BEFORE THE INDIAN CLAIMS COMMISSION

THE ONEIDA NATION OF NEW YORK, THE ONEIDA NATION BY JULIUS DANFORTH, OSCAR ARCHIQUETTE, SHERMAN SKENANDORE, MAMIE SMITH, MILTON BABCOCK, BERYL SMITH AND AMANDA PIERCE,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 301

[Claims 1 and 2]

Decided: December 29, 1971

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiffs herein are identifiable groups of American Indians, residing within the territorial limits of the United States. Based upon previous findings of the Commission the plaintiffs have the right and capacity under the Indian Claims Commission Act (60 Stat. 1049) to maintain this claim in a representative capacity for and on behalf of the Oneida Nation.

2. Among the aborigines first encountered by European colonists on the North American continent were those who shared a common language identified as "Iroquoian." The aborigines who spoke this language were generally found in the vicinity of the eastern seaboard of the continent.

3. In those earliest contacts, the Iroquoian aborigines identified themselves as the "The Five Nations." After the Tuscarora Indians, who
emigrated from the Carolinas to the north, affiliated themselves with the existing Iroquoian confederacy in the 1720's, that confederacy was frequently referred to as "The Six Nations." The Oneida Nation is one of the group of tribes which was known collectively as the Iroquois Confederacy or the Six Nations, the other tribes being the Senecas, Cayugas, Onondagas, Mohawks and Tuscaroras.

4. During the French and Indian War, the Six Nations, with the exception of the Senecas, were loyal to Great Britain and its American colonies. The Senecas fought on the side of the French on the Canadian border. Prior to the outbreak of that war, the British had been aware of the necessity for a uniform Indian policy as distinguished from the existing policy of permitting each colony to manage its own Indian affairs. The abuses committed by the colonists in connection with their acquisition of Indian lands, and the frauds perpetrated on the Indians by the colonial traders, persuaded the British that they must adopt an imperial policy for regulating the trade between the colonists and the Indians and that there must be established a boundary between Indian and non-Indian land. Accordingly, at the close of the French and Indian War, King George issued the Proclamation of October 7, 1763, establishing as a boundary between Indian and non-Indian lands a north-south line which roughly followed the watershed of the Appalachian Mountains, and declaring the British policy of protecting the Indians in the peaceful possession of their lands. This meant that all land between the Mississippi River and the
Appalachians was to be Indian country. In the north, Sir William Johnson had the task of ascertaining the boundaries of Indian lands. The Six Nations had never been conquered by either the French or the British and considered themselves a free people. In the 1768 Treaty of Fort Stanwix between Great Britain and the northern tribes, Sir William settled the northern boundary line which began in northern New York near the eastern end of Lake Ontario, ran south to the Delaware River, thence west to the Allegheny River, down the Allegheny River to the Ohio River, and thence west along the Ohio to the mouth of the Tennessee River. By 1768, the dividing line between Indian and non-Indian lands was fixed from Canada south to Florida. The boundary line and the attempted imperial regulation of the Indian trade were very unpopular with the colonists, who wanted Indian land for settlement by the expanding white population, and wished themselves to regulate the lucrative Indian trade. In 1768 Great Britain returned to colonial control the management of Indian trade, but it attempted to maintain the integrity of the boundary line.

5. With the coming of the Revolutionary War the Indians became the pawns in the military struggle between the rebelling colonies and the mother country. Because of what they considered to have been the bad treatment meted out to them by the colonists, nearly all of the Indians sided with the British who, on the whole, had a good record of attempting to deal justly with the Indians, particularly with respect to their lands.
6. The rebelling colonies realized the importance of keeping the Indians neutral in the impending conflict, and in 1775 the Continental Congress inaugurated a federal Indian policy declaring that securing and preserving the friendship of the Indians was of the utmost importance to the colonies. The Congress established three departments (as had the British formerly). The Northern Department included the Six Nations and the Indians to the north of them; the Southern Department included the Cherokees, Creeks and other southern Indians; the Middle Department included the tribes living between the other two departments. Several commissioners were appointed to manage the affairs in each department and the importance attached to Indian affairs is evidenced by the caliber of men appointed as commissioners. They included, among others, Benjamin Franklin, Patrick Henry and James Wilson.

7. While the British imperial experiment in a unified management of Indian affairs favorably impressed the delegates to the Continental Congress who, for the most part, agreed that the management of Indian affairs should be lodged in the central government, the inhabitants and local officials of the former colonies preferred to handle their own Indian affairs with the primary purpose of removing as soon as possible the Indians from the borders of what would be the new United States. Georgia, which had a great many more Indians than it could possibly control, and little money to buy presents, was willing to have Congress assume the Indian control burden, but New York, among others, was steadfast in its
position that it and it alone should control the affairs of the Indians living within its borders.

8. One of the primary duties of the commissioners appointed by the Continental Congress to deal with the Indians was to preserve peace and friendship between the Indians and the colonies, and to insure Indian neutrality, if not active Indian participation on the colonial side, in the event of war with Great Britain.

