty. Butler enclosed a copy of Brant's letter dated July 8, 1788. Brant stated that the Indians had been delayed in attending the federal treaty by "landjobbers from the States of New York and Massachusetts" which had come to Buffalo Creek to purchase land. Brant stated that the matter was settled and the Indians were setting out for the treaty.

On September 15, 1788, Acting Secretary for War William Knox presented to Congress a report from Arthur St. Clair dated August 17, 1788. St. Clair reported that the Six Nations had not arrived at Sandusky as of July 24, and that the remaining tribes refused to treat without them. St. Clair's letter enclosed several other communications. One was the letter from Joseph Brant, described above. Second was a letter from Richard Butler dated August 3, 1788. Butler stated that Cornplanter and his Senecas were on the way to the treaty. The third letter was from assistants of Butler and St. Clair who were near the treaty ground. This letter, dated July 29, 1788, stated that the other tribes were still waiting the arrival of the New York Indians. They had heard that commissioners from New York and Massachusetts were at Buffalo Creek to buy lands but that the Indians were refusing to sell.

74. Fort Schuyler Treaty Proceedings.

(a) August 29, 1788. The Oneidas and Onondagas arrived at Fort Schuyler on August 29, 1788. They were informed that the remaining nations had not yet arrived at the council. The Oneidas informed the Commissioners that they were returning to their villages, and requested that they be summoned when the business of the treaty was ready to begin.

(b) September 16, 1788. The other tribes of the Six Nations did not arrive at Fort Schuyler. In the absence of the Oneidas, the Commissioners entered into a treaty with the Onondagas. The Commissioners then summoned the Oneidas to return to the council. Negotiations with the Oneidas began on September 16, 1788.



Governor Clinton opened the proceedings with a speech to the Oneidas. He related to them that during their absence the state had entered into a separate treaty with the Onondagas respecting their lands. By the terms of the treaty the Onondagas ceded all their lands to the state, reserving to themselves the right to hunt and fish on the land ceded, and also reserving a large tract for their use and cultivation. Clinton asserted that this arrangement would benefit both the Onondagas and New York.

The Governor then related that the legislature had learned that white people had obtained leases of the lands of the Oneidas, Onondagas, Senecas, and Cayugas in violation of the New York Constitution and laws. He stated that these people would be punished for their misdeed. Clinton further stated that the legislature decided that it was their duty to protect the Indians from the evil that would befall them if white people attempted to settle on their lands under these invalid leases. The present treaty was therefore called so as to arrive at the best means for providing for the security of the Indians.

Peter the Quarter Master spoke on behalf of the Oneidas. He stated that the subject matter of the Governor's speech was of such great importance that the Oneidas needed time to discuss it. Therefore, he stated, a reply to Clinton's speech would not be made until the following day.

(c) September 17, 1788. On September 17 the Beech Tree spoke on behalf of the Oneidas. He related that the Oneidas did not fully understand the principal message of the Governor's opening speech, and requested that the speech be repeated.

A transcript of the Governor's September 16 speech was read and also translated for the Oneida.

Prior to the negotiations resuming, it was learned that an Oneida warrior had drowned. The council was suspended for a funeral and period of mourning and reconvened on September 19.

(d) September 19, 1788. The proceedings on September 19 began with a speech by the Oneida Good Peter. Peter spoke of the agreement reached at Fort Herkimer in 1785 and related that the Governor had promised that the state would never again attempt to purchase land from the Oneidas. He spoke also of the lease arrangements entered into by the Oneidas and the other Six Nations and noted that it was wise of the Commissioners to convene the present treaty to remove the evils of those leases.

Good Peter referred to the treaty reached between New York and the Onondagas and stated that the Oneidas were glad that the Onondagas were able to secure part of their land. Peter stated that he understood that the Governor was seeking a similar arrangement with the Oneidas. He expressed his understanding that under such an agreement the Oneida would retain the right to hunt and fish on the ceded land, and that the reserved land would be secured to the Oneidas and their descendants.

(e) September 20, 1788. Governor Clinton spoke first at the council on September 20. He began by stating his belief that the Oneidas wished his advice on the best means for them to avoid the injury they might sustain from having entered into the illegal lease. The Governor stated that it was essential that the Oneidas understand all that he would tell

them, and that they believe that he truly had their welfare at heart.

He then continued,

Brothers! Be not deceived in supposing that it was our Intention to Kindle a Council Fire at this Time in Order to Purchase Lands from you for our People. We have already more Lands than we have People to settle on them. If we had wanted Lands for our People to settle on, we would have told you so and requested you to have sold us some and would have paid you a reasonable Price for them. [Comm. Ex. 2: Proceedings of the Commissioners of Indian Affairs 224.]