9. On June 19, 1775, before the commissioners for the Northern Department met with the Six Nations, the Oneida Nation on its own initiative declared to Governor Trumbull of Massachusetts the tribe's intention to remain neutral in any quarrel between Great Britain and the colonies. Commencing on August 15, 1775, the commissioners for the Northern Department held council meetings with the Six Nations, first at German Flats and then at Albany. The commissioners explained to the Six Nations the nature of the quarrel between the colonies and the mother country and finally secured the solemn promise of those Indians to remain neutral in the conflict. In accordance with Congressional authorization, the commissioners assured the Indians that Congress would protect the Indians in the peaceful possession of their lands not only against the British but against any attempt of the colonists to preempt such lands. An example of such attempts to reassure the Indians is found in a speech which Congress caused to be delivered to the Delaware Indians in April of 1776, reading in part as follows:

... We wish to promote the lasting peace and happiness of all our brothers, the Indian nations, who live with us on this great island. As far as your settlement and security may depend upon us, you may be assured of our protection. We shall take all the care in our power, that no interruption or disturbance be given you by our people, nor shall any of them be suffered, by force or fraud, to deprive you of any of your lands, or to settle them without a fair purchase from you, and your free consent. If, contrary to our intention, any injury should be offered to you by any of our people, inform us of it, and we shall always be ready to procure you satisfaction and redress.

10. In May of 1776, several Oneida chiefs wrote to General Schuyler, one of the commissioners for Indian affairs in the Northern Department of the United Colonies, to convey to him valuable intelligence. The Oneidas had sent two of their members to attend a council meeting held at Niagara between the Six Nations and Colonel Butler, a British officer and the King's agent to the Indians. The Oneida chiefs reported to General Schuyler that Colonel Butler had assured the Indians the British would win an easy victory over the colonists, and the Indian sachems present then assured Butler that the Indians they represented would "support the King's peace or Government". The Oneidas reported to Schuyler that 50 men of the Six Nations had already joined the British military.

11. When it became apparent that the great majority of the Oneidas and Tuscaroras were loyal to the United Colonies but that the remaining tribes of the Six Nations were engaging in active combat on the side of the British, General Schuyler wrote to the President of the Continental

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Congress on June 8, 1776, recommending that a conference be held again with the Six Nations at German Flats to inform them of the displeasure of the United Colonies with their actions, and to advise them that they were in gross violation of their 1775 promise of neutrality; that while Congress knew that many Indians were friendly to the colonies, the fact that some had openly joined the enemy made it necessary to request "that such of them as are our friends should declare for us, and that we and they should enter into mutual engagements to defend each other; that such as mean to act against should now declare it, that we may distinguish between our friends and enemies, and take proper measures to distress the one and protect the other." General Schuyler further recommended:

"... that, in order to secure ourselves, and our Indian friends, we mean immediately to take post at Fort Stanwix, and erect a fortification there; that hitherto we had neglected securing our western frontier, because we had believed what they had said, and had confided in their engagements, otherwise an expedition would have been carried on early in the spring against the enemy's fort at Oswegatchie; that they would see that it was owing merely to our confidence in them that we had neglected to take possession of Fort Stanwix, and not to want of ability, for that in ten days' time we shall have a fort there, and keep a body of men sufficient to cut off any parties that may attempt to distress our frontiers; that such as act against us must never expect that they will regain our friendship; that, as the Mohawk warriors have, from the beginning, been our enemies, and joined with the King's troops, and have fought against us, without the least cause given them for such conduct, they must all immediately join the enemy, or recall those that are already with them, and give hostages for their future good behaviour; that if they choose to join Sir John Johnson, they shall be furnished..."
with beateaus to go to him, but that they must never expect to return to their families, or ever hope for a reconciliation with us.

I do not think that any part less decisive will keep the Mohawks, Senecas, Cayugas, and part of the Onondagas, neutral; and this may perhaps induce them to join us, especially as Mr. Kirkland informs me that the Oneidas, Tuscaroras, Ochugues, and the Caughnawagas of Canada, have entered into a defensive league to support each other against the other nations; being resolved that, if the others join the King's party, they would die with the Americans in the contest; but as this was communicated in confidence by the chiefs of the Oneida nation, he did not choose to commit it to paper, and entreats that no mention may be made of it, lest the confederacy should be attacked by the others. I have read this to Mr. Kirkland, to prevent mistakes, and he agrees it is what the sachems informed him. I hope to be at Albany on Monday to advise on this matter with my colleagues in office; but should they be of the same opinion, and think it necessary to convene the Indians, I yet will not advise to deliver a speech in the spirit I have abovementioned until the approbation of Congress is obtained. I shall, however, make every preparation for taking post at Fort Stanwix, and hope to conduct it in such a manner, and with so much celerity, as to impress on the Indians an idea that we are capable of acting with vigour, and that we do not mean to be trifled with.

12. The Reverend Samuel Kirkland, referred to in General Schuyler's letter to the President of the Continental Congress, was a missionary who had lived for several years with the Oneida Indians and is given much credit for keeping those Indians on the side of the colonies during the war. On June 8, 1776, he wrote to General Schuyler a letter which was read before the Continental Congress on June 13, 1776. The letter states

\[4\] in part as follows:

\[4\] Ibid., p. 764.
The Oneidas and Tuscaroras have expressed great concern on account of Colonel Butler's growing strength and influence at Niagara. He [Col. Butler] has, by threats and proffers, prevailed upon the greater part of the Senecas, Cayugas, and Onondagas, to renounce the cause of the Colonies, and engage on the King's side, as they call it. By the last accounts from Niagara, upwards of one hundred have inlisted into the King's service, and are now acting against us. The war-hatchet has been sent to the Chippewas and Ottawas; some of their tribes have received it. Should Colonel Butler get reinforcement at Niagara, with a supply of provisions, our Indian friends say our frontiers will soon feel his resentment, particularly the back parts of New York, Pennsylvania, and Virginia.

The Indians are now generally of opinion that it is impracticable for them to continue much longer in a state of neutrality, and that it has now become necessary for the Commissioners to call upon the Six Nations, and demand who are friends and who are not, and if a party of five hundred men, with two or three Rifle companies, were sent to Fort Stanwix, it would annoy our enemy and strengthen our friends, and protect that part of our frontiers...

13. On July 31, 1776, General Schuyler wrote to Governor Trumbull of Massachusetts complaining about the chronic shortage of men which the various colonies were able to supply to the Continental Army and noting that the American setback in Canada had made the Indians "somewhat assuming." He stated that he was certain that few Indians except for the Oneidas, would ever take an active part with the Continental Army.

14. A conference with the Six Nations was finally held at German Flats from August 8 through August 13, 1776. The Commissioners for Indian Affairs of the United States reminded the Six Nations of their solemn

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pledge of neutrality given just the year previously, and accused them of having grossly violated it. The commissioners asked the hostile members of the Six Nations to declare their true intentions so that it might be clear whether the four hostile tribes were friends or enemies of the United Colonies. Answering for the hostile group, Abraham, the Mohawk, acknowledged both their previous pledges of neutrality and their subsequent acts of hostility and apologized for the latter. The Oneida and Tuscarora Indians reaffirmed their friendship for the colonies and promised to continue neutral. In response to the statement of these friendly Indians, the commissioners stated:

... The tree of peace which you planted so long ago has greatly flourished of late. It has spread a pleasing shade far and near. Its boughs have grown strong and its leaves broad. It has not been shaken by any of the storms that have lately blown with so much violence. Not a leaf has dropped from it. It is perfect, and be assured that it will yield fruits which will nourish you and your posterity and make you grow. ... [Emphasis supplied.]

At the same conference Commissioner Peter Schuyler further chastized the four hostile tribes for their treachery and complimented the Oneida and Tuscarora Indians for their loyalty and aid, assuring them that as they had been faithful to the United Colonies, so would the Confederation be loyal to them by protecting them from all enemies and sharing with them whatever "good things the great God shall please to bestow on us".

6/ Ibid., pp. 1043-1044.

7/ Proceedings of Commissioners, August, 1776, German Flats, Philip Schuyler Papers, Vol. 13, New York Public Library.
15. The United States continued its policy of pressing the four hostile members of the Six Nations to remain neutral, but under constant pressure from the British, those Indians allied themselves with the British and by 1777 were engaging in open, active combat against the Confederation.

16. On December 3, 1777, the Continental Congress again sent a message to the Six Nations in which they asked the four hostile tribes why they had permitted the British to mislead them into assisting the enemies of the Confederated Colonies. The Oneidas were complemented on their loyalty and were told that as trusty friends of the Confederation they would be protected and that their welfare should at all times be considered as the welfare of the Confederation.

17. When General George Washington was empowered by a resolution of the Continental Congress to employ a body of four hundred Indians to assist the colonial army, he wrote (March 13, 1778) to the commissioners for Indian affairs that since the Oneidas had manifested the strongest attachment to the colonies throughout the war, they would probably supply the greatest number of Indian recruits. On May 4, 1778, the Continental Congress passed a resolution directing General Gates to afford all protection to the Oneida and Tuscarora tribes which the commissioners for Indian affairs in the Northern Department had promised them on behalf of the United States.


18. In the Journals of the Continental Congress for June 11, 1778, it was noted that General Schuyler had reported the activities of the four hostile tribes of the Six Nations, and feared the commencement of an Indian war threatening with extensive devastation the frontiers of the United States. Congress noted that the friendly Indians, including the Delawares, Oneidas and Tuscaroras, were collecting themselves in bodies to guard against attacks from the large number of Indians loyal to the British, who had been "rendered implacable" by the former Indians' warm and steady attachment to the cause of the colonies. Congress accordingly resolved, among other things, that General Gates, or the officer commanding the colonial troops on the east side of the Hudson River, be directed to take expeditious measures to carry the war into the Senecas' country to subdue the hostile elements of the Six Nations and to evict the enemy from Oswego, New York.