Clinton reminded the Oneidas that at previous treaties they had been cautioned not to dispose of their land to anyone not authorized by the legislature to deal with them. He stated that the legislature had been greatly grieved when they had heard of the lease entered into by the Oneidas, and had called the treaty to prevent these types of transactions in the future. The Governor then said,

Brothers, You will be sensible that it is very difficult for us, in a very extensive Country, to watch our People, they get at a Distance from us and then privately make Bargains with you, without any Permission from us. For this Reason we advised the Onondagoes to cede to us all their Lands, reserving to themselves a convenient Tract for their own Use and Habitation where none of our People should come to settle, and of such Extent only that if any of our People should come there it would be immediately discovered. This Tract so reserved is not to be disposed of, but to remain to the Onondagoes and their Posterity forever. This appeared to us and to them the best Mean to secure it to their Posterity forever. Our People will know that they cannot get any Part of this Tract and therefore will not attempt it. This was our Advice to the Onondagoes, and we give you the same Advice. [Comm. Ex. 2: Proceedings of the Commissioners of Indian Affairs 225.]

Clinton stated that the legislature would be willing to provide for the support of the Oneidas with an initial payment and annual payments, the

size of which would depend on the extent of the land reserved to them. He further advised the Oneidas that the proposal he made was all that the state could do to protect them. He warned them that, unless they accepted it, within a few years they would be forced off their lands and the state would be powerless to help them. He concluded,

Brothers, you know we have a great many wicked People among us, who will be constantly endeavouring to defraud you as long as you have Lands to dispose of. We shall always punish them severely whenever we detect them in such wicked and unlawful Practices. This however will be very troublesome and expensive to us, and notwithstanding our Severity and Vigilance with our People, yet you will still experience injurious Consequences . . . Nothing but the Interposition of our Great Council the Legislature, can defend you against such Injuries. You will always be exposed to Impositions unless they protect you. Your whole Dependence must be on them, and it will not be in their Power to assist you unless you agree to what we have proposed to you. [Comm. Ex. 2: Proceedings of the Commissioners of Indian Affairs 224-26.]

Good Peter then spoke on behalf of the Oneidas. He expressed his understanding that the treaty had been called to remove the confusion that existed in the Oneidas landed affairs and not to purchase more land for New York. Good Peter continued,

Brother Governor attend while I speak a few Words. In the Course of your second Speech, equally excellent with your former, you observed that you had even in your Government, disorderly People who did not obey the Voice of their Chiefs. That therefore to avoid Confusion you were obliged to take our landed Affairs under your Care and us under your immediate Protection. This I have experienced the Truth of; I have felt it. These People will continue to seek after our Lands, and if any one of them dies, another will pursue the same Object. This I have experienced the Truth of . . . As long as any Spot of our excellent Land remains, they will covet it, and if one dies, another will pursue it, and will never rest till they possess it. These disorderly People must bear their own Punishment. [Comm. Ex. 2: Proceedings of the Commissioners of Indian Affairs 227.]

Good Peter noted that the Oneidas should not be held solely to blame for the illegal leases they entered into. Much of the blame must fall on the white men who came among the Oneida representing that they were agents of the New York legislature.

Peter then stated,

Brother! In the Course of your Speech, you have exhorted us to look well for the good of Posterity; that they were an Object of your Attention; also that we should consider well what would be the Consequence of your abandoning us to ourselves and leaving us to Bargains we had made with some of your People, without your Authority, and that we might in Time be plunged into such Difficulties that it might not be in your Power to give us Relief.

Brother! I know the Truth of this Sentiment, that after repeated Warnings to a People, they may be given up as incorrigible. [Comm. Ex. 2: Proceedings of the Commissioners of Indians Affairs 228.]

Peter completed his speech by requesting the Governor to restore peace to the Oneida by keeping unruly white people out of the Oneida country.

Colonel Lewis, an Oneida, then announced to the Governor that he and Peter Otsequette had been designated by the Oneidas to conduct further negotiations with the Commissioners. He expressed his desire to reach a fair settlement that would be reduced to writing so that there could be no further disputes between the Oneida and white men.

The Oneida delegates described to the Commissioners the tract of land which they wished to reserve. The proposed reservation included lands to the north of Wood Creek and Oneida Lake and an extensive territory south of Oneida Lake. Governor Clinton, on behalf of the Commissioners stated that the state would not agree to this reservation. He explained

that it was improper for the Oneida to reserve such a large tract of land. He requested the Oneida delegates to discuss the matter further with the people during the evening.

(f) September 21, 1788. On September 21, 1788, the Oneida delegates informed the Commissioners that they were willing to give up the lands to the north of Oneida Lake. They then described the reservation they wished on the south side of the lake. The Commissioners again rejected the proposed reservation as being too large.

The Oneidas then requested that the Commissioners describe to them what they considered a proper reservation. The Commissioners described the reservation they thought proper for the Oneidas, which reservation the Indians agreed to. After continued negotiations, the Commissioners and the Oneida delegates also reached agreement on the extent of the consideration to be paid the Oneidas.

(g) September 22, 1788. On September 22 the deed of cession was executed by both parties. Prior to the execution Good Peter again spoke to Governor Clinton and the other Commissioners. He stated,

We are this Day come together with our Pipes in Peace. We have been deliberating upon Matters of the greatest Importance respecting us all here present. We now return you our Thanks, Brother Chief, that you have brought to a happy Close the Business of this Treaty. My Nation are now restored to a Possession of their Property which they were in danger of having lost. Had not my Father the French Gentleman [Peter Penet] discovered it we should have been drowned; had it not come to your Ears, we with all our Property would have been buried very deep in Ruin; therefore we do heartily congratulate you this Day upon having accomplished the Treaty and thereby secured to us

so much of our Property which would otherwise have been lost.  
[Comm. Ex. 2: Proceedings of the Commissioners of Indian  
Affairs 235.]

Peter also presented to and discussed with the Governor several private claims of various Oneidas against various New Yorkers.

After the Oneidas and the Commissioners signed the deed of cession, Governor Clinton addressed the Oneidas as follows:

Brothers! We have given you at this Time in Money, Clothing and Provisions, sufficient to answer your present Occasions. You have a very large Tract of Country for your own Use and Cultivation; you are to have the Rents of a very large Tract, and you are to be allowed by our Great Council to the Amount of six hundred Dollars annually forever. We also give you five hundred Dollars towards building a Grist Mill and Saw Mill for you. You have therefore more than sufficient for the comfortable Support of yourselves and your Posterity if you are prudent and sober. If you have not Prudence and Sobriety, these very extensive Advantages reserved to you, will not secure you from Distress and possible Ruin.

Brothers! Listen to our Advice. Endeavour to take Care of yourselves, be prudent, be sober. Do not suffer any of our People who lead disorderly Lives to come and reside among you. They will not only constantly defraud you, but they will also by their Example and Conversation make you as bad as they themselves are. If you are not able let us know and we will oblige them to remove. Pay a due Respect to your Chiefs. Attend to the Advice of good Men in your own Nation, and observe such Regulations as they propose for preserving Peace and good Order among yourselves; observe this Advice and you will enjoy all the Happiness which we sincerely wish to you and your Posterity.  
[Comm. Ex. 2: Proceedings of the Commissioners of Indian Affairs 248.]

With the conclusion of his speech Governor Clinton ended the treaty council.

75. Fort Schuyler Treaty with Oneidas Reported.

On October 2, 1788, the New York Journal and Weekly Register reported that the New York State Commissioners of Indian Affairs had returned from Fort Schuyler where they had obtained a cession to the state of the lands of the Oneidas and Onondagas. The October 9 edition of the Journal and Weekly Register reported the terms of the cession including the consideration paid and the bounds of the tract reserved to the Oneidas.

76. United States Takes No Action to Protect Oneidas.

Both in 1785 and 1788, the United States did not take any action to protect the Oneidas in their land transactions with New York. The United States did not send a representative to either of the treaties to assure that the Oneidas were treated fairly. It did not attempt to influence New York either to refrain from taking cessions against the desires of the Oneidas, or to pay the Oneidas the full value of their lands.

LEGISLATIVE HISTORY, AND CONTEMPORARY INTERPRETATIONS  
OF THE ARTICLES OF CONFEDERATION

77. Benjamin Franklin's Proposed Articles of Confederation.

On July 21, 1775, the Continental Congress, sitting as a committee of the whole, was presented with a draft of Articles of Confederation prepared by Benjamin Franklin. Franklin's draft contained several references to relations with the Indians. In Article X it was stated that

No colony shall engage in an offensive War with any Nation of Indians without the Consent of the Congress, or Great Council above mentioned, who are first to consider the Justice and Necessity of such War. [Comm. Ex. 4: II Journals of the Continental Congress 197.]