19. In a letter of June 21, 1778, from General Washington to General Benedict Arnold, General Washington urged conciliation, if possible, of the Senecas, whom he felt were finally becoming convinced of the possibility of an American victory, but he said that if they did not immediately cease hostilities, General Washington would turn his whole force against them and destroy them. In the event of a meeting, General Washington recommended the giving of trinkets, etc., by General Arnold, but admonished the General to make a distinction between the Senecas and the friendly Oneidas and Tuscaroras who should receive the bulk of such presents.
20. On August 15, 1778, the Commissioners for Indian Affairs in the Northern Department met with deputies from the Onondaga Indians who tried to excuse their recent hostile behaviour. The Federal commissioners treated them with considerable tact, but warned them to follow in the future the example of the friendly Oneidas whose actions spoke far louder than the words of the Onondagas.

Following the notorious Wyoming massacre in 1778 when the British and their Indian allies killed hundreds of settlers and destroyed their houses, barns, grain and cattle, the Americans under General Sullivan and General Clifton, mounted an expedition through the Mohawk Valley into the heart of the Indian country, burning the Indian villages and their harvest fields. The army left unharmed the towns of the Oneidas and Tuscaroras, concentrating their wrath on the villages of the hostile Indians. The Onondagas went to the Oneidas begging them to intercede on their behalf. The Oneidas attempted to comply with this request, partly because of the close relationship of the two tribes through intermarriage, and partly because the principal Onondaga village which had been destroyed was very near to Oneida country. In reply to the Oneida appeal, Colonel Van Schaick commended the Oneidas for their loyalty to the colonial cause but reminded them that the Onondagas had frequently broken their pledges of neutrality and "have been great murderers." Upon hearing his explanation of the attack, the Oneidas readily admitted that the Americans had been greatly
provoked and that the chastisement of the Onondagas had been justly incurred.

21. The majority of the Oneidas and many of the Tuscaroras fought actively on the side of the Confederation and provided valuable intelligence service to the United States concerning the activities of the British and the hostile Indians. A number of Oneida and Tuscarora Indians received commissions in the United States Army. As a result of their friendship and loyalty the unity of the Six Nation confederacy was destroyed and in 1780 the Oneidas were attacked by the other tribes led by Joseph Brant (Thayendanegea), their towns and fields were destroyed, and many were killed or wounded.

22. The treaty of peace between England and the United States marking the end of the Revolutionary War was concluded at Paris on September 3, 1783. No reference was made therein to Great Britain's Indian allies who were left to make their own peace with the former colonies, now the conquerors. The British were well aware of the predicament in which this treaty left their former Indian allies. At the end of the war some 3,000 destitute Senecas were camped near Fort Niagara and the British continued to feed and clothe them. The Tuscaroras and Oneidas, driven from their homelands

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by the hostile Indians, were camped near Schenectady and were supported
by the Americans. Even after the end of formal hostilities, white
captives were carried away or killed by the Indians who were allies of
the British.

The English, still occupying the border forts after the signing of
the peace treaty, kept up a constant policy of agitating the Indians to
defy the former colonists, telling these Indians, with some truth as it
turned out, that the victors were hungry for the Indians' lands and would
not rest until the Indians were driven completely from their homes. The
British conceded that one of the reasons they decided to continue to
occupy the border forts was that their presence would give the Indians a
better advantage in bargaining with the Americans, and the British repre-
sentatives in those forts told the Indians that they could find asylum
in Canada if they wished to cross the lakes.

23. There was no unanimity among the new states concerning the
issue of whether the central government or the individual states should
control the affairs of the Indians who were within the borders of the
states. While it is clear that the Continental Congress was aware of
the desirability of central government control of Indian affairs, including
the disposition of the lands owned or claimed by the Indians within state
borders, the Articles of Confederation as enacted were sufficiently ambiguous
on this point to permit the interpretation placed upon the matter by New
York, i.e., that insofar as Indian lands were concerned, the state in which
the lands were situated could deal directly with the Indians without central government approval.

24. In accordance with its insistence on the right to deal with the Indians within its borders, New York State appointed commissioners to deal with the New York State Indians and on March 17, 1783, the New York Legislature instructed those commissioners as follows:

The principal Object of your Commission is to endeavor to accomplish an Exchange of the District claimed by the Oneida's and Tuscarora's, for a District of vacant and unappropriated Lands within this State.

In the execution of this Trust, you are to proceed with Caution and Reserve, so as not to alarm the Oneida's and Tuscarora's [sic] with apprehensions that there is the most remote Intention to deprive them of the enjoyment of the District belonging to them: On the contrary you are on all proper Occasions to impress them with a Confidence that this State will suffer no encroachment to be made within their limits nor any Settlement thereon without their free Consent.