Article XI of Franklin's draft contained the following provisions on Indian affairs:

A perpetual Alliance offensive and defensive, is to be enter'd into as soon as may be with the Six Nations; their Limits to be ascertain'd and secur'd to them; their Land not to be encroach'd on, nor any private or Colony Purchases made of them hereafter to be held good; nor any Contract for Lands to be made but between the Great Council of the Indians at Onondaga and the General Congress. The Boundaries and Lands of all the other Indians shall also be ascertain'd and secur'd to them in the same manner; and Persons appointed to reside among them in proper Districts, who shall take care to prevent Injustice in the Trade with them, and be enabled at our general Expence by occasional small Supplies, to relieve their personal Wants and Distresses. And all Purchases from them shall be by the General Congress for the General Advantage and Benefit of the United Colonies. [Id. 198.]

Franklin's draft provided that the confederation was to last until such time as the King of England acceded to the demands of the colonists. The Congress did not act on Franklin's plan for temporary confederation.

78. Dickinson's Draft of the Articles.

In 1776 Congress appointed a Committee to draft articles of confederation. The Committee designated John Dickinson of Pennsylvania to draft the articles. Dickinson's draft was presented to the Congress on July 12, 1776.

Dickinson's draft, in Article XIII, prohibited any of the colonies from engaging in war without the previous consent of Congress, unless it were invaded, or unless it learned that an Indian nation was planning to invade it. It further provided, in Article XIV, that

A perpetual Alliance, offensive and defensive, is to be entered into by the United States assembled as soon as may be, with the Six Nations, and all other neighbouring Nations of Indians; their Limits to be ascertained, their Lands to be secured to them, and not encroached on; no Purchases of Lands, hereafter to be made of the Indians by Colonies or private Persons before the Limits of the Colonies are ascertained, to be valid: All Purchases of Lands not

included within those Limits, where ascertained, to be made by Contracts between the United States assembled, or by Persons for that Purpose authorized by them, and the great Councils of the Indians, for the general Benefit of all the United Colonies. [Comm. Ex. 5: V Journals of the Continental Congress 549.]

Finally, in Article XVIII, Dickinson's draft stated the authority of the federal government over Indian affairs, in the following language:

"The United States assembled shall have the sole and exclusive Right and Power of . . . Regulating the Trade, and managing all Affairs with the Indians . . ." Id. at 550.

79. Congressional Debate on the Indian Affairs Provisions of the Articles of Confederation, July 1776.

On July 25, 1776, the Continental Congress, sitting as a committee of the whole, debated Dickinson's draft articles, addressing themselves specifically to Article XIV. According to notes of these debates kept by John Adams, there was a division of opinion between representatives of the so-called landed states, i.e., those states which claimed that under their colonial charters their territory extended westward to the Pacific Ocean, or at least to the westernmost limit of the United States, and the landless states, i.e., those states whose limited western boundaries were established by their charters.<sup>3/</sup>

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<sup>3/</sup> Throughout the debates on the drafting and ratification of the Articles of Confederation it was the position of the landless states that a definite western limit should be placed on all the landed states and that the remaining western lands should be owned in common by the United States. The landed states strongly opposed this position. Although the landed states prevailed on this issue during the drafting stages of the Articles, the refusal of Maryland to ratify the Articles unless they did so finally forced the landed states to cede their western lands to the United States.

Thomas Jefferson, a delegate from Virginia, speaking for the landed states, pointed out that, since the boundaries of all states were already fixed, the provision in Dickinson's draft invalidating all purchases of Indian land until the boundaries of the states were established was meaningless. Jefferson proposed an amendment which invalidated purchases by individual states or by private persons of lands outside of the boundaries of any state.<sup>4/</sup> Samuel Chase of Maryland, on behalf of the landless states, objected to Jefferson's amendment. He stated that it was the intention of Dickinson's draft to limit the boundaries of certain of the states. The resolution of this dispute was postponed until Article XVIII was to be discussed.

On July 26, 1776, the Indian provision in Article XVIII of Dickinson's draft was debated. Edward Rutledge and Thomas Lynch, both of South Carolina, expressed their opposition to giving the power over Indian trade and Indian affairs to Congress. They felt that the Indian trade was a profitable venture which should be reserved to the states.

Button Gwinnet and George Walton, both of Georgia, supported the Dickinson draft. Walton stated that the Indian trade ought to be monopolized by Congress. If it were left free, he warned, it would inevitably lead to

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4/ The exact language of the Jefferson amendment was as follows:

Amendment proposed.

ART. KIV. No purchases hereafter to be made by individual States or persons of lands on this continent not within the boundaries of any of these United states, shall be valid: but all purchases of such lands shall be made by contract between the United states assembled or persons authorized by them, and the great Councils of the Indians; and when purchased shall be given freely to those who may be permitted to seat them.  
[Comm. Ex. 5: V Journals of the Continental Congress 680, n. 1.]

wars with the Indians. Walton further pointed out that states like Georgia, which acted as buffers between the hostile tribes and the remaining states, could not afford the tributes which were necessary to keep the Indians peaceful. His speech suggested his view that managing Indian affairs must be a matter of congressional rather than state concern.

Carter Braxton of Virginia suggested that those tribes which were tributary to any state should be excepted from exclusive management by the federal government. Thomas Jefferson felt this exception should extend to all Indians who lived in a state. He stated that these Indians were subject to state law to some degree.

Samuel Chase of Maryland noted that if the western boundary claims of the landed states were honored, and that if Indians residing within states were excepted from federal control, the power to regulate the affairs and trade with the Indians would lie exclusively with the landed states.

James Wilson of Pennsylvania looked at the issue from the point of view of the Indians. He stated,

We have no right over the Indians, whether within or without the real or pretended limits of any Colony. They will not allow themselves to be classed according to the bounds of Colonies. Grants made three thousand miles to the eastward, have no validity with the Indians. . . .  
[Comm. Ex. 6: VI Journals of the Continental Congress 1078.]

Wilson then went on to state the benefits of federal control over Indian affairs as follows:

No lasting peace will be [made] with the Indians, unless made by some one body . . . No power ought to treat with the Indians, but the United States. Indians know the

striking benefits of confederation; they have an example of it in the union of the Six Nations. The idea of the union of the Colonies struck them forcibly last year. None should trade with Indians without a license from Congress. A perpetual war would be unavoidable, if everybody was allowed to trade with them. [Id. at 1078-79.]

80. Second Printed Form of the Articles of Confederation.

On August 20, 1776, the Congress was presented with a second draft of the Articles of Confederation. This second draft differed from Dickinson's draft in several respects. Article XIV of Dickinson's Draft, referring to purchases of Indian lands, was removed from the second draft entirely. The provision relating to federal control over Indian affairs, which was contained in newly-numbered Article XIV, read as follows: "The United States Assembled shall have the sole and exclusive right and power of . . . regulating the trade, and managing all affairs with the Indians, not members of any of the States . . . ." Comm. Ex. 5: V Journals of the Continental Congress 681-82.

81. Proposed Amendments on Indian Affairs.

On October 27, 1777, two amendments of Article XIV relating to Indian Affairs were proposed to Congress. The first amendment was to strike the words "not members of any of the states" from the grant of federal power, and to substitute instead the words "not residing within the limits of any of the United States."

The second amendment was to strike the entire language respecting Indian affairs and to substitute instead the following: "The United States assembled shall have the sole and exclusive right and power of . . .

managing all affairs relative to war and peace with all Indians not members of any particular State, and regulating the trade with such nations and tribes as are not resident within such limits wherein a particular State claims, and actually exercises jurisdiction". Comm. Ex. 7: IX Journals of the Continental Congress 844.

Debate on these proposed amendments continued until October 28, 1777, without Congress being able to agree on either of them. On October 28 a third amendment was proposed. This amendment was to retain the existing language but to add thereto the following: "provided, that the legislative right of any State, within its own limits be not infringed or violated." Id. at 845. This third amendment was adopted by the Congress.

82. Articles of Confederation Approved by Congress.

On November 15, 1777, the Congress approved a final draft of the Articles. With regard to Indian Affairs the Articles of Confederation as approved provided in Article IX as follows: "The United States, in Congress assembled, shall also have the sole and exclusive right and power of . . . regulating the trade and managing all affairs with the Indians not members of any of the States; provided that the legislative right of any State within its own limits be not infringed or violated . . . ." Comm. Ex. 7: IX Journals of the Continental Congress 919.

83. Communication Between James Monroe and James Madison, November 1784.

On November 15, 1784, James Monroe, who had been present at the Fort Stanwix treaty council, wrote to James Madison, who had also been at

that council. Monroe stated as follows:

DEAR SIR,--You rec'd I hope by the last post a small cypher from me. At fort Stanwix you were necessarily acquainted with the variance which had taken place between the Indian Commissioners of the U. States & those of New York as well as of the principles upon which they respectively acted & the extent to which they carried them. As I reach'd N. York about eight days after you had left it & the Ind. Comm'rs were then on the ground & have not since made a sta'ment of their final transactions there, I have nothing new to give you upon that head. The questions w'h appear to me to arise upon the subjects of variance are 1. Whether these Indians are to be considered as members of the State of N. York, or whether the living simply within the bounds of a State, in the exclusion only of an European power, while they acknowledge no obedience to its laws but hold a country over which they do not extend, nor enjoy the protection nor any of the rights of citizenship within it, is a situation w'h will even in the most qualified sense, admit their being held as members of a State? 2. Whether on the other hand this is not a description of those whose management is committed by the confederation to the U.S. in Congress assembled? In either event the land held by these Indians having never been ceded either by N. York or Massachusetts belongs not to the U. States; the only point then in w'h N. York can be reprehensible is, for proceding, by a particular, the general Treaty. This must be attributed to a suspicion that there exists in Congress a design to injure her. The transaction will necessarily come before us, but will it not be most expedient in the present state of our affairs to form no decision there on? I know no advantages to be deriv'd from one. If the general treaty hath been obstructed the injury sustain'd in that instance is now without remedy. A decision either way, will neither restore the time we have lost nor remove the impressions wh this variance has made with the Indians & in the Court of G. Britain respecting us. If the right of Congress hath been contraven'd shall we not derive greater injury by urging it to the reprehension of New York who holds herself aggriev'd in other respects than by suffering our sense of that delinquency to lay dormant? Our purchases must be made without her bounds & those Indians whose alliance we seek inhabit a country to which she hath no claim. . . .