If such Exchange cannot be obtained you will enquire whether it is the Intention of those Tribes, to sell any part of the District belonging to them? And if so what Quantity thereof, and where situated and what are the Terms and Considerations which they may expect for the same; And you have it particularly in charge to apprise them that no Purchases can be made from them of any of their Lands unless under the Authority and with the Consent of the Legislature of this State; carefully explaining at the same time that their Security was the Motive which led to the establishment of this prohibition in the [state] constitution.

The commissioners were also authorized to offer the Oneidas land which had actually belonged to the Senecas in western New York State in exchange

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for Oneida land in the central part of the State. If the Oneidas refused to part with any of their lands, the commissioners were told to inquire into the extent of the Oneida land claims and to obtain as accurate a description of such land as was possible and report the same to the Legislature.

25. New York's avowed Indian policy in general and the state's desire for Oneida land in particular was known to the central government. In view of the ambiguities contained in the Indian policy article of the Articles of Confederation, the matter was a delicate one, but the central government finally took the firm position that it would be highly improper for the individual states to make separate peace treaties with the hostile Indian tribes and that any land transactions between the states and the Indians, hostile or friendly, should be deferred until after the central government had negotiated peace treaties with the Indians. Despite the fact that all this was made known to the Governor of New York, that official called a meeting with the Six Nations at Fort Stanwix prior to the federal treaty council, and attempted to purchase land from the Indians. From their past experience of dealing directly with the King's representatives who attempted to protect them from the land hungry colonies, the Indians, without insulting the New York commissioners, made it quite clear that in view of the fact that there did exist a central government for all the victorious former colonies, it seemed to them that it would be preferable and proper for the Indians to deal first with such central government. The meeting with the
New York commissioners ended in a stalemate when the Indians stated that those present were not authorized to sell land but only to make peace.

26. Following the abortive meeting between the Six Nations and New York commissioners, the New York Governor reacted by refusing to raise from the New York Militia the number of troops requested by the Federal Government for the purpose of garrisoning the frontier posts and protecting the persons who would attend the peace treaty proceedings to be held thereat. His excuse was that the Legislature of the State was the only body competent to attend to the request and that the Legislature was not in session. He also advised the federal Indian commissioners that they should be careful not to enter into any stipulations with the Indians residing within New York State (with which Indians the Governor intended to treat) which might be prejudicial to or in conflict with the rights of the State of New York.

27. On August 31, 1784, one Jellis Fonda wrote to Governor Clinton telling him that he had discovered why the Reverend Mr. Kirkland was hurrying to visit the Oneidas, and that it was to put those Indians on their guard not to exchange any of their lands with New York or any other person.

28. It was finally decided by the State of New York to have Major Peter Schuyler and Mr. Peter Ryckman attend the treaty to be held at Fort Stanwix between the Indians and the commissioners of the Continental Congress. They were specifically instructed to observe the conduct of the federal commissioners, take notes of the daily proceedings, attend all sessions,
find out what objects the federal commissioners had in view, and if they should discover that any of those objectives might eventually prove detrimental to the interests of New York State, they were to use their best endeavors to counteract and frustrate such actions. They were also instructed to supply the four formerly hostile Indian tribes with the balance of the provisions left from the New York State sessions with the Six Nations, until the day fixed by the federal representatives for the commencement of their treaty. They were also instructed to inform the Oneidas and Tuscaroras that they had been given all the provisions on hand that could be spared.

29. On October 5, 1784, the United States commissioners wrote to the President of Congress telling him that although the Governor of New York had been advised of the time and place of holding the treaty and had been invited to attend if he had any business to transact with the Indians under the patronage of the United States, the Governor had preferred to hold a separate treaty with the Six Nations before the general treaty and had endeavored to make peace with them in the name of the state. The commissioners stated that they did not think New York had succeeded in purchasing any territory from the Indians and that they had therefore advised the Indians that a treaty with an individual state without the sanction of Congress would be of no validity.

30. In a communication advising Governor Clinton of the proposed federal treaty proceedings with the Six Nations at Fort Stanwix and
inviting his attendance, the federal commissioners stated that not
knowing exactly what business Governor Clinton wished to transact with
the Indians, they could not judge how far that business was compatible
with the commission they had from Congress, but that in their opinion
it would be proper for New York to subordinate its business with the
Indians to that of the general treaty as had the State of Pennsylvania.
Apparently in an effort to avoid an open breach with the central government,
New York did not respond to the letter of the federal commissioners and
Governor Clinton did not attend the treaty proceedings.

31. Congressman John Duane advised Governor Clinton that if New
York wished to prevail in its position that it alone was competent to
deal with the Indians residing in New York, the State should take the
position that those tribes were ancient dependents upon New York and not
independent nations detached from the State; that as members of the State,
all their territorial rights would depend upon the will of New York
and would not come within the jurisdiction of Congress. He suggested
that the article of the Articles of Confederation dealing with Congressional
control of Indian affairs could be so interpreted.