[Comm. Ex. 9: I Writings of James Monroe 46-47 (S. Hamilton ed)]

James Madison replied to Monroe on November 27, 1784, stating,

Dear Sir,--Your favor of the 15th instant came to hand by thursday's post. Mine by the last post acknowledged your preceding one. The umbrage given to the Commissioners of the United States by the negociations of New York with the Indians was not altogether unknown to me, though I am less acquainted with the circumstances of it than your letter supposes. The idea which I at present have of the affair leads me to say, that as far as New York may claim a right of treating with Indians for the purchase of lands within her limits, she has the Confederation on her side; as far as she may have exerted that right in contravention of the General Treaty, or even unconfidentially with the Commissioners of Congress, she has violated both duty and decorum. The federal Articles give Congress the exclusive right of managing all affairs with the Indians not members of any State, under a proviso, that the Legislative authority of the State within its own limits be not violated. By Indians not members of a State, must be meant those, I conceive, who do not live within the body of the Society, or whose persons or property form no objects of its laws. In the case of Indians of this description, the only restraint on Congress is imposed by the Legislative authority of the State.

If this proviso be taken in its full latitude, it must destroy the authority of Congress altogether, since no act of Congress within the limits of a State can be conceived which will not in some way or other encroach upon the authority of the State. In order, then, to give some meaning to both parts of the sentence, as a known rule of interpretation requires, we must restrain this proviso to some particular view of the parties. What was this view? My answer is, that it was to save to the States their right of pre-emption of lands from the Indians. My reasons are: 1. That this was the principal right formerly exerted by the Colonies with regard to the Indians. 2. That it was a right asserted by the laws as well as the proceedings of all of them, and therefore, being most familiar, would be most likely to be in contemplation of the parties. 3. That being of most consequence to the States individually, and least inconsistent with the general powers of Congress, it was most likely to be made a ground of compromise. 4. It has been always said that the proviso came from the Virginia Delegates, who would naturally be most vigilant over the territorial rights of their constituents. But whatever may be the true boundary between the authority of Congress and that of New York, or however indiscreet the latter may have been, I join entirely with you in thinking that temperance on the part of the former will be the wisest policy. [Comm. Ex. 10: I Letters and Other Writings of James Madison 109-110 (emphasis in the original).]



84. Report of Committee on Southern Indian Affairs, 1787

During 1786 and 1787 citizens of the States of Georgia and North Carolina were encroaching on the lands of the Creek and Cherokee Nations. These encroachments presented the real danger of an Indian war on the southern frontier. In 1787, at the request of the Secretary at War, a committee of Congress was appointed to investigate the disputes and make recommendations to Congress. The report of this committee was presented to Congress on August 3, 1787. In its report the committee commented on the possible construction of the Articles of Confederation, as follows:

[T]here is another circumstance far more embarrassing, and that is the clause in the confederation relative to managing all affairs with the Indians, &c. is differently construed by Congress and the two States within whose limits the said tribes and disputed lands are. The construction contended for by those States, if right, appears to the committee, to leave the federal powers, in this case, a mere nullity; and to make it totally uncertain on what principle Congress is to interfere between them and the said tribes; The States not only contend for this construction, but have actually pursued measures in conformity to it. North Carolina has undertaken to assign land to the Cherokees, and Georgia has proceeded to treat with the Creeks concerning peace, lands, and the objects, usually the principal ones in almost every treaty with the Indians. This construction appears to the committee not only to be productive of confusion, disputes and embarrassments in managing affairs with the Independent tribes within the limits of the States, but by no means the true one. The clause referred to is, "Congress shall have the sole and exclusive right and power of regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the Legislative right of any State within its own limits be not infringed or violated". In forming this clause, the parties to the federal compact, must have had some definite objects in view; the objects that come into view principally, in forming treaties or managing Affairs with the Indians, had been long understood and pretty well ascertained in this country. The committee conceive that it has been long the opinion of the country, supported by Justice and humanity, that the Indians have just claims to all lands