32. When the commissioners for Indian affairs of the United States
and the Six Nations finally assembled at Fort Stanwix for the general
conference in October of 1784, the commissioners, as they had done at all
former conferences with these Indians, treated separately with the faithful
allies of the United States, the Oneida and Tuscarora Nations, and with
the formerly hostile four tribes of the Six Nations, repeatedly recalling the faithful adherence of the former to the cause of the United States and emphasizing the active state of war that had existed between the latter nations and the United States. For example, in a meeting with the Six Nations in January, 1784, General Philip Schuyler, on behalf of the United States, advised the formerly hostile tribes that if the English had informed them that they had been included in the peace concluded between the British and the United States, they were misinformed for they had not been mentioned at all. He reminded the hostile Indians of the fact that they had broken their pledges of neutrality and said that he did not know then on what terms Congress would offer them peace. In connection with their complaint that Americans had been exploring Indian lands in New York State in quest of settlement, he stated that he did not know if this was done by proper authority or not, but that in his opinion citizens of the United States had the right to explore every part of the country within the limits of the United States unless they were expressly forbidden to do so by proper authority. He then stated that Americans had no right to settle on vacant land without permission from proper authority and that they had no right at all to settle in the Oneida country without the leave of that nation "and none will do this". Speaking of the northern boundary line between the Indians and whites established by the Indians and the British in 1768, he remarked that it was not within his power to say whether that agreement was now void by reason of the
unprovoked war which the Indians waged against the Americans and that this matter must be settled at the general peace conference to be held later when boundaries would be established. As for the Oneidas and Tuscaroras, the United States commissioners stated:

There was no occasion for them to speak to us about peace, they had not been at war with us, . . .

33. Captain Joseph Brant in his account of what happened at Fort Stanwix prior to the signing of the treaty in October, 1784, reported that after addressing the formerly hostile tribes of the Six Nations the commissioners turned towards the Oneidas, Tuscaroras and Caghnawagas who were sitting together, and said:

. . . . Brothers you Oneidas, Tuscaroras, & Caghnawagas, you are our friends. Therefore we have nothing particular to say to you on this occasion, only to bid you well come to this council fire, and ask you to sit still and look on. When we shall be speaking to these nations who was fighting against us.

34. As the October 1784, council proceedings opened, a representative of the four formerly hostile tribes of the Six Nations spoke first saying that he represented all of the eastern and western Indians including the Ottawas, Chippewas, Hurons, Potawatomis, Messasagas, Miamis, Delawares, Shawnees, Cherokees, Chickasaws, Choctaws and Creeks, as well as the Six Nations; that they had all been required to join the King in the Revolutionary War because the King had long been their friend and they had binding covenants with him; that since the King had now deserted them, they were once more

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12/ Public Archives of Canada; Department of Indian Affairs, Record Group No. 10, Volume 1834, pp. 170-175.
free and independent Indian nations able to make covenants with the
United States.

On the day following the above speech, the United States' reply
was firm, sharp and to the point. The four hostile tribes were told that
they had furnished no evidence of any right to represent the other eastern
or western tribes mentioned; that they themselves had clearly violated
their 1775 and 1776 solemn treaties of neutrality made with the Confederated
States; that they were not now "free and independent nations" able to make
any treaty terms they pleased with the United States but, on the contrary,
were a "subdued people . . . overcome in a war" into which they had entered
without provocation and in violation of the aforementioned treaties of
neutrality. They were told that they were being offered peace on more
moderate and generous terms than they had any just reason to expect, and
that they would be wise to accept those terms because they would not be
offered to them a second time.

The four formerly hostile members of the Six Nations were then told
that they must give up all prisoners and that the Americans would not,
as suggested by the hostiles, send representatives to the Indian villages
to collect those prisoners, but that the Americans would take hostages
from the four tribes to insure that those tribes delivered up the prisoners
to the United States. As to their lands, they were told that by their
actions they had forfeited all claims thereto and that any boundaries
established would be established by the United States and not the four
nations. They were told that they could no longer rely on the old 1768 Fort Stanwix northern boundary negotiated with the British and that as to the alternate boundary line proposed by the Indians, much of the land they claimed they had already sold to Pennsylvania. They were then told of the conditions on which they might make peace with and receive the protection of the United States: (1) that the United States would require hostages to remain with the federal commissioners until all prisoners taken were returned; (2) that the Oneida and Tuscarora Nations were to be secured in the possession of the lands on which they were settled; (3) that the Six Nations must yield to the United States all their claim to the country west of a boundary line which was described in Article 3 of the Treaty as signed, and that the four formerly hostile Indian tribes would then be secured in the peaceful possession of the lands to the east and north of that line, reserving six miles square around Fort Oswego to the United States; and (4) that in consideration of the deprived circumstances of the Indians and to demonstrate the humane and liberal character of the United States, presents and goods would be delivered to the Six Nations for their use and comfort upon the signing of the treaty.

35. After stating the terms of the proposed treaty, the commissioners made certain remarks concerning the treaty. They admonished the four hostile nations to immediately deliver up the prisoners they had taken; they told them that the boundary line proposed left as extensive a country "to the remaining four nations, as they can in reason desire, and more than,
from their conduct in the war, they could expect" [emphasis supplied];
that the King of Great Britain had ceded to the United States the whole
of his possessions and that the United States obtained such land by
right of conquest and might therefore rightfully claim the whole; that
despite the federal right to all of the hostile Indians' lands, the
United States would take but a small part compared with its own white
population and its needs; that the United States soldiers must be pro-
vided for and compensation must be made for the blood and money expended
in conducting the war against both the British and the hostile Indians;
that the great increase in the white population rendered more land
essential to its subsistence and that the boundary line proposed by the
United States would make effectual provision for those legitimate needs
and demands of the United States and would prevent future cause of trouble
between the Indians and whites.

36. With respect to Article II of the treaty which recited that
the Oneida and Tuscarora nations should be secured in the possession of
the lands on which they were settled, the treaty commissioners made the
following statement:

It does not become the United States to forget those
nations who preserved their faith to them, and adhered to
t heir cause, those therefore must be secured in the full
and free enjoyment of those possessions.

13/ The Olden Time by Neville B. Craig, Pittsburgh, 1848, Volume II, pp. 404-430.
37. In concluding the treaty proceedings immediately after the signing of the treaty, the United States commissioners stated:

    Chiefs & Warriors of the Six Nations Mohawk Onondago and Cayuga Tribes -

    We have now laid the foundation of the great and blessed work of peace. ... We have buried the hatchet, not only between the United States and you, but also between our friendly Indians the Oneidas Tuscaroras Mohickans and Conewaghias and Yourselves. ... .

    Brothers of the Oneida & Tuscarora Tribes -

    The immovable firmness with which you have preserved your faith to Congress and attached yourselves to the fortunes of America has justly raised your glory among the nations. It is a glory that will last as long as any memory of these times shall remain. Congress has not forgot your fidelity and attachment. They would not have made peace with the hostile tribes, without securing your interests, but such a peace is now concluded with them as is perfectly agreeable to you. ... .

38. The different treatment given to the four hostile tribes and to the Oneida and Tuscarora tribes in the treaty proceedings and the treaty itself was strictly in accordance with the Congressional resolution passed in 1783 authorizing the holding of the treaty and describing its background. With respect to the Oneida and Tuscarora tribes, the

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14/ Historical Society of Pennsylvania; Wayne Manuscripts, Indian Treaties 1778-1795, B, Extracts from Journal of the Commissioners of Indian Affairs, for the Northern and Middle Departments, 41-42.
Sixthly, and whereas the Oneida and Tuscarora tribes had adhered to the cause of America and joined her arms in the course of the late war, and Congress have frequently assured them of peculiar marks of favour and friendship, the said commissioners are therefore instructed to reassure the said tribes of the friendship of the United States and that they may rely that the lands which they claim as their inheritance will be reserved for their sole use and benefit until they may think it for their own advantage to dispose of the same.

39. In January 1785, United States Commissioners held a treaty council at Pittsburgh with the Ottawa, Chippewa, Delaware and Wyandot tribes of Indians (the Western Indians). The Treaty of Paris (1783) between the United States and Great Britain was read to these formerly hostile Indians and it was pointed out to them that their old ally had

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15/ Journals of the Continental Congress, 1774-1789, Volume XXV, 1783, p. 687. The copy of this page of the Journal which is in evidence as plaintiff's exhibit 50 contains language which was apparently considered by Congress for inclusion in the sixth paragraph of this resolution and then changed to read as set forth above. The deleted language is of interest. After the words "the said commissioners are therefore instructed" the rejected version read:

- to take particular care to distinguish the lands claimed as the inheritance of those tribes, to have them ascertained and enter into stipulations that they shall be reserved for the sole use and benefit of those tribes until they shall think it for their own advantage to dispose of them.

In addition, the following paragraph which indicates the central Government's knowledge of the New York plan to attempt to persuade the Oneidas to exchange their central New York homelands for lands in the western part of the state belonging, prior to the war, to the Senecas, was also omitted:

- Provided that if those tribes shall voluntarily agree to exchange their present claims for a district more remote from the settlements of our citizens, and such exchange shall not be deemed disadvantageous by the State claiming the jurisdiction it shall be lawful for the Commissioners to ratify such exchange for the better security of the said Indians.
made no provision for them in the terms of the treaty, leaving them to make a separate peace with the victorious United States. Next, the commissioners read aloud the Treaty of Fort Stanwix concluded with the Six Nations in October, 1784. On the next day there were some proud speeches by chiefs of the participating Indian tribes noting, among other things, that the Six Nations had seen fit to give to the United States some of their lands. The following day the commissioners spoke to the Indians and, after reprimanding them for not bringing in their prisoners as they had been directed to do, the commissioners said:

You next express your kindness that the Six Nations your uncles have given us a part of their country. But it is quite the contrary. We have given the hostile party [of] the Six Nations some of the country which we conquered from them, and we have secured their lands to those who were friendly. Our friends have experienced our good faith; our enemies have felt our bounty & forgiveness.