occupied by and not fairly purchased from them; and that in managing affairs with them, the principal objects have been those of making war and peace, purchasing certain tracts of their lands, fixing the boundaries between them and our people, and preventing the latter settling on lands left in possession of the former. The powers necessary to these objects appear to the committee to be indivisible, and that the parties to the confederation must have intended to give them entire to the Union, or to have given them entire to the State; these powers before the revolution were possessed by the King, and exercised by him nor did they interfere with the legislative right of the colony within its limits; this distinction which was then and may be now taken, may perhaps serve to explain the proviso, part of the recited clause. The laws of the State can have no effect upon a tribe of Indians or their lands within the limits of the state so long as that tribe is independent, and not a member of the state, yet the laws of the state may be executed upon debtors, criminals, and other proper objects of those laws in all parts of it, and therefore the union may make stipulations with any such tribe, secure it in the enjoyment of all or part of its lands, without infringing upon the legislative right in question. It cannot be supposed, the state has the powers mentioned without making the recited clause useless, and without absurdity in theory as well as in practice; for the Indian tribes are justly considered the common friends or enemies of the United States, and no particular state can have an exclusive interest in the management of Affairs with any of the tribes, except in some uncommon cases. [Comm. Ex. 8: XXXVIII Journals of the Continental Congress 457-59.]

85. Duane's Advice to Governor Clinton.

In the summer of 1784, prior to the treaty council between the State of New York and the Six Nations, James Duane, a New York Delegate to Congress, expressed his views to Governor Clinton on the respective authorities of the United States and New York to treat with the Indians. He stated,

Great difficulty arises from the interference of the proposed Treaty with the Authority & the views of Congress.

Five of the Six Tribes of Indians were at open War with the United States. The general Treaty of Peace doth not mention nor extend to them. Congress, therefore, on the 9th art. of the Confed. claims the exclusive Right to make this peace; And If the Tribes are to be considered as independent nations, detached from the State, and absolutely unconnected with it, the Claim of Congress would be uncontrovertable.

There is then an indispensable Necessity that these Tribes should be treated as antient Dependants on this State, placed under its protection, with all their territorial Rights, by their own consent publicly manifested in solemn and repeated Treaties. Of this there is sufficient evidence and particularly by the Deeds of 1701 and 1726 which tho' in the name of the King were obtained at the Expence of the people of this State, and for their Benefit. On this ground the Tribes in question may fall under the character of Members of the State, with the management of whom Congress have no concern.

But the Spirit of the Message from the Indians rendered questionable whether they will submit to be treated as Dependants. They assume a perfect Equality; and instead of Contrition for their perfidious Behaviour, seem ever to consider themselves as the Party courted and solicited for Reconciliation and Favour.

This then will be a point to be managed with Skill and Delicacy, nor will any Care bestowd on it be misapplied for besides the Respect which we owe to the Union, our own particular Honor, Interest and Safety require that these Tribes should be reconciled to the Idea of being Members of the State, dependant upon its government and resting upon its Protection. If we adopt the disgraceful system of pensioning, courting and flattering them as great and mighty nations, we shall once more like the Albanians be their Fools and Slaves, and this Revolution in my Eyes will have lost more than half its' Value.

From these observations it will follow that the Stils, as well as the substance, of the Communications on the part of Government are very material. And I may add that instead of conforming to the ceremonies practiced in Negotiations among the Indians it would be wise to bring them to adopt, gradually our Forms.

1st. Then If it will not be too great an innovation which I think is not to be apprehended. It would use neither Belts nor strings in any Communication instead of it, all Messages or Communications should be signed or sealed or both.

2nd. I would never suffer the word nations, or Six Nations, or Confederates or Council Fire at Onondaga, or any other Form which would revive or seem to confirm their former Ideas of Independence to except. I would say nothing of making peace or burying the Hatchet, for that would be offensive to Congress, perhaps very Justly. But I would study to carry on the Intercourse (for I object even against the Term Treaty, which seems to much to employ Equality) with as much plainness and simplicity as possible--and as if I was actually transacting Business with the Citizens. This must, I am sensible, be repugnant to the opinions which will be given at Albany; but their management instead of humbling, gave the Indians the superiority and made them their Tyrants; and I have long & fatal Experience to convince me that they were in a wrong course

. . . .

4thly. The Stile by which the Indians are to be addressed is of Moment also. They are used to be called Brethren, Sachems and Warriors of the Six Nations. I hope it will never be repeated. It is sufficient to make them sensible that they are spoken to: without complementing 20 or 30 Mohawks as a nation and a few more Tusceroroes & Onondagoes as distinct nations. It would be not less absurd than mischievous. They should rather be taught that by separating from the Oneidas, and entering into a wicked war, they had weakened and destroyed themselves and that the publick opinion of their importance had long since ceased. [Def. Ex. J-40-A: VIII Public Papers of George Clinton 328-332 (1904) (footnotes omitted).]

86. It is established by the evidence:

(1) that the actions of New York prior to, during, and subsequent to the Fort Stanwix Treaty in 1784 gave warning to the United States that New York intended to assert jurisdiction over Indian affairs;

(2) that prior to and during the negotiations which resulted in the Fort Stanwix treaty the United States and its officers acted to prevent New York from entering into separate treaties with the Six Nations and from interfering with the federal treaty;

(3) that in 1785 delegates to the Continental Congress had access to the New York City newspapers which reported New York's intention to procure land cessions from its Indians, and the actual purchase of land from the Oneidas at Fort Herkimer;

(4) that the congressional delegates from Massachusetts read of New York's intention to acquire and sell Indian lands, and took action to protect the interests of Massachusetts in those lands;

(5) that in inviting the Oneidas to the 1785 treaty the New York Indian Commissioners informed the Oneidas that the treaty was made necessary by the illegal attempts of white people to purchase Oneida lands. The Oneidas did not realize that the primary purpose of the treaty was to purchase their land;

(6) that at the Fort Herkimer treaty, on June 25, 1785, Petrus the Minister informed Governor Clinton that the Oneidas could not sell to New York the lands which New York wished to purchase, and requested that New York prevent its citizens from entering into Oneida land;

(7) that at the June 26, 1785, cession of the Fort Herkimer Treaty, Governor Clinton accused the Oneidas of acting in bad faith, and warned them that, unless they sold the land requested by New York, New York would no longer protect them from the incursions of white settlers.

(8) that after private meetings between the New York Commissioners and the Oneidas, Petrus the Minister was replaced as the principal spokesman for the Oneidas, and the Oneidas suddenly changed their minds and agreed to sell the lands requested by New York State.

(9) that in reorganizing the Indian department in 1786 Congress asserted its jurisdiction over Indian tribes residing west of the Hudson River, including the Oneidas;

(10) that in 1788 delegates to the Continental Congress had access to the New York City newspapers which reported the appointment of new commissioners to obtain land cessions from the Indians, and the actual purchase of the lands of the Oneidas at Fort Schuyler;

(11) that during the summer of 1788 the federal official responsible for administering Indian affairs, as well as certain delegates to Congress, were aware that New York was planning an Indian treaty at Fort Schuyler.

(12) that in February 1788 the New York legislature voided the attempted long term lease of Oneida lands by private land speculators;

(13) that in April 1788, John Taylor, an agent of New York State, informed the Oneidas that the unlawful lease of their lands to non-Indians would result in their losing their lands and the friendship of the New York government unless they attended the Fort Schuyler Treaty and did what was requested by the Governor. Taylor did not inform the Oneidas that the New York legislature had already voided the lease.

(14) that at the Fort Schuyler Treaty in 1788 Governor Clinton represented to the Oneidas that they would lose all their land unless they

agreed to New York's proposal, under which they would cede the remainder of their lands to New York. Further, Clinton specifically told the Oneidas the treaty was not called by New York to purchase Oneida land.

(15) that at the Fort Schuyler Treaty in 1788 the Oneidas understood the transaction not as a sale of their lands to New York, but rather as a means of reacquiring lands they were led to believe they had already lost. The Oneida believed that New York was assuming a guardianship over their landed affairs.

87. It is not established by the evidence:

(1) that the United States or any of its officers took any action to protect the interests of the Oneida Nation in its land transactions with New York in 1785 and 1788.

(2) that the Oneida Nation voluntarily sold its lands to New York State in the 1785 and 1788 land transactions.


#### CONCLUSION OF LAW

On the basis of the foregoing primary and ultimate findings, the Commission concludes as a matter of law that the United States failed to fulfill its special obligation to the Oneida Nation of Indians in relation to protecting its peaceful possession of lands in New York State. The defendant will be liable to the plaintiffs under Section 2, Clause (5), of the Indian Claims Commission Act, 25 U.S.C. §70a (1970), if the Oneida

Nation did not receive conscionable consideration for the land it ceded to New York under the 1785 and 1788 treaties.

  
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John T. Vance, Commissioner

  
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Richard W. Yarborough, Commissioner

  
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Margaret A. Pierce, Commissioner

  
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Brantley Blue, Commissioner