You have been particular in describing to us the claim and title of each particular tribe, to the lands from Venango, towards the sun-rising, to the Miami, towards the sun-setting, and between the Ohio & lake Erie. The detail of these claims and title may appear to be of consequence among yourselves. But to us & to the business of the Council Fire to which we have called you, they have no relation; because we claim the country by conquest; and are to give not to receive. It is of this that it behoves you to have a clear and distinct comprehension.

Two mighty armies of the K. of C.B. were obliged to surrender themselves prisoners; and he was compelled to yield up to us all the country described in the treaty. You were driven from your towns, and from the country now in question. Had we been conquered, our lands would have been subject to the K. of C.B. & to you. By the same law, you being conquered, your lands must be at our disposal.

16/ Pickering Papers, Volume 53, pp. 115-131, Harvard College Library.
40. It is not established by the evidence:

(1) that any significant number of Oneida warriors aided the British Army against the colonies during the War of the Revolution or that the Oneida Nation as an Indian tribal entity was other than loyal to the cause of the colonies;

(2) that the Oneida's efforts on behalf of the hostile Onondagas demonstrated their disloyalty to the United States. On the contrary their appeal to the colonial army officers merely evidenced their concern for the destruction for reasons they did not understand of a chain of Onondaga villages which were close to the Oneida lands and the death of members of a tribe many of whose members were related to the Oneidas by marriage. Once the reason for the destruction of the Onondaga villages was explained to the Oneida representatives who had appealed to Colonel Van Schaick, i.e., that the Onondagas had committed serious depredations against the colonials, the Oneidas were reported as being satisfied that the proper course had been taken against their hostile kinsmen;

(3) that the deleted language of the Congressional Resolution of October 15, 1783 (Finding 38, footnote 14) did any more than relieve the United States treaty commissioners of the task of determining the boundaries of Oneida and Tuscarora lands. The deletion did indicate a reluctance on the part of the United States to prejudge the merits of the New York plan, of which the Federal Government was aware, to try to persuade the Oneidas to exchange their central New York State lands
for western lands belonging to or at least claimed by the hostile Senecas 
(see findings 24 and 25);

(4) that the treaty commissioners were instructed to make peace 
with any but the four hostile members of the Six Nations or to take 
cessions of land from any but them.

41. It is established by the evidence:

(1) that with very few exceptions, the majority of the members 
of the Oneida Nation of Indians and the tribal entity itself were loyal 
to the Confederated Colonies throughout the period of the Revolutionary 
War and not only engaged in actual combat in the service of the colonies, 
but suffered severe losses in life and property at the hands of the 
disloyal and hostile Mohawks, Senecas, Cayugas and Onondagas, as well as 
the British;

(2) that those few Oneida who aided the British against the 
Colonial Army during the Revolutionary War did not represent the body of 
the tribe or tribal policy, which was consistently loyal to the colonies;

(3) that the hostility of the American Indians was a threat 
to the colonies' prospects of success in the Revolution and the loyalty 
and aid of the Oneidas and Tuscaroras in New York State through their 
intelligence service and actual force of arms, was of great assistance 
to the colonial forces in that strategic area;

(4) that the Continental Congress and the local New York 
government early recognized the loyalty of the Oneidas and actively courted
and constantly commended it;

(5) that when it became apparent that the Six Nations, with the exception of the Oneidas and Tuscaroras, were not going to live up to the 1775 and 1776 treaties of neutrality, both the Federal and New York State governments dealt with the Oneidas as allies and friends and relied greatly on their assistance throughout the war;

(6) that the central government took the position that the hostile Indian tribes who had aided the British had forfeited all rights to their lands and, not having been mentioned in the terms of the 1783 Treaty of Paris, were dependent solely upon the generosity of the United States in connection with their rights to any of their former possessions;

(7) that it was never considered necessary to hold peace treaties with the Indian tribes who had been loyal to the colonies, and the Oneidas and Tuscaroras were summoned to Fort Stanwix in October of 1784 not for the purpose of making peace with them or relinquishing to them lands which the United States and New York claimed by right of conquest, but only to be sure that the terms of the treaty with the four other members of the Six Nation confederation were agreeable to the two friendly tribes and to assure them that the United States would reward their help and fidelity by protecting them in the future peaceful possession of their ravaged home lands from all comers;

(8) that on the basis of the statements made to the Oneidas by the federal representatives prior to the Fort Stanwix council and during
that council, confirmed by Article II of the Treaty of Fort Stanwix and
repeated in the council with the western Indians in 1785, the United States
undertook a special obligation to the Oneidas to protect them in the
peaceful possession of their traditional homelands in New York State.

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 in
Article II of the Treaty of Fort Stanwix undertook a special responsibility
or obligation to the Oneida Nation of Indians in relation to protecting
their peaceful possession of their lands in New York State, and that the
relationship was such that its breach by the United States would constitute
a violation of the standards of fair and honorable dealings within the
meaning of Clause (5) of Section 2 of the Indian Claims Commission Act.

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner