

CLASSIFIED

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CLASSIFIÉ

File No. Dossier 45-CDA-13-3-4 B 0128

Volume 1 From - De 63-4-1 To - À 81-01-31

VOLS ACCESSION NO. 4352

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SEMI ACTIVE

TITLE—TITRE:

SOCIAL AFFAIRS  
HUMAN RIGHTS  
MINORITIES AND RELATIONS  
CANADA  
UK-USA  
TREATY OF AMITY, COMMERCE AND NAVIGATION  
(JAY'S TREATY)

AFFAIRES SOCIALES  
DROITS DE L'HOMME  
MINORITES ET RELATIONS INTERRACIALE  
CANADA  
TRAITE ANGLO-AMERICAINE DE RELATIONS AMICALES,  
DU COMMERCE ET DE LA NAVIGATION (TRAITE DE JAY).

Retention period - Période de retention:

PUBLIC RECORDS APPROVALS  
NOS. 68/001, 69/063 AND  
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FOR SELECTIVE RETENTION

DEPARTMENT  
OF  
EXTERNAL AFFAIRS

MINISTÈRE  
DES  
AFFAIRES EXTÉRIEURES

CHARGE-OUT DATE - DATE D'ENVOI




Government  
of Canada

Gouvernement  
du Canada

# CLOSED VOLUME VOLUME COMPLET

DATED FROM  
À COMPTER DU

63-04-01

TO  
JUSQU'AU

81-01-30

AFFIX TO TOP OF FILE - À METTRE SUR LE DOSSIER

DO NOT ADD ANY MORE PAPERS - NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE - POUR CORRESPONDANCE ULTÉRIEURE VOIR

FILE NO. - DOSSIER N°

45-CDA-13-3-4

VOLUME

2

002007



10450-40 Lists of Treaties of "Peace"  
Friendship & Commerce to which Canada is  
a party  
OLD FILE-11724-40

CHARGE-OUT DATE – DATE D'ENVOI



Document divulgué en vertu de la  
Loi sur l'accès à l'information  
Government of Canada

Gouvernement  
du Canada

**ACTION FICHE DE  
REQUEST SERVICE**

To — À

File No. — Dossier N°

Date

*Feb 3*

From — De

☐ Please call  
Prière d'appeler

Tel. No. — N° de tél.

Ext. — Poste

☐ Returned your call  
Vous a rappelé

☐ Will call again  
Vous rappellera

☐ Wants to see you  
Désire vous voir

Date

Time — Heure

Message received by  
Message reçu par

☐ Action  
Donner suite

☐ Approval  
Approbation

☐ Note & return  
Noter et retourner

☐ Comments  
Commentaires

☐ Draft reply  
Projet de réponse

☐ Note & forward  
Noter et faire suivre

☐ As requested  
Comme demandé

☐ Signature

☐ Note & file  
Noter et classer

*Catherine Watson  
Adjudications Branch  
of Revenue Canada  
will call me back*

002009



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Government of Canada

Gouvernement du Canada

**ACTION FICHE DE  
REQUEST SERVICE**

To — À

File No. — Dossier N°

FLA / Jim Wall

Date

30/1/81

From — De

Ted Johnston

☐ Please call  
Prière d'appeler

Tel. No. — N° de tél.

Ext. — Poste

☐ Returned your call  
Vous a rappelé☐ Will call again  
Vous rappellera☐ Wants to see you  
Désire vous voir

Date

Time — Heure

Message received by  
Message reçu par☐ Action  
Donner suite☐ Approval  
Approbation☐ Note & return  
Noter et retourner☐ Comments  
Commentaires☐ Draft reply  
Projet de réponse☐ Note & forward  
Noter et faire suivre☐ As requested  
Comme demandé☐ Signature☐ Note & file  
Noter et classer

I could say all the things Leger  
said to me; take it as read.

Any ideas?

Ted

002010

Canadian Embassy



Ambassade du Canada

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8/10/30	
45-CDA-13-3-A	
BY HAND	FOR FORWARD
EA/GNG	

1746 Massachusetts Ave., N.W.  
Washington, D.C. 20036

January 28, 1981

37-8-1-2

Dear Ted,

...

I am enclosing a letter and attachments from the Indian Law Resource Center concerning a problem some Mohawks encountered in crossing the border. I am sending this to you because I know your reputation as a troubleshooter and solver of esoteric problems and otherwise I would not know where to start dealing with this.

Our relationship with native rights representatives in Washington is excellent, as evidenced by the cooperation we obtained during the visit last year by officials of the Department of Indian and Northern Affairs, and I would like to do everything possible to provide assistance in this matter.

Yours sincerely,

Georges A. Léger

Mr. E.R. Johnston  
Deputy Director

United States General Relations Division  
Department of External Affairs  
o t t a w a

## INDIAN LAW RESOURCE CENTER

601 E STREET, SOUTHEAST, WASHINGTON, D.C. 20003 • (202) 547-2800

January 21, 1981

Mr. George A. Leger  
First Secretary MC of Canada  
Ambassy of Canada  
1746 Massachusetts Avenue, N. W.  
Washington, D. C. 20008

DATE	
ACC	131919 REF
FILE	DOSSIER
BY HAND	PAR PORTEUR
ATTN:	
378-1-2	

Dear Mr. Leger:

Per our telephone conversation of last week, enclosed herewith is the letter of appeal which I filed with the Canadian customs authorities in the matter of a Mohawk Indian family whose Holiday gifts were siezed just before Christmas. I would appreciate it very much if you would have a look at the facts of the case to determine whether a more just, less harsh resolution might be found.

It would seem to me that the applicable Canadian law leaves room for flexibility and proper discretion in determining whether goods are to be seized or whether they should be returned subject to the payment of the required duty. While there are substantial legal arguments favoring the Mohawks, the principal consideration in this case ought to be whether under all the circumstances this is a fair and appropriate application of the law.

These Mohawks are not smugglers. They are native people who live in both our countries and who must constantly traverse a border which they did not create. The importance and fairness of respecting the Indians' freedom of movement is reflected in the treaties of 1794 and 1814 mentioned in our appeal. Even though these rights may be largely ignored in present day Canadian law, I think it is a strong reason for reexamining the present case to try to find a more just result.

Returning the goods to the Mohawks in this case would not create a precedent because of the particular facts of this case. While it would be desirable to reach a long-run solution, that is not necessary to do now.



Mr. George A. Leger  
January 21, 1981  
Page Two

Please let me know if I can supply further information about this matter. I would appreciate the opportunity to discuss this matter with you further if you believe that would be helpful.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert T. Coulter", written in a cursive style.

Robert T. Coulter

Enclosure

INDIAN LAW RESOURCE CENTER  
601 E STREET, SOUTHEAST, WASHINGTON, D.C. 20003 • (202) 547-2800

January 16, 1981

Chief, Adjudications Division  
Customs and Excise Division  
17th Floor  
Sir Richard Scott Building  
Ottawa, Ontario K1N 6P1  
CANADA

Dear Sir:

DATE	
ACC	131923 REF
FILE	45-CDA-13-3-4 DOSSIER
BY HAND	PAR PORTEUR
ATTN: 37-8-1-2	

This is to request reconsideration of the seizure of a rental car and certain personal property belonging to the following Mohawk Indian individuals:

Mr. Hayden Hemlock  
Mrs. Josephine Hemlock  
Ms. Linda Hemlock  
Ms. Carla Goodleaf

The seizure numbers are:

1-1581  
1-1582  
1-1583  
1-1584  
1-1585

These goods, mostly Christmas presents, were seized on December 20, 1980, at Champlain Border. As I understand, the seizure was made pursuant to section 192 of the Customs Act.

The facts are as follows. On the evening of December 20, 1980, these individuals were travelling into Canada in a car. At the border the driver, Hayden Hemlock was asked if he had anything to declare. He remarked "just groceries" or a similar statement and was asked to pull over for an inspection. On inspection there was also found a stereo set and a few toys, items of clothing and tobacco. The total value of the items in U.S. dollars was about \$724.00. These items and their car were confiscated. The car was returned after payment of \$207.00. The groceries were not confiscated.

Chief, Adjudications Division  
January 16, 1981  
Page Two

All of the individuals involved here are Mohawk Indians, members of the Mohawk Nation and the Six Nations Iroquois Confederacy. As you know, these Mohawk people have historically lived and travelled throughout the area, having many long-established communities on both sides of the border.

The Mohawks, and in fact other Indians, have special rights in regard to the border which derive historically from the Treaty of 1794 between Great Britain and the United States. That Treaty known as the Jay Treaty in the United States contains a provision permitting Indians to cross the border between the United States and Canada and to carry with them their goods and belongings without the payment of duties.

The pertinent provision of Article III of the Treaty is as follows:

It is agreed that it shall at all times be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's Bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, freely, to carry on trade and commerce with each other.

\* \* \*

No duty of entry shall ever be levied by either party on peltries brought by land, or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any import or duty whatever. But goods in bales, or other large packages, unusual among Indians shall not be considered as goods belonging bona fide to Indians.

Article XXVIII of the Jay Treaty also provided:

It is agreed that the first ten articles of this treaty shall be permanent.....



Chief, Adjudication Division  
January 16, 1981  
Page Three

In 1796, the United States and Great Britain further agreed to the Explanatory Article of May 4, 1796, 8 Stat. 130, which provided in part:

That no stipulation in any treaty subsequently concluded by either of the contracting parties with any other State or Nation, or with any Indian tribe can be understood to derogate in any manner from the rights of free intercourse and commerce secured by the aforesaid third Article of the treaty of Amity, commerce and navigation and to the subjects of his Majesty and to the Citizens of the United States and to the Indians dwelling on either side of the boundaryline aforesaid; but that all the said persons shall remain at full liberty freely to pass and repass by land or inland navigation, into the respective territories and countries of the contracting parties on either side of the boundaryline, and freely to carry on trade and commerce with each other, according to the stipulation of the said their Article of the treaty of Amity, commerce and navigation.

The Indians were fully informed of these provisions. At Chenail Ecarte in 1796, for instance, the chiefs of the Ottawa and Chippawa Nations were told by a British spokesman that "all the Indian Nations...are to be perfectly free in their trade and hunting grounds and to pass and repass undisturbed to trade with whom they please."

Although the War of 1812 may have abrogated the provisions of the Jay Treaty, these rights were restored by the Treaty of Ghent in 1815. Article IX of this treaty reads in pertinent part:

And His Britannic Majesty engages, on his part, to put an end immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such tribes or nations respectively, all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities: Provided always that such tribes or nations shall agree to desist from all hostilities against His Britannic Majesty, and his subjects, upon the ratification of the present treaty

Chief, Adjudication Division  
January 16, 1981  
Page Four

being notified to such tribes or nations, and shall so desist accordingly.

This provision was also fully explained to the tribes. For example, in 1815, the British Deputy Superintendent General of Indian Affairs, William Claus, explained how Jay Treaty rights had been restored by the Treaty of Ghent:

I am further instructed to inform you that in making Peace with the Government of the United States of America, your interests were not neglected nor would Peace have been made with them had they not consented to include you in the Treaty which they at first refused to listen to--I will now repeat to you one of the Articles of the Treaty of Peace which secures you the peaceable possession of all the country which you possessed before the late War, and the Road is now open and free for you to pass and repass it without interruption.

In attendance at this meeting held in Burlington, Ontario were representatives of the Hurons, Shawnees, Kickapoos, Ottawas, Mesquakies, Munseys, Nanticokes, Delawares, Chippewas, Sacs, Creeks, Moravians, and Six Nations. The Six Nations representatives stated that they also spoke in behalf of the Caughnawagas and other Lower Canada Indians.

The Mohawk people have always taken most seriously their rights under these treaties. They are third-party beneficiaries of the treaties whose rights would, we believe, be internationally cognizable.

For almost 200 years these people have gone about their business crossing and recrossing the border conscious of the legal obligations of both Canada and the United States to respect their rights to cross and to be free of duties--provided of course that they are not engaged in some sort of general commerce. The Mohawks have never surrendered nor forgotten their legal rights under these treaties. This is, after all, their ancestral home where they have lived, travelled, and carried their belongings since long before the coming of non-Indians.

Treaty rights are of particular and special importance to most Indian people. These rights, most often honored in the breach, are almost all that is left to these people who once welcomed the Europeans to these lands. Is it any wonder then, that they hold

Chief, Adjudication Division  
January 16, 1981  
Page Five

these rights dear? Can we be surprised if they feel their rights are inviolable?

I ask that this case be reviewed in light of these treaty provisions and in light of the special facts of the case. These Mohawk people sincerely believe that they have a natural and treaty-guaranteed right to travel across the border with their personal goods. They truly believe that no duty is to be required or paid. To act otherwise would be to give up their treaty rights and abandon their rights as Mohawks.

I believe there was no intention of "defraud" the government or to avoid any lawful duty. There was no intention to flout the law. There was no criminal intent or act at all. It is apparent to all, even the customs officers, that these are not smugglers or criminals of any sort.

After all, only the driver of the car was questioned and his brief reply seems ambiguous to me. His reply has to be viewed in light of the facts, the historic treaty rights and the special position of the Mohawks who through no fault of their own must live on both sides of the border. Under these circumstances Mr. Hemlock's actions do not seem to warrant confiscation of the belongs, particularly the items that belonged to others.

Of course also, this was the Holiday season, a time when all of us are busy, often travelling and likely to have gifts for our families or friends. On a personal level it seems a less harsh resolution might be found.

To summarize, we believe that no duty was properly owing on the times by reason of the treaties. In any event, Mr. Hemlock believed that to be true. Therefore we ask that the goods be returned and that the \$207 paid in relation to the car be returned. In the alternative, perhaps the goods could simply be returned subject to payment of duty if they are to be taken into Canada. This alternative, while not in keeping with the treaties, would be more fair and reasonable.

Thank you for your consideration.

Sincerely,



Robert T. Coulter  
Attorney at Law



ONE 011/19

MESSAGE

Document disclosed under the Access to Information Act  
Document divulgué en vertu de la Loi sur l'accès à l'information  
ACTC/FILE/DIV/DIARY/CIRC/WF

PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
LIEU	MINISTÈRE	N° D'ORIG.			
FM/DE	OTT	EXT	GNG-0505	18APR80	RESTRICTED PRÉCEDENCE
TO/A	WSHDC				APR 18 22 48 '80
INFO	CNGNY				

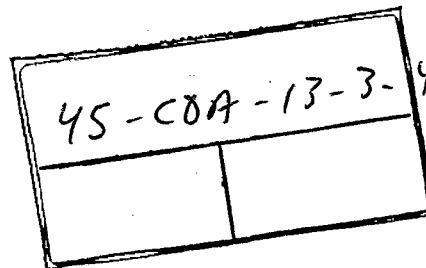
DISTR. FIA GNP CSP MIN

REF

SUB/SUJ

INDIAN DELGN TO WSHDC

FOR YOUR INFO, MOHAWK INDIANS OF BAY OF QUINTE ARE REPORTEDLY INCENSED OVER  
LANGUAGE OF TREATY MONEY TRANSFER FROM CDN GOVT. TRIBE SPOKESMAN SAYS REPS  
OF TRIBE INTEND TO GO TO WSHDC NEXT WK TO SEEK FOREIGN AID.



DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APProuvé
SIG..... E. JOHNSTON/SS	GNG	2-7560	SIG..... P. HEINBECKER/DIR

file/diary/circ/wf/div

B. Hambleton

A. Park

45-CDA-13-3-4	
18	

RESTRICTED

August 22, 1979

GNT-857

Indian land claims in USA

KJM

The Minister's office (de Saaberry) has asked us to look into the question of whether the Department is able to do anything in support of Canadian Indian land claims in the US. This has arisen as a result of a phone call from the Tobique Indian band in New Brunswick which apparently has such a claim and has requested a meeting with departmental officials. There are no further details.

2. As the resident expert in these matters, could you please check into it and see what might be done. He is hoping to get back to them soon.

Anne Park

MAY 31 1979

ACTION

SUITE A DONNER

WASHINGTON DC

UNCLASSIFIED

FM WSHDC UNGR2724 30MAY79

TO EXTOTT GNG

INFO INAHULL/ONC/FAULKNER/BERNIER/COUTURE EANDIOTT

DISTR FLA CSO

---REQUEST FOR INFO ON CDN NATIVE RIGHTS

WE HAVE RECEIVED FOLLOWING REQUEST FROM HEAD OF EDITORIAL RESEARCH,  
ATLANTIC BOOKS, PUERTO RICO.

TEXT BEGINS: IT IS OUR UNDERSTANDING THAT JAY TREATY PROVIDES FOR  
FREEDOM OF IMMIGRATION BETWEEN USA AND CDA FOR NATIVE AMERICANS.  
WE WOULD BE INTERESTED IN HAVING INFORMATION ON PROCEDURE TO BE  
FOLLOWED BY AN AMERICAN INDIAN WISHING TO USE THIS PROVISION TO  
VISIT OR RESIDE IN CDA. WHAT IS CDN GOVERNMENTS DEFINITION OF AMERICAN  
INDIAN FOR THIS PURPOSE? IS ANY SPECIAL TYPE OF IDENTIFICATION  
ISSUED? FOR EXAMPLE, USA IMMIGRATION AND NATURALIZATION SERVICE ISSUES  
A RESIDENT IDENTIFICATION CARD TO A CDN INDIAN WISHING TO ENTER  
THE USA UNDER THIS PROVISION.

ANSWERS TO THESE SPECIFIC QUESTIONS AS WELL AS ANY GENERAL  
INFORMATION ON POINT WOULD BE HELPFUL. DO YOU HAVE COPIES OF  
APPLICATION FORMS THAT WOULD BE USED IN SUCH CASES? TEXT ENDS.

2. GRATEFUL YOU PROVIDE ELEMENTS OF RESPONSE.

UUU/099 301641Z UNGR2724

Parry - 5-6-426

- actual procedure from immigration



file diary circ div

The Canadian Embassy,  
WASHINGTON, D.C.

The Under-Secretary of State  
for External Affairs, OTTAWA

Your letter No. 1391 dated September 19/78  
and your telegram No. UNCS9025 dated  
February 2/79

Arrest of Albert Calabazza -  
Seizure of Personal Property

UNCLASSIFIED

February 23, 1979

DATE	FLO-765	
ACC	16525	REL
FILE	83-19-1-2-1006	DOSSIER
BY HAND	PAR PORTEUR	
ATTN:	cc 45-CWA-13-3-4	

... We attach for transmission to Mr. Richard J. Smith, Director, Office of Canadian Affairs of the Department of State, a report from Inspector D.A. Docker of the RCMP on the incident under reference.

CSOG-wo/a

FLA/PARRY-  
w/a ...

2. As regards the Jay Treaty, the attached copy of a letter of September 7, 1978 to Miss Green, a researcher in Native American Studies at the University of Lethbridge, sets out the Canadian position, namely that "Article III (so far as it relates to the right of Indians to pass across the border), Article IX and Article X may still be in force for Canada".

3. You may pass this letter to Mr. Richard J. Smith, Director of Canadian Affairs, and advise him that there would appear to be no essential difference between the Canadian position and that of the State Department, as outlined in his letter of September 12, 1978 to Mr. James Little Bull. In the United States there have been a number of cases bearing on the Jay Treaty, but none of these, to our knowledge, has focussed specifically on the issue of Indian passage rights under Article III. In Canada there has been only one case, Francis vs. The Queen, where the Supreme Court of Canada did not rule on whether Article III was still in force for Canada and did not consider whether the terms of the Jay Treaty were abrogated by the War of 1812. Because, in Canadian law, rights and obligations contained in a treaty (in Canadian terminology this would embrace any international agreement between States governed by international law) can only be effective if there is implementing legislation, we place the emphasis on the absence of implementing legislation, i.e. "the effect of the

.../2

- 2 -

Supreme Court decision in Francis vs. The Queen is that even if Article III of the Jay Treaty were still in force for Canada it does not operate of itself to confer upon Indians a right to customs exemption under Canadian law because implementing legislation was necessary to make it effective in domestic law and no such legislation existed". Further, in reply to a recent letter from Mr. Noel Starblanket, President of the National Indian Brotherhood, he was advised that it was not the intention of the Canadian Government to implement those provisions of the Jay Treaty which may still be in force.

(*for file*) Under-Secretary of State  
for External Affairs

781011

PLEASE ADDRESS  
CORRESPONDENCE TO:

THE COMMISSIONER  
ROYAL CANADIAN MOUNTED POLICE  
OTTAWA, CANADA  
K1A 0R2



HEADQUARTERS  
DIRECTION GÉNÉRALE

LE COMMISSAIRE  
GENDARMERIE ROYALE DU CANADA  
OTTAWA, CANADA  
K1A 0R2

YOUR NO. 83-19-1-2-USA  
VOTRE NO.

OUR NO. 77 HQ 098-1846  
NOTRE NO. 77 HQ 098-1949

78-10-10

Mr. Erik B. Wang,  
Director,  
Legal Operations Division,  
Department of External Affairs,  
Lester B. Pearson Building,  
125 Sussex Drive,  
OTTAWA, Ontario.  
K1A 0G2

543

Dear Mr. Wang:

In reply to your letter dated 78-09-29, with enclosures from the Canadian Embassy, Washington, D.C., the following information is provided concerning alleged injustices imposed on one Albert Calabaza at Lethbridge, Alberta, in July, 1977. They were similarly provided to Mr. E. F. Suarez, Sr., Chief, Division of Law Enforcement Services, United States Department of the Interior, Bureau of Indian Affairs, Washington, D.C., in response to his request in March of this year.

On 77-07-07 Albert Calabaza was arrested at Standoff, Alberta, while actually engaged in the act of selling jewellery which had been unlawfully entered into Canada. Jewellery owned and priced by Calabaza at \$11,601.60 was seized, together with a 1977 Ford S.W. bearing California licence plates. Jewellery owned by Mary Frances Little Bull valued at \$8,399.00 was similarly seized.

This jewellery was entered into evidence in a Provincial Court trial in Lethbridge, Alberta. Following an adjournment, Little Bull could not be located and the trial could not proceed so a Stay of Proceedings was entered.

On 78-04-05 Revenue Canada, Customs authorized the release of the vehicle to the lease holder, Federal Credit Union, Downey, California. They paid the \$1,000.00 vehicle penalty and exported the car.

... /2

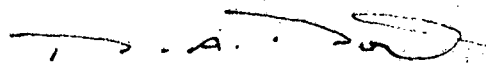
- 2 -

Although the jewellery has been technically forfeited, Revenue Canada in Ottawa was again contacted on 78-10-05. Terms of release for the jewellery have been authorized, and will be officially extended to Calabaza and Little Bull by the seizing member when the goods are released from the custody of the Court. The terms for release of the jewellery have been established as a penalty equal to the value plus duty plus Sales and Excise taxes, amounting to \$17,663.47 for Calabaza and \$12,303.48 for Little Bull. In the event Mr. Calabaza wishes to take release of these goods and then export them from Canada under Customs supervision, they may be taken upon payment of a penalty equal to duty in the amounts of \$2,892.40 and \$2,099.75, respectively.

In reply to questions raised by Mr. James Little Bull, the Royal Canadian Mounted Police Act, Section 17(3), authorizes all members of the Force to be peace officers and to have jurisdiction in every part of Canada.

It has also been noted that no appeal was received pursuant to Section 153(1) of the Customs Act. This Section provides that a Notice of Appeal, in writing, may be made to the seizing officer within one month from the day of seizure.

Yours truly,



D. A. Docker, Inspector,  
Officer in Charge,  
Customs and Excise Branch.

c.c.: Adjudications Division, Revenue Canada.

Lethbridge Customs and Excise Section.

Liaison Officer, Washington, D.C., U.S.A.

Diary  
Div.  
Circ.

cc: O.I. (16-10-1)

OTTAWA, K1A OG2

FLA-856

September 7, 1978

Dear Miss Green,

This is in reply to your letter of July 11, 1978 in which you request our interpretation of the Jay Treaty of 1794.

Our conclusion is that the following articles of the Jay Treaty (Treaty of Amity, Commerce and Navigation between Great Britain and the United States, signed at London on November 19, 1794) may still be in force for Canada: Article 3 (so far as it relates to the right of Indians to pass across the border), Article 9 and Article 10. The remaining articles have been terminated or fulfilled.

The position of the United States State Department is similar. "U.S. Treaties in Force as of January 1, 1978", a State Department publication, contains this notation regarding the Jay Treaty: "Only Article 3 so far as it relates to the right of Indians to pass across the border, and Articles 9 and 10 appear to remain in force".

We are sorry that it is not possible for us to be more definite. The problem revolves around the effect of war on treaties and, specifically, whether the War of 1812 abrogated Articles 3, 9 and 10 of the Jay Treaty.

In Francis v. The Queen (1956) 3 DLR (2d) 641 the Supreme Court of Canada held that a Canadian Indian was subject to general customs legislation and could not claim exemption from customs duties in respect of household articles imported

.... /2

Miss Joyce A. Green,  
Researcher,  
Native American Studies,  
University of Lethbridge,  
4401 University Drive,  
LETHBRIDGE, Alberta,  
T1K 3N4.



- 2 -

by him from the United States. The Court did not rule on whether Article 3 was still in force for Canada and did not consider whether the terms of the Jay Treaty were abrogated by the War of 1812. The effect of the Supreme Court decision in Francis v. The Queen is that even if Article 3 of the Jay Treaty were still in force for Canada it does not operate of itself to confer upon Indians a right to customs exemption under Canadian law because implementing legislation was necessary to make it effective in domestic law and no such legislation existed.

There have been a number of court cases in the United States bearing on Articles 3, 9 and 10 of the Jay Treaty but none of these cases, to our knowledge, has focussed specifically on the issue of Indian passage rights under Article 3 of the Jay Treaty. The most recent U.S. case on Article 3 appears to be a 1976 decision by the U.S. Customs Court in Akins v. United States, a note on which is attached.

We hope this information will be of assistance.

Yours sincerely,

W. H. Montgomery

W.H. Montgomery,  
Director,  
Legal Advisory Division

[Vol. 71]

1977]

JUDICIAL DECISIONS

791

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the Dominican Republic with a crew comprising nationals of both states. As it had not been shown that the ship, its owners, or the crew had had any point of contact with the United States, the District Court for Puerto Rico granted defendants' motion for dismissal for want of jurisdiction (Fed.R.Civ.P. 12(b)(2)) and with prejudice. The Court of Appeals for the First Circuit affirmed this decision per curiam but struck the words "with prejudice." In a second suit in the Southern District of New York, the same facts were found. The Court dismissed this suit for want of jurisdiction and for improper service on defendants (Fed.R.Civ.P. 12(b)(2)(5)). Plaintiffs' motion to reargue the case was denied by the District Court (S.D.N.Y.), as was their effort to have the dismissal order set aside on the ground that their suit could now be heard following the striking of "with prejudice" by the Court of Appeals for the First Circuit. Plaintiffs then appealed from the orders of dismissal. The Court of Appeals for the Second Circuit affirmed the decisions of the District Court (S.D.N.Y.).

The problem was whether plaintiffs had any cause of action which could be heard in the United States. Their effort to find a remedy under Liberian law which they said "empower[ed] the courts to consider the non-statutory General Maritime Law of the United States of America"<sup>1</sup> could not override the doctrine of *res judicata* here in the opinion of Circuit Judge Anderson; and foreign law could not be applied by a federal court in a case in which its jurisdiction was not established.

Plaintiffs contended that the fact that defendant Caribbean Carriers Ltd. included a U.S. national and a person having dual United States-Dominican nationality among its directors and that the ship's operations had been financed in part through sources in the United States established contacts with the United States for purposes of this suit. The Court found no merit in these arguments, pointing out that the Jones Act could not be extended to foreign seamen solely on the grounds of the mode of financing of the ship.<sup>2</sup>

*Treaties—abrogation by war—abrogation by subsequent legislation— 1794 Jay Treaty—Indian rights*

AKINS v. UNITED STATES. 551 F.2d 1222.

U.S. Court of Customs and Patent Appeals, Mar. 31, 1977.

Plaintiff, a U.S. national and a Penobscot Indian residing in the United States, protested the imposition of customs duties on a pair of hiking boots which he had bought in Canada for his own use. He contended that under Article III of the 1794 Treaty of Amity, Commerce and Navigation (Jay Treaty) (8 Stat. 116, TS 105, 12 Bevans 13) members of the Six Nations were exempted from the payment of customs duties on goods which they transported across the border for personal use. Defendant argued that Article III had been abrogated by the War of 1812. Both

<sup>1</sup> 552 F.2d 70, 72.

<sup>2</sup> The Court observed that this argument represented an effort to invoke *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306 (1970), *rehearing denied*, 400 U.S. 856 (1970); 64 AJIL 960 (1970).

parties moved for summary judgment. The Customs Court denied plaintiff's motion (407 F.Supp. 748 (1976); 71 AJIL 357 (1977)). On appeal, the Court of Customs and Patent Appeals affirmed the decision below.

Examining the history of Article III and the effect of the War of 1812 thereon, subsequent tariff legislation passed by Congress up to 1897, and relevant judicial decisions, Judge Baldwin concluded that Article III had been abrogated by the War of 1812. Although Article III was self-executing, nevertheless Congress had provided for an exemption from customs duties for Indians in the Tariff Act of 1799 and had continued this or similar provisions until 1897. The relevant provision was not re-enacted in the Tariff Act of 1897. The Court concluded that "we cannot revive the duty exemption which history and the law have firmly ended."

<sup>1</sup> 551 F.2d 1222, 1230.

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Mr. J.B. Beckett,  
Legal Services,  
Indian & Northern Affairs.  
(with attachments)

File/Diary/Div/Circ

BEST COPY AVAILABLE

FLA-474

OTTAWA, KIA OG2

DATE	
FEB 19 1979	15699
FILE	45-Cda-13-34
BY	W
RECEIVED	

Dear Mr. Horn,

This is in reply to your letter of December 31  
to the Secretary of State for External Affairs concerning  
the Jay Treaty of 1794.

I understand that your interest relates to that  
part of Article 3 of the Jay Treaty dealing with the right  
of Indians to cross the border which reads as follows:

"It is agreed that it shall at all times  
be free to His Majesty's subjects, and  
to the citizens of the United States, and  
also to the Indians dwelling on either  
side of the said boundary line, freely  
to pass and repass by land or inland  
navigation, into the respective territ-  
ories and countries of the two parties,  
on the continent of America, ..."

Our conclusion is that the following articles  
of the Jay Treaty (Treaty of Amity, Commerce and Naviga-  
tion between Great Britain and the United States, signed  
at London on November 19, 1794) may still be in force for  
Canada: Article 3 (so far as it relates to the right of  
Indians to pass across the border), Article 9 and Article  
10. The remaining articles have been terminated or ful-  
filled.

.... /2

Mr. Frank T. Horn,  
Box 772,  
Caughnawaga Indian Reserve,  
CAUGHNWAGA, P.Q.

FLA

FEB 12 1979

9.2.9(us)

- 2 -

The position of the United States State Department is similar. "U.S. Treaties in Force as of January 1, 1978", a State Department publication, contains this notation regarding the Jay Treaty: "Only Article 3 so far as it relates to the right of Indians to pass across the border, and Articles 9 and 10 appear to remain in force".

In Francis v. The Queen (1956) 3 DLR (2d) 641 the Supreme Court of Canada held that a Canadian Indian was subject to general customs legislation and could not claim exemption from customs duties in respect of household articles imported by him from the United States. The Court did not rule on whether Article 3 was still in force for Canada and did not consider whether the terms of the Jay Treaty were abrogated by the War of 1812. The effect of the Supreme Court decision in Francis v. The Queen is that even if Article 3 of the Jay Treaty were still in force for Canada it does not operate of itself to confer upon Indians a right to customs exemption under Canadian law because implementing legislation was necessary to make it effective in domestic law and no such legislation existed.

There have been a number of court cases in the United States bearing on Articles 3, 9 and 10 of the Jay Treaty but none of these cases, to our knowledge, has focussed specifically on the issue of Indian passage rights under Article 3 of the Jay Treaty.

We are sorry that it is not possible for us to be more definite. The problem revolves around the effect of war on treaties and, specifically, whether the War of 1812 abrogated Articles 3, 9 and 10 of the Jay Treaty.

To turn to the questions raised in your letter, Article 3 of the Jay Treaty, insofar as it relates to the right of Indians to pass across the border, appears to be still in force and this would permit Canadian Indians to cross the U.S. border. You ask what would be the effect of changes in the Indian Act which would affect the status of Indians so that they might not be "British subjects". I suggest that this question be put to the Department of Indian Affairs and Northern Development as their Minister is responsible for the Indian Act. As regards possible repatriation of the Constitution, i.e. the British North

.... /3

- 3 -

America Act, this would not affect those provisions of the Jay Treaty which may still be in force.

I hope this information will be of some assistance.

Yours sincerely,

*ALL*  
Allan Lever,  
Executive Assistant

Office of

The Secretary of State for External Affairs



Cabinet du

Secrétaire d'Etat aux Affaires extérieures

Canada

Ottawa

January 24, 1979

Dear Mr. Horn,

Re: Jay Treaty

On behalf of the Honourable Don Jamieson  
I wish to acknowledge receipt of your letter dated December 31,  
1978 on the above reference.

Please be assured that your letter has  
been brought to the Minister's attention.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "M Humeniuk".

Matthew Humeniuk  
Administrative Assistant

Mr. F.T. Horn  
Box 772  
Caughnawaga Indian Reserve,  
Caughnawaga, P. Q.



CC: Mr. B. Beckett  
Legal Services  
Indian & Northern Affairs

GNT

"Return to FLA"

DS"

File / Diary / Div / Circ

BEST COPY AVAILABLE

OTTAWA, KIA 0G2

JAN 30 1979

FLA-249

ACC

13 240

FILE

45-Cda-13-3-4

BY HAYB

PAR PORTEUR

Dear Mr. Starblanket,

This is in reply to your letter of December 7, 1978 concerning the Jay Treaty of November 19, 1794.

The Jay Treaty was concluded between Great Britain and the United States at a time when Britain was responsible for the external relations of the Canadian colonies. It was ratified by both Britain and the United States, the instruments of ratification being exchanged at London on October 28, 1795 when the treaty entered into force.

Most of the provisions of the Jay Treaty have either been fulfilled or terminated. The only articles which may still be in force are Article 3 (so far as it relates to the right of Indians to pass across the border), Article 9 and Article 10. The uncertainty about these articles of the Jay Treaty centres on the effect of war on treaties and, specifically, whether the War of 1812 abrogated Articles 3, 9 and 10 of the Jay Treaty. This question has never been addressed directly by a Canadian court. In *Francis vs The Queen* (1956) 3 DLR (2d) 641, the Supreme Court of Canada held that a Canadian Indian was subject to general customs legislation and could not claim exemption from customs duties in respect of household articles imported by him from the United States. The Supreme Court reached this decision because of the absence of implementing legislation in Canada. It did not rule on whether Article 3 was still in force for Canada and did not consider whether the terms of the Jay Treaty were abrogated by the War of 1812.

The effect of the Supreme Court decision in *Francis vs The Queen* is that even if Article 3 of the Jay Treaty is still in force for Canada it does not operate of itself to confer upon

.../2

Mr. Noel V. Starblanket  
President  
National Indian Brotherhood  
1st Floor Bankall Building  
102 Bank Street  
Ottawa, K1P 5N4

FLA

- 2 -

Indians a right to customs exemption under Canadian law because implementing legislation was necessary to make it effective and no such legislation now exists.

In response to the two questions raised in your letter it is not the intention of the Government to implement those provisions of the Jay Treaty which may still be in force, nor is it the Government's intention to introduce legislation which would acknowledge the Jay Treaty as a basic document of Canada's nationhood.

You also enquire as to the difference between an agreement such as the Great Lakes Water Quality Agreement of 1978 and Indian treaties which recognize special rights of Indians. The former is an international agreement concluded between States and governed by international law while Indian treaties are, at most, contracts between the Crown and Indian bands.

I hope this information will be of assistance.

Yours sincerely,

ORIGINAL SIGNED BY  
ORIGINAL SIGNÉ PAR  
Don C. Jamieson

Don Jamieson

*Note: This reply  
was prepared in  
consultation with  
Mr Beckett, of the  
Legal Services of  
Indian & Northern  
Affairs*

*T. Barry*

002035

Ottawa  
December 13, 1978

Dear Mr. Starblanket,

On behalf of the Honourable Don Jamieson  
I wish to acknowledge receipt of your letter dated  
December 7, 1978 concerning the Jay Treaty.

Please be assured that your letter has  
been brought to Mr. Jamieson's attention.

Yours sincerely,

Original Signed By  
Original Signé par  
L. Bertrand

Luc Bertrand  
Special Assistant

Mr. Noel V. Starblanket  
President  
National Indian Brotherhood  
1st Floor  
Bankal Building  
102 Bank Street  
Ottawa, Ontario

EXTERNAL AFFAIRS - AFFAIRES EXTÉRIEURES

TRANSMITTAL SLIP - NOTE D'ENVOI

TO/À MIN (through AEG ~~FLA~~)  
FROM/DE FLA ~~Job~~  
SUBJECT/SUJET Jay Treaty of November 19,  
1794

SECURITY UNCLASSIFIED  
SÉCURITÉ

FILE  
DOSSIER

DATE January 17, 1979

RECORD OF CONSULTATION - RAPPORT DE CONSULTATION

COPIES SENT TO:  
(DIV. SYMBOLS)  
EXEMPLAIRES  
ADRESSÉS À:  
(SYMBOLES DE DIR.)

PREPARED IN CONSULTATION WITH  
(NAMES OF INDIVIDUALS AND DIVISIONAL SYMBOLS)  
ÉTABLI EN CONSULTATION AVEC  
(NOMS DES INDIVIDUS ET SYMBOLES DE DIRECTION)

MIN  
GNT

Mr. J.B. Beckett  
Legal Services  
Indian & Northern  
Affairs

Indian & Northern  
Affairs/Beckett

Ref. No. 1798.

Letter for your signature  
on the above subject, if  
you agree.

For further information please  
contact Mr. J.O. Parry of  
Legal Advisory Division, FLA  
at 6-5426.

TO BE RETAINED WITH FILE COPY - A CONSERVER AVEC L'EXEMPLAIRE DESTINÉ AU DOSSIER

002037

to the HONOURABLE Don Jamieson  
Minister for External Affairs,  
House of Commons, Ottawa, Canada.

December 31 1978

From Frank Taiotekane Horn, Box 772  
Caughnawaga Indian Reserve, Caughnawaga, PQ.

DATE	
ACC 15699	REF
FILE 45-CA-13-3-4	DECEMBER
BY HAND	PAR PORTEUR
ATTN:	

Re Inquiry as to rights that may be used at present  
and may be forfeited if Jay Treaty (USA-Great Britain)  
Honourable Don Jamieson: ceases to aid Indians.

Permit me to very respectfully turn to you for  
your guidance, following my being greatly impressed with your poised and very  
considerate reactions to the questions on Television over last week end. You  
were most precise and impressive.

In 1794 in desperation to settle the border dis-  
pute with Great Britain, the US government followed the plan of Mr Justice  
Jay, and created the Jay Treaty between US and Great Britain which allowed  
their subjects (including the registered Indians living in Canada) to cross  
the border for work, commerce, and trade. This has continued with 39% <sup>6,195</sup> (18,000)  
of the Indians who are gainfully employed in Canada working in the US via  
the benefits originally granted under the Jay Treaty to cross the border.  
~~Now~~ Now the Indians cross the border freely at all times through the  
arrangements which the US Dept of Justice have advised me allows persons who  
are 50% Indian to cross the border, but not to settle as residents of the US  
(as Indians have been doing at their will since 1794).

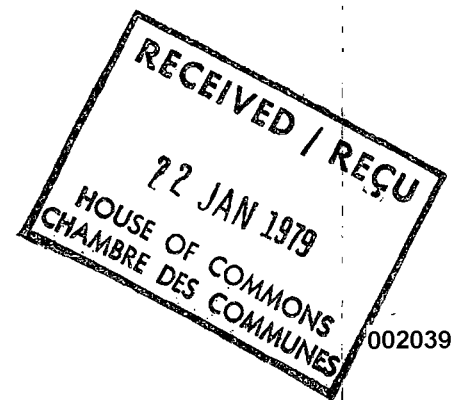
However with a change in the Indian Act to  
change from "50% Indians blood" or repatriation of the constitution could well  
affect the status of the Indians crossing the border because they will not be  
"British subjects" and they will not be aided by the US-Britain Jay Treaty.  
Does the Jay Treaty permit our Indians entry now? If not what does?  
What will be the future changes if Constitution repatriation?



REGISTRY

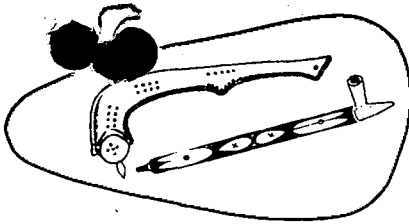
JAN 22 1979

O/SSEA



002039

FLA 1798



# NATIONAL INDIAN BROTHERHOOD

1st FLR. BANKAL BUILDING 102 BANK ST., OTTAWA K1P 5N4 (613) 236-0673  
TELEX 053-3202

December 7, 1978.

Honourable Donald Jamieson,  
Minister,  
Secretary of State for  
External Affairs,  
Room 438-N,  
House of Commons,  
Ottawa, Ontario.  
K1A 0A6

DATE	
ACC	13242
REF	
FILE	45-Cda-13-3-4
DOSSIER	
BY HAND	PAR PORTEUR
ATTN:	

Dear Mr. Jamieson:

We have observed that immediately upon signing the Great Lakes Water Quality Agreement on November 22, 1978, steps have been taken by your government and the Province of Ontario to implement its provisions.

But we have also observed that the Jay Treaty of 1794 between the United States and Great Britain has not been ratified. (Supreme Court, 1956, Francis vs Regina). The government of Canada has been officially aware of this omission since 1956. In light of the government's move to implement immediately the provisions of the Great Lakes Quality Agreement, we were interested in determining whether the government has shifted its policy on the implementation of the Jay Treaty.

Is it the intention of the government now to:

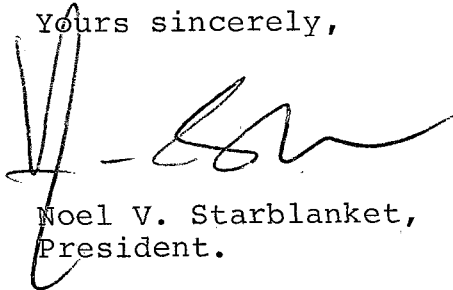
- a) Implement the forms of the Jay Treaty?
- b) Introduce into Parliament, legislation to ratify and acknowledge the Jay Treaty as a basic document of Canada's Nationhood?

.../2

- 2 -

If it is not the government's intention to pursue these two routes, there must be another interpretation of the implementation of the International Law of Treaties of which we are not aware. We would appreciate your views as to the difference between the current "agreement" and Treaties which recognize special rights of Indians.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Noel V. Starblanket', written over the typed name.

Noel V. Starblanket,  
President.





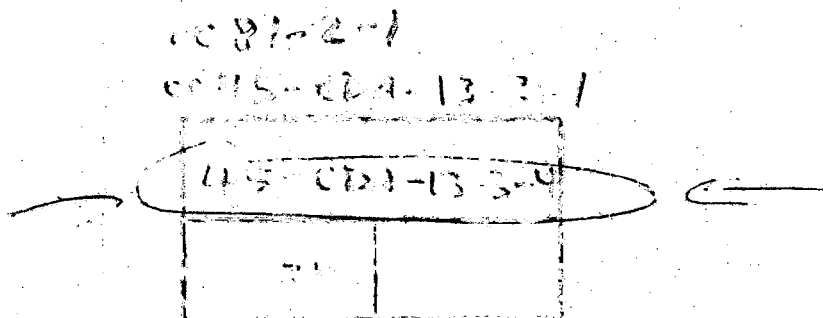
OPINIONS INDEX FILE 16.10.1

CONFIDENTIAL

FLA/J.O. Parry

September 7, 1978

Jay Treaty



In a 65-page opinion prepared by Ken Peel (a very good summer student) in 1975 (Opinions Index 16.10.1) the conclusion is reached that:

- (1) Article 3 was abrogated by the War of 1812;
- (2) Article 9 was executed but rights of property vested under the Jay Treaty, and remedies incident thereto, remain available to those capable of tracing direct title back; and
- (3) Article 10 remains in force.

But the argument re Article 3 is undercut by the conclusion that "even if the provisions of Article 3 regarding native rights and privileges was not abrogated by the War of 1812, the radical change of circumstances evident since that time has provided grounds for either party to terminate the provisions by invocation of the doctrine of 'rebus sic stantibus'".

2. However, this doctrine (rebus sic stantibus) does not operate automatically to terminate a treaty; it must be invoked by one or other of the parties, as pointed out in Joe Stanford's memorandum of January 16, 1969. And neither Canada nor the United States has invoked changed circumstances as a ground for terminating Articles 3, 9 or 10 of the Treaty.

.... /2

- 2 -

CONFIDENTIAL

3. Michael Vechsler's letter of February 27, 1975 to the Legal Adviser of FIRA is, in my view, the best assessment of the situation in the absence of any determination by a Canadian Court of the validity of these provisions of the Jay Treaty. The U.S. State Department position is similar because, insofar as Article 3 is concerned, none of the U.S. cases has focussed on the issue of the border crossing rights of Indians.

J. O. PARRY

J.O. Parry

(IV.2)

De: MISPERNY (Plamondon)

To: FLA (Traité)

From/De: ACRA

MAY 12 1976

Att'n: Mrs. B. C.

*Treaty file aw.*

UNITED NATIONS



NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.136.1976.TREATIES-3

3 May 1976

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL  
FORMS OF RACIAL DISCRIMINATION  
OPENED FOR SIGNATURE AT NEW YORK ON 7 MARCH 1966

ACCESSION BY ZAIRE

4 5-13-3-4	
f	S

Sir,

I have the honour, upon instructions from the Secretary-General, to inform you that, on 21 April 1976, the instrument of accession by the Government of Zaire to the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature at New York on 7 March 1966, was deposited with the Secretary-General.

In accordance with paragraph 2 of article 19, the Convention will enter into force for Zaire on the thirtieth day after the date of the deposit of its instrument of accession, that is to say on 21 May 1976.

Accept, Sir, the assurances of my highest consideration.

RECEIVED - REÇU

MAY 11 1976

LEGAL ADVISOR  
DEPARTMENT OF EXTERNAL AFFAIRS  
DIRECTION DES CONSULATS  
MONTREAL  
MINISTRE DES AFFAIRES ÉTRANGÈRES

*Erik Suy*  
Erik Suy  
The Legal Counsel

The Secretary of State for External Affairs  
Department of External Affairs  
Ottawa  
Canada

ENTERED IN  
CANADA TREATY REGISTER

002045

(IV.2)

UNITED NATIONS



NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE: C.N.136.1976.TREATIES-3

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Accept, Sir, the assurances of my highest consideration.

COPY

A handwritten signature in dark ink, appearing to read 'Erik Suy'.

Erik Suy  
The Legal Counsel

The Secretary of State for External Affairs  
Department of External Affairs  
Ottawa  
Canada

(IV.2)

UNITED NATIONS



NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE: C.N.136.1976.TREATIES-3

3 May 1976

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FORMS OF RACIAL DISCRIMINATION  
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Accept, Sir, the assurances of my highest consideration.

COPY

A handwritten signature in ink, appearing to read 'Erik Suy'.

Erik Suy  
The Legal Counsel

The Secretary of State for External Affairs  
Department of External Affairs  
Ottawa  
Canada

002047

*3-K To file  
M.K. Warren*

**From/De ACRA**  
**FEB 25 1976**  
**Attn: Warren**

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A Under-Secretary of State  
for External Affairs, Ottawa (GEC)

FROM  
De Canadian Embassy, Oslo, Norway

REFERENCE  
Référence

SUBJECT  
Sujet Norwegian Prime Minister's Speech  
on Status of Women

SECURITY  
Sécurité UNCLASSIFIED

DATE 10 February 1976

NUMBER  
Numéro 74

FILE	DOSSIER
OTTAWA	
45-13-4	
MISSION	
29	43

ENCLOSURES  
Annexes

DISTRIBUTION

By Ottawa

Sec. of  
State

Comm. on  
Equal Status  
for Women

ECD

UNS

In a speech at a seminar in Tonsberg held as a follow-up to the Mexican conference on International Women's Year, the Norwegian Prime Minister, Mr. Odvar Nordli made a strong statement on the need for women to have an equal position with men in a democratic society. He said that it was indefensible and undemocratic that so few women were elected to public offices or placed in administrative positions. He stated that there was no doubt that male domination had meant that a number of subjects that were of particular interest to women had been overlooked. He said, "We have not used the insight and the experience that women have. Men have defended the system by saying that women's traditional occupations (as mothers, housewives) are more important. It would be interesting to speculate to what degree the increasing problems amongst young people, psychological disturbances amongst children and others unfortunately placed in our modern society, can be blamed on this philosophy."

2. Mr. Nordli continued by saying that he did not mean to suggest that women must necessarily become part of the decision-making process because they were specialists in the question of social affairs. He said that "participation of women in public life is just as important in the formation of industrial and local municipal policies in order to build a more humane society and produce a higher standard of life. He said that the policy of equal pay for equal work is much more than a question of bettering the rights of a neglected group. He foresaw no easy solution, but said that the problem required longterm political solutions which would involve a broad range of areas including family law reform, social insurance reform, and tax reform. The Prime Minister said that family law and equal pay questions are extricably connected. He concluded by saying that the question of equal pay concerned the progressive development of a democratic society.

/in

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002048

UNCLASSIFIED

- 2 -

Aid

3. As a follow up at the seminar the Director General of the Foreign Ministry, Mr. Paal Bog, said that Norway would give aid projects that favour women high priority. Mr. Bog said that although Norway could not dictate conditions to the recipient, it would do its share to focus attention on women's problems in developing countries.

4. Four of the sixteen members of the Norwegian cabinet are women, holding the following portfolios: Justice; Consumer Affairs and Government Administration; Social Affairs and Environment.

  
The Embassy



MTN Multilateral Trade Negotiations, Delegation

OTTAWA, Ontario  
KLA OG2

October 23, 1975

45-00A-13-3-4	
19	

... Further to your letter of October 13, 1975 asking us to obtain a copy of the Exchequer Court Decision of the early 1950's on the GATT Treaty, please find attached a copy, which we received directly from the Court. The Tariffs Division in Finance was also interested and we have forwarded a copy to them. I must admit I found it fascinating reading myself.

I too would hope to be in Geneva before too long but there seems to be considerable debate as to attendance at the TNC and while I still think it would be extremely useful if I did attend, my attendance is by no means certain at this time.

Yours sincerely,

Robert R. Fowler

Mr. J.M. Weekes,  
First Secretary,  
MTN Delegation  
GENEVA

CANADIAN DELEGATION



DÉLÉGATION DU CANADA

17-19 Champ d'Anier, Geneva,  
October 13, 1975

45-ODA-13-3-4

19	
----	--

Mr Wilson

— COULD YOU TAKE THIS ON  
ON A PRIORITY BASIS?

Dear Bob,

Rodney Grey has asked whether you could obtain for us a copy of the Exchequer Court decision of the early 1950s on the Jay Treaty. Apparently a band of Canadian Indians was attempting to import electrical equipment from the United States and claimed that the Treaty permitted them to do this free of duty. The decision of the Exchequer Court is the definitive statement of the relationship of Canadian customs law to international agreements.

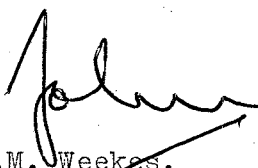
— FIN ARE UNABLE TO HELP  
ALTHOUGH THE  
(CRAIG TURNER)  
WOULD LIKE  
A COPY

— START  
WITH THE  
COURT.

Mr. Grey suggests that Joe Loomer might have a copy of this decision or be able to tell you how to acquire it quickly.

I hope we will soon have the pleasure of seeing you in Geneva.

Yours sincerely,

  
J.M. Weekes,  
First Secretary,  
MTN Delegation.

Louis Frances  
petition of right

Mr. R.R. Fowler,  
Commercial Policy Division,  
Department of External Affairs,  
OTTAWA.

FOR USE WHEN SIGNATURE ACKNOWLEDGING RECEIPT OF DOCUMENTS IS NEEDED. ORIGINATOR TO COMPLETE BOTH SECURITY BLOCKS.  
À UTILISER LORSQU'ON EXIGE UN ACCUSÉ DE RÉCEPTION. À L'ENVOYEUR, COMPLÉTER LES DEUX ESPACES DE SÉCURITÉ.

EXTERNAL AFFAIRS - AFFAIRES ÉTRANGÈRES

TRANSMITTAL AND RECEIPT NOTE - NOTE D'ENVOI ET DE RÉCEPTION

TO  
À

EXTOTT (UNS)

SECURITY - SÉCURITÉ

WITH ATTACHMENT(S) / AVEC ANNEXE(S)

SANS COTE

WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

NO.

DATE

Le 7 mai 1974

QUANTITY QUANTITÉ	DESCRIPTION - DESCRIPTION	REFERENCE - RÉFÉRENCE
1	<p>Copie de la note FI 323(43) du Secrétaire général avec une copie du reçu officiel concernant la contribution canadienne au Comité pour l'élimination de la discrimination raciale</p> <div data-bbox="313 927 669 1213" data-label="Form"> <p>To/A <u>LYNS</u> From/De <u>ACRA</u>  MAY 13 1974  Att'n: <u>M. Massip</u></p> </div>	<div data-bbox="1138 550 1536 725" data-label="Form"> <p>45-13-3-4</p> </div>

G.Desbiens

RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION

RETURN TO / RETOURNER À

PERMIS - Canada

DATE

SIGNATURE

## TRANSMITTAL AND RECEIPT NOTE - NOTE D'ENVOI ET DE RÉCEPTION

SANS COTE

WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

TO  
À

EXTOTT (UNS)

NO.

DATE

Le 7 mai 1974

QUANTITY QUANTITÉ	DESCRIPTION - DESCRIPTION	REFERENCE - RÉFÉRENCE
1	<p>Copie de la note FI 323(43) du Secrétaire général</p> <p>avec une copie du reçu officiel concernant la</p> <p>contribution canadien au Comité pour</p> <p>l'élimination de la discrimination raciale</p> <p>45-13-3-4</p> <p>G.Desbiens</p> <p><i>Missip</i></p>	
RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION		RETURN TO / RETOURNER À  <b>PERMIS - Canada</b>
DATE	SIGNATURE	

UNITED NATIONS



NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

FI 323(43)

BEST COPY AVAILABLE

REFERENCE:

Le Secrétaire général de l'Organisation des Nations Unies présente ses compliments au Représentant permanent du Canada auprès de l'Organisation et a l'honneur d'accuser réception de sa note du 2 mai 1974, lui transmettant un chèque de \$E.U.1.892,00.

..... Un reçu officiel en double exemplaire est joint à la présente pour ce paiement qui représente le solde de la contribution du Gouvernement canadien aux dépenses du Comité pour l'élimination de la discrimination raciale pour l'année 1974.

Le Secrétaire général saisit cette occasion pour renouveler au Représentant permanent les assurances de sa très haute considération.

le 3 mai 1974

*RA*

COPY

**UNITED NATIONS**  
NEW YORK  
**CASH RECEIPT VOUCHER**

DEPOSITED IN BANK:

A/C

CODER:

CURRENCY

DATE

No. A 102425

MAY 7 10 43 AM '74

Date: 6 MAI 1974

Received from: GOUVERNEMENT DU CANADA

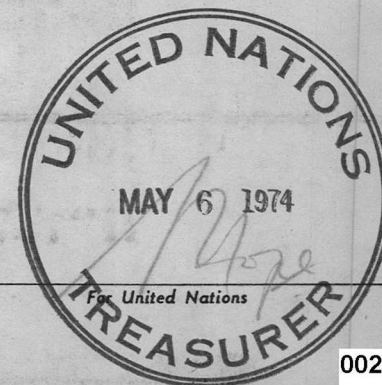
Address:

BEST COPY AVAILABLE

Amount (in words): MILLE HUIT CENT QUATRE-VINGT-DOUZE DOLLARS

In payment of: 3-3-4  
CONTRIBUTION AUX DEPENSES DU COMITE POUR  
L'ELIMINATION DE LA DISCRIMINATION RACIALEUNITED  
NATIONSDUPLICATE  
1892-00

Amount (in figures): \$E.U. 1.892,00



002055



Foreign Investment  
Review Agency

Agence d'examen de  
l'investissement étranger

Feb 19/3

*[Handwritten signature]*

*To: Mr. Stanford J.R.*

*[Handwritten circle]*

10 March 1975

Our file: 35/600

Mr. J.S. Stanford  
Acting Director  
Legal Advisory Division  
External Affairs Department  
Lester B. Pearson Building  
125 Sussex Drive  
Ottawa, Ontario  
K1A 0G2

45-CDA-13-3-4	
38	<i>[Handwritten mark]</i>

Dear Mr. Stanford:

Thank you for sending me a copy of your letter to Mr. Rosenfeld of 27 February 1975 concerning those aspects of the Jay Treaty which may be relevant to the Foreign Investment Review Act. I do appreciate receiving this information.

Yours truly,

*[Handwritten signature of G.M. Cummins]*

G.M. Cummins  
Assistant Director  
Compliance Branch (Rulings)

RECEIVED

MAR 13 1975

In Legal Advisory Division  
Department of External Affairs

File ✓  
Diary  
Div. Diary  
Circ. Diary

c.c.:  
Mr. G. Cummins  
Assistant Director  
Rulings Division  
Foreign Investment Review Agency

Foreign Investment Review Agency

Jay Treaty

Treaty of Amity, Commerce and Navigation

(3)

ECL  
GWU  
Opinion Index

OTTAWA, K1A 0G2  
February 27, 1975

45-CDA-13-3-4	
38	52

Dear Mr. Rosenfeld,

I wish to refer to our letter of May 7, 1974 to your predecessor, Mr. Boucher, concerning the Treaty of Amity, Commerce and Navigation (Jay Treaty) between the United Kingdom and the United States which was signed at London on November 19, 1794. In that letter, we stated that we would be undertaking a further examination of the Jay Treaty in order to determine which, if any, of its provisions are at present binding on Canada, and that we would inform you of the results of our examination in so far as they might be relevant to the Foreign Investment Review Act.

The results of our further consideration of this question have been to confirm that the following articles of the Jay Treaty may still be in force for Canada: Article 3 (so far as it relates to the right of Indians to pass across the border); Article 9, and Article 10.

Of these three articles, only Article 9 would appear to have any possible relevance for the Foreign Investment Review Act. This Article states:

"It is agreed, that British Subjects who now hold Lands in the Territories of the United States, and American Citizens who now hold Lands in the Dominions of His Majesty, shall continue to hold them according to the nature and Tenure of their respective Estates and Titles therein, and may grant Sell or Devise the same to whom they please, in like manner as if they were Natives; and that neither they nor their Heirs or assigns shall, so far as may respect the said Lands, and the legal remedies incident thereto, be regarded as Aliens."

Even if Article 9 is still in force, it would seem, on its broadest interpretation, to be applicable only to American citizens whose title

Mr. W.P. Rosenfeld  
Legal Advisor  
Legal Advisory Division  
Foreign Investment Review Agency  
Journal Building  
300 Slater Street  
Ottawa, K1A 0H5

.../2



- 2 -

to land in Canada can be traced back through an unbroken chain of heirs and assigns to an American citizen who held that estate or title on the date that the Jay Treaty was signed or entered into force. We doubt that there is today any significant number of American citizens who would fall into this category. Furthermore, we understand that the Foreign Investment Review Act does not provide for discriminatory treatment of foreigners with regard to land which they already own in Canada, i.e. foreign owners (as opposed to prospective purchasers) are not subject under the Act to constraints in respect of land already owned. Consequently, it would seem that the application of the Foreign Investment Review Act to prospective purchases in Canada by aliens would not, in any event, result in a contravention of Article 9 of the Jay Treaty since American citizens already owning land in Canada would not be affected in respect of such ownership.

Yours sincerely,

J. S. STANFORD

J.S. Stanford  
Acting Director  
Legal Advisory Division

CC: G W U

Department of External Affairs

Jay Treaty



Canada

(2)

Ministère des Affaires extérieures

APR 14 1975

45-COA-13-34	
23	20

Ottawa KIA OG2  
April 11, 1975

U.S.A. OFW.	
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BW	PC
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Dear Mr. Horn, T.

I acknowledge receipt of your letter of April 4, 1974 to this Department, with the attached proposed address on the Jay Treaty. I regret to inform you that it is not the policy of this Department to provide substantive comments on private written material and thus that we are unable to comply with your request that we correct any inaccuracies of omissions which the proposed address may contain.

However, as regards the Jay Treaty, it is the view of this Department that Canada succeeded to the rights and obligations of those treaties which were entered into by Britain on Canada's behalf prior to our independence. This view of treaty succession, although it may differ from some of the positions on this matter which have been taken by newer states, is that of Canada. Canada could not, therefore, seek to avoid any remaining obligations to other states under the Jay Treaty (if it still were in effect) merely on the ground that it is not itself a party to that Treaty.

As far as concerns the provision of Article III of the Treaty, relating to the duty free passage of Indians across the Canada-United States border, which reads as follows:

"No Duty on Entry shall ever be levied by either Party on Peltries brought by land, or Inland Navigation into the said Territories respectively, nor shall the Indians passing or repassing with their own proper Goods and Effects of whatever nature, pay for the same any Impost or Duty whatever. But Goods in

-2-

Bales or other large Packages unusual among Indians shall not be considered as Goods belonging bona fide to Indians", there are those who consider that this provision may have become binding on Britain in international law by virtue of the reviving effect of Article IX of the Treaty of Ghent, 1815. This Article read in part as follows:

"And His Britannic Majesty engages, on his part, to put an end, immediately after the Ratification of the present Treaty to hostilities with all the Tribes or Nations of Indians with whom he may be at war at the time of such Ratification; and forthwith to restore to such Tribes or Nations, respectively, all the Possessions, Rights and Privileges, which they may have enjoyed or been entitled to in 1811, previous to such hostilities: Provided always, that such Tribes or Nations shall agree to desist from all hostilities against His Britannic Majesty, and his Subjects, upon the Ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly".

If this were so, in due course, Canada would have assumed whatever British obligations flow therefrom. As for the USA, it considers that "Article 3, so far as it relates to the right of Indians to pass across the border, appears to remain in force between the United States and Canada" (US State Department Publication "Treaties in Force" p. 255).

Even if the duty-free passage provision of Article III is regarded as still being in force between Canada and the United States, however, and leaving aside the input of the phrase "goods in bales or other large packages unusual among Indians" it would not, in the absence of implementing domestic legislation in Canada, provide any rights of duty-free passage as such to Indians. Furthermore, the obligations of an extent treaty exist only between and for the state-parties to the treaty. Therefore it is only open to a party to a treaty to question any lack of implementing domestic legislation by the other state-party. Private individuals do not have this right.

In any further examination of this subject, you may wish if you have not already done so, to consult the following works:

...3

-3-

Combs, J.A.,

The Jay Treaty: Political Battleground  
of the Founding Fathers (U. of California  
Press, 1970)

Green, L.C.,

"Canada's Indians: Federal Policy, Inter-  
national and Constitutional Law" in the  
Ottawa Law Review, Vol. 9, No. 1, 1970.

"Legal Significance of Treaties affecting  
Canada's Indians" in Anglo-American Law  
Review, Vol. 1, No. 1, 1972.

Yours sincerely,

A. W. Robertson

A.W. Robertson,  
Director  
Legal Advisory Division.

Mr. T. Horn,  
Box 772,  
Caughnawaga, P.Q.

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

TO  
À

GWU

FROM  
De

FLA

REFERENCE  
Référence

Your memorandum of March 25, 1975

SUBJECT  
Sujet

Aboriginal Peoples' Rights

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BW	PC
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APR - 9 1975

SECURITY  
Sécurité

RESTRICTED

DATE

April 9, 1975

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
45 - CDA-13-3-4	
MISSION	
10	

ENCLOSURES  
Annexes

DISTRIBUTION

CSR

We offer the following comments on the request of the Association of Iroquois and Allied Indians for legislative or administrative implementation of that part of Article III of the Jay Treaty of 1794 which relates to the duty-free passage of Indians and their own "Proper Goods and Effects of Whatever Nature" across the Canada/US border.

2. There appear to be two distinct concerns which are relevant to a consideration of the Association's request. The first is legal and the second is policy. The first concern is whether or not this particular provision of Article III of the Jay Treaty is still in force and whether, in any case, this is relevant to the Canadian position. It is the view of the US Government that "Art 3, so far as it relates to the right of Indians to pass across the border, appears to remain in force between the United States and Canada". (US State Department Publication "Treaties in Force" p.255). In the past, this Division has expressed the view that, "... the provisions of Article III of the Jay Treaty are at present probably binding upon Canada by virtue of Article IX of the Treaty of Ghent". (Legal Division memorandum of January 16, 1969 to U.S.A. Division). The matter, however, was researched in depth last summer and it appears that the point may not be as entirely clear as we had thought. This division is still on the process of evaluating the results of this research and we would prefer, if possible, to avoid having to give a firm view on the matter at the present time.

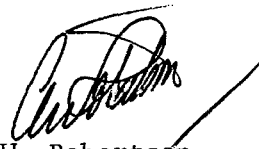
3. Even if it were in force, however, it would not, in the absence of complementary domestic legislation, give rise to any rights to Indians as such, since only the U.S.A. as the other party could question a Canadian failure to implement its provisions. Correspondingly, it is open to the Canadian Government, by appropriate legislative or administrative action, to accord to Indians the border crossing rights to which the Jay Treaty refers whether or not the relevant provision of the Treaty is in force.

APR 24 1975	
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Ext 407A/Bil.	
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4. Any other legal aspects of the Association's request, i.e. those relating to the treatment accorded to Indians under the relevant Canadian statutes, are within the competence of the legal advisers of the Departments of Justice, National Revenue and Indian and Northern Affairs.

5. As to the policy concern whether, if it is decided that the passage provision of Article III is still in force, any legislation implementing this international obligation on Canada should be prepared, this is a matter which we consider can only be determined after high-level inter-departmental consultations among the above mentioned departments whose responsibilities would be directly affected by any such legislation.



A.W. Robertson,  
Director,  
Legal Advisory Division.

CSR: F.B. ROGER: 2-5315:gb

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO  
À GWU

SECURITY  
Sécurité

UNCLASS.

FROM CSR  
De

DATE

April 2, 1975

REFERENCE Your memorandum of March 25, 1975  
Référence

NUMBER  
Numéro

SUBJECT Aboriginal Peoples' Rights.  
Sujet

FILE	DOSSIER
OTTAWA	
45-COA-13-3-4	
MISSION	
23	

ENCLOSURES  
Annexes

DISTRIBUTION

...  
/with Mr.  
R.D. Jackson

c.c. FLA

MIN

We have discussed the attached letter of March 3 received from the Minister's office from the Association of Iroquois and Allied Indians/who, as you know, is seconded to MANDI, and is the Chairman of the New Immigration Legislation Project Group. Mr. Jackson requested a copy of this letter for consideration and possible advice to his Minister as the substantial content of the questions raised by Mr. Hopkins involved the entitlement of Indians to cross freely between Canada and the U.S.A.; a responsibility of Manpower and Immigration to regulate and, precisely, one item under study by Mr. Jackson's committee.

2. We therefore have some doubt whether or not it would be appropriate for Mr. MacEachen to attempt to answer a possible question on this subject if it should be raised in the House.

*C. Louis Chastell*

Consular Policy Division

APR 21 1976

U.S.A. DIVISION

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U.S.A. DIV.	
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BW	PC
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4	4
5	5

APR - 7 1975

B.H. do you know about this? ✓



R. R. # 3,

Wallaceburg, Ontario

NSA 4K9

Association  
(519) 827-1694

Research  
(519) 827-1695

March 3, 1975  
LRH-016-75

Honorable Member:

It is becoming increasingly apparent that non-Indian society does indeed wish to have individual cultural identities, since we are now a bilingual nation.

With this fact in mind, we again request the honorable members to enact a legislative amendment or an Order-in-Council, that will enable Aboriginal people, who are one per cent of the population of Canada, to cross freely between Canada and the United States with personal belongings as set out in the Jay Treaty and Treaty of Ghent (copies attached).

All other sections dealing with Amity, Commerce, and Navigation have been enacted in other sections of the Federal Statutes, except this piece that has to do with the Aboriginal people; "nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever".

As has been recommended emphatically in the Hawthorn Report, commissioned by the Government, we Aboriginal people are Citizens Plus, with special privileges, as indicated under the recommendations, page 13, Part 1, of Chapter 1:

"(1) INTEGRATION OR ASSIMILATION ARE NOT OBJECTIVES WHICH ANYONE ELSE CAN PROPERLY HOLD FOR THE INDIAN. THE EFFORT OF THE INDIAN AFFAIRS BRANCH SHOULD BE CONCENTRATED ON A SERIES OF MIDDLE RANGE OBJECTIVES, SUCH AS INCREASING THE EDUCATIONAL ATTAINMENTS OF THE INDIAN PEOPLE, INCREASING THEIR REAL INCOME, AND ADDING TO THEIR LIFE EXPECTANCY".

"(7) INDIANS SHOULD BE REGARDED AS "CITIZENS PLUS". IN ADDITION TO THE NORMAL RIGHTS AND DUTIES OF CITIZENSHIP, INDIANS POSSESS CERTAIN ADDITIONAL RIGHTS AS CHARTER MEMBERS OF THE CANADIAN COMMUNITY."

.....2

C c Mr R. D. Jackson  
M. J. D.  
4/5/75



Iroquois + Allied Indian Assn of  
Hopkins, L.R.



File Ref  
21/4/76.

R. R. # 3.

Wallaceburg, Ontario

N8A 4K9

Association  
(519) 627-1694

Research  
(519) 627-1695

Jay Treaty

March 3, 1975  
LRH-016-75

(3)

45-CDA-13-3-4	
10	20

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.....2

Page 2

Members of Federal Parliament

March 3, 1975

It is a continuing demand by we Aboriginal people that the Federal Department of Indian Affairs be our voice in parliament and should be the body advocating and implimenting legislation that will give us confidence in a governing body, if that governing body is indeed attempting to improve the socio-economic position of its "Citizens Plus".

Our position on border crossing privileges has been put before the public constantly, and is probably the first claim by Indian people which could be settled without costing the taxpayer one single cent, in contrast to the settlement of the James Bay Agreement.

The public in Canada, has always recognized that tax exemption privileges of Aboriginal people, as shown by the Federal Statute "The Indian Act", section 87, which clearly states:

"Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection (2) and to section 83, the following property is exempt from taxation, namely:  
(a) the interest of an Indian or a band in reserve or surrendered lands; and  
(b) the personal property of an Indian or band situated on a reserve;..."

Section 87 of our Indian Act states:  
"NOTWITHSTANDING ANY OTHER ACT OF THE PARLIAMENT OF CANADA OR ANY ACT OF THE LEGISLATURE OF A PROVINCE,...  
THE FOLLOWING PROPERTY IS EXEMPT FROM TAXATION..."

We as an Association have recommended to the Government through the Minister of Indian Affairs, that this section be quoted on the front or back of our Indian Status Cards, along with the border crossing rights, which is quite agreeable.

Yours truly,



L. R. Hopkins  
President  
ASSOCIATION OF IROQUOIS  
AND ALLIED INDIANS

LRH:pm

Encl.

CC Chiefs and Councillors

MAR 12 1975

40-1 Assoc. of Inguis. & Allied  
Indians

RECEIVED

MAR 12 1975

1975/03

6261

MAR 17 1975

David

FICHE DE SERVICE  
ACTION REQUEST

CABINET DU SEAE - OFFICE OF THE SSEA

Date 12/3/75

A: GWU  
To

MIN / UYEHAMA

Lettre en date du:  
Letter dated:

3/3/75

de  
from

Assoc. of IROQUOIS / ALLIED INDIANS.

Sujet:  
Subject:

ABORIGINAL FREEDOM of PASSAGE

MAR 19 1975

Action requise: - Action required:

Réponse pour la signature du Premier Ministre  
Reply for Prime Minister's signature

Réponse pour la signature du Ministre  
Reply for Minister's signature

Réponse au nom du P.M./ou Ministre  
Reply on behalf of PM/or SSEA

Réponse pour la signature de  
Reply for signature of:

Pour avis et retourner  
For advice and return

Noter et retourner  
Note and return

Traduction  
For translation

Réponse provisoire immédiate pour  
la signature de

For immediate interim reply for  
signature of

Commentaires:  
Comments:

IT MAY BE USEFUL TO HAVE MEMORANDA FOR

MIN HANDBOOK ON THIS SUBJ.

(by memo)  
Consult with CRP & ask  
them to seek guidance from  
M&I and Indian Affairs

Porter à l'attention des archives du SEAE le  
B.F. to Minister's registry on

Commentaires par D.S.:  
D.S.'s Comments:

REF: 1979

#### INSTRUCTIONS

- (a) Si une réponse substantielle ne peut être soumise dans les 10 jours qui suivent la réception de la fiche de service, on doit rédiger une réponse provisoire.
- (b) S'il est nécessaire ou préférable de déléguer la correspondance à une autre direction pour suite ou renseignements à donner, prière d'en aviser le Service des dossiers de MIN, au numéro de téléphone 6-8885, poste 304.
- (c) Pour obtenir des renseignements concernant les lettres et les notes expédiées par les directions au MIN et exigeant la signature du P.M. ou du Ministre, prière de communiquer avec le secrétaire de cabinet de MIN, numéro de téléphone 6-8885, poste 314.
- (d) Pour obtenir des renseignements concernant la formulation et le style de l'appel, prière de communiquer avec le secrétaire de cabinet de MIN, numéro de téléphone 6-8885, poste 314.
- (a) If a substantive reply cannot be provided within 10 days of receipt of the action slip, an interim reply should be prepared.
- (b) If it is necessary or more appropriate to refer this correspondence to another division for action/information, please notify MIN Registry, telephone 6-8885, Ext. 304.
- (c) For information concerning letters and memoranda sent from divisions to MIN requiring the P.M.'s/Minister's signature, please contact the D.S. in MIN, telephone 6-8885, Ext. 314.
- (d) For queries concerning procedure and style of address, please consult D.S. in MIN, telephone 6-8885, Ext. 314.



Proposed Green Paper

**IMMIGRATION**

■

**TAXATION**

■

**JAY TREATY**

■

**TREATY OF GHENT**

30 APRIL 1974

002070



P.O. BOX 1506, c/o Mohawk Institute, Brantford, Ontario (519) 759-5052  
N3T 5V6

February 14, 1974.

ATTENTION: Honourable Robert Andras

Reference: Proposed Green Paper to be discussed in  
the Spring of 1974.

This Association is requesting the Federal  
Government, to enact legislation, to allow Indian  
People more liberal access at the border, dividing  
Canada and the United States.



February 14, 1974.

It has been repeatedly brought to the attention of the Federal Civil Servants, manning the customs offices on this border, that Indian people are not required to register as immigrants, or submit themselves to the laws governing the members of Canadian society. This freedom of travel is an Aboriginal Right, of the Native inhabitants residing on both sides of the Canada-United States.

This right has been repeatedly brought to the attention of elected officials, reminding them that there is a treaty (the Jay Treaty) which was originally recognized by all people living on this continent. The Treaty of Ghent of 1814 re-enforces the articles within the original Jay Treaty that allows Indian people free access of personal belongings and themselves to either country.

Since the time that Indian people have been recognized as Allies of Canada, we have participated in all defences necessary to maintain Canada, as an independent government, this included in many cases, the entire male population of Indian Reserves, being transported to France and other countries during what is known as the First World War, and also the Second World War.



Page 2

Prior to this activity by Indian people, we were not allowed to participate in Provincial or Federal Elections, and we did not have a voice in the making of legislation that did indeed effect the lives of the entire Indian population, in Canada. Upon the returning of the servicemen home, (those who were still living) they were then recognized by the Government, as persons entitled to vote for Members of Parliament. After this date we have become more interested in governing ourselves, and are attempting with all effort, and co-operation of Non-Indian Society, to become a self-sustaining group, and do not wish to be a burden financially, on the other members of Canadian Society.

One of the items that will begin to give self-confidence to us, is a recognition by surrounding society that Indian people do have rights, that are somewhat different as compared to the general public.

This change in legislation should probably be made in the Immigration Act, and a revision also to the Federal Indian Act, although in the latter case a complete revision is in the process of being recommended by this 25,000 member organization.

. . . 3





Page 3

This one small change, shall be a step, made by the legislators showing us that Governments are indeed attempting, to obey the wishes of the Canadian Indian public.

The policy of the Federal Government has been, as far as we are aware, one that allows for a claim of loss of rights, to successful economic development. This, of course, shall require heavy initial financial commitments by the public, to assist this development, but in all likelihood will not require any changes in Immigration Policy.

We note by your statement of September 17, 1973 that Canada is considering the possibility, of a much heavier flow of immigrants from other members of the Commonwealth and spreading the financial burden of settling Native claims over a wider areas, shall be a much lighter burden to each individual in their contributions to Government.

Those in charge of manpower availability, and immigration possibility, should consider to a much greater degree, Indian manpower already hammering on the door, and wishing to make contributions to the economic stability of this country.

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Page 4

The educational system in Canada is training more and more Indian people, and encouraging them to continue on to higher academic levels, and these people must be put into positions of responsibility, to allow them to make decisions, in the proper places, for the use of Indian human resource. It has been found that Indian people working under the direction of Indian people, with equal financial reward, as surrounding society, will mobilize themselves to other areas in the country where human resource is needed.

In reviewing immigration legislation there must be more consideration as changes must involve men, women and children to be acceptable and not only children. By this letter, we are requesting the support of all the people in Canada, to put into law, a practise that has been exercised by us continually since inhabiting North America. As we know, laws are nothing more than habit - more, than Legislation.

Your co-operation at the earliest opportunity shall be appreciated.



## TAXATION

Many agreements have been ratified  
by the Federal Government between Britain and  
the Aboriginal Nation of this land, whereby we  
did agree not to molest settlers in their efforts  
to develop the resources in our possession.

This recognition is clearly stated in  
Section 72, of the Indian Act R. S. c 149, Revised  
Statutes of Canada 1970, Vol. IV, which states  
"Moneys that are payable to Indians or to Indian  
Bands under a treaty between her Majesty and the  
Band and for the payment of which the Government  
of Canada is responsible, may be paid out of the  
Consolidated Revenue Fund. R.S. c. 149, s. 71."



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With this in mind, and the fact that the Indian Nation shall probably remain as an Individual entity, with a separate governing body and recognized as such, along with the fact that development in Canada has gotten to a point where there is a cultural lag, with the slower community intending to become equal, that a Tax concession must be allowed the aboriginal people. This must be done so that capital may become accumulated for development purposes.

Since the concession is presently in one Federal Statute, it shall be necessary to amend Chapter 1-5, an Act respecting income taxes, part I, Division A - Liability for Tax, sections



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2. (1), to state after "every person", except  
a Registered Canadian Indian person,

As the economic situation now exists,  
we are not encouraged to find employment away  
from our Indian Communities, nor are we encour-  
aged to attend places of learning away, as all  
income received by us off land set aside as Indian  
Reserves becomes subject to income tax.

We should also point out that all Revenue  
earned in non-Indian Society and on Indian Reserves  
is absorbed in the Canadian Economy.

At present there are no financial means  
of producing food, clothing or building materials



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on Indian Reserves, although the resource is there for development. Interest is being shown by our people, to become self-sufficient in the many fields of possibility, and if encouragement is given by the Federal Government in this one small amendment, this would show sincerity in attempting to be just with society.

By Government encouraging and helping, as has been noted during the past six years, we Aboriginal people shall be able to manage, to a greater degree, the cost we shall carry for services to our people in all fields of Indian public need.



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We do recognize that Governments attempt to lessen the tax burden on Canadian people, but this cannot happen overnight, although by encouragement and legislative changes, in Present Federal Statutes, requested by our elected Indian representatives, the process of Indian Community Development shall continue steadily on.



## Chapter 1-2 - Section 2 (Definitions)

An Act Respecting Immigration.

Revised Statutes of Canada 1970 shall be amended to state in a separate paragraph; as in the Canadian Citizenship Act.

This Immigration Act R.S., c. 325 S.1 shall not apply to these North American Aborigines, referred to as Indians in the Citizenship Act

Section 9-3, Part 2, revised Statutes of Canada, 1970, Volume 1.





JAY TREATY

1794

-Also-

TREATY OF GHENT

1814

1 March 74

THE JAY TREATY

1794 (1)

TREATY OF AMITY COMMERCE AND NAVIGATION

Concluded November 19, 1794; ratification advised by the senate with amendment June 24, 1795; ratified by the President; ratifications exchanged October 28, 1795; proclaimed February 29, 1796.

ARTICLES:

- |   |  |
|---|--|
| I. Amity.   | XV. Discrimination on vessels, imports, etc.     |
| II. Withdrawal of forces; privileges of settlers. | XVI. Consuls.                                    |
| III. Commerce and navigation; duties.             | XVII. Capture or detention of neutrals.          |
| IV. Survey of the Mississippi.                    | XVIII. Contraband.                               |
| V. St. Croix River                                | XIX. Officers passengers on neutrals.            |
| VI. Indemnification by United States.             | XX. Pirates.                                     |
| VII. Indemnification by Great Britain.            | XXI. Commission from foreign states.             |
| VIII. Expenses.                                   | XXII. Reprisals.                                 |
| IX. Land tenures.                                 | XXIII. Ships of war.                             |
| X. Private debts, etc.                            | XXIV. Foreign privateers.                        |
| XI. Liberty of navigation and commerce.           | XXV. Prizes.                                     |
| XII. West India trade; duties.                    | XXVI. Reciprocal treatment of citizens in war.   |
| XIII. East India trade; duties.                   | XXVII. Extradition.                              |
| XIV. Commerce and Navigation.                     | XXVIII. Limitation of Article XII; ratification. |

His Britannic Majesty and the United States of America, being desirous, by a treaty of amity, commerce and navigation, to terminate their difference in such a manner, as, without reference to the merits of their respective complaints and pretensions, may be the best calculated to produce mutual satisfaction and good understanding; and also to regulate the commerce and navigation between their respective countries, territories and people, in such a manner as to render the same reciprocally beneficial and satisfactory; they have, respectively, named their Plenipotentiaries, and given them full powers to treat of, and conclude the said treaty, that is to say:

His Britannic Majesty has named for his Plenipotentiary, the Right Honorable William Wyndham Baron Grenville of Wotton,

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one of His Majesty's Privy Council, and His Majesty's Principal Secretary of State for Foreign Affairs; and the President of the said United States, by and with the advice and consent of the Senate thereof, hath appointed for their Plenipotentiary, the Honorable John Jay, Chief Justice of the said United States, and their Envoy Extraordinary to His Majesty;

Who have agreed on and concluded the following articles:

#### ARTICLE I.

There shall be a firm, inviolable and universal peace, and a true and sincere friendship between His Britannic Majesty, his heirs and successors, and the United States of America; and between their respective countries, territories, cities, towns and people of every degree, without exception of persons or places.

#### ARTICLE II.

His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. This evacuation shall take place on or before the first day of June, one thousand seven hundred and ninety-six, and all the proper measures shall in the interval be taken by concert between the Government of the United States and His Majesty's Governor-General in America for settling the previous arrangements which may be necessary respecting the delivery of the said posts. The United States in the mean time, at their discretion, extending their settlements to any part within the said boundary line, except within the precincts or jurisdiction of any of the said posts. All settlers and traders, within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to remove with all or any part of their effects; and it shall also be free to them to sell their lands, houses or effects, or to retain the property thereof, at their discretion; such of them as shall continue to reside within the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the Government thereof; but they shall be at full liberty so to do if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining subjects of His Britannic Majesty, shall be considered as having elected to become citizens of the United States.

### ARTICLE III.

It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America, (the country within the limits of the Hudson's Bay Company only excepted.) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood that this article does not extend to the admission of vessels of the United States into the sea-ports, harbours, bays or creeks of His Majesty's said territories; nor into such parts of the rivers in His Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of His Majesty in Great Britain.

All goods and merchandize whose importation into His Majesty's said territories in America shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandize shall be subject to no higher or other duties than would be payable by His Majesty's subjects on the importation of the same from Europe into the said territories. And in like manner all goods and merchandize whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by His Majesty's subjects, and such goods and merchandize shall be subject to no higher or other duties than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said States. And all goods not prohibited to be exported from the said territories respectively, may in like manner be carried out of the same by the two parties respectively, paying duty as aforesaid.

No duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall merely be carried over any of the portages or carrying-places on either side, for the purpose of being immediately re-embarked and carried to some other place or places. But as by this stipulation it is only meant to secure to each party a free passage across the portages on both sides, it is agreed that this exemption from duty shall extend only to such goods as are carried in the usual and direct road across the portage, and are not attempted to be in any manner sold or exchanged during their passage across the same, and proper regulations may be established to prevent the possibility of any frauds in this respect.

As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood, it is agreed that the respective Governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

#### ARTICLE IV.

Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace between His Majesty and the United States: it is agreed that measures shall be taken in concert between His Majesty's Government in America and the Government of the United States, for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony, to the principal source or sources of the said river, and also of the parts adjacent thereto; and that if, on the result of such survey, it should appear that the said river would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed, by amicable negotiation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent of the said treaty.

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ARTICLE V. (2)

Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described; that question shall be referred to the final decision of commissioners to be appointed in the following manner, viz:

One commissioner shall be named by His Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the said two commissioners shall agree on the choice of a third; or if they cannot so agree, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original Commissioners. And the three Commissioners so appointed shall be sworn, impartially to examine and decide the said question, according to such evidence as shall respectively be laid before them on the part of the British Government and of the United States. The said Commissioners shall meet at Halifax, and shall have power to adjourn to such other place or places as they shall think fit. They shall have power to appoint a Secretary, and to employ such surveyors or other persons as they shall judge necessary. The said Commissioners shall, by a declaration, under their hands and seals, decide what river is the river St. Croix, intended by the treaty. The said declaration shall contain a description of the said river, and shall particularize the latitude and longitude of its mouth and of its source. Duplicates of this declaration and of the statements of their accounts, and of the journal of their proceedings, shall be delivered by them to the agent of His Majesty, and to the agent of the United States, who may be respectively appointed and authorized to manage the business on behalf of the respective Governments. And both parties agree to consider such decision as final and conclusive, so as that the same shall never thereafter be called into question, or made the subject of dispute or difference between them.

ARTICLE VI. (3)

Whereas it is alleged by divers British merchants and others His Majesty's subjects, that debts, to a considerable amount, which were bona fide contracted before the peace, still remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments since the peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances, impaired and lessened, so that, by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive full and adequate compensation for

the losses and damages which they have thereby sustained: It is agreed, that in all such cases, where full compensation for such losses and damages cannot, for whatever reason, be actually obtained, had and received by the said creditors in the ordinary course of justice, the United States will make full and complete compensation for the same to the said creditors: But it is distinctly understood, that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors or other causes as would equally have operated to produce such loss, if the said impediments had not existed; nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

For the purpose of ascertaining the amount of any such losses and damages, five Commissioners shall be appointed and authorized to meet and act in manner following, viz: Two of them shall be appointed by His Majesty, two of them by the President of the United States by and with the advice and consent of the Senate thereof, and the fifth by the unanimous voice of the other four; and if they should not agree in such choice, then the Commissioners named by the two parties shall respectively propose one person, and of the two names so proposed, one shall be drawn by lot, in the presence of the four original Commissioners. When the five Commissioners thus appointed shall first meet, they shall, before they proceed to act, respectively take the following oath, or affirmation, in the presence of each other; (which oath, or affirmation, being so taken and duly attested, shall be entered on the record of their proceedings, viz: I, A. B., one of the Commissioners appointed in pursuance of the sixth article of the Treaty of Amity, Commerce and Navigation, between His Britannic Majesty and the United States of America, do solemnly swear (or affirm) that I will honestly, diligently, impartially and carefully examine, and to the best of my judgment, according to justice and equity, decide all such complaints, as under the said article shall be preferred to the said Commissioners: and that I will forbear to act as a Commissioner, in any case in which I may be personally interested.

Three of the said Commissioners shall constitute a board, and shall have power to do any act appertaining to the said Commission, provided that one of the Commissioners named on each side, and the fifth Commissioner shall be present, and all decisions shall be made by the majority of the voices of the Commissioners then present. Eighteen months from the day on which the said Commissioners shall form a board, and be ready to proceed to business, are assigned for receiving complaints and applications; but they are nevertheless

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authorized, in any particular cases in which it shall appear to them to be reasonable and just, to extend the said term of eighteen months for any term not exceeding six months, after the expiration thereof. The said Commissioners shall first meet at Philadelphia, but they shall have power to adjourn from place to place as they shall see cause.

The said Commissioners in examining the complaints and applications so preferred to them, are empowered and required, in pursuance of the true intent and meaning of this article, to take into their consideration all claims, whether of principal or interest, or balances of principal and interest, and to determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require. And the said Commissioners shall have power to examine all such persons as shall come before them, on oath or affirmation, touching the premises; and also to receive in evidence, according as they may think most consistent with equity and justice, all written depositions, or books, or papers, or copies, or extracts thereof; every such deposition, book, or paper, or copy, or extract, being duly authenticated either according to the legal form now respectively existing in the two countries, or in such other manner as the said Commissioners shall see cause to require or allow.

The award of the said Commissioners, or of any three of them as aforesaid, shall in all cases be final and conclusive, both as to the justice of the claim, and to the amount of the sum to be paid to the creditor or claimant; and the United States undertake to cause the sum so awarded to be paid in specie to such creditor or claimant without deduction; and at such time or times and at such place or places, as shall be awarded by the said Commissioners; and on condition of such releases or assignments to be given by the creditor or claimant, as by the said Commissioners may be directed: Provided always, that no such payment shall be fixed by the said Commissioners to take place sooner than twelve months from the day of the exchange of the ratifications of this treaty.

#### ARTICLE VII. (4)

Whereas complaints have been made by divers merchants and others, citizens of the United States, that during the course of the war in which His Majesty is now engaged, they have sustained considerable losses and damage, by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from His Majesty, and that from various circumstances belonging



to the said cases, adequate compensation for the losses and damages so sustained cannot now be actually obtained, had, and received by the ordinary course of judicial proceedings; it is agreed, that in all such cases, where adequate compensation cannot, for whatever reason, be now actually obtained, had, and received by the said merchants and others, in the ordinary course of justice, full and complete compensation for the same will be made by the British Government to the said complainants. But it is distinctly understood that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

That for the purpose of ascertaining the amount of any such losses and damages, five Commissioners shall be appointed and authorized to act in London, exactly in the manner directed with respect to those mentioned in the preceding article, and after having taken the same oath or affirmation, (*mutatis mutandis*,) the same term of eighteen months is also assigned for the reception of claims, and they are in like manner authorized to extend the same in particular cases. They shall receive testimony, books, papers and evidence in the same latitude, and exercise the like discretion and powers respecting that subject; and shall decide the claims in question according to the merits of the several cases, and to justice, equity and the laws of nations. The award of the said Commissioners, or any such three of them as aforesaid, shall in all cases be final and conclusive, both as to the justice of the claim, and the amount of the sum to be paid to the claimant; and His Britannic Majesty undertakes to cause the same to be paid to such claimant in specie, without any deduction, at such place or places, and at such time or times, as shall be awarded by the said Commissioners, and on condition of such releases or assignments to be given by the claimant, as by the said Commissioners may be directed.

And whereas certain merchants and others, His Majesty's subjects, complain that, in the course of the war, they have sustained loss and damage by reason of the capture of their vessels and merchandise, taken within the limits and jurisdiction of the States and brought into the ports of the same, or taken by vessels originally armed in ports of the said States:

It is agreed that in all such cases where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, September 5, 1793, a copy of which is annexed to this treaty; the complaints of the parties shall be and hereby are referred to the Commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in the like

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manner relative to these as to the other cases committed to them; and the United States undertake to pay to the complainants or claimants in specie, without deduction, the amount of such sums as shall be awarded to them respectively by the said Commissioners, and at the times and places which in such awards shall be specified; and on condition of such releases or assignments to be given by the claimants as in the said awards may be directed: And it is further agreed, that not only the now-existing cases of both descriptions, but also all such as shall exist at the time of exchanging the ratifications of this treaty, shall be considered as being within the provisions, intent and meaning of this article.

#### ARTICLE VIII.

It is further agreed that the Commissioners mentioned in this and in the two preceding articles shall be respectively paid in such manner as shall be agreed between the two parties, such agreement being to be settled at the time of the exchange of the ratifications of this treaty. And all other expenses attending the said Commissions shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by the majority of the Commissioners. And in the case of death, sickness or necessary absence, the place of every such Commissioner respectively shall be supplied in the same manner as such Commissioner was first appointed, and the new Commissioners shall take the same oath or affirmation and do the same duties.

#### ARTICLE IX.

It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of His Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens.

#### ARTICLE X.

Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor monies, which they may have in the public funds, or in the public or private banks, shall ever in any event of war or national differences be sequestered or confiscated, it being unjust and impolitic that debts and engagements contracted and made by individuals, having confidence in each other and in their respective Governments, should ever be destroyed or impaired by national authority on account of national differences and discontents.

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## ARTICLE XL. (5)

It is agreed between His Majesty and the United States of America, that there shall be a reciprocal and entirely perfect liberty of navigation and commerce between their respective people, in the manner, under the limitations, and on the conditions specified in the following articles.

## ARTICLE XII. (6)

His Majesty consents that it shall and may be lawful, during the time hereinafter limited, for the citizens of the United States to carry to any of His Majesty's islands and ports in the West Indies from the United States, in their own vessels, not being above the burthen of seventy tons, any goods or merchandizes, being of the growth, manufacture or produce of the said States, which it is or may be lawful to carry to the said islands or ports from the said States in British vessels; and that the said American vessels shall be subject there to no other or highertonnage duties or charges than shall be payable by British vessels in the ports of the United States; and that the cargoes of the said American vessels shall be subject there to no other or higher duties or charges than shall be payable on the like articles if imported there from the said States in British vessels.

And His Majesty also consents that it shall be lawful for the said American citizens to purchase, load and carry away in their said vessels to the United States, from the said islands and ports, all such articles, being of the growth, manufacture or produce of the said islands, as may now by law be carried from thence to the said States in British vessels, and subject only to the same duties and cahrges on exportation, to which British vessels and their cargoes are or shall be subject in similar circumstances.

Provided always, that the said American vessels do carry and land their cargoes in the United States only, it being expressly agreed and declared that, during the continuance of this article, the United States will prohibit and restrain the carrying any molasses, sugar, coffee, cocoa or cotton in American vessels, either from His Majesty's islands or from the United States to any part of the world except the United States, reasonable sea-stores excepted. Provided, also, that it shall and may be lawful, during the same period, for British vessels to import from the said islands into the United States, and to export from the United States to the said islands, all articles whatever, being of the growth, produce or manufacture of the said islands, or of the United States respectively, which now may, by the laws of the said United States, be so imported and exported.

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And that the cargoes of the said British vessels shall be subject to no other or higher duties or charges, than shall be payable on the same articles if so imported or exported in American vessels.

It is agreed that this article, and every matter and thing therein contained, shall continue to be in force during the continuance of the war in which His Majesty is now engaged; and also for two years from and after the date of the signature of the preliminary or other articles of peace, by which the same may be terminated.

And it is further agreed that, at the expiration of the said term, the two contracting parties will endeavour further to regulate their commerce in this respect, according to the situation in which His Majesty may then find himself with respect to the West Indies, and with a view to such arrangements as may best conduce to the mutual advantage and extension of commerce. And the said parties will then also renew their discussions, and endeavour to agree, whether in any and what cases, neutral vessels shall protect enemy's property; and in what cases provisions and other articles, not generally contraband, may become such. But in the mean time, their conduct towards each other in these respects, shall be regulated by the articles hereinafter inserted on those subjects.

#### ARTICLE XIII. (7)

His Majesty consents that the vessels belonging to the citizens of the United States of America shall be admitted and hospitably received in all the sea-ports and harbors of the British territories in the East Indies. And that the citizens of the said United States may freely carry on a trade between the said territories and the said United States, in all articles of which the importation or exportation respectively, to or from the said territories, shall not be entirely prohibited. Provided only, that it shall not be lawful for them in any time of war between the British Government and any other Power or State whatever, to export from the said territories, without the special permission of the British Government there, any military stores, or naval stores, or rice. The citizens of the United States shall pay for their vessels when admitted into the said ports no other or higher tonnage duty than shall be payable on British vessels when admitted into the ports of the United States. And they shall pay no other or higher duties or charges, on the importation or exportation of the cargoes of the said vessels, than shall be payable on the same articles when imported or exported in British vessels. But it is expressly agreed that the vessels of the United States shall not carry any of the articles exported by them from the said British territories to any port or place, except to some port or place in America,

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where the same shall be unladen and such regulations shall be adopted by both parties as shall from time to time be found necessary to enforce the due and faithful observance of this stipulation. It is also understood that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of the said British territories; but vessels going with their original cargoes, or part thereof, from one port of discharge to another, are not to be considered as carrying on the coasting trade. Neither is this article to be construed to allow the citizens of the said States to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British Government established there; and if any transgression should be attempted against the regulations of the British Government in this respect, the observance of the same shall and may be enforced against the citizens of America in the same manner as against British subjects or others transgressing the same rule. And the citizens of the United States, whenever they arrive in any port or harbour in the said territories, or if they should be permitted, in manner aforesaid, to go to any other place therein, shall always be subject to the laws, government and jurisdiction of what nature established in such harbor, port or place, according as the same may be. The citizens of the United States may also touch for refreshment at the island of St. Helena, but subject in all respects to such regulations as the British Government may from time to time establish there.

## ARTICLE XIV. (7)

There shall be between all the dominions of His Majesty in Europe and the territories of the United States a reciprocal and perfect liberty of commerce and navigation. The people and inhabitants of the two countries, respectively, shall have liberty freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places and rivers within the dominions and territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time. Also to hire and possess houses and warehouses for the purposes of their commerce, and generally the merchants and traders on each side shall enjoy the most complete protection and security for their commerce; but subject always as to what respects this article to the laws and statutes of the two countries respectively.

## ARTICLE XV. (7)

It is agreed that no other or high duties shall be paid by the ships or merchandise of the one party in the ports of

the other than such as are paid by the like vessels or merchandize of all other nations. Nor shall any other or higher duty be imposed in one country on the importation of any articles the growth, produce or manufacture of the other, than are or shall be payable on the importation of the like articles being of the growth, produce or manufacture of any other foreign country. Nor shall any prohibition be imposed on the exportation or importation of any articles to or from the territories of the two parties respectively, which shall not equally extend to all other nations.

But the British Government reserves to itself the right of imposing on American vessels entering into the British ports in Europe a tonnage duty equal to that which shall be payable by British vessels in the ports of America; and also such duty as may be adequate to countervail the difference of duty now payable on the importation of European and Asiatic goods, when imported into the United States in British or in American vessels.

The two parties agree to treat for the more exact equalization of the duties on the respective navigation of their subjects and people, in such manner as may be most beneficial to the two countries. The arrangements for this purpose shall be made at the same time with those mentioned at the conclusion of the twelfth article of this treaty, and are to be considered as a part thereof. In the interval it is agreed that the United States will not impose any new or additional tonnage duties on British vessels, nor increase the now-subsisting difference between the duties payable on the importation of any articles in British or in American vessels.

#### ARTICLE XVI. (7)

It shall be free for the two contracting parties, respectively, to appoint Consuls for the protection of trade, to reside in the dominions and territories aforesaid; and the said Consuls shall enjoy those liberties and rights which belong to them by reason of their function. But before any Consul shall act as such, he shall be in the usual forms approved and admitted by the party to whom he is sent; and it is hereby declared to be lawful and proper that, in case of illegal or improper conduct towards the laws or Government, a Consul may either be punished according to law, if the laws will reach the case, or be dismissed, or even sent back, the offended Government assigning to the other their reasons for the same.

Either of the parties may except from the residence of Consuls such particular places as such party shall judge proper to be so excepted.

ARTICLE XVII. (7)

It is agreed that in all cases where vessels shall be captured or detained on just suspicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war, the said vessels shall be brought to the nearest or most convenient port; and if any property of an enemy should be found on board such vessel, that part only which belongs to the enemy shall be made prize, and the vessel shall be at liberty to proceed with the remainder without any impediment. And it is agreed that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes so brought in for adjudication, and in the payment or recovery of any indemnification, adjudged or agreed to be paid to the masters or owners of such ships.

ARTICLE XVIII. (7)

In order to regulate what is in future to be esteemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket-rests, bandoliers, gun-powder, pitch, saltpetre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse-furniture, holsters, belts, and generally all other implements of war, as also timber for ship-building, tar or rosin, copper in sheets, sails, rope, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted; and all the above articles are hereby declared to be just objects of confiscation whenever they are attempted to be carried to an enemy.

And whereas the difficulty of agreeing on the precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed that whenever any such articles so becoming contraband, according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or, in their default, the Government under whose authority they act, shall pay to the masters or owners of such vessels the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention.

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And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is either besieged, blockaded or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless after notice she shall again attempt to enter, but she shall be permitted to go to any other port or place she may think proper; nor shall any vessel or goods of either party that may have entered into such port or place before the same was besieged, blockaded, or invested by the other, and be found thereafter the reduction or surrender of such place, be liable to confiscation, but shall be restored to the owners or proprietors there.

## ARTICLE XIX. (7)

And that more abundant care may be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men-of-war, or privateers of either party, all commanders of ships of war and privateers, and all others the said subjects and citizens, shall forbear doing any damage to those of the other party or committing any outrage against them, and if they act to the contrary they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.

For this cause, all commanders of privateers, before they receive their commissions, shall hereafter be obliged to give, before a competent judge, sufficient security by at least two responsible sureties, who have no interest in the said privateer, each of whom, together with the said commander, shall be jointly and severally bound in the sum of fifteen hundred pounds sterling, or, if such ships be provided with above one hundred and fifty seamen or soldiers, in the sum of three thousand pounds sterling, to satisfy all damages and injuries which the said privateer, or her officers or men, or any of them, may do or commit during their cruise contrary to the tenor of this treaty, or to the laws and instructions for regulating their conduct; and further, that in all cases of aggressions the said commissions shall be revoked and annulled.

It is also agreed that whenever a judge of a court of admiralty of either of the parties shall pronounce sentence against any vessel or goods or property belonging to the subjects or citizens of the other party, a formal and duly authenticated copy of all the proceedings in the cause, and of the said sentence, shall, if required, be delivered to the commander of the said vessel, without the smallest delay, he paying all legal fees and demands for the same.



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ARTICLE XX. (7)

It is further agreed that both the said contracting parties shall not only refuse to receive any pirates into any of their ports, havens or towns, or permit any of their inhabitants to receive, protect, harbor, conceal or assist them in any manner, but will bring to condign punishment all such inhabitants as shall be guilty of such acts or offences.

And all their ships, with the goods or merchandizes taken by them and brought into the port of either of the said parties, shall be seized as far as they can be discovered, and shall be restored to the owners, or their factors or agents, duly deputed and authorized in writing by them (proper evidence being first given in the court of admiralty for proving the property) even in case such effects should have passed into other hands by sale, if it be proved that the buyers knew or had good reason to believe or suspect that they had been piratically taken.

ARTICLE XXI. (7)

It is likewise agreed that the subjects and citizens of the two nations shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign Prince or State, enemies to the other party; nor shall the enemies of one of the parties be permitted to invite, or endeavor to enlist in their military service, any of the subjects or citizens of the other party; and the laws against all such offences and aggressions shall be punctually executed. And if any subject or citizen of the said parties respectively shall accept any foreign commission or letters of marque for arming any vessel to act as a privateer against the other party, and be taken by the other party, it is hereby declared to be lawful for the said party to treat and punish the said subject or citizen having such commission or letters of marque as a pirate.

ARTICLE XXII. (7)

It is expressly stipulated that neither of the said contracting parties will order or authorize any acts of reprisal against the other, on complaints of injuries or damages, until the said party shall first have presented to the other a statement thereof, verified by competent proof and evidence, and demanded justice and satisfaction, and the same shall either have been refused or unreasonably delayed.

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ARTICLE XXIII. (7)

The ships of war of each of the contracting parties shall, at all times, be hospitably received in the ports of the other, their officers and crews paying due respect to the laws and Government of the country. The officers shall be treated with that respect which is due to the commissions which they bear, and if any insult should be offered to them by any of the inhabitants, all offenders in this respect shall be punished as disturbers of the peace and amity between the two countries. And His Majesty consents that in case an American vessel should, by stress of weather, danger from enemies, or other misfortune, be reduced to the necessity of seeking shelter in any of His Majesty's ports, into which such vessel could not in ordinary cases claim to be admitted, she shall, on manifesting that necessity to the satisfaction of the Government of the place, be hospitably received, and be permitted to refit and to purchase at the market price such necessities as she may stand in need of, conformably to such orders and regulations at the Government of the place, having respect to the circumstances of each case, shall prescribe. She shall not be allowed to break bulk or unload her cargo, unless the same should be bona fide necessary to her being refitted. Nor shall be permitted to sell any part of her cargo, unless so much only as may be necessary to defray her expences, and then not without the express permission of the Government of the place. Nor shall she be obliged to pay any duties whatever, except only on such articles as she may be permitted to sell for the purpose aforesaid.

ARTICLE XXIV. (7)

It shall not be lawful for any foreign privateers (not being subjects or citizens of either of the said parties) who have commissions from any other Prince or State in enmity with either nation to arm their ships in the ports of either of the said parties, nor to sell what they have taken, nor in any other manner to exchange the same; nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest port of that Prince or State from whom they obtained their commissions.

ARTICLE XXV. (7)

It shall be lawful for the ships of war and privateers belonging to the said parties respectively to carry whithersoever they please the ships and goods taken from their enemies, without being obliged to pay any fee to the officers of the admiralty, or to any judges whatever; nor

shall the said prizes, when they arrive at and enter the ports of the said parties, be detained or seized, neither shall the searchers or other officers of those places visit such prizes, (except for the purpose of preventing the carrying of any of the cargo thereof on shore in any manner contrary to the established laws of revenue, navigation, or commerce,) nor shall such officers take cognizance of the validity of such prizes; but they shall be at liberty to hoist sail and depart as speedily as may be, and carry their said prizes to the place mentioned in their commissions or patents, which the commanders of the said ships of war or privateers shall be obliged to show. No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties; but if forced by stress of weather, or the dangers of the sea, to enter therein, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. Nothing in this treaty contained shall, however, be construed or operate contrary to former and existing public treaties with other sovereigns or States. But the two parties agree that while they continue in amity neither of them will in future make any treaty that shall be inconsistent with this or the preceding article.

Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon shot of the coast, nor in any of the bays, ports or rivers of their territories, by ships of war or others having commission from any Prince, Republic or State whatever. But in case it should so happen, the party whose territorial rights shall thus have been violated shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

#### ARTICLE XXVI. (7)

If at any time a rupture should take place (which God forbid) between His Majesty and the United States, and merchants and others of each of the two nations residing in the dominions of the other shall have the privilege of remaining and continuing their trade, so long as they behave peaceably and commit no offence against the laws; and in case their conduct should render them suspected, and the respective Governments should think proper to order them to remove, the term of twelve months from the publication of the order shall be allowed them for that purpose, to remove with their families, effects and property, but this favor shall not be extended to

those who shall act contrary to the established laws; and for greater certainty, it is declared that such rupture shall not be deemed to exist while negotiations for accommodating differences shall be depending, nor until the respective Ambassadors or Ministers, if such there shall be, shall be recalled or sent home on account of such differences, and not on account of personal misconduct, according to the nature and degrees of which both parties retain their rights, either to request the recall, or immediately to send home the Ambassador or Minister of the other, and that without prejudice to their mutual friendship and good understanding.

ARTICLE XXVII. (7)

It is further agreed that His Majesty and the United States, on mutual requisitions, by them respectively, or by their respective Ministers or officers authorized to make the same, will deliver up to justice all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality as, according to the laws of the place, where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expence of such apprehension and delivery shall be borne and defrayed by those who made the requisition and receive the fugitive.

ARTICLE XXVIII.

It is agreed that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged, but subject to this condition. That whereas the said twelfth article will expire by the limitation therein contained, at the end of two years from the signing of the preliminary or other articles of peace, which shall terminate the present war in which His Majesty is engaged, it is agreed that proper measures shall by concert be taken for bringing the subject of that article into amicable treaty and discussion, so early before the expiration of the said term as that new arrangements on that head may by that time be perfected and ready to take place. But if it should unfortunately happen that His Majesty and the United States should not be able to agree on such new arrangements, in that case all the articles of this treaty, except the first ten, shall then cease and expire together.

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Lastly. This treaty, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be binding and obligatory on His Majesty and on the said States, and shall be by them respectively executed and observed with punctuality and the most sincere regard to good faith; and whereas it will be expedient, in order the better to facilitate intercourse and obviate difficulties, that other articles be proposed and added to this treaty, which articles, from want of time and other circumstances, cannot now be perfected, it is agreed that the said parties will, from time to time, readily treat of and concerning such articles, and will sincerely endeavor so to form them as that they may conduce to mutual convenience and tend to promote mutual satisfaction and friendship; and that the said articles, after having been duly ratified, shall be added to and make a part of this treaty. In faith whereof we, the undersigned Ministers Plenipotentiary of His Majesty the King of Great Britain and the United States of America, have signed this present treaty, and have caused to be affixed thereto the seal of our arms.

Done at London this nineteenth day of November, one thousand seven hundred and ninety-four.

(SEAL.)  
(SEAL.)

GRENVILLE.  
JOHN JAY.

Letter from Thomas Jefferson to George Hammond.

PHILADELPHIA, September 5, 1793.

Sir: I am honored with yours of August 30. Mine of the 7th of that month assured you that measures were taken for excluding from all further asylum in our ports vessels armed in them to cruise on nations with which we are at peace, and for the restoration of the prizes the Lovely Lass, Prince William Henry, and the Jane of Dublin; and that should the measures for restitution fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels.

We are bound by our treaties with three of the belligerent nations, by all the means in our power, to protect and defend their vessels and effects in our ports, or waters, or on the seas near our shores, and to recover and restore the same to the right owners when taken from them. If all the means in our power are used, and fail in their effect, we are not bound by our treaties with those nations to make compensation.

Though we have no similar treaty with Great Britain, it was the opinion of the President that we should use towards that nation the same rule which, under this article, was to govern us with the other nations; and even to extend it to captures made on the high seas and brought into our ports, if done by vessels which had been armed within them.

Having, for particular reasons, forbore to use all the means in our power for the restitution of the three vessels mentioned in my letter of August 7th, the President thought it incumbent on the United States to make compensation for them; and though nothing was said in that letter of other vessels taken under like circumstances, and brought in after the 5th of June, and before the date of that letter, yet when the same forbearance had taken place, it was and is his opinion, that compensation would be equally due.

As to prizes made under the same circumstances, and brought in after the date of that letter, the President determined that all the means in our power should be used for their restitution. If these fail, as we should not be bound by our treaties to make compensation to the other Powers in the analogous case, he did not mean to give an opinion that it ought to be done to Great Britain. But still, if any cases shall arise subsequent to that date, the circumstances of which shall place them on similar ground with those before it, the President would think compensation equally incumbent on the United States.

Instructions are given to the Governors of the different States to use all the means in their power for restoring prizes of this last description found within their ports. Though they will, of course, take measures to be informed of them, and the General Government has given them the aid of the custom-house officers for this purpose, yet you will be sensible of the importance of multiplying the channels of their information as far as shall depend on yourself, or any person under your direction, or order that the Governors may use the means in their power for making restitution.

Without knowledge of the capture they cannot restore it. It will always be best to give the notice to them directly; but any information which you shall be pleased to send to me, also, at any time, shall be forwarded to them as quickly as distance will permit.

Hence you will perceive, sir, that the President contemplates restitution or compensation in the case before the 7th of August; and after that date, restitution if it can be effected by any means in our power. And that it will be important that you should substantiate the fact that such prizes are in our ports or waters.

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Your list of the privateers illicitly armed in our ports is, I believe, correct.

With respect to losses by detention, waste, spoilation sustained by vessels taken as before mentioned, between the dates of June 5th and August 7th, it is proposed as a provisional measure that the Collector of the Customs of the district, and the British Consul, or any other person you please, shall appoint persons to establish the value of the vessel and cargo at the time of her capture and of her arrival in the port into which she is brought, according to their value in that port. If this shall be agreeable to you, and you will be pleased to signify it to me, with the names of the prizes understood to be of this description, instructions will be given accordingly to the Collector of the Customs where the respective vessels are.

I have the honor to be, &c.,  
GEO: HAMMOND, Esq.

TH: JEFFERSON.

#### ADDITIONAL ARTICLE. (8)

It is further agreed, between the said contracting parties, that the operation of so much of the twelfth article of the said treaty as respects the trade which his said Majesty thereby consents may be carried on between the United States and his islands in the West Indies, in the manner and on the terms and conditions therein specified, shall be suspended.

1796.

EXPLANATORY ARTICLE TO THE THIRD ARTICLE OF THE TREATY OF NOVEMBER 19, 1794, RESPECTING THE LIBERTY TO PASS AND REPASS THE BORDERS AND TO CARRY ON TRADE AND COMMERCE.

Concluded May 4, 1796; Ratification advised by Senate May 9, 1796.

Whereas by the third article of the treaty of amity, commerce and navigation, concluded at London on the nineteenth day of November, one thousand seven hundred and ninety-four, between His Britannic Majesty and the United States of America, it was agreed that it should at all times be free to His Majesty's subjects and to the citizens of the United States, and also to the Indians dwelling on either side of the boundary line, assigned by the treaty of peace to the United States, freely to pass and repass, by land or inland navigation, into the respective territories and countries of the two

contracting parties, on the continent of America, (the country within the limits of the Hudson's Bay Company only excepted,) and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with each other, subject to the provisions and limitations contained in the said article: And whereas by the eighth article of the treaty of peace and friendship concluded at Greenville on the third day of August, one thousand seven hundred and ninety-five, between the United States and the nations or tribes of Indians called the Wyandots, Delawares, Shawanoes, Ottawas, Chippewas, Putawatimies, Miamis, Eel River, Weeas, Kickapoos, Piankashaws, and Kaskaskias, it was stipulated that no person should be permitted to reside at any of the towns or the hunting camps of the said Indian tribes, as a trader, who is not furnished with a licence for that purpose under the authority of the United States: Which latter stipulation has excited doubts, whether in its operation it may not interfere with the due execution of the third article of the treaty of amity, commerce and navigation: And it being the sincere desire of His Britannic Majesty and of the United States that this point should be so explained as to remove all doubts and promote mutual satisfaction and friendship: And for this purpose His Britannic Majesty having named for his Commissioner, Phineas Bond, Esquire, His Majesty's Consul-General for the Middle and Southern States of America, (and now His Majesty's Chargé d'Affaires to the United States,) and the President of the United States having named for their Commissioner, Timothy Pickering, Esquire, Secretary of State of the United States, to whom, agreeably to the laws of the United States, he has intrusted this negotiation: They, the said Commissioners, having communicated to each other their full powers, have, in virtue of the same, and conformably to the spirit of the last article of the said treaty of amity, commerce and navigation, entered into this explanatory article, and do by these presents explicitly agree and declare, that no stipulations in any treaty subsequently concluded by either of the contracting parties with any other State or nation, or with any Indian tribe, can be understood to derogate in any manner from the rights of free intercourse and commerce, secured by the aforesaid third article of the treaty of amity, commerce and navigation, to the subjects of his Majesty and to the citizens of the United States, and to the Indians dwelling on either side of the boundary line aforesaid; but that all the said persons shall remain at full liberty freely to pass and repass, by land or inland navigation, into the respective territories and countries of the contracting parties, on either side of the said boundary line, and freely to carry on trade and commerce with each other, according to the stipulations of the said third article of the treaty of amity, commerce and navigation.



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This explanatory article, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be added to and make a part of the said treaty of amity, commerce and navigation, and shall be permanently binding upon His Majesty and the United States.

In witness whereof we, the said Commissioners of His Majesty the King of Great Britain and the United States of America, have signed this present explanatory article, and thereto affixed our seals.

Done at Philadelphia this fourth day of May, in the year of our Lord one thousand seven hundred and ninety-six.

(SEAL.)

(SEAL.)

P. BOND.

TIMOTHY PICKERING.

1798.

EXPLANATORY ARTICLE TO THE TREATY OF NOVEMBER 19, 1794,  
RELEASING THE COMMISSIONERS UNDER THE FIFTH ARTICLE FROM  
PARTICULARIZING THE LATITUDE AND LONGITUDE OF THE RIVER  
ST. CROIX.

Concluded March 15, 1798; Ratification advised by Senate  
June 5, 1798.

Whereas by the twenty-eight article of the treaty of amity, commerce, and navigation between His Britannic Majesty and the United States, signed at London on the nineteenth day of November, one thousand seven hundred and ninety-four, it was agreed that the contracting parties would, from time to time, readily treat of and concerning such further articles as might be proposed; that they would sincerely endeavour so to form such articles as that they might conduce to mutual convenience and tend to promote mutual satisfaction and friendship; and that such articles, after having been duly ratified, should be added to and make a part of that treaty: And whereas difficulties have arisen with respect to the execution of so much of the fifth article of the said treaty as requires that the Commissioners appointed under the same should in their description particularize the latitude and longitude of the source of the river which may be found to be the one truly intended in the treaty of peace between His Britannic Majesty and the United States, under the name of the river St. Croix, by reason whereof it is expedient that the said Commissioners

should be released from the obligation of conforming to the provisions of the said article in this respect. The undersigned being respectively named by His Britannic Majesty and the United States of America their Plenipotentiaries for the purpose of treating of and concluding such articles as may be proper to be added to the said treaty, in conformity to the above mentioned stipulation, and having communicated to each other their respective full powers, have agreed and concluded, and do hereby declare in the name of His Britannic Majesty and of the United States of America, that the Commissioners appointed under the fifth article of the above mentioned treaty shall not be obliged to particularize, in their description, the latitude and longitude of the source of the river which may be found to be the one truly intended in the aforesaid treaty of peace under the name of the river St. Croix, but they shall be at liberty to describe the said river, in such other manner as they may judge expedient, which description shall be considered as a complete execution of the duty required of the said Commissioners in this respect by the article aforesaid. And to the end that no uncertainty may hereafter exist on this subject, it is further agreed, that as soon as may be after the decision of the said Commissioners, measures shall be concerted between the Government of the United States and His Britannic Majesty's Governors or Lieutenant Governors in America, in order to erect and keep in repair a suitable monument at the place ascertained and described to be the source of the said river St. Croix, which measures shall immediately thereupon, and as often afterwards as may be requisite, be duly executed on both sides with punctuality and good faith.

This explanatory article, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be added to and make a part of the treaty of amity, commerce, and navigation between His Majesty and the United States, signed at London on the nineteenth day of November, one thousand seven hundred and ninety-four, and shall be permanently binding upon His Majesty and the United States.

In witness whereof we, the said undersigned Plenipotentiaries of His Britannic Majesty and the United States of America, have signed this present article, and have caused to be affixed thereto the seal of our arms.

Done at London this fifteenth day of March, one thousand seven hundred and ninety-eight.

(SEAL.)  GRENVILLE.  
(SEAL.)  RUFUS KING.

The declaration was made by the Commission under this treaty October 25, 1798.

(1) <sup>a</sup>Note concerning treaties with Great Britain of 1782, 1783, 1794 and the additional and explanatory articles thereto, and 1802.

In response to an inquiry as to whether these treaties, so far as they were not fully executed, terminated by the war of 1812, the Department of State, in a communication addressed to W.M. Malloy, dated January 20, 1910, replied as follows:

"With respect to the British treaties mentioned, you are informed that they were claimed by Great Britain, after the conclusion of the treaty of Ghent, to John Quincy Adams it is stated, 'She (Great Britain) knows of no exception to the rule that all treaties are put an end to by a subsequent war between the same parties.' (American State Paper, vol. 4, p. 354.) Against this view of the British Government and its unqualified expression the United States protested. (On the effect of war on treaties, see Moore's Digest International Law, vol. 5, p. 372.)"

See also decision of Supreme Court of United States (Society for Propagation of Gospel v. New Haven, 9 Wheaton, 464) as to effect of war of 1812 on treaties with Great Britain.

(2) The Commission made a declaration October 25, 1878, as to the true source of the St. Croix River.

(3) The Commission under this article met May 29, 1797, and suspended July 31, 1799, owing to disagreements. By the treaty of 1802 \$2,664,000 was provided to be paid to Great Britain in settlement of these claims.

(4) The Commission met August 16, 1796, and suspended July 20, 1799. The meetings were resumed under the treaty of 1802, and the final meeting held February 4, 1804. The awards against the United States amount to \$143,428.14, and against Great Britain \$11,656,000.

(5) Articles XI to XXVII, inc., expired October 28, 1807.

(6) Suspended by the Additional Article being an amendment by the Senate (see p. ).

(7) Expired October 28, 1807.

(8) Amendment of the Senate by its resolution advising ratification, June 24, 1795, accepted by Great Britain.

## EXPLANATION ON JAY TREATY

The Jay Treaty was contracted between the British Sovereign and the Government of the United States in 1794 to ensure amicable relations between the two governments in commerce and navigation. It was not a treaty between the Sovereign and the Indian people of North America.

The present controversy at Cornwall results from the belief of the St. Regis Indians that the Jay Treaty exempts Indians from paying customs duty on goods transported by them across the United States - Canada border at Cornwall. Three classes of persons are referred to in the Treaty, namely: "His Majesty's subjects ... citizens of the United States and ... Indians dwelling on either side of the boundary line". A section of Article III dealing with the transport of goods by Indian people reads as follows: "nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any import duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians". It is on this section that the Indian claim to customs duty exemptions is based.

The most notable Canadian Customs case involving this issue is that of Louis Francis of the St. Regis Reserve as the Queen, in which Mr. Francis lost his appeal to the Supreme Court in 1956 concerning duty paid on appliances imported from the United States. The Supreme Court judged that neither the Jay Treaty nor the Indian Act exempted Canadian Indians from payment of customs duty. It is because of this

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judgment and from the fact that legislation has not been passed giving effect to the Jay Treaty that Indians have no special rights regarding border crossings.

The question of United States' customs duty does not have the same significance in relation to the present controversy as traffic in manufactured goods in mainly from the United States to Canada. However, we have been advised that in a decision rendered on March 1, 1937, published as TD 48857, Article III of the Jay Treaty, which granted Indians the right to pass and repass with their goods and effects was held by the United States court of customs and patent appeals to have been abrogated by the War of 1812 between the United States and Great Britain. As a result of this decision and the fact that there are no special provisions in the current customs' laws and regulations exempting Indians from the payment of duty, merchandise brought into the United States by Indians is treated in the same manner as merchandise brought in by any other person. It is, however, the practice of the American authorities to permit Indians who reside in the Canadian portion of the reserve who have made purchases in Cornwall or elsewhere in Canada and who are returning to their residence on the reserve, or who are proceeding with goods from the Canadian portion of the reserve to some other place in Canada to declare their purchases or other articles to United States customs under an informal procedure which does not involve the payment of duty.

The Government is currently reviewing all treaties affecting Indian people and the Jay Treaty is being examined as a part of the review.

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Therefore, until this review has been completed and the Government has fully considered the matter, this Department is unable to supply any further information on the Jay Treaty.

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QS-0109-000-EE-A-1

FROM F.I. ISRAEL MAJOR PEACE TREATIES OF MODERN HISTORY,  
1648-1967. (4 VOLS.) CHELSEA HOUSE PUBLICATIONS, 1967.

TREATY OF GHENT

1814

TREATY OF PEACE AND AMITY, BETWEEN HIS MAJESTY AND  
THE UNITED STATES OF AMERICA <sup>1</sup>

SIGNED AT GHENT, THE 24TH DECEMBER, 1814

(Ratifications exchanged 17 February, 1815)

His Britannic Majesty and The United States of America, desirous of terminating the War which has unhappily subsisted between the two Countries, and of restoring, upon principles of perfect reciprocity, peace, friendship, and good understanding between them, have for that purpose appointed their respective Plenipotentiaries, that is to say:

His Britannic Majesty, on his part, has appointed the Right Hon. James Lord Gambier, late Admiral of the White, now Admiral of the Red Squadron of His Majesty's fleet; Henry Goulburn, Esquire, a member of the Imperial Parliament, and Under Secretary of State; and William Adams, Esquire, Doctor of Civil Laws;

And the President of the United States, by and with the advice and consent of the Senate thereof, has appointed John Quincy Adams, James A. Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin, citizens of the United States.

Who, after a reciprocal communication of their respective Full Powers, have agreed upon the following Articles:

Article I. There shall be a firm and universal Peace between His Britannic Majesty and the United States, and between their respective Countries, Territories, Cities, Towns and People of every degree, without exception of Places or Persons. All hostilities, both by sea and land, shall cease as soon as this Treaty shall have been ratified by both parties, as hereinafter mentioned. All Territory, Places and Possessions whatsoever taken by either party from the other during the War, or which may be taken after the signing of this Treaty, excepting only the Islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the Artillery or other public property originally captured in the said Forts or Places, and which shall remain therein upon the exchange of the Ratifications of this Treaty, or any Slaves or other private property. And all Archives, Records, Deeds and Papers, either of a public nature, or belonging to private Persons, which, in the course of the War, may have fallen into the hands of the Officers of either Party, shall be, as far as may be practicable, forthwith restored and delivered to the proper Authorities and Persons to whom they respectively belong. Such of the islands in the Bay of Passamaquoddy as are claimed by both Parties, shall remain in the possession of the Party in whose occupation they may be at the time of the exchange of the Ratifications of this Treaty, until the decision respecting the title to the said Islands, shall have been made in conformity with the IVth Article of this Treaty. No disposition made by this Treaty, as to such possession of the Islands and Territories claimed by both Parties, shall, in any manner whatever, be construed to affect the right of either.

1. From British & Foreign State Papers, Vol. 2, p.357.

II. Immediately after the Ratifications of this Treaty by both Parties, as hereinafter mentioned, orders shall be sent to the Armies, Squadrons, Officers, Subjects, and Citizens of the two Powers, to cease from all hostilities. And to prevent all causes of complaint which might arise on account of the prizes which may be taken at sea after the said Ratifications of this Treaty, it is reciprocally agreed, that all Vessels and effects which may be taken after the space of 12 days from the said Ratifications, upon all parts of the coast of North America, from the latitude of 23 degrees North, to the latitude of 50 degrees North, and as far eastward in the Atlantic Ocean as the 36th degree of West longitude from the meridian of Greenwich, shall be restored on each side; that the time shall be 30 days in all other parts of the Atlantic Ocean, North of the Equinoxial line or equator, and the same time for the British and Irish Channels, for the Gulf of Mexico, and all parts of the West Indies; 40 days for the North Seas, for the Baltic, and for all parts of the Mediterranean; 60 days for the Atlantic Ocean, South of the Equator, as far as the latitude of the Cape of Good Hope; 90 days for every other part of the World, south of the Equator; and 120 days for all other parts of the World, without exception.

III. All Prisoners of War taken on either side, as well by land as by sea, shall be restored as soon as practicable after the Ratifications of this Treaty, as hereinafter mentioned, on their paying the debts which they may have contracted during their captivity. The two Contracting Parties respectively engage to discharge, in specie, the advances which may have been made by the other for the sustenance and maintenance of such Prisoners.

IV. Whereas it was stipulated by the IIInd Article in the Treaty of Peace, of 1783,\* between His Britannic Majesty and the United States of America, that the boundary of The United States should comprehend all Islands within 20 leagues of any part of the shores of The United States, and lying between Lines to be drawn due East from the points where the aforesaid Boundaries, between Nova Scotia, on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy, and the Atlantic Ocean, excepting such Islands as now are, or heretofore have been, within the limits of Nova Scotia; and whereas the several Islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the Island of Grand Manan in the said Bay of Fundy, are claimed by the United States, as being comprehended within their aforesaid Boundaries, which said Islands are claimed as belonging to His Britannic Majesty, as having been at the time of, and previous to the aforesaid Treaty of 1783, within the limits of the Province of Nova Scotia.

In order, therefore, finally to decide upon these Claims it is agreed that they shall be referred to two Commissioners, to be appointed in the following manner, viz: One Commissioner shall be appointed by His Britannic Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two Commissioners so appointed, shall be sworn impartially to examine and decide upon the said Claims according to such evidence as shall be laid before them on the part of His Britannic Majesty and of the United States respectively.

The said Commissioners shall meet at St. Andrews, in the Province of New Brunswick, and shall have power to adjourn to such other Place or Places as they shall think fit. The said Commissioners shall, by a Declaration or Report under their hands and seals, decide to which of the two Contracting Parties, the several Islands aforesaid do respectively belong, in conformity with the true intent of the said Treaty of Peace of 1783; and if the said Commissioners shall agree in their decision, both Parties shall consider such decision as final and conclusive.



It is further agreed that, in the event of the two Commissioners differing upon all or any of the matters so referred to them, or in the event of both or either of the said Commissioners refusing, or declining, or wilfully omitting to act as such, they shall make jointly or separately, a Report or Reports, as well to the Government of His Britannic Majesty as to that of the United States stating, in detail, the points on which they differ and the grounds upon which their respective opinions have been formed, or the grounds upon which they or either of them, have so refused, declined, or omitted to act.

And His Britannic Majesty and the Government of the United States hereby agree to refer the report or reports of the said Commissioners to some friendly Sovereign or State, to be then named for that purpose, and who shall be requested to decide on the differences which may be stated in the said Report or Reports, or upon the Report of one Commissioner, together with the grounds upon which the other Commissioner shall have refused, declined, or omitted to act, as the case may be.

And if the Commissioner so refusing, declining, or omitting to act, shall also wilfully omit to state the grounds upon which he has so done, in such manner that the said statement may be referred to such Friendly Sovereign or State, together with the Report of such other Commissioner, then such Sovereign or State shall decide, ex parte, upon the said Report alone. And His Britannic Majesty and the Government of the United States engage to consider the decision of such Friendly Sovereign or State to be final and conclusive on all the matters so referred.

V. Whereas neither that point of the Highlands lying due North from the source of the River St. Croix, and designated in the former Treaty of Peace\* between the two Powers, as the Northwest Angle of Nova Scotia, nor the North-Westernmost head of the Connecticut River, has yet been ascertained; and whereas that part of the Boundary Line between the Dominions of the two Powers, which extends from the source of the River St. Croix, directly North to the above-mentioned Northwest Angle of Nova Scotia, thence along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the North-Westernmost head of Connecticut River, thence down along the middle of that River to the 45th degree of North Latitude, thence by a line due West on said Latitude, until it strikes the River Iroquois or Cataraquy, has not yet been surveyed; it is agreed, that for these several purposes two Commissioners shall be appointed, sworn and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding Article unless otherwise specified in the present Article.

The said Commissioners shall meet at St. Andrews, in the Province of New Brunswick, and shall have power to adjourn to such other Place or Places, as they shall think fit. The said Commissioners shall have power to ascertain and determine the points above-mentioned, in conformity with the provisions of the said Treaty of Peace of 1783, and shall cause the boundary aforesaid, from the source of the River St. Croix to the River Iroquois or Cataraquy, to be surveyed and marked, according to the said provisions. The said Commissioners shall make a Map of the said Boundary, and annex to it a declaration, under their Hands and Seals, certifying it to be the true Map of the said Boundary, and particularizing the Latitude and Longitude of the Northwest Angle of Nova Scotia, of the North-Westernmost head of Connecticut River, and of such other points of the said Boundary, as they may deem proper.

And both Parties agree to consider such Map and Declaration as finally and conclusively fixing the said Boundary. And in the event of the said two Commissioners differing, or both, or either of them refusing, declining, or willfully omitting to act, such Reports, Declarations, or Statements, shall be made by them, or either of them, and such reference to a Friendly Sovereign or State shall be made, in all respects, as in the latter part of the IVth Article is contained, and in as full a manner as if the same was herein repeated.

VI. Whereas, by the former Treaty of Peace, that portion of the Boundary of the United States, from the point where the 45th degree of North Latitude strikes the River Iroquois or Cataraquy to the Lake Superior, was declared to be "along the middle of said River into Lake Ontario, through the middle of said Lake, until it strikes the communication by water between that Lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said Lake, until it arrives at the Water-communication into the Lake Huron; thence through the middle of said Lake to the Water-communication between that Lake and Lake Superior." And whereas doubts have arisen what was the middle of the said River, Lakes and Water-communications, and whether certain Islands lying in the same were within the Dominions of His Britannic Majesty, or of the United States. In order, therefore, finally to decide these doubts, they shall be referred to two Commissioners, to be appointed, sworn, and authorized to act exactly in the manner directed, with respect to those mentioned in the next preceding Article, unless otherwise specified in this present Article.

The said Commissioners shall meet, in the first instance, at Albany, in the State of New York, and shall have power to adjourn to such other Place or Places as they shall think fit; the said Commissioners shall, by a Report or Declaration, under their Hands and Seals, designate the Boundary through the said Rivers, Lakes, and Water-communications, and decide to which of the two Contracting Parties the several Islands lying within the said River, Lakes, and Water-communications, do respectively belong, in conformity with the true intent of the said Treaty of 1783.\* And both Parties agree to consider such designation and decision as final and conclusive. And in the event of the said two Commissioners differing, or both, or either of them refusing, declining, or wilfully omitting to act, such Reports, Declarations, or Statements, shall be made by them, or either of them, and such reference to a Friendly Sovereign or State, shall be made in all respects as in the latter part of the IVth Article is contained, and in as full a manner as if the same was herein repeated.

VII. It is further agreed that the said two last-mentioned Commissioners, after they shall have executed the duties assigned to them in the preceding Article, shall be, and they are hereby authorized, upon their Oaths, impartially to fix and determine, according to the true intent of the said Treaty of Peace of 1783, that part of the Boundary between the Dominions of the two Powers, which extends from the Water-communication between Lake Huron and Lake Superior, to the most North-western point of the Lake of the Woods, to decide to which of the two Parties the several Islands lying in the Lakes, Water-communications and Rivers forming the said Boundary, do respectively belong, in conformity with the true intent of the said Treaty of Peace of 1783; and to cause such parts of the said Boundary, as require it, to be surveyed and marked.

The said Commissioners shall, by a Report or Declaration, under their Hands and Seals, designate the Boundary aforesaid, state their decision on the points thus referred to them, and particularize the Latitude and Longitude of the most North-western point of the Lake of the Woods, and of such other

parts of the said Boundary as they may deem proper. And both Parties agree to consider such designation and decision as final and conclusive. And in the event of the said two Commissioners differing, or both, or either of them refusing, declining, or wilfully omitting to act, such Reports, Declarations, or Statements shall be made by them, or either of them, and such reference to a Friendly Sovereign or State, shall be made in all respects as in the latter part of the IVth Article is contained, and in as full a manner as if the same was herein repeated.

VIII. The several Boards of two Commissioners, mentioned in the four preceding Articles, shall respectively have power to appoint a Secretary, and to employ such Surveyors, or other Persons, as they shall judge necessary. Duplicates of all their respective Reports, Declarations, Statements, and Decisions, and of their Accounts, and of the Journal of their Proceedings, shall be delivered by them to the Agents of His Britannic Majesty, and to the Agents of The United States, who may be respectively appointed and authorized to manage the business on behalf of their respective Governments.

The said Commissioners shall be respectively paid in such manner as shall be agreed between the two Contracting Parties, such agreement being to be settled at the time of the exchange of the Ratifications of this Treaty. And all other expenses attending the said Commissioners, shall be defrayed equally by the two Parties. And in the case of death, sickness, resignation, or necessary absence, the place of every such Commissioner respectively, shall be supplied in the same manner as such Commissioner was first appointed, and the new Commissioner shall take the same Oath or Affirmation, and do the same duties.

It is further agreed, between the two Contracting Parties, that in case any of the Islands, mentioned in any of the preceding Articles, which were in the possession of one of the Parties, prior to the commencement of the present War between the two countries, should, by the decision of any of the Boards of Commissioners aforesaid, or of the Sovereign or State so refused to, as in the four next preceding Articles contained, fall within the Dominions of the other Party, all grants of land made previous to the commencement of the War, by the Party having had such possession, shall be as valid as if such Island or Islands had by such decision or decisions, been adjudged to be within the Dominions of the Party having had such possession.

IX. The United States of America engage to put an end, immediately after the Ratification of the present Treaty, to hostilities with all the Tribes or Nations of Indians, with whom they may be at War at the time of such Ratification; and forthwith to restore to such Tribes or Nations respectively, all the Possessions, Rights, and Privileges, which they may have enjoyed, or been entitled to in 1811, previous to such hostilities: Provided always, that such Tribes or Nations shall agree to desist from all hostilities against The United States of America, their Citizens and Subjects, upon the Ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly.

And His Britannic Majesty engages, on his part, to put an end, immediately after the Ratification of the present Treaty to hostilities with all the Tribes or Nations of Indians with whom he may be at War at the time of such Ratification; and forthwith to restore to such Tribes or Nations, respectively, all the Possessions, Rights and Privileges, which they may have enjoyed or been entitled to in 1811, previous to such hostilities: Provided always, that such Tribes or Nations shall agree to desist from all hostilities against His Britannic Majesty, and his Subjects, upon the Ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly.

X. Whereas the Traffic in Slaves is irreconcilable with the principles of humanity and justice; And whereas, both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition; it is hereby agreed that both the Contracting Parties shall use their best endeavours to accomplish so desirable an object.

XI. This Treaty, when the same shall have been ratified on both sides, without alteration by either of the Contracting Parties, and the Ratifications mutually exchanged, shall be binding on both Parties, and the Ratifications shall be exchanged at Washington, in the space of four months from this day, or sooner if practicable.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done, in Triplicate, at Ghent, the 24th day of December, 1814.

(L.S.) GAMBIER,  
(L.S.) HENRY GOULBURN,  
(L.S.) WILLIAM ADAMS.

(L.S.) JOHN QUINCY ADAMS,  
(L.S.) J.A. BAYARD,  
(L.S.) H. CLAY,  
(L.S.) JONA RUSSELL,  
(L.S.) ALBERT GALLATIN.

8 Assiniboine Rd. #609,  
Downsview, Ont.

M35 124

- Nov. 12, 1974.

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Dear Mr. Stanford,

The eye of the storm surrounds me, and in the quiet I'm taking the opportunity to respond to the points you raised in your memorandum of October 21st, concerning my paper on the Jay Treaty. The pressures of a paper and of the court exercise have passed, and the final trial exercise and exams lie ahead, so that (as I predicted in my note of the 29th) it is only now that I can discuss adequately your points.

Again allow me to express my satisfaction in that you are inclined to agree that Article III of the Jay Treaty was terminated by the War of 1812. The only material I've uncovered in my research of the past few days bearing on this point is the extensive evidence of native Indian participation in the hostilities of that War, notably on the British side. Such evidence, I submit, substantiates the conclusion in paragraph 31 of the paper that Article 3's operation "presupposed the continuance of a state of peace between the contracting Parties, for clearly warfare is inconsistent with the free movement of nationals...". Further, the evidence is clear that, for the most part, where native Indians were at war little fur trading and trapping took place: p. 17 of Phillips, P.C., The Fur Trade (Vol. II), U. of Oklahoma Press, Norman (USA), 1961. In order to maintain the fur trade, which the British dominated even in nominally American territory, it was necessary to keep the Indians friendly; such was a cardinal object of British North American policy in the 1770's, and was reflected in the Jay Treaty, Article 3. The end to Indian peace, and a disruption of the fur trade, were reflections and consequences of the War of 1812 which could not be restored without express treaty provision.

It is necessary, then, to proceed to the points you have raised with respect to whether Article IX of the Treaty of Ghent revived the Indian provisions in the first and third paragraphs of Article 3 of the Jay Treaty. I will proceed through your points as they appear in your memorandum of Oct. 21, 1994.

At p. 2, with respect to paragraph 10 where I have suggested that the freedom of movement granted the Indians in Article 3, para. 3, is related to Indians engaged in the fur trade and to those movements which are essential to the fur trade: *Yes*, I am confining the movements so permitted to those for the specific commercial purpose of fur trading, for I submit that such an interpretation is the only one consistent with the scope and commercial object of the Article. The footnote 51 reference in paragraph 30 may be of some assistance; the copy of the paper you kindly sent to me does not contain the appended footnotes (which I strongly urge ought to be typed and attached to complete the paper). As well, the Phillips text (reference, *supra*), and the classic Innis, (H.A.) text, The Fur Trade in Canada, U. of Toronto Press, rev. ed. 1970, provide many examples as authority for the fact that Indian "middlemen" or collectors were involved in much of the trans-border trade.

At p. 2, with respect to para. 55: The quotation was cited as authority that no part of Article 3 of the Jay Treaty was revived. Similarly Hackworth has been cited in para. 59 as authority for the proposition that no part of Article 3 survived the War of 1812. However, the reference to the Barrow case in para. 60 is limited only to the proposition that the third paragraph of Article 3 had been abrogated by the War of 1812.

I agree with your observation, at p. 2 with respect to para. 62, that the U.S. "Treaties in Force" publication is inconsistent only with my conclusion on Article 3 of the Jay Treaty, provided that their reference to Article 9 is properly explained as, I submit, the conclusion at para. 39 of the paper provides.

With respect to para. 63, I suggested that "there is no settled opinion" in the U.S.A. in so far as the Dept. of State suggests only that the Articles "appear to remain in force"; hardly the wording of a settled question.

I agree with your observation with respect to Dr. Shelton's letter, arising out of the quotation at para. 64.

If I may re-open the question of my comments appearing at para. 67: I agree that, per your comments at the top of p. 5, research into certain questions, e.g. the matter of intention of the parties, may have been consciously rejected. However, there still appears to me to have been at that time no full consideration of all the pertinent issues and law involved. To that extent, I retain my opinion as to the letter's accuracy and thoroughness, though I hasten to make it clear that I never spoke of incompetence. A hurried response by a subaltern is as fully consistent with my description.

With respect to para. 71, and the U.S.A. practice after the War of 1812 of allowing free border passage: I submit that Article 31 (3)(b) ~~and~~ of the Vienna Convention on the Law of Treaties, and proof of practice, cannot alone revive a provision and substantiate an interpretation of the object of the provision (here Article IX of the Treaty of Ghent) which the text, preamble and other instruments do not substantiate on their face, particularly where the principle of a restricted interpretation of the wording of treaty provisions plus the review of history and preparatory materials suggest another interpretation of the provision. Further, (a.) of Article 32 of the Vienna Convention seems to obtain here; the wording of Article IX of the Treaty of Ghent is obscure as to which "rights" are considered to be revived. In such a case recourse may be had to supplementary means of interpretation, including the preparatory work of the Treaty.

In para. 73 the reference to the intention of the parties in 1794 is to the analyses in para. 10 and 30. Footnote 51 in para. 30 may be of some assistance, too. The Innis text, The Fur Trade in Canada (reference above on p. 2), at pp. 179 and 391 implies close links between fur trade policy and the Jay Treaty negotiations. Innis makes particular reference here to the work of one Wayne E. Stevens, The Northwest Fur Trade, 1763-1800, Urbana, Ill. (USA), 1964.

I have been unable to track down a copy of this work, but a search for it in the National Library holdings might be valuable.

With respect to my conclusion in para. 78 that in U.S.A. domestic law Article 3 no longer has any force as a source of rights of passage across the U.S.A. - Canada border: This conclusion was reached, first, by noting the U.S.A. principles with respect to treaty implementation — see para. 95 —, and then, second, by collating these principles with the findings in Goodwin v. Karnuth..., and in Akins v. Saxbe... In the latter two cases the courts relied on other than the continued validity (if any) of Article 3 in USA domestic law, but rather relied on the law of the land represented by a later (1928) statute, or relied on such statute's recognition of an aboriginal right. The usefulness of the cases lies as well in their influence on our interpretation of the intrinsic character of the native passage provisions of Article 3 and of the intention of the contracting parties. The fact that Article 3 may not be in force as U.S.A. domestic law is not conclusive, of course, in resolving ~~the~~ the Article's force and validity in international law, for the distinction between the assumption (and continued validity) of a treaty provision, and any obligation to implement the provision in the domestic law of that state must be recognized. As an added note, the cases you have referred to (at p. 3) do not review the question whether any part of Article 3 was revived by Art. IX of Ghent.

As an added note to para. 94, there appeared an article on the front page of the Toronto Star (on Oct. 19, 1974, I believe...) dealing with an attempt by an old Indian to be allowed to remain in Canada. The problems in citizenship faced by this Melvin Greene were compounded by his alleged passages back & forth across the U.S.A. - Canada border. The immigration appeals officer Lloyd Ross stated:

"There is no special status conferred on any group, be they Indian or not... It is not an issue whether they are Indians. It's a question of whether they are Canadians. That's how people are checked when they apply for entry to Canada."



statement would appear to confirm my summation, at para. 94, that there are no special administrative practices with regard to the admission to Canada of United States Indians.

On to the Treaty of Ghent issues, first in response to the argument you propose in respect of para. 99 (at pp. 3-4 of your memo.): I can fairly see that a distinction might be drawn between the suggestion that Indians in the U.S.A. should not be extended border passage rights, and the suggestion that British traders should not be allowed to enter the U.S.A. to trade with Indians there. However, the nature of the commercial fur trade was such as to involve traffic in both directions, and the Indian collectors (referred to in the 2d paragraph of p. 2 of this memo.) were particularly active here. Though the emphasis of U.S. concern is with respect to the entry of British traders, surely the unhampered trade with the Indians by British agents would wreak the same political and commercial effects regardless of the precise locus of the exchange of goods, credits and furs.

I submit that despite the attractiveness of the distinction offered, when the whole of the texts and arguments contained in paragraphs 97 to 103 is examined & considered along with the new material derived from Jones, other authors, and particularly Phillips, the following is true:

(a) Though, as we have seen (2d paragraph of the first page of this memo.), the link between Indian policy and the viability of the fur trade is strong, where in the Ninth Article of the Treaty of Ghent reference is made to "rights" of the Indians these must be distinguished in the context from the commercial trade provisions of article 3 of the Jay Treaty.

- see paras. 100-103 of the paper.

- also: Phillips in his text on The Fur Trade examines more than the numbers of bales and other trade facts, but provides a comprehensive study of the full conditions pertaining to the old Northwest. This covered not only Indian policy as it was reflected in fur trade policy and practice, but also covered the British proposals at Ghent which summed up the earlier policies in support of Indian pacification and alliance. In an important passage independently supporting my conclusion at para. 103:

... after first detailing (at p. 159) the British proposals serving the two-fold object of serving the fur-trading interests and confirming Indian interests — which proposals included the creation of a buffer Indian territory, and boundary re-adjustments to favour British trade —, Phillips noted the American's rejection of both proposals. Phillips then continued with a reference to precisely the same source employed in my paper at para. 100, saying:

"The British reply to this ringing refusal of the American commissioners was mild. ... Instead of an Indian barrier, it asked merely that the United States agree to end Indian wars in the Northwest and restore the natives to the possessions they had enjoyed prior to the outbreak of war. This claim to a right to protect the Indians within the United States stirred in the minds of the Americans a decided resentment. An agreement to this, however, would amount to no practical surrender of American sovereignty; thus, they made a face-saving, reciprocal proposal that the British agree to the same conditions for the Indians of Canada. Since the tribes of Canada were causing no trouble, agreement to this was only a gesture and the British accepted. This agreement became Article IX of the final treaty." (p. 160, Phillips, op. cit.)

views, cont'd.: (b.) Thus, per paras. 100-103 of the paper and the Phillips extract above, Indian "rights" per Article IX of the Treaty of Ghent were only those rights and privileges assured in the U.S.A. and Great Britain respectively by "treaties" with the Indian tribes residing in their respective territories.

(c.) Trading rights were indeed lost by the British, as is evident from the evidence of history and the commentaries. The reciprocal but, in practice, unequal U.S.A. rights under Article 3 fell as well, of course. The hopes of the British are summarized at para. 104 of the paper. That such a renunciation of trade 'rights' and practices occurred is clear from footnote 160 in para. 104, and from typical text summaries as that by editor Parker in The Recollections of Peter Prescott (1819-1862), U. of Nebraska Press, Lincoln (USA), 1966 at p. viii: "... Great Britain renounced all claims to trade south of the Canadian border..."

(d.) Later trade negotiations did not result in a revival of the trading <sup>in the</sup> <sub>002123</sub>

... as thus appeared in Article 3 of the Jay Treaty; and:

Therefore: (c) Article IX did not purport, nor in fact lead, to a revival of the Indian passage rights of the first and third paragraphs of Article 3 of the Jay Treaty.

To plunge on to the many questions posed at p. 4 of your memo. With respect to the language of Article IX of the Treaty of Ghent — after the polemics are over, both States agreed in words and in practice that Indians were not Nations in an international sense and therefore any "rights" etc. would be those by grace of or by contract with, and under, the respective sovereigns. Therefore in terms of the day, more express language was not necessary and would only have stirred further American resentment against internal interference. The provision appeared in the Treaty at all only in the face of British insistence and as a result of British attempts to provide their Indian allies with the express assurances of the warring States that peace terms would provide for them as well. The parity of the provision, as Phillips notes (above, p. 6 of this memo.), was a sop to equality of bargaining; a "face-saving" proposal to counter what the U.S.A. justifiably felt was an intrusion into internal, sovereign matters. With respect to Indians in Canada, Phillips has noted that they "were causing no trouble", though certain of the Six Nations tribes may have been disposed to the U.S.A. cause in the War of 1812.

In respect of your observations re paras. 100-103, I admit that an argument might be framed suggesting that my interpretation of Article IX and of Indian "rights" does not exclude other "rights" — such as those in the first and third paragraphs of Article 3 of the Jay Treaty. However, I again submit that the force of the materials reviewed above and at paras. 97-103 of the paper is such as to rebut presumptions (if any) of more. Especially where the rights in Article 3 generally were in hot dispute (the breaches, imbalances et al. complained of, plus the influence problem), to have so ambiguously included them (revived them) in Article IX without any preparatory discussion at all and without clear language to that effect ~~and~~ seems too unlikely to overthrow existing evidence otherwise.

Your comments at pp. 4-5 of your memo. have, in part, already been dealt with where I examined the application of the Vienna Convention on the Law of Treaties (at p. 3 of this memo, above). Further, while the words of the Article 18 provision may be clear, their content and scope remain obscure. To then review all possible "rights" intended, it would appear that all useful materials should be available to the researcher. Where these are examined, I submit that the meaning of the words in Article 18 become clear and incontrovertible: see my conclusions (a.-c.) above, and at para. 103 of the paper.

Finally, with respect to your comments at p. 5 of your memo, with respect to the Vienna Convention on the Law of Treaties. I did in fact examine its provisions when I prepared the paper. However, where the Convention was but a mere codification I felt it would be redundant in the face of more basic source materials and, where the Convention was progressive, it was inapplicable. Both results stemmed from the argument (at para. 25 of the paper) that the international law to be applied to a resolution of the Jay Treaty issue must be that obtaining in 1812 or so. Only perhaps in respect of the application of the 'rebus sic stantibus' in the Vienna codification particularly useful. Article 62 would appear to be applicable in the circumstances described: see paragraph 106.

With these comments and elaborations I hope I have fully answered all the points you have raised in your memorandum of October 21st. I remain unshaken in my belief that the conclusions I have reached are supported in law and by fact, policy and history. ... But perhaps I have missed a forest by measuring the girth of a single tree; I again welcome any further discussion that may assist the objects of the study. I only trust that something positive will come of it.

May I repeat my suggestion that the footnotes to the paper be typed and appended to the paper? Such a step seems indispensable to the completeness of the study and to ease of future reference and research. Would you be so kind as to forward a copy of these footnotes to complete my copy? ... R. L. Seal

File  
Div. diary  
Circ. diary  
Diary  
JS Stanford

Jay Treaty

- ① Mr. Kenneth R. Peel
- ② Jay Treaty

(2) 45-Cda -13-3-4	
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Ottawa, Ontario,  
K1A 0G2  
November 4, 1974

Dear Ken,

Thanks for your letter of October 29.

--- I knew we had discussed whether you would take a copy of your paper away with you but didn't realize when I wrote to you earlier that you didn't have a copy. I am therefore enclosing a copy for your use in our discussions concerning the points raised in your draft and my earlier memorandum. The document itself remains classified, of course, and I would ask you to treat it accordingly.

Warm personal regards,

Yours sincerely,

J. S. STANFORD

J.S. Stanford  
Deputy Director  
Legal Advisory Division

Mr. Kenneth R. Peel,  
8 Assiniboine Road, #609,  
DOWNSVIEW, Ontario,  
M3J 1L4

✓  
File  
Div. diary  
Circ. diary  
Diary  
JS Stanford

- ① Mr. Lorne Clarke.  
② Canadian Embassy, Washington

② 45-CDA-13-3-4. <del>20-3-3-1</del>	
38	20

Ottawa, K1A 0G2  
October 24, 1974

Dear Lorne,

I should be grateful for your assistance in connection with the following matter.

One of our summer students has done an extensive study of the Jay Treaty and has come to the conclusion, inter alia, that no part of Article III of the Jay Treaty is still in force. He has discovered, however, a certain inconsistency in the official U.S. position on this question. You are familiar, of course, with the State Department publication "U.S. Treaties in Force". The 1962 edition of that publication stated that "only Articles IX and X appear to remain in force". In 1964 this was changed to read "only Article III, so far as it relates to Indians, and Articles IX and X appear to remain in force". In 1973 the text was further altered to read "only Article III, so far as it related to the right of Indians to pass across the border, and Articles IX and X appear to remain in force". This is unchanged in the 1974 edition.

I discussed this matter with Steve Schwebel in New York last week, making clear to him that our interest in this question was not related to any existing or anticipated difference with the U.S. concerning Article III of the Jay Treaty. I asked him how we might obtain from the State Department, on an informal basis, the information and reasoning upon which it based its conclusion that part of Article III is still in force. He suggested the most effective way would be for you to raise the matter informally with the State Department, probably the Treaty

... 2

Mr. Lorne Clark,  
First Secretary,  
Canadian Embassy,  
1746 Massachusetts Avenue, N.W.,  
WASHINGTON, D.C. 20036

- 2 -

Section. He did not anticipate there would be any reluctance to provide you with this information, however he did suggest that, should you encounter any difficulty, you might raise the matter with him.

Any material you are able to obtain from the State Department on this point would be helpful to us.

Many thanks for your assistance.

Warm personal regards,

Yours sincerely,

J. S. STANFORD

J.S. Stanford  
Deputy Director  
Legal Advisory Division

Department of External Affairs



Ministère des Affaires extérieures

Canada

Ottawa, Ontario,

K1A 0G2

October 21, 1974

45-CDA-13-3-4	
38	/

Dear Ken,

I have now had an opportunity for a first reading of your draft paper on the Jay Treaty and, since it is unlikely I will have an early opportunity for a more detailed study in the near future, I thought it might be useful if I were to pass on to you now my initial reactions and comments.

First I must say the paper seems to have been very well researched and is very well written. You have treated a very complex subject with admirable clarity, and I find the arguments you put forward in support of your conclusions very persuasive. In particular I find your treatment of the effect of war on treaty relations to be particularly useful. I hope the comments which follow will be understood in the light of this general assessment.

The principal questions which occurred to me as I read the paper related, as you might imagine, to the question whether the provisions relating to Indians in the third paragraph of Article III are still in force. My comments which follow are based entirely on the material in your paper. I have not sought to duplicate your research, assuming your paper discloses all relevant material on both sides of the question.

I was interested in the fact that the publication "U.S. Treaties in Force" has only recently included a reference to Article III among the provisions of the Jay

... 2

Mr. Kenneth R. Peel,  
8 Assiniboine Road, #609,  
DOWNSVIEW, Ontario, M3J 1L4



- 2 -

Treaty still in force. This is a question which I hope to pursue on a personal basis with my U.S. colleagues, but it appears to indicate that the State Department has recently studied this particular question and has come to a conclusion contrary to that in the draft paper. It would be useful to know on what facts and reasoning their conclusion was based. It is this information which I will seek to obtain.

On the point whether Article III was terminated by the War of 1812, I am inclined to agree with your conclusion that it was. The point on which questions occurred as I read the paper were more related to whether Article IX of the Treaty of Ghent revived the Indian provisions in the third paragraph of Article III. I will raise the questions in the order in which they occurred as I read the paper rather than in order of importance.

In paragraph 10 you suggest that the freedom of movement granted the Indians in paragraph 3 is related to Indians engaged in the fur trade and to those movements which are essential to the fur trade. Are you suggesting that the rights conferred are confined only to movements by such persons for that specific purpose? If so, is this interpretation based entirely on the context in which the provision appears or is there additional authority?

In paragraph 55 you include a quotation to the effect that Washington would never admit and London did not claim that Article III of Jay had been revived by Article IX of Ghent. It is not clear, however, whether this is authority for the proposition that no part of III was revived or for the proposition that III was not revived in its entirety. The difference, of course, is critical. The context of the quotations from Hackworth in paragraph 59 would also have to be examined with this distinction in mind, as would U.S. v. Garrow, referred to in paragraph 60.

(As an aside, the reference to Articles IX and X of Jay in U.S. Treaties in Force doesn't appear to me to be inconsistent, as paragraph 62 implies, with your conclusions on those Articles, but only with your conclusion on Article III.)

The material in paragraph 63 indicates the State Department in 1964 changed its mind about Article III and now considers certain of its provisions to be in force, rather than that it has no settled opinion on the issue.

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- 3 -

On paragraph 64, you have already established that Dr. Skelton's letter was inaccurate, at least with respect of Articles IX and X.

(As another aside, should the question of publication of this paper arise, consideration will have to be given to the implication of incompetence in the first sentence of paragraph 67. My comments below indicate a possible different reason.)

On paragraph 71, I would agree that the practice of the U.S.A. in allowing free border passage after the War of 1812 would not revive a terminated provision of the Jay Treaty, but it remains to be considered whether the practice interprets the provisions of Article IX of Ghent (cf 1969 Vienna Convention on the Law of Treaties, Article 31, paragraph 3(b)).

In paragraph 73, is the evidence of the intention of the parties in 1794 concerning the nature of Article III found in paragraph 10 of the memorandum, or are these other parts of the memorandum which support this understanding of the parties' intentions?

In paragraph 78, I have trouble following you to the conclusion that the material previously quoted establishes that in U.S. domestic law Article III no longer has any force as a source of rights of passage across the U.S.A.-Canada border. You indicate that the court in Karmuth appears to have considered Article III still in force in 1928, and that the status of the Jay Treaty was not in issue in Saxbe. These cases were disposed of on other grounds. Garrow and Guiles, cited later, may support this conclusion, but you refer to them primarily in support of the proposition that III was terminated by the War of 1812. It would be useful to know whether the reasons for judgement deal with the question whether any part of III was revived by IX of Ghent.

Starting with paragraph 97, the paper comes to grips with the real issue concerning Article III of Jay, namely whether it was revived in part by Article IX of Ghent. In paragraph 99 you quote an instruction to the U.S. negotiators that a provision which allows British traders from Canada to carry on trade with the Indian tribes within the limits of the U.S. must not be renewed. Is the suggestion that Indians in the U.S. should not be allowed to enter Canada to trade with British traders, or that British traders should not be allowed to enter the U.S. to trade with Indians there? The distinction is important, for if the

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instruction is intended (as the language may be interpreted) to apply to the movement of British traders into the U.S. to trade with Indians, rather than with the movement of Indians, then it does not refer to the provision in III which concerns us. Perhaps the sources to which the relevant footnotes refer clarify this point. If so, it may be useful to add an appropriate passage from the sources to the text.

The following paragraphs contain what I judge is the essence of your argument on the basic point at issue, namely that IX of Ghent was intended to apply only to rights conferred by "treaties" between the U.S. and Indian tribes within its territory. The U.S., it appears, took the view that its treatment of Indians within its territory was a matter internal to the U.S.

Several questions come to mind. You point to the similarity of the language of the instructions to the language of IX. The differences appear equally noteworthy. Why is there no qualification of the reference to "Rights and Privileges" in IX? If IX is intended to apply only to "treaties" with Indians, why doesn't it say so? (To paraphrase A.P. Herbert, "if the drafters didn't mean what they said, they should have said so".) Indeed, if it is intended to apply only to the U.S. treatment of Indians in its territory, an internal U.S. matter, why is it in the Treaty at all? If the purpose was only to assure the U.K. that its Indian allies in the U.S. would not be persecuted, why is there a corresponding undertaking by Britain? Were there Indians in Canada, allied to the U.S., who had previously concluded treaties with Britain and in respect of whom the U.S. required corresponding assurances?

There are two general observations on the line of argument developed in paragraphs 100-103. The first is that a statement that IX applied to rights granted Indians under pre-1811 "treaties" concluded between them and one of the contracting parties to Ghent is not, without more, authority for the proposition that IX does not also include rights granted elsewhere, including the provision of interest to us in the third paragraph of III of Jay.

The argument for excluding this last provision appears to rely essentially on the instructions to the U.S. delegation.

The problem we are faced with is essentially one of treaty interpretation, specifically the meaning to be given to the words "Rights and Privileges, which they may have enjoyed ... previous to such hostilities" in Article IX.

- 5 -

The words themselves are clear and unambiguous. As you know, the view that every interpretation of a treaty should consist in an enquiry ab initio into the intentions (or as it has more recently come to be termed, the "shared expectations") of the parties is not widely held and was firmly rejected by the U.N. Conference on the Law of Treaties which drew up and adopted the 1969 Vienna Convention on the Law of Treaties. The more widely held view, reflected in the Convention, is that reference to the preparatory work of a treaty for purposes of arriving at an interpretation of its provisions is justified only in certain circumstances (see Articles 31 and 32). It may therefore be that what you have characterized as inadequate research was in fact the recognition by the researcher that there did not exist in the text of Article IX itself that ambiguity or inconsistency of language which would have legally justified reference to the preparatory work for the purpose of clarification and interpretation.

One final observation, not confined to the question of Article III, is that a paper so well researched and so fully documented and footnoted which deals with a treaty problem could appropriately include reference, on matters of treaty law, to the Vienna Convention. I have already indicated that principles of treaty interpretation found in the Convention may be relevant. This is true not only in the concluding paragraphs but possibly elsewhere (e.g. paragraphs 22 and 91). Separability (paragraph 23) is dealt with in the Convention (Article 44), as is fundamental change of circumstances (paragraph 106 of the paper; Article 62 of the Convention). Not all of the Convention is codification, some of it is progressive development, but where it is relevant you may wish to refer to it and, if the relevant provision does not assist your case, argue that it is progressive development.

This is a long letter, for which I apologize. It would probably be true to say it is long because I didn't have time to write a short one. I have no doubt that you will be able quickly to dispose of many of the questions. But the reply which will interest me most will be that indicating how we can justify giving a restricted meaning to the general terms of Ghent Article IX.

With respect to the "final matter" to which your letter of October 2 refers, I hope to discuss this shortly with Messrs. Lee and Robertson, after which I will write you again. I very much hope to be able to give you a favourable reply. The only possible obstacle I can foresee at the moment relates to budgetary considerations, which are still under general review in the Department.

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- 6 -

The very best of luck to you, Ken, in your studies and articles. Whatever may be the results of our further pursuit of the points raised in this letter, your paper on the Jay Treaty is already, in its present form, an extremely useful and valuable study for our purposes. The value of a paper of this kind lies, in my view, much more in the thorough research it incorporates and the source material it brings to light than in the conclusions it draws. Discussion of the conclusions is thus primarily useful to the extent that it may focus and refine the research rather than to support a particular viewpoint.

Yours sincerely,

  
J.S. Stanford

FLA/M.J. VECHSLER 2-8615/pv

45-CDA-13-8-4

FILE  
DIARY  
DIV DIARY  
CIRC DIARY

RESTRICTED

cc: Mr. R. Leclaire (MIN)  
ECL  
GWU

OTTAWA, K1A 0G2

May 7, 1974.

Dear Mr. Boucher,

Further to your telephone conversation of May 3, 1974 with Mr. Vechsler of this Division, we enclose, as you requested, a copy of the Treaty of Amity, Commerce and Navigation (Jay Treaty) between the United Kingdom and the United States which was signed at London on November 19, 1794.

Since the U.K. and the USA declared war on each other after the Treaty was signed, (the War of 1812), and since questions can arise regarding Canada's succession to any subsisting U.K. obligations under the treaty, there may be some doubt as to which, if any, of the provisions of the 1794 treaty are at present binding on Canada. The USA Government seems to take the view that Article III, so far as it relates to the right of Indians to pass across the border and Articles 9 and 10 of the Jay Treaty appear to remain in force. However, we intend to examine this matter in detail, and will inform you of the results of our study insofar as they may be relevant to the Foreign Investment Review Act.

Yours sincerely,

A.W. ROBERTSON

Mr. G. Boucher,  
Legal Adviser,  
Foreign Investment  
Review Agency,  
Jackson Bldg.,  
122 Bank St.,  
Ottawa, K1A 0G4

A.W. Robertson,  
Director,  
Legal Advisory Division.

DEPARTMENT OF EXTERNAL AFFAIRS

Cortie FIA  
FLA  
(4) FLO  
WNS

Subject Status of Women

Date SEP 30 1974

Publication

MONTREAL GAZETTE

45-cda-13-4  
P /

# Women here launch fight for full rights

By LINDA CAHILL  
of The Gazette

The Quebec Women's League launched an ambitious plan yesterday for charting a Women's Bill of Rights.

Since many existing Quebec laws discriminate against women, the Bill of Rights is an absolute necessity, group spokesman Gloria Mallaroni said.

According to Quebec law, married women may not join unions without their husbands' consent. There is also no equal pay for equal work statute enforced here, she noted.

## EQUALITY

And although discrimination by landlords is forbidden on the basis of race, religion and national origin, no landlord can be prosecuted for refusing to rent to a woman.

"Our goal is equality of women in every area, political, social and economic," Mrs. Mallaroni said.

The greatest problem facing Quebec women, who are trying to liberate themselves, is getting in contact with each other, she said.

"We practically have to drag them out of their kitchens sometimes."

The 250-member group's Bill of Rights project is their contribution to International Women's Year, 1975.

With the help of a \$15,000 grant from the Secretary of State's women's program, they hope to establish contact with groups of women across the province.

Although they haven't yet received final word on the grant, they plan to go ahead in organizing discussion groups across Quebec.

From these discussions of women and their problems, and specifically from the answers to a prepared questionnaire, they will know what Quebec women want changed in the law.

Status of Women  
File #15  
R-B

FILE ✓  
DIARY  
DIV. DIARY

45-Cda-13-384	
9	8

OTTAWA, K1A 0G2

March 23, 1973 ✓

Dear Mr. Trotman,

As requested by telephone this morning, I am pleased to attach a copy of a letter dated May 19, 1971 from our Legal Adviser to Miss Martha Cook, a student in the United States, which discusses the status of the Jay Treaty and its applicability in Canada.

Yours sincerely,

CHARLES V. COLE

Legal Advisory Division

Mr. G.T. Trotman,  
Director,  
Legal Services Branch,  
Department of National Revenue,  
Customs and Excise,  
OTTAWA.



Minister  
Indian and Northern Affairs

Ministre  
Affaires indiennes et du Nord

Ottawa, Ontario K1A 0H4  
March 21, 1973

American Indian Movement,  
226 Piccadilly Street,  
London, Ontario.

45-1Cda-13-3-4	
16	

Gentlemen:

On the Minister's behalf, I acknowledge receipt of a letter dated March 15, 1973, unsigned, from the American Indian Movement regarding the Jay Treaty of 1794 and the Treaty of Ghent of 1815 between Britain and the United States.

The matter seems to concern the Secretary of State for External Affairs rather than the Minister of Indian Affairs and Northern Development. A copy of the above-mentioned letter will be forwarded to the Honourable Minister for action and reply.

Yours sincerely,

ORIGINAL SIGNED BY  
IRVIN GOODLEAF  
ORIGINAL SIGNÉ PAR

Irvin Goodleaf,  
Special Assistant.

c.c. Mr. Mitchell Sharp  
Minister of Secretary of State for External Affairs

Same letter sent to: Alberta Indian Movement  
c/o Mr. Ed Burnstick  
106-13 98th Avenue  
Edmonton, Alberta

American Indian Movement  
c/o Paul Williams  
McMillan, Binch  
Barristers & Solicitors  
20 King Street West  
Suite 701  
Toronto, Ontario  
M5H 1C8

RECEIVED

MAR 28 1973

In Legal Advisory Division  
Department of External Affairs

DA-733

AMERICAN INDIAN MOVEMENT

March 15th, 1973.



Mr. Jean Chretien,  
Minister of Indian Affairs,  
Houses of Parliament,  
OTTAWA, Ontario.

Dear Sir,

As a member of the Commons Committee on Indian Affairs and Northern Development you are probably aware of the present state of the law with regard to Indians and their goods crossing the Canada-U.S. border.

Canada did not create free passage across the border and freedom from duty on personal goods for Indians. These rights pre-existed the coming of the Europeans and were acknowledged in the Jay Treaty of 1794 and the Treaty of Ghent of 1815 between Britain and the United States.

In a little more than a month's time you will receive a brief on this matter from us. A committee made up of traditional Indian leaders and American Indian Movement members will be in Ottawa in the middle of May to discuss the proposals set forth in the brief with you. //

Should you wish to correspond with us, could you send one copy of your letter to each of the following addresses: -

American Indian Movement, Telephone: 519-434-8390  
226 Piccadilly St.,  
London, Ontario.

Alberta Indian Movement, Telephone: 403-422-0870  
c/o Mr. Ed Burnstick,  
106-13 98th Avenue,  
Edmonton, Alberta.

American Indian Movement, Telephone: 416-364-5121  
c/o Paul Williams,  
McMillan, Binch,  
Barristers & Solicitors,

MAR 28 1973

Advisory Division  
Department of External Affairs

- 2 -

20 King Street West,  
Suite 701,  
Toronto, Ontario.  
M5H 1C8

We hope you will take steps to rectify this situation, which is one of great importance to Indian people across the continent. We address ourselves to you because you are the makers of the laws. The government Departments concerned, Manpower and Immigration, National Revenue, and Indian Affairs, are enforcers of existing laws. Negotiations with them would take a long time without much hope of a change in legislation, which is what we seek from you.

AMERICAN INDIAN MOVEMENT



01/22/81  
RECEIVED  
JAN 23 1981

O/SSEA  
MAR 26 1973  
REGISTRY

FICHE DE SERVICE  
ACTION REQUEST

CABINET DU SEAE - OFFICE OF THE SSEA

Date: 21 March 1973

*Adrienne & Terry please speak*

A: \_\_\_\_\_  
To: \_\_\_\_\_

FLO

De: \_\_\_\_\_  
From: \_\_\_\_\_

MIN -- Jon Church/jm

Lettre en date du \_\_\_\_\_  
Letter dated \_\_\_\_\_

March 15/73

Copy of a letter sent to the Hon.  
de Jean Chrétien from:

Sujet concerning the Jay Treaty of 1794  
Subject and the Treaty of Ghent of 1815  
between Britain and the United States

from American Indian Movement,  
226 Piccadilly Street,  
London, Ontario.

Action requise: - Action required:

\_\_\_\_ Réponse pour la signature du Premier Ministre  
Reply for Prime Minister's signature

\_\_\_\_ pour avis et retourner  
for advice and return

XX Réponse pour la signature du Ministre  
Reply for Minister's signature

Before April 13/73

\_\_\_\_ noter et retourner  
note and return

...with a copy to Mr. Goodleaf  
please

\_\_\_\_ Réponse au nom du P.M./ou Ministre  
Reply on behalf of PM/or SSEA

\_\_\_\_ traduction  
for translation

\_\_\_\_ Réponse pour la signature de \_\_\_\_\_  
Reply for signature of:

Commentaires:  
Comments:

*on other action thought appropriate.*

RECEIVED

Porter à l'attention des archives du SEAE le \_\_\_\_\_  
B.F. to Minister's registry on \_\_\_\_\_

Commentaires par D.C.O.:  
D.C.O.'s comments:

*I am indicating right the buck passing in the JCS  
Goodleaf reply - the depts actually concerned as those  
indicated in para 2 of the letter*

48-CDA-1313-4

2/13  
MINISTRE DES  
AFFAIRES INDIENNES  
ET DU NORD CANADIEN

MINISTER OF  
INDIAN AFFAIRS AND  
NORTHERN DEVELOPMENT



4-22  
10/8/70

Ottawa 4, July 28, 1970.

Mr. Jon Church,  
Executive Assistant to the  
Honourable Mitchell Sharp,  
Minister of External Affairs,  
House of Commons,  
Ottawa, Ontario.

Dear Mr. Church:

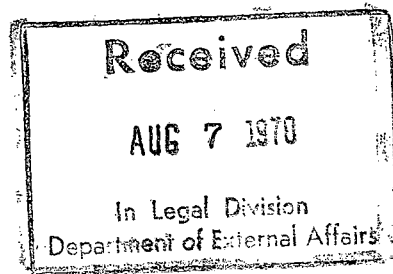
On behalf of the Honourable Jean Chrétien, I wish to acknowledge receipt of your Minister's letter of July 21, concerning a letter received from Mrs. Bernice Seymour, Secretary of the Mohawk Indian Rights Committee.

I will bring this matter to the Minister's attention for his consideration and reply.

Yours sincerely,

William J. Mussell,  
Special Assistant.

FLE



AUG 4 1970  
**REGISTRY**

NORTHERN DEVELOPMENT  
INDIAN AFFAIRS AND  
MINISTER OF

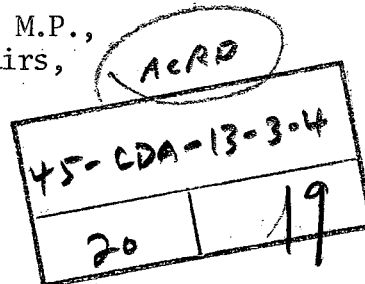
ET DU NORD CANADIEN  
AFFAIRES INDIANES  
MINISTRE DES

MINISTER OF  
INDIAN AFFAIRS AND  
NORTHERN DEVELOPMENT



45-13-3-4  
C.C. Encl. 2/10/70  
Montgomery  
MINISTRE DES  
AFFAIRES INDIENNES  
ET DU NORD CANADIEN  
USA Dir. to  
September 30, 1970.

The Honourable Mitchell Sharp, P.C., M.P.,  
Secretary of State for External Affairs,  
Ottawa, Ontario.



U.S.A. DIV	
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My dear Colleague:

Thank you for your letter of July 21 and for the copies which you enclosed of the correspondence which you have had with Mrs. Bernice Seymour, Secretary of the Mohawk Indian Rights Committee, concerning the *Jay Treaty*.

- - I enclose a copy of a letter which I am sending to Mrs. Seymour. I have not made any statement such as that attributed to me in her letter that Canada is not bound by the *Jay Treaty* because Canada was not a party to it. As I have stated in my letter to Mrs. Seymour, there are serious difficulties in the way of implementing this *Treaty* but none of these difficulties relates to the idea that the *Treaty* cannot be honoured because Canada is not a party to it. The principal difficulties which do exist are, first, whether the *Treaty* has not ceased to be in force either because the conditions with which it was intended to deal in 1794 have, in the meantime, changed completely, or because its Indian-border-crossing provision has fallen into disuse and second, whether the correct legal interpretation of this provision should not be that only those goods are covered which it was usual for Indians to possess in 1794.

Yours sincerely,

Jean Chrétien.



MINISTER OF  
INDIAN AFFAIRS AND  
NORTHERN DEVELOPMENT



MINISTRE DES  
AFFAIRES INDIENNES  
ET DU NORD CANADIEN

Mrs. Bernice Seymour,  
Secretary,  
The Mohawk Indian Rights Committee,  
Box 703,  
Cornwall, Ontario.

SEP 30 1970

Dear Mrs. Seymour:

My colleague, the Honourable Mitchell Sharp, has referred to me a copy of your letter of June 10.

I have not, at any time, stated either orally or in writing that the *Jay Treaty* cannot now be honoured because Canada was not a party to it. There are serious difficulties in the way of implementing this *Treaty* but none of these difficulties relates to the idea that the *Treaty* cannot be honoured because Canada is not a party to it. The principal difficulties which do exist are, first, whether the *Treaty* has not ceased to be in force either because the conditions with which it was intended to deal in 1794 have, in the meantime, changed completely, or because its Indian border-crossing provision has fallen into disuse and second, whether the correct legal interpretation of this provision should not be that only those goods are covered which it was usual for Indians to possess in 1794.

As you say in your letter officials of my Department are engaged in a study of all treaties related to Indians. Officials of several other Departments of the Government of Canada are also involved in this study as their Departments have responsibilities for certain matters in respect of which questions are being raised concerning these treaties. A final decision on all these questions probably cannot be reached until that study has been completed and its results considered.

Yours sincerely,

Original Signed by  
HON. JEAN CHRÉTIEEN

Jean Chrétien.

✓ c.c. The Honourable Mitchell Sharp, P.C., M.P.,  
Secretary of State for External Affairs  
Ottawa, Ontario.

cc: Minister of Fisheries and Forestry  
Minister of Indian Affairs and  
Northern Development  
Cdn. Embassy, Washington, D.C.

43-13-3-4  
2

Ottawa, *July 21, 1970*

Dear Mrs. Seymour,

Thank you for your letter of June 10, 1970, concerning Jay's Treaty of 1794. I have read your comments with interest and have brought them to the attention of my colleague, Mr. Chrétien and to the appropriate officials of the Canadian Government.

With regard to your comments on the Treaty of Utrecht, I might mention that French treaty fishing rights off the east coast of Canada are governed by a more recent agreement than the Treaty of Utrecht, namely, a Convention of 1904 between the U.K. and France to which Canada later succeeded. French fishing rights in our coastal waters can be traced to the Treaty of Utrecht of 1713 but the rights accorded under this instrument were altered several times in succeeding years until a general settlement was reached on these questions in 1904.

Yours sincerely,

ORIGINAL SIGNED BY  
MITCHELL SHARP

Mitchell Sharp.

Mrs. Bernice Seymour, Secretary,  
The Mohawk Indian Rights Committee,  
P. O. Box 703,  
Cornwall, Ontario.

cc: Minister of Fisheries and  
Forestry  
Canadian Embassy, Washington, D.C.

FILE: 45-CDA-13-3-4

BEST COPY AVAILABLE

Ottawa, *July 21, 1970*

My dear Colleague,

Attached for your information and any further action that you may consider necessary is a letter from Mrs. Bernice Seymour, Secretary of the Mohawk Indian Rights Committee, relating to Jay's Treaty of 1794.

As the question of Canada's obligations under Jay's Treaty pertain directly to important policy questions concerning our native peoples which are presently under intensive review by officials of your Department, I have simply acknowledged receipt of Mrs. Seymour's letter (copy attached) and attempted to clarify the position with respect to the Treaty of Utrecht.

You will note that Mrs. Seymour attempts to draw an analogy between the discharge of our obligations under the Treaty of Utrecht of 1713 and the implementation of Jay's Treaty. In fact, Canada considers that the more restrictive Convention of 1904 between the United Kingdom and France, to which Canada succeeded, rather than earlier instruments such as the Treaty of Utrecht governs French fishing rights in our coastal waters.

Mrs. Seymour attributes to you the view that Canada is not a party to Jay's Treaty. I have not seen the correspondence to which Mrs. Seymour alludes and I assume she has over-simplified and possibly distorted the views you expressed on this subject. As we are anxious to avoid creating any confusion regarding Canada's obligations under Jay's Treaty, my Special Assistant wrote to your Special Assistant on April 8, 1969 setting out our view of Canada's status under the Treaty and I attach a copy of that letter for your convenience.

I am referring copies of this letter, with its attachments, to our colleague, the Minister of Fisheries and to the Embassy in Washington for their information.

Yours sincerely,  
ORIGINAL SIGNED  
MITCHELL SHARP  
Mitchell Sharp

The Honourable J. Chrétien, P.C., M.P.,  
Minister of Indian Affairs and Northern  
Development,  
Ottawa.

cc: GUS  
ECO  
GEUW *done*

June 10th, 1970.

*t h e m o h a w k i n d i a n r i g h t s c o m m i t t e e*  
*via box 703, cornwall, ontario, canada*

*The Honorable Mitchell Sharp*  
*Department of External Affairs*  
*Government of Canada*  
*Ottawa, Canada*

Sir:

*We are glad to see that Canada will honor the Treaty of Utrecht, with your support and encouragement. It is good that French fishermen will have these very old rights recognized, despite the fact that Canada itself was not a party to the treaty, and since Parliament has not made any legislation confirming their rights to do so.*

*Perhaps you will inform your colleague, Jean Chretien, of your feelings in this regard, for he has recently written to us that the Jay Treaty cannot be honored since Canada was not a party to it, and since Parliament has not made any legislation confirming the right of North American Indians to a free border.*

*Since Mr. Chretien has made his position quite clear in this matter, perhaps you would inform the Canadian Embassy in Washington, D.C., of his decision, for they have been informing the Secretary of the Department of State of the United States Government that ... "pursuant to a revised Indian policy, a study of all treaties relating to Indians, including the Jay Treaty, has been undertaken." The Canadian Embassy has promised to inform them of the results of this study, and perhaps now they can do so, for it is not good that the American government be misinformed.*

*I hope this letter finds you in good health, and with your mind at peace, sir, sincerely,*

*B. Seymour*

*Mrs. Bernice Seymour*  
*Secretary*

6/16/6

002149



*Thur*  
OTTAWA,

*Apr 18/69*

Dear Mr. Russell,

I have for acknowledgement your letter of March 26, 1969 concerning the Jay Treaty of 1794.

You have noted that it is your understanding that the Jay Treaty has not been ratified by Canada. While we would confirm that this statement is strictly speaking correct, it ought to be borne in mind that this point has no relevance to the central legal issue arising from the Jay Treaty, namely, whether Canada is a party to the instrument, and therefore bound by its provisions, more particularly Article III containing certain custom exemptions for the Indian people. At the time the Jay Treaty came into force in the late 18th Century, Canada was a territory for the foreign relations of which Britain was responsible. Subsequent to attaining independence, in the years following the First World War Canada took the position that it succeeded to the rights and obligations of treaties entered into by Britain on its behalf prior to independence. Hence very many of the treaties by which Canada is now bound were concluded by Britain before Canada attained sovereignty in international affairs. Although they have never been ratified by our government, Canada as a successor State under international law, is bound by these treaties to the same extent as if it had signed and ratified the international instruments on its own behalf. This obligation devolved upon Canada by the operation of international law and does not depend for its effect upon ratification or any other similar formal acceptance of the obligation by Canada.

Although, as explained above Canada is a party to the Jay Treaty and therefore bound under international law to honour the provisions of Article III, there is at present no Canadian legislation enacted to give effect in our domestic law to the undertakings contained in the Treaty. Consequently, Indians entering Canada do not enjoy under our law the benefit of the custom exemption to which Article III refers. It may be validly contended therefore, that under international law Canada is in default of an obligation imposed upon it by a treaty by which it became bound as a successor State.

I trust the above information will serve to further clarify Canada's position vis-à-vis the Jay Treaty.

Yours sincerely,

Richard Gervais,  
Special Assistant.

Mr. William Russell,  
Special Assistant to the Minister of  
Indian Affairs and Northern Development,  
Centennial Tower, 400 Laurier Avenue West,  
OTTAWA, Ontario.

CONFIDENTIAL

July 2, 1970

MEMORANDUM FOR THE MINISTER

Letter from Secretary of the Mohawk Indian  
Rights Committee

SEEN BY THE MINISTER

...

Attached for your signature, if you agree, are letters to Mrs. Bernice Seymour, Secretary of the Mohawk Indian Rights Committee and your colleague, the Minister of Indian Affairs and Northern Development, concerning the Treaty of Amity, Commerce and Navigation of 1794, between the U.K. and the U.S.A., better known as Jay's Treaty, which confers the right on the "Indians dwelling on either side of the said boundary line (Canada/U.S. border), freely to pass and re-pass by land or inland navigation, into the respective territories and boundaries of the two parties, on the continent of America...."

2. As the matters raised by Mrs. Seymour touch largely on important questions of policy relating to our native peoples, the proposed reply refrains from commenting on the substance of her letter. As you are aware, a number of such letters have been received in recent years from spokesmen of Indian tribes in Canada with the object of seeking federal legislation to implement the relevant provisions of Jay's Treaty. As this is a matter which is the primary responsibility of the Department of Indian Affairs and Northern Development it would appear that your colleague, Mr. Chrétien, is in the best position to determine whether in light of policy considerations, a more substantive reply to Mrs. Seymour is required at this time. We have accordingly prepared a second letter for your signature to Mr. Chrétien attaching a copy of Mrs. Seymour's letter.

3. Because we are concerned to prevent any inter-departmental misunderstanding regarding Canada's legal obligations under Jay's Treaty, we also propose to attach to your letter to Mr. Chrétien, if you agree, a copy of a letter of April 8, 1969 from your Special Assistant to Mr. Chrétien's Special Assistant which defined in a concise manner the treaty obligations devolving upon Canada as a party to the Treaty.

4. In her letter, Mrs. Seymour attempts to draw an analogy between the Treaty of Utrecht of 1713 (Definitive Treaty of Peace between U.K., France, Portugal and Spain) and Jay's Treaty. You will note in the proposed reply to Mrs. Seymour that we have mentioned that Canada considers that French fishing rights in our coastal waters are governed by the more restrictive convention of 1904 between the U.K. and France respecting, inter alia, fishing rights off Newfoundland, to which Canada succeeded, rather than earlier instruments such as the Treaty of Utrecht.

*WHEA*  
*Before sending this letter you should look at what I said, Mr. Staley, about the Treaty of Utrecht*  
*3.9.18/05*  
*under advice from Mr. Staley about the Treaty of Utrecht*  
*A.B.R.*  
*Committee Fisheries*

21 avril 1970

Pêches et forêts

16 : 29

[Texte]

ment of this. I believe this is something relatively new, and it is an example of what we are trying to do and how seriously the two countries are taking this problem.

Mr. Comeau: I will pass, Mr. Chairman. Thank you.

The Chairman: Mr. McQuaid.

Mr. McQuaid: Thank you, Mr. Chairman. I was very much concerned, Mr. Chairman, with the explanation given by the Minister this morning with respect to Canadian fishing rights. I am afraid it does not square up very well with the speech which was made by the Minister of Fisheries when he was speaking on the Throne Speech Debate on November 3. I would like to read into the record, Mr. Chairman, what the Minister of Fisheries said at that time, as reported on page 413 of *Hansard* for November 3. This is what he said when he was speaking on this subject:

We want to be able, for instance, to regulate and conserve our fisheries in the Gulf of St. Lawrence. We want to do this under Canadian law. Having drawn a fisheries closing line across the Strait of Belle Isle and the Cabot Strait, we will be able to keep foreign fishermen out. Not only that, but we will and can apply the anti-pollution provisions of our Fisheries Act, which will be improved by amendments this session. When the fisheries closing lines are drawn the Fisheries Act will apply to the whole Gulf of St. Lawrence. We will be able to protect the marine, animal and vegetable life in the Gulf and do this without let or hindrance from others.

I am convinced, Mr. Chairman, that at least 95 per cent of the people of Canada who read that statement got the impression that we could exclude foreign fishermen from our fishing zones. According to the statement the Minister made this morning—which was substantiated, of course, by Mr. Beesley—apparently we are not going to be able to do this so far as French nationals are concerned by reason of this treaty. I am concerned, Mr. Chairman, about whether anything can be done to abrogate or change this treaty so that these French nationals will be subjected to the same type of regulation as other Canadian fishermen. In other words, that they will also have to stay outside the 12-mile limit. Can anything be done to abrogate the treaty or has the government ever taken into consider-

[Interprétation]

patrouilleur américain un fonctionnaire canadien chargé de l'application du règlement. C'est un exemple de ce qui se fait récemment et du sérieux avec lequel les pays concernés s'occupent du problème.

M. Comeau: Merci, monsieur le président, je passe mon tour.

Le président: Monsieur McQuaid.

M. McQuaid: Monsieur le président, l'explication qu'a donnée ce matin le ministre en ce qui concerne nos droits de pêche m'a préoccupé. Il ne me semble pas que cet incident cadre avec le discours qu'a fait le ministre des Pêches le 3 novembre lors du débat en réponse au discours du Trône. Je vous lis à la page 413 du *Hansard* ce que le ministre des Pêches a déclaré le 3 novembre,

Nous voulons être en mesure, par exemple, de réglementer et de conserver nos pêches dans le golfe Saint-Laurent sous l'empire de la loi canadienne. Après avoir tracé une ligne de fermeture des pêches franchissant le détroit de Belle-Isle et le détroit de Cabot, nous serons en mesure d'en interdire l'accès aux pêcheurs étrangers. En outre, nous pourrions appliquer les dispositions contre la pollution que renferme notre loi sur les pêcheries qui seront améliorées, grâce à des modifications apportées au cours de la présente session. Lorsque les lignes de fermeture des pêches auront été tracées, la loi sur les pêcheries s'appliquera à tout le golfe Saint-Laurent. Nous serons en mesure de protéger la vie marine, animale et végétale ainsi que nos pêcheries dans le golfe sans que d'autres nous en empêchent.

Je suis convaincu, monsieur le président, que 95 p. 100 de la population du Canada qui a lu cette déclaration, avait l'impression que nous pouvions exclure de nos zones de pêche les pêcheurs étrangers. D'après l'exposé qu'a lu ce matin le ministre et à la suite des remarques de M. Beesley, nous ne pourrions le faire en ce qui concerne les citoyens français étant donné le traité qui existe depuis longtemps. Y a-t-il quelque chose à faire pour abroger ou modifier ce traité de façon que les citoyens français soient assujettis au même règlement que nos pêcheurs canadiens, c'est-à-dire qu'ils doivent rester en dehors de la limite de 12 milles. Cela peut-il se faire? Le gouvernement a-t-il jamais songé à changer les modalités du traité? Je sais que nous devons respecter ce traité, mais il me semble

16:30

Fisheries and Forestry

April 21, 1970

[Text]

ation the idea of perhaps taking some steps in order to try to change that treaty? I realize that it is a treaty and I realize that we are bound by it, but it seems to me very, very unfair if our Canadian fishermen are excluded from these waters while the French nationals can come in.

**Mr. Sharp:** I am sorry, what did you say about Canadian fishermen being excluded from the Gulf of St. Lawrence?

**Mr. McQuaid:** As I understand it, the deep-sea fishermen will be excluded when these baselines are drawn.

**Mr. Sharp:** You would have to ask the Minister of Fisheries about that.

**Mr. Davis:** We are back to the problem that was discussed earlier, that in a sense the treaty allows French fishermen in our territorial waters. Our regulations require that our large trawlers stay 12 miles out, unless there is some special ministerial order, whereas under the treaty the French vessels can come and go up to three miles and maybe even up to the shore. This is the inequity.

**Mr. Sharp:** But you were not talking about the whole Gulf of St. Lawrence?

**Mr. McQuaid:** No. I am concerned whether anything can be done to change or abrogate this treaty.

• 1100

**Mr. Sharp:** I suppose the theoretical answer is yes. The question is should anything be done, and in that respect one has to look at much more than just this particular treaty. One has to look at our relations with France, and we are just as concerned as any other Department or any other Canadians about protecting the rights of Canadians. We also consider that part of the protection of Canadian interest is the observance of treaties. We would not like other countries to abrogate treaties we have with them simply because they found it inconvenient. We will certainly be looking at the French treaty in the light of the changed circumstances and it may be possible to negotiate something better, but in any negotiation of a treaty there are two countries concerned, not just one. We have many interests in the world that we would like to protect by treaty; therefore, we have to look at any particular treaty in the light of our over-all interest. We cannot avoid that.

**Mr. McQuaid:** Let us clarify this. As I understand it now, we cannot exclude French

[Interpretation]

qu'il est injuste que les pêcheurs canadiens soient exclus de ces eaux, tandis que les citoyens français peuvent y pénétrer.

**M. Sharp:** Je regrette, qu'avez-vous dit au sujet des pêcheurs canadiens qui sont exclus du golfe Saint-Laurent?

**M. McQuaid:** Si je comprends bien, les pêcheurs de haute mer en seront exclus lorsque les lignes de base seront tirées.

**M. Sharp:** Il faudrait demander cela au ministre des Pêches.

**M. Davis:** On revient au problème qui a été discuté plus tôt. Le traité, dans sa teneur, permet aux pêcheurs français de venir jusqu'à l'intérieur de nos eaux territoriales. Notre règlement interdit à nos gros chalutiers de venir à moins de 12 milles de la côte à moins qu'un arrêté ministériel ne leur permette d'entrer dans nos eaux tandis que les bateaux français peuvent pénétrer jusqu'à 3 milles du littoral et même jusqu'à la côte.

**M. Sharp:** Ne parliez-vous de tout le golfe Saint-Laurent?

**M. McQuaid:** Non, je me demande ce qu'on peut faire pour modifier ou abroger le traité.

**M. Sharp:** Je suppose que la réponse est oui en théorie. La question est de savoir si nous devons intervenir. Il faut envisager plus qu'un seul traité. Il faut envisager nos relations avec la France et nous sommes tout aussi préoccupés que n'importe quel autre ministère ou tout autre Canadien de protéger les droits des Canadiens.

Nous considérons aussi que protéger les intérêts canadiens peut signifier aussi observer les traités. Nous ne voudrions pas que d'autres pays dénoncent des traités que nous avons conclus avec eux tout simplement parce qu'ils considéreraient qu'il ne leur convient plus. Nous étudierons certainement le traité français à la lumière de la nouvelle situation. Il est possible qu'on puisse négocier un meilleur traité, mais toute négociation de traité ne se fait pas unilatéralement. Nous avons énormément d'intérêts dans l'ensemble du monde que nous aimerions voir protégés en vertu d'un traité. Il nous faut donc examiner tout traité à la lumière de nos intérêts d'ensemble. Nous ne pouvons pas éviter cela.

**M. McQuaid:** Si je comprends bien, monsieur le président, nous ne pouvons empêcher



21 avril 1970

Pêches et forêts

16 : 31

[Texte]

nationals from fishing within the Gulf of St. Lawrence; is this correct?

**Mr. Sharp:** I am sorry?

**Mr. McQuaid:** As the law presently exists, despite what we may do in Parliament now, is it correct that we cannot exclude French nationals from the Gulf of St. Lawrence?

**Mr. Sharp:** That is my understanding of the treaty, yes.

**Mr. McQuaid:** May I ask this question, Mr. Chairman. Does the Minister consider this a serious enough matter that he or his Department would consider taking some steps or trying to negotiate some measures whereby this treaty could be abrogated so the French nationals would be subjected to the very same regulations as our own Canadian fishermen?

**Mr. Sharp:** I would certainly be prepared, and I did not need to come to this Committee to be convinced of the desirability of reviewing very carefully our position under this treaty. I would not say now, this would be very irresponsible for me to say, that we would proceed to amend the treaty because that would be a decision that would have to be taken in the full light of all its consequences.

**The Chairman:** It is now 11 o'clock and Mr. McQuaid you are not finished and we still have Messrs. Whelan, Lundrigan, McGrath, Perrault and quite a few others who wish to ask questions. I was speaking to the Minister a few moments ago and he has indicated a willingness to appear before this Committee again. As to the time, that he would have to check.

**Mr. Sharp:** Yes. I do not have my agenda in my mind so I cannot very well answer the question, but in principle I am prepared to come back.

**Mr. Lundrigan:** May I make a suggestion, Mr. Chairman, that might be very helpful for our next meeting? In view of the fact that the Minister has made reference to representations which have been made to the United States and other foreign countries, representations to Japan and Russia regarding our fishing rights and the taking of fish on the high seas, especially salmon, reference to public pronouncements which he has made on the seal fishery, would the Minister be prepared to make a collection of these various formal documents and make it available to members of the Committee in order to give up a broader basis for our representations to him at the next meeting?

[Interprétation]

les pêcheurs français de pêcher dans le golfe Saint-Laurent. Est-ce juste?

**M. Sharp:** Pardon, je n'ai pas bien saisi.

**M. McQuaid:** Est-il juste de dire qu'en vertu de la loi actuelle, nous ne pouvons exclure les pêcheurs français du golfe Saint-Laurent.

**M. Sharp:** C'est ce que je crois comprendre du traité.

**M. McQuaid:** Je pose une autre question alors. Monsieur le président, le ministre considère-t-il la question suffisamment grave pour étudier la possibilité de négocier de nouveau ce traité ou de l'abroger afin que les pêcheurs français soient assujettis au même règlement que nos pêcheurs canadiens?

**M. Sharp:** Je serais certainement disposé à le faire et je n'ai pas eu besoin de venir à ce Comité pour être convaincu du fait qu'il est souhaitable de revoir notre position en ce domaine. Il ne serait pas raisonnable de ma part de dire que nous allons modifier le traité, parce que ce serait une décision qui devrait être prise en connaissant toutes les conséquences qu'une telle action pourrait avoir.

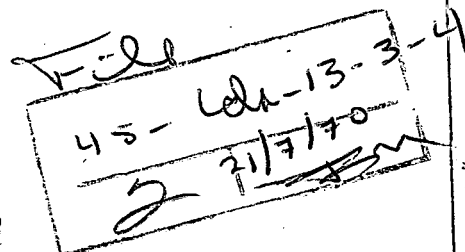
**Le président:** Il est maintenant 11 heures et vous n'avez pas terminé vos questions, monsieur McQuaid. MM. Whelan, Lundrigan, McGrath, Perrault et plusieurs autres désirent poser des questions. Le ministre a indiqué qu'il voudrait bien revenir témoigner. Il lui faudrait fixer la date et l'heure.

**M. Sharp:** Oui. Je n'ai pas mon emploi du temps ici, mais en principe, je suis disposé à revenir.

**M. Lundrigan:** Je voudrais faire une suggestion qui nous aiderait beaucoup lors de notre prochaine réunion. Le ministre a parlé de représentations qui ont été faites aux États-Unis et à d'autres pays étrangers, au Japon et à la Russie, sur nos droits de pêche et sur la pêche en haute mer, surtout du saumon; il s'est reporté aux déclarations publiques qu'il a faites au sujet de la chasse aux phoques. Le ministre serait-il donc disposé à réunir ces documents et à les mettre à la disposition des membres du Comité pour leur permettre de mieux formuler les observations qu'ils lui feront à la prochaine séance?

CONFIDENTIAL

July 17, 1970



SEEN BY THE MINISTER

MEMORANDUM FOR THE MINISTER

Letter from Secretary of the Mohawk Indian  
Rights Committee

In a memorandum of July 2, 1970, copy attached, you were asked to approve and sign letters to Mrs. Bernice Seymour, Secretary of the Mohawk Indian Rights Committee and your colleague, the Minister of Indian Affairs and Northern Development, concerning Jay's Treaty. You returned the memo with the attached letters with the comment that "Before I send this letter, you should look at what I said, under advice from Mr. Beesley, about the Treaty of Utrecht at the Standing Committee on Fisheries."

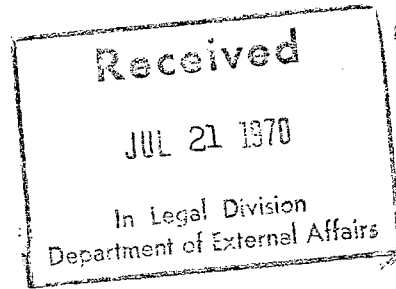
We have reviewed the relevant proceedings of the Standing Committee on Fisheries and Forestry and have noted that on April 21, 1970 Mr. McQuaid, M.P., asked you a number of questions about the Convention of 1904 between the United Kingdom and France which deals, inter alia, with French treaty fishing rights off the east coast of Canada. The relevant portions of the proceedings are attached for convenient reference. You will note that Mr. McQuaid's principal concern was with the possibility of abrogating the convention with France. However, there was no reference during the Committee proceedings to the Treaty of Utrecht of 1713. The fishing concessions accorded to France under the latter instrument were in fact expressly renounced by that country under the 1904 Convention. In light of your comment, however, we have revised the letter to Mrs. Seymour in order to clarify the connection between the Treaty of Utrecht and the 1904 Convention.

Attached for your signature, if you agree, is a revised letter to Mrs. Seymour together with the letter to your colleague, Mr. Chrétien, which you have already signed and may, if you approve, go forward unrevised.

A. E. R.

*Two letters signed July 21.*

17.7.22(us) [illegible]



FILE  
July 20

cc: Mr. Hammill, of  
GUS Div., Ott.

*file*

1746 Massachusetts Avenue, N.W.,  
Washington, D.C. 20036,

July 16, 1970.

ACRD

45-CDA-13-3-4	
21	—

Dear Fred,

I refer to your letter of July 7 concerning Indian rights under the Jay Treaty and the purported review of Indian treaties.

I have been informed that no review of Indian treaties is now being conducted by the Canadian Government. There are, however, a number of studies which are looking into various aspects of Indian treaties. For example, a commissioner has been appointed under the Inquiries Act to look into Indian claims in the area of money and land and all other matters related to the administration of treaties and mismanagement of band funds. Concurrently the National Committee of Indian Rights and Treaties, a group led and staffed by Indians but subsidized by the federal government, is looking into more or less the same problem.

Because of their own particular interests the Indians are in fact including in their review a review of the Jay Treaty. The Government's position on the Jay Treaty has not changed and is not expected to be changed for a number of years at least.

I hope that this information will enable you to reply to Mr. Gambill. I should like, however, to stress that the inquiries which are being carried out should not in any way be regarded as a formal review of Indian treaties by the Canadian Government.

Yours truly,

S.L. ABRAHAMS

S. L. Abrahams,  
Second Secretary.

Frederick S. Quin, Esq.,  
Office of Canadian Affairs,  
Department of State,  
Room 4234,  
WASHINGTON, D.C. 20520.



# ACTION REQUEST / FICHE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA

FILE NO.—DOSSIER N°

DATE

JULY 8/70

TO—À

FLE

FROM—DE

MIN/A. S. McGill/re

☐ PLEASE CALL  
PRIÈRE D'APPELER

TEL. NO.—N° TEL.

EXTENSION—POSTE

☐ WANTS TO SEE YOU  
DÉSIRE VOUS VOIR

DATE

TIME—HEURE

☐ WILL CALL AGAIN  
DOIT RAPPELER

☐ ACTION  
DONNER SUITE

☐ APPROVAL  
APPROBATION

☐ COMMENTS  
COMMENTAIRES

☐ DRAFT REPLY  
PROJET DE RÉPONSE

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NOTER ET RETOURNER

☐ NOTE & FORWARD  
NOTER ET FAIRE SUIVRE

Minister has commented: "Before I send this letter, you should look at what I said, under advice from Mr. Beesley, about the Treaty of Utrecht at the Standing Committee on Fisheries."

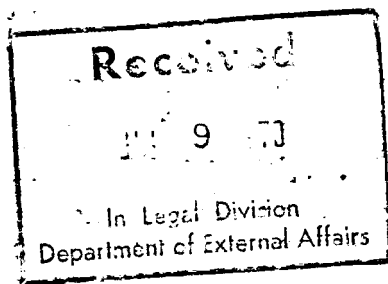
The letter to the Minister of IAND has been signed by the Minister and is returned to you herewith, to be held for your case.

CALL RECEIVED BY  
MESSAGE REÇU PAR

TIME  
HEURE

002158

*letter is prepared for  
Leyman*



CONFIDENTIAL

July 2, 1970

File 45-100-13-3-4  
22/7/70  
SEEN BY THE MINISTER

MEMORANDUM FOR THE MINISTER

Letter from Secretary of the Mohawk Indian  
Rights Committee

...

Attached for your signature, if you agree, are letters to Mrs. Bernice Seymour, Secretary of the Mohawk Indian Rights Committee and your colleague, the Minister of Indian Affairs and Northern Development, concerning the Treaty of Amity, Commerce and Navigation of 1794, between the U.K. and the U.S.A., better known as Jay's Treaty, which confers the right on the "Indians dwelling on either side of the said boundary line (Canada/U.S. border), freely to pass and re-pass by land or inland navigation, into the respective territories and boundaries of the two parties, on the continent of America...."

2. As the matters raised by Mrs. Seymour touch largely on important questions of policy relating to our native peoples, the proposed reply refrains from commenting on the substance of her letter. As you are aware, a number of such letters have been received in recent years from spokesmen of Indian tribes in Canada with the object of seeking federal legislation to implement the relevant provisions of Jay's Treaty. As this is a matter which is the primary responsibility of the Department of Indian Affairs and Northern Development it would appear that your colleague, Mr. Chrétien, is in the best position to determine whether in light of policy considerations, a more substantive reply to Mrs. Seymour is required at this time. We have accordingly prepared a second letter for your signature to Mr. Chrétien attaching a copy of Mrs. Seymour's letter.

3. Because we are concerned to prevent any inter-departmental misunderstanding regarding Canada's legal obligations under Jay's Treaty, we also propose to attach to your letter to Mr. Chrétien, if you agree, a copy of a letter of April 8, 1969 from your Special Assistant to Mr. Chrétien's Special Assistant which defined in a concise manner the treaty obligations devolving upon Canada as a party to the Treaty.

4. In her letter, Mrs. Seymour attempts to draw an analogy between the Treaty of Utrecht of 1713 (Definitive Treaty of Peace between U.K., France, Portugal and Spain) and Jay's Treaty. You will note in the proposed reply to Mrs. Seymour that we have mentioned that Canada considers that French fishing rights in our coastal waters are governed by the more restrictive convention of 1904 between the U.K. and France respecting, inter alia, fishing rights off Newfoundland, to which Canada succeeded, rather than earlier instruments such as the Treaty of Utrecht.

WHEA  
Before sending this letter you should look at what I said, under advice from Mr. Barclay about the Treaty of Utrecht. A.B.R. Committee on Fisheries  
3.9.18/05

1514  
FILE  
July 6

THE FIRST PART OF THE REPORT OF THE  
COMMISSIONER OF THE ENVIRONMENT  
CONCERNING THE PROPOSED  
CONSTRUCTION OF A NEW  
BRIDGE OVER THE RIVER  
ST. LAWRENCE AT  
MONTREAL, QUEBEC

THE SECOND PART OF THE REPORT OF THE  
COMMISSIONER OF THE ENVIRONMENT  
CONCERNING THE PROPOSED  
CONSTRUCTION OF A NEW  
BRIDGE OVER THE RIVER  
ST. LAWRENCE AT  
MONTREAL, QUEBEC

THE THIRD PART OF THE REPORT OF THE  
COMMISSIONER OF THE ENVIRONMENT  
CONCERNING THE PROPOSED  
CONSTRUCTION OF A NEW  
BRIDGE OVER THE RIVER  
ST. LAWRENCE AT  
MONTREAL, QUEBEC

THE FOURTH PART OF THE REPORT OF THE  
COMMISSIONER OF THE ENVIRONMENT  
CONCERNING THE PROPOSED  
CONSTRUCTION OF A NEW  
BRIDGE OVER THE RIVER  
ST. LAWRENCE AT  
MONTREAL, QUEBEC

THE FIFTH PART OF THE REPORT OF THE  
COMMISSIONER OF THE ENVIRONMENT  
CONCERNING THE PROPOSED  
CONSTRUCTION OF A NEW  
BRIDGE OVER THE RIVER  
ST. LAWRENCE AT  
MONTREAL, QUEBEC



# TRANSMITTAL SLIP

Document disclosed under the Access to Information Act  
Document divulgué en vertu de la Loi sur l'accès à l'information  
**BEST COPY AVAILABLE**

TO: *The* *Under-Secretary of State for External Affairs,*  
*Ottawa, Canada.*

FROM: *The Canadian Embassy,*  
*Washington, D.C.*

Security *UNCLASSIFIED*

Date *February 24, 1970*

Air or Surface *Surface*

No. of enclosures *1*

The documents described below are for your information.

Despatching Authority *H.D. Burwash/gb*

<i>45-DA-13-3-4</i>		<i>FILE</i>
<i>41</i>		

Also referred to:

*LAND*  
Secretary of State

TO: *Mr. Applebaum*  
FROM: *ACRL*  
*51* MAR 5  
ATTN: *GUS*

Copy of letter (with attachment) to the Ambassador from the "Constitutional Government of the United States", dated February 12, 1970.

U.S.A. DIV.	
<i>6/3/70</i>	
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*file*  
*2*

*CRL*

## INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.
2. This form should **NOT** be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
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CONSTITUTIONAL GOVERNMENT OF THE UNITED STATES

P. O. BOX 113, SWANTON, OHIO 43558

"TO DEFEND THE CONSTITUTION"

(OOH N GWE HOO WEH - "TRUE AMERICANS")

February 12, 1970

The Honorable - The Ambassador of Canada  
Canadian Embassy, Washington, DC

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Washington, D.C.  
Leonard Tagadine - Asst. C/S  
Orangeburg, S.C.  
Isaac Kareen - Executive Officer  
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Washington, D.C.

HERBERT C. HOLDRIDGE  
Brig. Gen. U.S. Army (Ret.)  
Da Ha Re Weh Ha Whe-  
"Bringing A Message")  
Chief Magistrate  
Mohawk

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Stillaguamish  
Inez Dave  
Shoshone  
(Sec.-Treas.)

Your Excellency:

I notify you with regret that this Government of the United States must withdraw recognition of the Government of Canada; and requests early withdrawal of yourself and members of your legation from U.S. Soil.

As an adopted Mohawk I have learned much concerning relations between the United States and Canada on the one hand, and the American - Canadian Indians on the other, these inter-relationships established by the Jay Treaty of 1794. Under this treaty the U.S. and Canada are jointly responsible for abuses committed by either against the Six Nations of the Iroquois Confederacy. It is clear from the uniformity of genocidal policies in effect, that a conspiracy, formal or informal, exists between the politicians and exploiters of our two countries, against the Indians, designed to eliminate them politically, economically, and spiritually as a people. I, as a public Magistrate, am held by my duty to resist all overt acts contrary to formal commitments with the Indians. Having "assumed command", of this Government - I command! I have brought reports of violations of the treaty to the attention of both governments repeatedly, without effect. It has been proven that the White Man who rises to public office, is so totally devoid of integrity as to be unfit to rule. This was proven during the Crusades when Vatican-dominated armed forces marched on Jerusalem under the false slogan of freeing the sepulcher of Jesus from Arab "pagans"; demonstrated currently in the war in Vietnam - the Pope's War; and in the Vatican-U.S.- World Zionist Axis War against the Arab world today; demonstrated since earliest times by Vatican-motivated "Conquistadores" against North and South American Indians; and continues aggressively in the entire Western Hemisphere, their lands become rat-infested "ghettos" of garbage dumps.

I am engaged in the monumental task of meeting the horrors of White Man pollutions and sedition, to restore sanity in the United States, as promised by Indian prophecies, and meeting with growing success. If at any time the people of Canada - caught in US pollutions, -will commit themselves to Truth & Justice in fulfillment of solemn agreements, I shall be happy to reopen this issue with you, for closer, friendly relations.

FOR THE CONSTITUTION OF THE UNITED STATES:

Herbert C. Holdridge - General  
CHIEF MAGISTRATE - AND

COMMANDER IN CHIEF OF THE ARMED FORCES OF THE UNITED STATES

HOB  
a file!  
THERE IS PLenty FOR ALL

PRESS RELEASE... For the people of the world about  
the Long House People of the Six  
Nations Iroquois Confederacy,  
Grand River Lands, near Brantford, Ontario.

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it is in no way distorted. -  
It is the Truth.

### " THE WRITING ON THE WALL "

At the Time of the Longest Shadows.....

On the Grand River Lands of the Six Nations Iroquois Confederacy, near Brantford, Ontario, Canada, live more than 1,500 followers of the Long House Religion, of the code of Handsome Lake - Ga-ne-o-di-yo, and of the prophet Deganawidah. These people are the Hodenoshonnees. They are the supporters of the hereditary chieftains of the Six Nations Iroquois Confederacy, the treaty-making chieftains, who still regularly meet in council today, and who ruled the people until that black day in 1924 when the Federal Government of Canada stripped them of that power and barred them from their own council house.

These people still faithfully perform the rituals and ceremonies of their forefathers, for the benefit of all mankind. They were told that their treaties would last "as long as the grass grows, the water flows, and the sun shines". This is why they go through with their ceremonies to pray for the grass, and the water, and the crops, and the weather - for the good of all people, not just themselves. They feel that by so doing they will be able to prolong their treaties and their own precious way of life.

However, these people are worried. Desperately worried. They have been threatened with the extinction of their way of life, yet still they remember "as long as the grass grows and the water flows". Many of them feel that we are near the end, for their prophecies have told them that the end for them is the end for us all. They feel that they are in "the Time of the Longest Shadows". They feel that the white man does not understand them. And every move that the Government makes goes to prove it.

Their treaties are being broken. Their rights have been ignored and conveniently forgotten for many long years. Thousands of Canadians aren't even aware that these people exist any more. Proposed Government legislation would strip from them their birthright to proudly proclaim themselves the "ONG-WEH-HWA-WEH" - the Original People. They have been told that they are to be made Canadian citizens, 'just like everybody else', but they just don't happen to want this. "You are Canadians", say the Honourable Messieurs Trudeau and Chrétien. "We are not Canadians, we are the Ong-Weh-Hwa-Weh" say the Original People. "Our people were here long before Canada was even thought of."

See how the proposed compulsory changes in the unique status of the Ong-Weh-Hwa-Weh directly abrogate the UNIVERSAL DECLARATION OF HUMAN RIGHTS, which was adopted and proclaimed at the United Nations in December, 1948. Canada is a member of the United Nations and is sworn to uphold all its principles. The Universal Declaration of Human Rights provides in Article 15 that:

- (1) Everyone has the right to a Nationality.
- (2) No one shall be arbitrarily deprived of his Nationality nor denied the right to change his Nationality.

.... 2

It is one thing for Canada to ignore treaties made over a hundred years ago, but to my mind, it is quite another to break a solemn pledge made as recently as 1948 together with all the Nations of the free world.

WHO ARE WE, MAY I ASK, TO TELL THESE PEOPLE WHO THEY ARE AND WHAT THEY MUST DO?

At this "Time of the Longest Shadows" I want to pass on to you the prophecies which have been told to me by the Hodenoshonnees. All across Canada, from the Mic-Mac in the East to the Haida in the West, the Original People have their prophecies, and they tally to a remarkable degree. Here then, are some of the Prophecies of the Iroquois....

"When man can no longer drink the water of the spring and the stream, then we are getting near to the end."

"When the trees start to die from the top, then we are getting near to the end."

"When the birds cannot make their nests on the ground, then we are getting near the end."

"When the ears of corn, our supporter, grow near to the ground, we are getting near to the end."

"There will be a great darkness come over the earth, we have been told to make sure we always have enough food in the house for the long, dark time that is to come."

VERNA LOGAN (Mohawk)  
Wife of Chief Joseph Logan,  
Iroquois Village, Six Nations  
Grand River Lands.

"The end will come with oil covering the waters, this will catch fire and everything will burn."

CHIEF JOSEPH LOGAN (Mohawk)  
'HA-STA-WEA-SER-EA-TAH'  
Iroquois Village, Six Nations  
Grand River Lands.

"When our children can no longer speak our languages, then it is near the end."

"The Creator said that first he would take the children, One day you will wonder where are all the children. It is true, many of our women do not want to have children anymore, so you see the children are being taken first."

"The time of the prophecies is here, now. The air is dying, the water too. The plants are not growing properly."

"When my people shall gather together in groups all across the land saying, "What shall we do?" ...then this is near to the end. And this is what we are doing now!"

ACKLAND DAVEY (Mohawk)  
Six Nations Grand River Lands.

(These prophecies, I was told, have been handed down since the time of Christ, and of the prophet Deganawidah.) J.M.

... 3

"There are not so many birds anymore. You hardly ever see a woodpecker. The birds feed on the insects that kill the plants and trees."

"There aren't the insects for the birds to eat. They've been poisoned. Man is going against nature. Everything's changing. The fish are dying. The water is dirty."

WILLIAM SMITH (Mohawk)  
Six Nations Grand River Lands.

Every one of our Original People I have talked to who follows the old ways and still retains the ancient wisdom, say the same thing. George Clutesi, the Nootka Artist-Writer, told me that "the White race is destroying itself, and will take the 'Indian' people with it".

If the end is near, as we near this end... it is no wonder that the Original People across Canada today want no part of any legislation that would make them as one with the White man. They want to be as far apart as possible when that time comes!

These people know what they are talking about. They have never allowed the day-to-day struggle for survival in a materialistic society to eclipse their ancient truths and wisdom. The Iroquois should know, for after all, they are the tribes of the Eastern Woodlands and, as such, were growing crops on this Continent many thousands of years before the White man discovered it in 1492. And let's face it, we've turned their land into one gigantic garbage dump.

DO YOU DOUBT THEM? WILL YOU HEED THEIR WARNINGS? If you care, you MUST support them in their decision to stand alone, if this is what they want. Protest NOW the legislation that would rob them of their birthright. Help them in their struggle against plans to make them 'instant citizens'.

RECOGNIZE the Sovereignty of the Six Nations Iroquois Confederacy which has existed from all ages. A nation which has never surrendered its sovereignty, and which has never been defeated... (on the contrary, the Iroquois were proclaimed Allies of the Crown). A nation which has never given up its right to self-Government.

IF YOU DOUBT ANY OF THESE TRUTHS PLEASE FEEL FREE TO CHECK OUT THE FACTS WITH ANY SCIENTIST, ECOLOGIST, OR HISTORIAN. They will verify every word.

If you would learn more about the Sovereignty of the Six Nations Iroquois Confederacy, or about the Prophecies which these wise and wonderful people have for all mankind, you are invited to visit the Iroquois Village on the Grand River Lands on summer Sunday afternoons to meet the faith-keepers of the Long House, Chief Joseph Logan, his wife Verna, their family and friends.

JOHN MORLEY "HA-LEH-WEH-SAIL-LAI"  
Toronto, Canada.  
February, 1970.

SPECIAL BUS TOURS FROM TORONTO  
CALL TORONTO 923-6036, OR WRITE:  
JOHN MORLEY - IROQUOIS TOURS  
12 BISHOP STREET  
TORONTO 5, ONTARIO, CANADA

# MESSAGE

*file*

FM/DE EXTERNAL OTT

DATE	FILE / DOSSIER	SECURITY / SECURITE
MAY 23/69	45-CDA-13-3-4 37	RESTRICTED

TO/A LONDON

NO  
CO-164  
PRECEDENCE  
IMMEDIATE

INFO

REF YOURTEL 2193 MAY 21

SUB/SUJ VISIT OF MISS HORN

INDIAN AFFAIRS SUGGESTS THAT IF MISS HORN TURNS UP ON YOUR DOOR-STEP WITH HER RETINUE YOU MIGHT ARRANGE TO BE BUSY. IF HOWEVER SHE ASKED FOR AN APPOINTMENT IN THE NORMAL WAY YOU MIGHT AGREE TO SEE HER (WITHOUT RETINUE) AND HEAR WHAT SHE HAS TO SAY. THEY ADD THAT IN THEIR EXPERIENCE SHE IS A FAIRLY REASONABLE PERSON TO TALK TO IN SUCH CIRCUMSTANCES.

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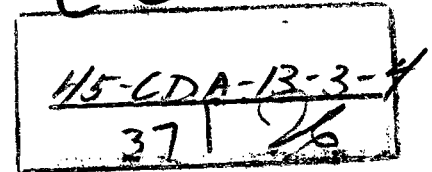
INFO IT IANDNDOTT DE OTT

VISIT OF MISS HORN

AS YOU WILL HAVE NOTED FROM CDN PRESS REPORTS, LDN HAS BEEN  
TITILLATED THIS WEEK BY THE VISIT OF MISS (KAHN TINETA HORN) THE  
MOHAWK SQUAW. HER PROCLAIMED MISSION-TO SEE THE QUEEN AND PM  
WILSON WITH A VIEW TO HAVING THE CDN GOVT COMMANDED TO HONOUR THE  
INDIAN FREE TRADE PROVISIONS OF THE JAY TREATY-CANNOT BE CONSIDERED  
SUCCESSFUL. SHE WAS LIKE EVERYONE ELSE PERMITTED TO HAND A PETITION  
TO THE DOORMAN AT NO 10 AND WILL LATER RECEIVE A ROUTINE ACK-  
NOWLEDGEMENT. HER MAJESTY IS OUT OF TOWN. SO MUCH FOR OFFICIAL  
VISITS.

2. PUBLICITYWISE, ON THE OTHER HAND, KAHN HAS PREDICTABLY DONE WELL.  
SHE HAS BEEN INTERVIEWED ON RADIO QUOTE WORLD AT ONE UNQUOTE,  
ON BBC TV QUOTE 24 HOURS UNQUOTE, ON ITV EAMON ANDREWS SHOW. HER  
PICTURE HAS APPEARED IN MOST NEWSPAPERS, AND SEVERAL CARTOONISTS  
HAVE USED IDEA OF MOHAWK INVASION FOR POLITICAL JIBES EG HEATH  
ACCOSTING HER OUTSIDE NO 10 AND ASKING QUOTE WHAT DO YOU CHARGE  
FOR A SCALPING UNQUOTE. BUT PRESS TREATMENT WAS GENERALLY LIGHT-  
HEARTED AND OBVIOUSLY HAD MORE TO DO WITH THE LADYS PHYSICAL  
ATTRIBUTES THAN WITH THE CONTENT OF HER MIND AND HER CAPACITY TO  
EXPRESS IT. ON BBC 24 HOURS, INTRODUCTORY FILM CLIPS DEALING WITH  
INDIAN CONDITIONS WERE MORE EFFECTIVE THAN ANYTHING MISS HORN

...2





R E S T R I C T E D PAGE TWO 2193

HAD TO SAY, AND HER ARGUMENTS WERE CONSIDERABLY BLUNTED BY WELL-BRIEFED INTERVIEWER.

3. THE WHOLE OPERATION HAS SOME OF THE MARKS OF PUBLIC RELATIONS PROFESSIONALISM. THERE IS A MYSTERIOUS MR BROADY IN THE BACKGROUND, WHO REFUSES TO TELL PRESS WHAT HIS OWN INVOLVEMENT IS. IT MAY BE SIGNIFICANT THAT (WE UNDERSTAND) SHE HAS BEEN OFFERED A PART IN A FILM TO BE MADE IN CDA BY CAROL REED, TITLED QUOTE NOBODY LIKES A DRUNKEN INDIAN UNQUOTE.

4. MISS HORN HAS NOT/NOT YET CONTACTED US, BUT THERE REMAINS THE POSSIBILITY THAT SHE MAY ONE DAY APPEAR ON OUR DOORSTEP WITH A RETINUE OF PHOTOGRAPHERS, ASKING TO SEE HIGHCOM. PERHAPS THIS IS UNLIKELY, AS SHE HAS BEEN STOUTLY DENYING THAT SHE IS A CDN CITIZEN. HOWEVER, WE WOULD APPRECIATE YOUR ADVICE SOONEST ON HOW MISS HORN SHOULD BE HANDLED, IF THAT IS THE WORD, SHOULD SHE DECIDE TO TURN ON US.

BEST COPY AVAILABLE

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

Mr. J.A. Beesley

SECURITY  
Sécurité

UNCLASSIFIED

FROM  
De

Mr. J.S. Stanford

DATE

April 8, 1969

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Jay Treaty

FILE	DOSSIER
OTTAWA	
45-CDA-13-3-4	
MISSION	37

ENCLOSURES  
Annexes

DISTRIBUTION

Mr. Mawhinney

You have asked whether the Jay Treaty can be considered as an Empire Treaty under Section 132 of the B.N.A. Act.

Section 132 applies to "Treaties between the Empire of such Foreign Countries". The only argument which occurs to me as a basis for suggesting that the Jay Treaty is not an Empire Treaty is that although it was concluded by Great Britain, it was concluded in respect of Canada only, not of the whole Empire, and is therefore not an "Empire Treaty". However, a similar treaty, the Migratory Birds Convention, has been held by the courts to come within Section 132 (see R v. Silkyea 43 DLR (2d) 150 at 162.) This is a decision of the Court of Appeal of the N.W.T. The decision was upheld by the Supreme Court of Canada although the Supreme Court judgement does not deal with Section 132. On the basis of the foregoing, my view is that the Jay Treaty comes within Section 132.

It is not entirely clear, however, whether Parliament can pass new legislation now on the basis of Section 132. A passage from the judgement referred to above reads "there would seem to be no doubt that statutes which implement treaties made before the Statute of Westminster remain "valid legislation even though the subject matter of that Treaty is one which falls exclusively under s.92". The use of the word "remain" appears to imply that the statute as well as the treaty must have been done before 1931.

*question correctness:*

*see cases & also clear reading of s. 132;  
the Silkyea quote is also out of context &  
should be seen in light of later passage  
in same case giving wide & prospective  
interpretation of s. 132. If a treaty fits the  
s. 132 conditions in all respects, it is  
one signed by B. or Empire before 1931  
the constl. authority to legislate subsists  
in s. 132.*

J.S. Stanford

(dictated April 3, 1969)

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO Memorandum  
A U.S.A. Division

FROM Legal Division  
De

REFERENCE Your letter No. X-403 of March 26 to the Canadian  
Référence Embassy, Washington

SUBJECT Rights of North American Indians under the Jay Treaty  
Sujet

SECURITY CONFIDENTIAL  
Sécurité

DATE April 1, 1969

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
4/5 - CDA-13-3-4	
MISSION	37

ENCLOSURES  
Annexes

DISTRIBUTION

We are concerned about one aspect of the draft memorandum to Cabinet attached to your letter under reference. Paragraph 5(a) suggests as one possibility that the status quo be maintained because "there is no obligation to give legislative effect to Article III of the Jay Treaty or to the Treaty of Ghent entered into by Great Britain and the United States and no such action is contemplated". This language seems to imply, that because Canada was not a party to these treaties it is under no obligation to implement them. This apparent implication is not correct. Upon attaining independence Canada accepted that it became bound by all treaties (with certain possible exceptions not relevant here) previously entered into by Great Britain in respect of Canada and which were then still in force. To the extent that the Jay Treaty and the Treaty of Ghent are still in force, Canada is legally bound in international law, as the successor state of Great Britain in respect of these treaties, to give effect to their provisions and is responsible in international law for failure to do so.

For this reason we do not consider that the position proposed in paragraph 5(a) is legally sound. If the status quo is to be maintained, some other justification will have to be found for the government's position. For the same reason we believe that every effort should be made to avoid a formal statement by the Government of the kind recommended in alternative one, paragraph III and alternative two, paragraph II of the recommendations that the Government has decided not to enact legislation to give effect to the Jay Treaty, as this would amount to a public declaration that Canada does not intend to honour its international treaty obligations. You may wish to transmit these views to the Department of Indian Affairs and Northern Development.

Legal Division

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A The Under-Secretary of State  
for External Affairs, Ottawa

FROM  
Do The Canadian Embassy, WASHINGTON, D.C.

REFERENCE  
Référence Our telegram 536 of February 14

SUBJECT  
Sujet Rights of North American Indians under  
the Jay Treaty

SECURITY  
Sécurité

UNCLASSIFIED

DATE February 27, 1969

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
MISSION	

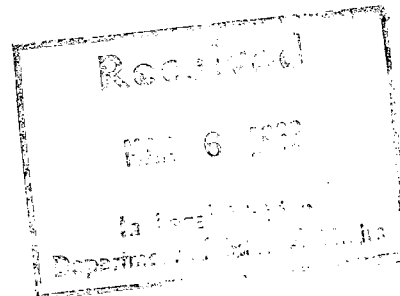
ENCLOSURES  
Annexes

DISTRIBUTION

We enclose a copy of a draft note on this subject which has been made available to us by the Canadian Affairs Office, State Department. It contains comments of the interested agencies in this country and has not yet been finally approved for dispatch. You should therefore regard it as for your own informal information only.

2. Also enclosed is a copy of Kahn-Tineta Horn's letter to President Nixon dated January 27.

The Embassy.



DRAFT ~~NOTE~~

posed in telegram  
X-109 of Jan. 7  
1969 from EXTUTT  
to WASHDC.  
embassy.

~~SECRET~~

The Government of the United States refers to recent  
<sup>REPRESENTATIVES OF</sup>  
discussions with the Embassy of Canada relating to North  
American Indians passing back and forth across the United  
States-Canadian border. In this connection, the Canadian  
Embassy has requested information relating to the relevant  
United States law. The Government of the United States of  
America is pleased to provide the following information and  
hopes that it will be of assistance:

1. Has customs or immigration legislation been enacted by  
the United States implementing the relevant sections of the  
Jay Treaty concerning North American Indians?

Yes. Both types of legislation have been enacted. Since  
each has a somewhat different history, it will be convenient  
to consider them separately.

a. Immigration legislation: Article III of the Jay Treaty  
of November 19, 1794 (8Stat.116), provided, in part:

It is agreed that it shall at all times be free to  
His Majesty's subjects, and to the citizens of the  
United States, and also to the Indians dwelling on  
either side of the said boundary line, freely to  
pass and repass by land or inland navigation, into  
the respective territories and countries of the two  
parties, on the continent of America \* \* \*.

the first codification of immigration measures enacted by the Congress, the Act of February 5, 1917 (39 Stat. 874), contained no reference to the Jay Treaty provision or to Indians generally. The Immigration Act of 1924 (43 Stat. 152) similarly failed to provide for the exemption of Indians crossing the border from Canada. The consequences of this omission were discussed in United States ex Rel. Diablo v. McCandless, 18 F.2d 282 (D.C. Pa. 1927), aff'd 25 F. 2d 71 (C.A. 3rd Cir. 1928), in which the court found that a full-blooded Iroquois Indian resident of Canada was not subject to deportation for failure to comply with the 1924 Act because Article III of the Jay Treaty had exempted American Indians from the operation of the immigration laws of the United States. That holding became statutory law with the Act of April 2, 1928 (45 Stat. 401; formerly 8 U.S.C. 226a), which provided:

That the Immigration Act of 1924 shall not be construed to apply to the right of American Indians born in Canada to pass the borders of the United States: Provided, that this right shall not extend to persons whose membership in Indian Tribes or families is created by adoption.

Thereafter, Indians born in Canada were permitted to enter the United States without inspection under the immigration laws.

In United States ex Rel. Goodwin v. Karnuth, 74 F. Supp. 660 (D.C.N.Y. 1947), the Court noted that the exemption of

"American Indians born in Canada" was applicable to persons

Indian blood generally and not just to members of a tribe since it was premised on racial and not political considerations. That exemption, slightly modified, has been carried forward into immigration legislation presently in effect. Section 289 of the Immigration and Naturalization Act of June 27, 1952 (66 Stat. 234; 8 U.S.C. 1359) provides:

Nothing in this subchapter shall be construed to affect the right of Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

In short, provision made in Article III of the Jay Treaty for the free passage of Indians from Canada into the United States has been and is now implemented by legislation. In the present form, however, that legislation extends the right accorded in the treaty only to those Indians born in Canada who are of at least one-half Indian blood.

b. Customs Legislation: Following the above cited provision for the immigration of Indians from Canada to the United States, Article III of the Jay Treaty stated:

No duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into said territories respectively, nor shall the Indians passing

or repassing with their own proper goods and effects of whatever nature, pay for same any impost or duty whatever. But goods in bales, or other large packages unusual among Indians shall not be considered as goods belonging bona fide to Indians.

That provision was carried verbatim into the Tariff Act of March 2, 1799 (1 Stat. 627), which was in effect at the time the War of 1812 broke out. At the close of the war, the Treaty of Ghent, signed on December 24, 1814 (8 Stat. 218) stated in Article IX:

The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all of the tribes or nations of Indians with whom they may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities.

The Jay Treaty provision exempting the Indians' "own proper goods and effects of whatever nature" from customs duties continued to appear unchanged in tariff acts until October 1, 1890. On that date, a slightly modified version of the provision was enacted, authorizing the Secretary of the Treasury to prescribe regulations governing the matter. Tariff Act of October 1, 1890 § 2, paragraph 674 (26 Stat. 567).



his version was repeated in the Tariff Act of August 27, 1894, as Paragraph 582, §2 (28 Stat. 509). However it was omitted from the Tariff Act of July 24, 1897 (30 Stat. 151), which made no reference to Indian goods whatsoever and repealed "all Acts or parts of Acts inconsistent with the provisions of this Act \*\*\*." Subsequent tariff legislation has been equally silent on the matter.

In 1938, the Court of Customs and Patent Appeals held in United States v. Garrow, 88 F.2d 318 (CC.P.A. 1937), that since current statutes failed to specifically provide an exemption for Indian goods, baskets brought into the United States for sale by a full-blooded Indian woman of the St. Regis Tribe of Canada were subject to the same duty as other similar baskets. That decision was cited with approval by the U. S. Court of Appeals, Ninth Circuit a year later in Guiles v. United States, 100 F.2d 47 (C.A. 9 Cir. 1938). As far as we are aware, no Court has directly considered the question of whether Indian goods brought into the United States from Canada are dutiable, since the Garrow decision in 1937.

¶ In the McCandless decision, the Court held that Article III of the Jay Treaty had not been abrogated by the War of 1812, and, alternatively, even if it had been, Article IX of the Treaty of Ghent had restored it. A year later, in 1929, the Supreme Court had occasion to consider the question in Karnuth v. United States

279 U.S. 231 (1929), a habeas corpus proceeding brought by two resident aliens of Canada (non-Indians) seeking to cross into the United States daily to work. In holding that the respondents were quota immigrants under Section 3 of the Immigration Act of 1924, supra, the Court stated:

\* \* \*the privilege accorded by Article III is one created by the treaty, having no obligatory existence apart from that instrument \* \* \*. It is in no sense a vested right.

\* \* \* \*

[It is] our conclusion that the provision of the Jay Treaty now under consideration was brought to an end by the War of 1812, leaving the contracting parties discharged from all obligation in respect thereto, and, in absence of a renewal, free to deal with the matter as their views of national policy, respectively, might from time to time dictate.

The Court was not specifically considering those portions of Article III applicable to Indians, and thus it did not have occasion to consider whether those portions had been

2

revived or restored by Article IX of the Treaty of Ghent. The decision in McCandless was therefore not over-ruled, but was left without authoritative support by the Supreme Court. As previously indicated, the Court of Customs and Patent Appeals in the Garrow case, supra, held contrary to the McCandless decision that Article IX of the Treaty of Ghent was not intended to be self-executing and hence had not restored Indian customs privileges under Article III of the Jay Treaty.

In light of the foregoing, it is difficult to conclude that the rights accorded under Article III of the Jay Treaty may be relied upon today by Indians seeking to bring goods into the United States from Canada. The obligation resting on the United States and Canadian Governments to enact legislation to restore those rights is of course a different question, depending for its resolution upon the interpretation to be given Article IX of the Treaty of Ghent.

2. Can a North American Indian born and residing in Canada carry Canadian goods duty-free into the United States (a) as a landed immigrant and (b) as a visitor?

Merchandise brought into the United States by Indians is treated in the same manner as merchandise brought in by any other person, since, as noted above, current customs laws provide ~~other persons~~ no specific exemption for North American Indians.

with respect to the questions presented by the Canadian Embassy, persons arriving in the United States from foreign countries are divided into two classes for customs purposes, (1) residents of the United States returning from abroad, and (2) all other persons, described as nonresidents. In the absence of satisfactory evidence that they have established a home elsewhere, as a general rule citizens of the United States or persons who have formerly resided in the United States are deemed to be residents thereof within the meaning of "residents" as used in 19 U.S.C. 1202, Schedule 8, Part 2A (Tariff Schedules of the United States).

A North American Indian born and residing in Canada would be accorded the customs status of a nonresident upon arrival in the United States.

A North American Indian, who was a former resident of the United States and has resided in Canada for some time, would be accorded the status of a nonresident if it is evident that he left ~~his~~ this country with the intention of establishing a permanent residence in Canada.

A non resident may bring into the United States free of duty and internal-revenue tax (1) personal effects owned by him and in his possession at the time he arrives in the United States

-9-

if the items are appropriate and intended for his own personal use and not for sale (items 812.10 and 812.20, TSUS); household effects if not imported for another person, not imported for sale, and which were available for use by the nonresident for at least 1 year, or were used in a household where he was a resident member for 1 year (item 810.10, TSUS); (3) tools of trade and professional equipment if they have been used by the owner and are in his possession at the time he emigrates to the United States (items 810.20 and 811.10, TSUS); and (4) a vehicle for transportation of self, family and guests provided it is imported in connection with his arrival (item 812.30, TSUS).

A nonresident may also bring in free of duty and internal-revenue tax (1) 300 cigarettes or 50 cigars or 3 pounds of manufactured tobacco (except Cuban products), or proportionate amounts of each, and one quart of alcoholic beverages by each adult nonresident for his personal use (item 812.20, TSUS); (2) gifts for other persons not exceeding \$100 in value, provided he will remain in the United States for at least 72 hours and has not claimed this \$100 gift exemption or any part of it within the immediately preceding 6 months (item 812.25, TSUS); and (3) articles not exceeding \$200 in value if the nonresident is in transit through the United States (item 812.40, TSUS).

-10-

If a nonresident is not entitled to the \$100 gift exemption, he may bring in free of duty and tax accompanying articles up to \$10 in aggregate fair retail value under the provisions of 19 U.S.C. 1321 (a)(2)(B) if the articles do not exceed the \$10 value, and are not subject to internal-revenue tax other than cigarettes not in excess of 50, cigars not in excess of 10, alcoholic beverages not in excess of 4 ounces, and alcoholic perfumery not in excess of 4 ounces.

A special practice has developed with respect to the *SPECIAL* situation in which Indians who reside in the Canadian portion of the reservation who have made purchases in Cornwall or elsewhere and who are returning to their residences on the reservation or who are proceeding with goods from the Canadian portion of the reservation to some other place in Canada. In this case these Indians are permitted to declare their purchases or other articles to the United States Customs under an informal procedure which does not involve the payment of duty.

3. Can a North American Indian born and residing in the United States carry goods duty-free into the United States

a) after residing from some time in Canada, (b) after a mere temporary visit to Canada of less than 24 or 48 hours, or (c) after a mere temporary visit to Canada in excess of 24 or 48 hours?

Persons born in the United States to a member of an Indian, Eskimo, Aleutian or other aboriginal tribe are citizens and nationals of the United States at birth. Immigration and Naturalization Act of June 27, 1952 (66 Stat. 235; 8 U.S.C.

1401(a)(2). Consequently,

A North American Indian born and residing in the United States would be accorded the customs status of a returning resident upon arrival in the United States after a mere temporary visit to Canada.

A resident of the United States returning from Canada may bring into the United States free of duty and internal-revenue tax (1) personal and household effects and tools of trade taken abroad (items 813.10 and 810.20, TSUS); and (2) household effects acquired abroad provided they are not imported for sale, they have been used abroad by the returning resident for not less than 1 year, or were available for use in a household in which he was a resident member for 1 year (item 810.10, TSUS). The returning resident may also bring in free of duty and

internal-revenue tax articles totaling \$100 (based on the fair retail value of each item acquired in Canada) if they were acquired as an incident of the trip and are for the resident's personal or household use, provided he has remained abroad for not less than 48 hours and has not used this exemption, or any part thereof, within the preceding 30-day period (item 813.31, TSUS). If the person is not entitled to the \$100 exemption

because of the 30-day or 48-hour minimum limitations, he may bring in free of duty and tax articles acquired abroad for his personal or household use if the aggregate fair retail value of such articles does not exceed \$10 (19 U.S.C 1321(a)(2)(B)).

When such articles are brought in from a contiguous country which maintains a free zone or free port, such as Canada, the duration of the returning resident's absence from the United States is immaterial.

4. Does United States Customs legislation provide a general exemption from United States customs duties for (a) North American Indians residing in the United States, (b) North American Indians born in Canada who are going to the United



States for a temporary visit, (c) all North American Indians?

As ~~we~~ discussed in the above three questions, current customs legislation contains no general exemption for North American Indians, regardless of the place of their residence or the length of their stay in the United States.

The Government of the United States hopes that the foregoing information will be of use to the Government of Canada, ~~\_\_\_\_\_~~

~~\_\_\_\_\_~~

~~\_\_\_\_\_~~

**KAHN . TINETA HORN**

**CAUGHNAWAGA QUEBEC**

Jan. 27th 1969

*To State  
to handle*  
Hon. Richard Nixon, President,  
United States of America,  
White House, Washington DC.

Re: Opportunity to meet you, congratulate you  
on your Indian Policy, to discuss Jay Treaty  
with whoever your designate.

Dear Mr. President,

In order to discuss with you the matter of the "Treaty of Amity, Commerce and Navigation Between His Britannic Majesty and the United States of America" (the Jay Treaty 1794) now respected by the government of the United States of America but not now being respected by the Canadian government, I would respectfully ask for an early appointment.

I would ask for the privilege of asking to come the very worthy Mr. James A. Duran, Jr., of Ransomville, New York States, who is a former Foreign Service Officer, and is fully aware of the Treaties in Force. I believe I have written to you to compliment you on your program concerning Indians, and I would like to personally meet you to compliment you on this. I am a Mohawk of the Six Nations Iroquois Confederacy from Caughnawaga Indian Land and am presently in the United States to appear on the "Today" Program, to speak to the New York Athletic Club, the Indian Club in Chicago and the After Dinner Speakers Club in Chicago, and the New York City Indian Womens League.

Respectfully yours,

*Kahn-Tineta*  
Kahn-Tineta  
Caughnawaga Indian Land  
(Quebec) Canada



DEPARTMENT OF MUNICIPAL AFFAIRS

801 BAY STREET

TORONTO 5

CHARLES W. YATES, Q.C.  
GENERAL MUNICIPAL COUNSEL

TO: Mr. MacLennan
FROM: REGISTRY
FEB 24 1969
FILE CHARGED OUT
TO:

February 20, 1969.

45-LDA-13-3-4
37   MR

Legal Adviser,  
Office of the Under Secretary of State  
for External Affairs,  
Ottawa, Ontario.

*Staffed to note  
& file  
26/2/69  
[Signature]*

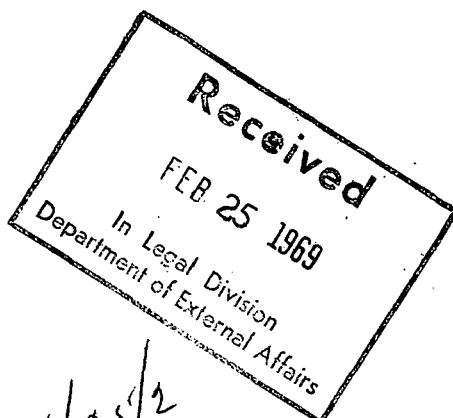
Dear Sir:                      Re: Status of the Jay Treaty

Mr. W. H. Palmer, Deputy Minister, has handed to me your  
letter of February 17th to him with enclosures as stated.

This will acknowledge receipt of this letter and thank  
you for the information therein contained.

Yours faithfully,

*[Signature: Charles W. Yates]*  
C. W. Yates,  
General Municipal Counsel,  
Department of Municipal Affairs.



*L 24/25/2*

ACTION COPY

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lv Bessy

" v cc DOJ AND Legal Dir  
File

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V

FM WSHDC FEB14/69 RESTR NO/NO STANDARD  
TO EXTER 536 PRIORITY  
REF YOURTEL X294 FEB12

USA CUSTOMS AND IMMIG LEGISLATION AND NORTHAMERICAN INDIANS  
STATE DEPT INFORMS US THAT REPLIES HAVE BEEN RECEIVED FROM  
AGENCIES CONSULTED AND THAT THEY WILL TRY TO HAVE REQUESTED  
INFO READY FOR US EARLY NEXT WEEK.

File Diary Div. Diary

Legal/Copithorne/Mawhinney/sm

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



Legal Adviser

RESTRICTED

TO  
À

SECURITY  
Sécurité

Legal Division

BEST COPY AVAILABLE DATE

FEBRUARY 12, 1969

FROM  
De

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Jay Treaty

FILE OTTAWA	DOSSIER
45 CDA-13-34	
MISSION	37

ENCLOSURES  
Annexes

DISTRIBUTION

USA  
Division.

Attached for your signature, if you agree, is a self-explanatory reply to a letter from Miss Kahntineta Horn of Caughnawaga, Quebec, requesting a copy of Mr. Wershof's letter of June 22, 1964 in which was rendered an opinion on the status of the Jay Treaty. Also enclosed for your signature are letters with attachments to certain Departments to which Miss Horn requested us to refer copies of Mr. Wershof's letter.

2. For reasons of consistency and presentation we propose that these letters be signed in your capacity as Legal Adviser as it was Mr. Wershof as Legal Adviser who rendered our original opinion on this subject and the use of this title serves to emphasize that the Department's role in this question is strictly a legal one, e.g. the interpretation of a treaty as it relates to Canada's international obligations.

3. You should also be aware that a Dr. Sutherland, Chairman of the Indian-Eskimo Association called Mr. Copithorne on Monday to invite the Department to send a representative to a panel discussion on "Unfulfilled Treaties" to be held on Thursday evening at the Public Archives Building. The panel is to be chaired by Dean McDonald of the University of Toronto, and would include Mr. Ernest Benedict, a Mohawk, Professor Duran of Canisius College in Buffalo, New York and Professor Peter Cummings of Osgoode. The Association had invited the Department of Indian Affairs to send a representative to "discuss the Government's position" but according to Dr. Sutherland, Mr. Battle, the Assistant Deputy Minister for Indian Affairs in that Department, had advised the Association that they would not participate and that the request should be put to External Affairs. Dr. Sutherland said that a formal invitation was in the mail to the Minister.

4. We have spoken with Mr. McGill about this invitation and as far as we know, it has not yet been received. He shares our view that it would be a most difficult panel for a representative of this Department to sit on and we have accordingly let Dr. Sutherland know

...2

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- 2 -

informally that it was unlikely we would be able to attend. We might add here that Professor Duran has been attempting to follow up Mr. Wershof's 1964 letter on a number of fronts and while we cannot fault him for doing so, the fact remains that this Department's interest in this contentious issue would seem to be confined to a determination of Canada's international obligations, that is to say, whether or not the Jay Treaty or the relevant provisions, is still in effect. This is the question answered by Mr. Wershof in 1964 and it seems to us that there is nothing else this Department can usefully contribute. The objective of the protagonists is presumably to seek legislation to implement the relevant provisions of the treaty and this of course is the responsibility of the interested government departments, Indian and Northern Affairs, and possibly National Revenue.

M. D. COPITHORNE

Legal Division

P.S. After typing this memorandum the invitation to the Minister from Dr. Sutherland has arrived and is attached hereto.

**FOR ACTION  
POUR CONSIDÉRATION  
IMMÉDIATE**

**SECURITY - SÉCURITÉ**

**DATE**

Feb. 3, 1969

**TO - A**

**Legal Division**

☐ **SIGNATURE**

☐ **SEE ME  
ME VOIR**

☐ **DRAFT REPLY  
PROJET DE RÉPONSE**

☐ **COMMENTS  
COMMENTAIRES**

Letter signed by SSEA and  
forwarded

O/SSEA/ASMcGill/fl

**SIGNATURE 002192**

**EXT 574/BIL EXTERNAL AFFAIRS - AFFAIRES EXTÉRIE**

*filed 17/2*

SEEN BY THE MINISTER

UNCLASSIFIED

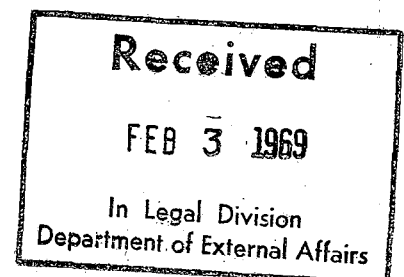
January 29, 1969.

MEMORANDUM FOR THE MINISTER

45-CDA-13-3-4  
14

Attached for your signature, if you approve,  
is a self-explanatory reply to a letter from The Honourable  
Robert Andras, Minister Without Portfolio, concerning the  
application of Canadian customs regulations to the St. Regis  
Indians in the light of the provisions of the Jay Treaty  
of 1794.

*mc*  
M.C.



30.1.9 (MS) GKM

002193



O/SSEA  
O/USSEA  
Parl.Secy.  
Press Office  
File  
Diary  
Div.Diary

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*File J/17/2*

USA Div.  
Dept.of Ind.Affairs & Nor.Develop.  
(Mr. Boyd)

Ottawa, February 3, 1969.

My dear Colleagues,

I acknowledge your letter of January 7 enclosing a copy of a letter from Mr. J. Duran, Junior, concerning the application of the provisions of the Jay Treaty to Canadian Indians.

Mr. Duran has asked for details of the recent incidents involving the application of Canadian customs regulations to Canadian Indians crossing into Canada from the United States. This information is available in the Department of Indian Affairs and Northern Development. I understand that a similar enquiry originating with Mr. Duran is already in the hands of that Department and that they are in the process of preparing a reply.

Yours sincerely,

ORIGINAL SIGNED BY  
MITCHELL SHARP

Mitchell Sharp.

The Honourable Robert Andras,  
Minister Without Portfolio,  
House of Commons,  
OTTAWA, Ontario.

30.1.9 (els)

FICHE DE SERVICE  
ACTION REQUEST

CABINET DU SEAE - OFFICE OF THE SSEA

Date

Jan. 27/69

A: Legal Division

Tr

BEST COPY AVAILABLE

De: O/SSEA, Richard Gervais/sr

From:

Lettre en date du Jan. 7/69  
Letter dated

de Robert Andras  
from

Sujet  
Subject

Action requise: - Action required:

Réponse pour la signature du Premier Ministre  
Reply for Prime Minister's signature

pour avis et retourner  
for advice and return

Réponse pour la signature du Ministre  
Reply for Minister's signature

noter et retourner  
note and return

Réponse au nom du P.M./ou Ministre  
Reply on behalf of PM/or SSEA

traduction  
for translation

Réponse pour la signature de  
Reply for signature of:

Commentaires: For your comments and preparation of draft reply for Minister's  
Comments:

signature and return to me.

Porter à l'attention des archives du SEAE le  
B.F. to Minister's registry on

Commentaires par D.C.O.:  
D.C.O.'s comments:

*Eric Borge*  
*Incl aff*  
*2-6752*



CANADA

MINISTER WITHOUT PORTFOLIO  
MINISTRE D'ÉTAT

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

January 7, 1969

My dear Colleague:

Attached please find copies of two letters:  
one from Mr. J. Duran Jr. and the other from  
one of your legal advisers.

I would greatly appreciate it if you would have  
one of your staff advise me on this.

Sincerely,

Robert Andras.

The Honourable Mitchell Sharp  
Minister of External Affairs  
House of Commons  
Ottawa 4, Ontario

Dec 27, 1968

2347 Lower Mountain Road  
Ransomville, New York 14131  
December 19, 1968

Mr. Robert K. Andras, M.P.  
Minister Without Portfolio  
House of Commons  
Ottawa, Canada

Dear Mr. Andras:

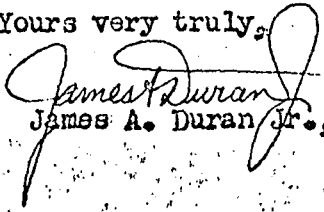
Thank you for your answer of November 21 to my letter concerning the border-crossing rights of the Indians as provided for in the Jay Treaty and reaffirmed in the Treaty of Ghent. Certainly, the St. Regis Mohawks have dramatically brought the issue to the attention of the public in Canada and the United States.

According to the Associated Press reports, Canadian government officials "have contended the system of collecting customs duties—only about three weeks old—is legal because Canada has never been a party to the Jay Treaty, ratified by the United States and Great Britain in 1794 before Canada became a nation."

I am enclosing a xerox copy of a letter of June 22, 1964, from the Legal Advisor of the Canadian Ministry of External Affairs which in effect acknowledges that the Jay Treaty is a treaty in force between the United States and Canada. Assertions such as those reportedly made by Canadian officials are contrary to basic principles of international law as they relate to the obligations of successor states. Many important agreements basic to United States-Canadian relations date back before Canada became fully sovereign. You may be interested to know that, when in Washington, D.C., on December 3, I learned that the U.S. State Department has recently made a low-level, informal representation to the Canadian Embassy on the question of Indian border-crossing rights. While the Government of Canada may not have passed legislation implementing its treaty, it does have a legal obligation to the Indians under international law.

I would appreciate it very much if you would send me the details of the incidents involving the St. Regis Mohawks. As a responsible, interested party, I wish to learn both sides of the story.

Yours very truly,

  
James A. Duran Jr., Ph.D.

002197



CANADA

THE UNDER SECRETARY OF STATE  
FOR EXTERNAL AFFAIRS

OTTAWA , June 22, 1964.

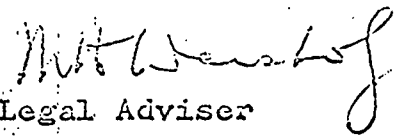
Dear Mr. Antone,

This will acknowledge your letter of May 29th addressed to the Secretary of State for External Affairs in which you asked whether the first ten articles of the 1794 "Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States of America", commonly known as Jay's Treaty, had "ever been abrogated with the concurrence of the United States".

The simple answer to your enquiry is that there has never been, to our knowledge, any formal abrogation of these particular articles or of the treaty as a whole.

However, as you are apparently representing U.S. citizens in the United States, it might be better for you to address your enquiry to the U.S. Department of State in Washington.

Yours very truly,

  
Legal Adviser

Mr. Lehigh Antone,  
Grand Secretary,  
Indian Defense League of America,  
Box 305, Niagara Falls,  
N.Y., U.S.A.



O/SSEA  
O/USSEA  
Parl. Secy.  
Press Office  
U.S.A. Div.  
File ✓  
Diary  
Div. Diary  
USA Div.

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Legal Div./J.S. Stanford/ss

*File*  
~~RETURN TO LEGAL DIV. DCO~~

UNCLASSIFIED

January 29, 1969.

MEMORANDUM FOR THE MINISTER

45-CDA-13-3-4  
25 |

Attached for your signature, if you approve,  
is a self-explanatory reply to a letter from The Honourable  
Robert Andras, Minister Without Portfolio, concerning the  
application of Canadian customs regulations to the St. Regis  
Indians in the light of the provisions of the Jay Treaty  
of 1794.

M. CADIEUX

M.C.

BEST COPY AVAILABLE

Legal Div./J.S.Stanford/zs

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

Legal Adviser (through U.S.A.Division)

UNCLASSIFIED

Legal Division

SECURITY  
Sécurité

January 29, 1969

DATE

NUMBER  
Numéro

TO  
À

FROM  
De

REFERENCE  
Référence

SUBJECT  
Sujet

The Jay Treaty and the St. Regis Mohawks

FILE DOSSIER

OTTAWA

45-LDA-13-3-4

MISSION

37

ENCLOSURES  
Annexes

-2-

DISTRIBUTION

USA Div.  
(with attach.)

Mr. Dennis Foley, a reporter from the Ottawa Citizen, telephoned Mr. Stanford of this Division on January 28th to obtain background information concerning the Jay Treaty and its application to the St. Regis Mohawks. During the course of the conversation Mr. Foley asked whether he could be provided with a copy of a letter of June 22, 1964 from Mr. Wershof, then Legal Adviser, to an Indian representative replying to his enquiry concerning the continued validity of the Jay Treaty. A copy of the letter in question is attached.

2. This letter is already, for all practical purposes, in the public domain. Relevant portions of it have been quoted in a letter to the Editor of the Ottawa Citizen which was published on January 20, 1969 and which is also attached. Virtually the same letter to the Editor appeared in the New York Times of Sunday, December 29, 1968. In fact the attached photocopy of Mr. Wershof's letter was made from a Xerox copy of the letter which was enclosed in a letter from Mr. Duran to the Honourable Robert Andras, Minister Without Portfolio.

3. In the circumstances there would appear to be no objection to our providing a copy of the letter to Mr. Foley. If you agree, would you please pass this memorandum to Mr. Francis in Press Office who has agreed to transmit it to Mr. Foley.

J. A. BEESLEY

Legal Division.

DEPARTMENT OF EXTERNAL AFFAIRS

Subject..... The Jay Treaty & St. Regis Mohawks

Date..... January 20, 1969..... Publication..... The Ottawa Citizen.

**READERS' VIEWS**

The Ottawa Citizen  
January 20/69

## Says Canada violates treaty

Editor, Citizen: In my opinion, the leaders of the St. Regis Mohawks are correct in their assertion that the Jay Treaty is in force and obligates Canada to honor their free border-crossing rights. Several Associated Press reports have cited "Canadian officials" as declaring that the Jay Treaty is not in effect "because Canada has never been a party to the Jay Treaty, ratified by the United States and Great Britain in 1794 before Canada became a nation."

Such reasoning has very serious implications for United States-Canada relations, since at least 28 such treaties are in force. Certainly, Article III of the Jay Treaty and Article IX of the Treaty of Ghent, which guarantee the free border-crossing rights of Indians, are in force according to the official publications of the U.S. department of state, "Treaties in Force." Moreover, the United States, after having voided provisions of this treaty by the Immigration Act of 1924, responded to the persistent efforts of Indian leaders led by Chief Clinton Rickard of the Tuscaroras by passing legislation in 1928 restoring the Jay Treaty border-crossing rights. Thus the United States recognizes the treaty in question as one in force.

Moreover, on June 22, 1964, the legal adviser of

the office of the undersecretary of state for the Canadian ministry of external affairs wrote to Lehigh Antone, Grand Secretary of the Indian Defence League of America, that "there has never been, to our knowledge, any formal abrogation of these particular articles or of the treaty as a whole."

Canadian officials have also referred to the voiding of these rights by the Canadian Supreme Court in the decision, *Francis vs. the Queen* (1956). After having studied the decision, my conclusion is that the Canadian Supreme Court did not declare the treaty null and void, but stated clauses of the Jay Treaty were not in effect because the government of Canada had not passed the legislation necessary to implement them. For five years, the Indian leaders of the Indian Defence League of America have been beseeching Canadian authorities to pass the necessary legislation, but to no avail.

The reported statements of Canadian officials violate basic principles of international law on the responsibilities of successor states, on the obligation to implement treaty commitments in good faith, and on the illegality of a single party unilaterally abrogating a bilateral international treaty.

JAMES A. DURAN Jr.  
Canisius College  
Buffalo, N.Y.



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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TO  
A U.S.A. Division

FROM  
De Legal Division

REFERENCE  
Référence Your memorandum of January 9, 1969

SUBJECT  
Sujet The Jay Treaty-Article III

*Mr. Bissonnette  
 This is very good  
 and I think we should  
 express our appreciation  
 in a memo to Legal Division*

*B2*

SECURITY  
Sécurité

UNCLASSIFIED

DATE January 16, 1969

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	20 Canada 5 1 1
MISSION	45-60A-13-3-4
	34

ENCLOSURES  
Annexes

DISTRIBUTION

Mr. Bissonnette

Mr. Bridle,  
Lat. Am. Div.

Opinions Index

You have requested our comments on the continuing validity of that portion of Article III of the Jay Treaty which refers to the right of Indians to cross the Canada-US border without paying customs duties.

2. There are two provisions, in two separate treaties, relevant to this question. Article III of the Jay Treaty provides, in part, that

" No Duty on Entry shall ever be levied by either Party on Peltries brought by Land, or Inland Navigation into the said Territories respectively, nor shall the Indians passing or repassing with their own proper Goods and Effects of whatever nature, pay for the same any Impost or Duty whatever. But Goods in Bales or other large Packages unusual among Indians shall not be considered as Goods belonging bona fide to Indians."

There was apparently a difference of views between Britain and the U.S., at the time of the War of 1812, over whether the Jay Treaty had been terminated by that war. Even if the Jay Treaty was terminated by the War of 1812, however, it appears clear that the provisions of Article III relating to Indians were revived by Article IX of the Treaty of Ghent, 1815, which provided in part:

" And His Britannic Majesty engages, on his part, to put an end, immediately after the Ratification of the present Treaty to hostilities with all the Tribes or Nations of Indians with whom he may be at war at the time of such Ratification; and forthwith to restore to such Tribes or Nations, respectively, all the Possessions, Rights and Privileges, which they may have enjoyed or been entitled to in 1811, previous to such hostilities: Provided always, that such Tribes or Nations shall agree to desist from all hostilities against His Britannic Majesty, and his Subjects, upon the Ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly."

- 2 -

3. The present position of the U.S. Government is that the provisions of Article III relating to Indians, and Articles IX and X dealing with land tenure and private debts, remain in force. (U.S. State Department publication U.S. Treaties in Force.) The only occasion in recent time on which, to our knowledge, the Canadian Government has taken a position on the question of the continuance in force of the Jay Treaty was in the letter of June 22, 1964 to which your memorandum refers, in which it was stated that "there has never been, to our knowledge, any formal abrogation of these particular articles or of the treaty as a whole."

4. Some of the news reports of the Canadian Government position with respect to the Jay Treaty have, rightly or wrongly, attributed to the Government the view that the Treaty was concluded between Britain and the U.S. and that, since Canada was not a party to the Treaty it is not bound by the Treaty's provisions. This argument is unsound. In 1794 and in 1815, the date of the two relevant treaties, Canada was a territory for the foreign relations of which Britain was responsible. Upon attaining independence in the years following the First World War, Canada and the other members of the "old Commonwealth" took the position that they succeeded to the rights and obligations of treaties entered into by Britain on their behalf prior to independence. While there has been considerable change in the attitudes of states (and perhaps, in consequence, in the law as well) regarding state succession in respect of treaties with the advent to independence of the new African and Asian states, Canada's position taken at the time we acquired independence is the operative one for us, with the result that a great many of the treaties by which Canada is now bound are treaties concluded on our behalf by Britain. Canada cannot, therefore, avoid the obligations of the Jay Treaty on the ground that it was not a party to that Treaty.

5. The only ground which would appear open to Canada as a basis for claiming that it is not bound by the relevant provisions of the Jay Treaty is the doctrine of fundamental change of circumstances. This doctrine, as recently formulated by the International Law Commission, provides that a party may invoke, as a ground for terminating a treaty, a fundamental change in the circumstances existing at the time of the conclusion of the treaty if the change was not foreseen by the parties, if the existence of the circumstances constituted an essential basis of the consent of the parties to be bound by the treaty and if the effect of the change is radically to transform the scope of the obligations still to be performed under the treaty. Rand J. in Francis v The Queen (referred to in greater detail below) seems to have had this doctrine in mind when he refers to the radical change in the circumstances relating to Indians which has occurred since 1794. While at first glance the doctrine would appear relevant to the present case, and might be pleaded by Canada, it should be noted that the doctrine is of such narrow application that it has never been invoked successfully before any national or international tribunal. At any rate, the doctrine does not operate automatically to terminate a treaty; it must be invoked. Unless and until the doctrine is successfully invoked by Canada, or some other ground of which we are

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(not aware is found to void the Treaty, the Treaty obligation remains.

6. It is our view, therefore, that the provisions of Article III of the Jay Treaty are at present probably binding upon Canada by virtue of Article IX of the Treaty of Ghent. The right to invoke the treaty and require Canada to honour its obligation under the Treaty by enacting the necessary customs legislation rests with the United States as the other party to the Treaty. It does not follow, however, that the subjects of one of the parties to a treaty are entitled in either international or national law to invoke the provisions of the treaty against their own government. On this point Oppenheim states:

" The binding force of a treaty concerns in principle the contracting States only, and not their subjects. As International Law is primarily a law between States only and exclusively, treaties can normally have effect upon States only. This rule can, as has been pointed out by the Permanent Court of International Justice, be altered by the express or implied terms of the treaty, in which case its provisions become self-executory. Otherwise, if treaties contain provisions with regard to rights and duties of the subjects of the contracting States, their courts, officials, and the like, these States must take such steps as are necessary, according to their Municipal Law, to make these provisions binding upon their subjects, courts, officials, and the like. It may be that, according to the Municipal Laws of some countries, the official publication of a treaty concluded by the Government is sufficient for this purpose, but in other countries other steps are necessary, such as, for example, special statutes to be passed by the respective Parliaments.

Oppenheim, International Law, Vol.1,  
8th Ed. p. 924.

7. The effect of the Supreme Court decision in Francis v The Queen [1956] SCR 618 is to rule that the Municipal Law position in Canada is that described in the second half of the last sentence of the passage quoted above from Oppenheim. The Supreme Court did not rule upon whether the Jay Treaty still binds Canada, it ruled only that even if it is still in force for Canada it does not operate of itself to confer upon Indians a right to customs exemption under Canadian law. The provision of Article III concerning the exemption of Indians from customs duty could have effect in the internal law of Canada only if these were provisions in Canadian legislation which conferred such an exemption. While legislation conferring such rights had existed in Upper and Lower Canada in the years immediately following the Jay Treaty, this legislation lapsed well before Confederation, no such legislation now exists and consequently Indians entering Canada do not enjoy under Canadian law the benefit of the exemption to which Article III refers.

8. We turn now to the questions in paragraph 3 of your memorandum, i.e. the questions in paragraph 3 of your telegram X109 of January 7 to

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Washington, altered to apply to Canada. Although these questions relate to domestic Canadian customs legislation and the Departments of Justice and National Revenue would have to be consulted before authoritative opinions could be given, our understanding of the relevant provisions of the Customs Act and Customs Tariff, based upon the Supreme Court's decision in *Francis v The Queen*, is that no provisions exist which exempt a person from liability for payment of customs duty in any of the circumstances mentioned in your questions solely on the ground that he is an Indian. Indians, whether resident in the U.S. or Canada, are subject to the same Canadian customs legislation as applies to all other U.S. or Canadian residents, and no legislation exists which has the effect of conferring upon Indians the exemption from customs duty contemplated by Article III of the Jay Treaty.

\*which the third  
party can enforce  
under international  
law.

9. It remains to consider whether the Jay Treaty and the Treaty of Ghent may be considered as having created rights for the Indian bands affected by its provisions. We confine our remarks on this question to rights in international law. International law recognizes that States may conclude treaties which confer benefits upon third parties (ILC draft article 32 on the law of treaties).<sup>\*</sup> It may therefore be urged that, in the Treaties in question, the two parties (the U.S. and Britain) created rights for the Indian bands affected by the Treaties. The question of the ability of Indian bands to receive and exercise rights created by treaty naturally arises most directly in connection with the "treaties" concluded with the Indian bands themselves. On this point the view has been expressed that:

"According to the modern doctrine of international law, an agreement made between a State and a native chief or tribe cannot be regarded as a treaty in the international sense of the term; nor can it be said that such an agreement produces the international legal effects commonly produced by a treaty.

...

The reason is that native chiefs and tribes are neither States nor International Organizations; and thus possess no treaty making capacity."

McNair, Law of Treaties pp 52-3.

It appears, therefore, that the Indians are to be considered as in the same position as other private persons who are subjects of one of the States party to a treaty and that, for the reasons mentioned in *Francis v The Queen* (para 7 above) they must rely upon municipal legislation to confer upon them the rights referred to in the Treaties.

*John Beasley*  
Legal Division

CLIPPING SERVICES

DEPARTMENT OF EXTERNAL AFFAIRS

Mr. Rafferty  
UN  
LEGAL

Subject *Human Rights*

MANCHESTER GUARDIAN

JUL 18 1967

Date ..... Publication .....

## Appeal is admissible

By our Diplomatic Staff

The European Human Rights Commission announced a decision in Strasbourg last night which could make it harder for the Home Office to exclude the dependants of Commonwealth immigrants from Britain. It may well hasten the introduction of appeals machinery for those refused entry at the ports.

The commission of 15 jurists declared admissible an appeal by a Pakistani immigrant working in a Bradford textile mill against the Government's refusal to let his 13-year-old son into this country. It found that the application, by Mr Mohamed Alam, raised questions of law and fact which were sufficiently complicated to justify a further examination.

A second appeal by an Indian immigrant, Mr Harbajan Singh, whose elderly father was turned away at Heathrow Airport-London, was rejected by the commission. Both immigrants claimed that the Government had violated the European Convention of Human Rights, of which Britain is a signatory.

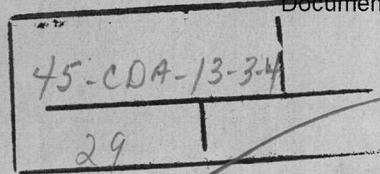
The two appeals were lodged under Articles 6 and 8 of the Convention, which guarantee the right to family life and to an impartial public hearing. The commission found Mr Singh's appeal "manifestly ill-founded." It said the character of family life had not been established in the case of his relationships with his father.

In both cases, the immigration authorities claimed to be acting in accordance with the Commonwealth Immigrants Act of 1962.

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Legal Division  
Mr. Shortliffe

*Handwritten signature: M. Robertson*

UN12

PRESS RELEASE L/T/88  
UNITED NATIONS, N.Y.

### ARGENTINA SIGNS CONVENTION ON RACIAL DISCRIMINATION

ARGENTINA YESTERDAY BECAME THE 59TH COUNTRY TO SIGN THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, OPENED FOR SIGNATURE AT UNITED NATIONS HEADQUARTERS.

UNDER THE CONVENTION, ADOPTED BY THE GENERAL ASSEMBLY ON 21 DECEMBER 1965 (RESOLUTION 2106 (XX)), STATES WHICH BECOME PARTIES "CONDEMN RACIAL DISCRIMINATION AND UNDERTAKE TO PURSUE, BY ALL APPROPRIATE MEANS AND WITHOUT DELAY, A POLICY OF ELIMINATING RACIAL DISCRIMINATION IN ALL ITS FORMS AND PROMOTING UNDERSTANDING AMONG RACES".

THE CONVENTION PROVIDES FOR THE ESTABLISHMENT OF MACHINERY TO OVERSEE THE IMPLEMENTATION OF ITS PROVISIONS.

IT WILL ENTER INTO FORCE 30 DAYS AFTER THE TWENTY-SEVENTH INSTRUMENT OF RATIFICATION OR ACCESSION HAD BEEN DEPOSITED WITH THE SECRETARY-GENERAL. ELEVEN COUNTRIES -- BULGARIA, COSTA RICA, CYPRUS, CZECHOSLOVAKIA, GHANA, HUNGARY, ICELAND, NIGER, PAKISTAN, TUNISIA AND THE UNITED ARAB REPUBLIC -- HAVE THUS FAR RATIFIED THE CONVENTION; AND ONE COUNTRY -- ECUADOR -- HAS ACCEDED TO IT.

THE 59 SIGNATORIES TO DATE ARE: ALGERIA, ARGENTINA, AUSTRALIA, BOLIVIA, BRAZIL, BULGARIA, BURUNDI, BYELORUSSIA, CAMBODIA, CAMEROON, CANADA, CENTRAL AFRICAN REPUBLIC, CHILE, CHINA, COLOMBIA, COSTA RICA, CUBA, CYPRUS, CZECHOSLOVAKIA, DAHOMEY, DENMARK, FEDERAL REPUBLIC OF GERMANY, FINLAND, GABON, GHANA, GREECE, GUINEA, HOLY SEE, HUNGARY, ICELAND, INDIA, ISRAEL, IRAN, JAMAICA, MAURITANIA, MEXICO, MONGOLIA, NETHERLANDS, NEW ZEALAND, NIGER, NORWAY, PAKISTAN, PANAMA, PERU, PHILIPPINES, POLAND, SIERRA LEONE, SOMALIA, SWEDEN, TRINIDAD AND TOBAGO, TUNISIA, UKRAINE, UNION OF SOVIET SOCIALIST REPUBLICS, UNITED ARAB REPUBLIC, UNITED KINGDOM, UNITED STATES, URUGUAY, VENEZUELA AND YUGOSLAVIA.

JA 240P 14 JUL 67

002207

TRANSMITTAL SLIP

TO: **The Under-Secretary of State**  
.....  
for External Affairs, Ottawa  
.....  
FROM: **The Permanent Mission of Canada**  
.....  
to the United Nations, New York.  
.....

Security. **UNCLASSIFIED**  
.....  
Date. **Nov. 19, 1965.**  
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Air or Surface. **Air**  
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No. of enclosures. **1** *RZ*  
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The documents described below are for your information.

Despatching Authority..... **M. Godfrey** *g-77*

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Copies	Description	Also referred to:
1	20th UNGA:  Statement by Professor R. St. John Macdonald to the Third Committee, November 17, 1965.	<i>cc 24-12-7-20th 3rd</i> <div>TO: <i>Mr. Macdonald</i> NOV 24 1965 REGISTRY</div> <i>Mr. Colquhoun</i> <i>Legal Dir</i> <i>I see with</i> <i>to</i>

002208

## INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.
2. This form should *NOT* be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
4. The form should bear the security classification of the material it covers.
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.



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Statement by Professor R. St. John Macdonald  
to the Third Committee, November 17, 1965

The Canadian delegation regards the draft convention before us as a document of great importance to the world community and to the United Nations in particular. This draft is part and parcel of the tremendous collective effort which the United Nations has been making, slowly but successfully, to clarify and to formulate principles and procedures which will promote and extend basic individual liberties to more people, in more areas, and on a more comprehensive scale, than ever before. In our view, this document has the capacity to take its place as one of the significant responses by the United Nations to the demands for freedom and for equality which can be discerned with rising insistence the world over, by all who have ears to hear and eyes to see.

We are in complete agreement, therefore, with the many, many delegations which have stressed the importance of making the draft effective, and of preventing it from lapsing into a sort of dead letter for want of adequate implementation provisions. Like others, we too do not want the Cheshire cat without the Cheshire smile. We have been particularly impressed by the eloquent plea which the distinguished representative of Ghana made in this House yesterday, and in which he asked us to exploit the present opportunity to go forward in the struggle against racial discrimination.

Through you, Mr. Chairman, I would say now to our good friend from Ghana that the Canadian delegation is ready to join with him in matching deeds to words, and in going forward with

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him in exploring new ways and new means of ensuring the success of the convention.

With your permission, Mr. Chairman, I would come now to the specific question of implementation; and my object at this time would be no more ambitious than to suggest the general views and orientation of the Canadian delegation, expressing our desire, and reserving our right, to participate in the details of the debate at a later stage.

I turn then to the two major proposals which are before us, namely, the Philippine suggestion in Doc. 1221, and the Ghana amendment thereto in Doc. 1274/Rev. 1.

Our preliminary analysis of the document circulated by the Philippines is that it reaches for three major objectives. First, it provides for reports from governments in Article 1. Secondly, it provides for fact-finding, good offices and conciliation of state vs state controversies by a committee, which is to be established under articles 2 - 10, inclusive. Thirdly, it provides for petitions by individuals and groups, under controlled conditions, by virtue of article 16. There are other provisions, of course, such as the committee's obligation to report annually to the General Assembly under article 17, and the creation of a kind of compulsory jurisdiction in the International Court of Justice under Article 18. But, generally speaking, the three points I have mentioned represent the core idea of the Philippine proposal.

(Para) The amendment submitted as a complete alternative by Ghana also contains a reporting and conciliation procedure, though it uses two bodies for these purposes, rather than the single committee preferred by the Philippines; and it calls for the creation of national committees through which the petitions of individuals



may be screened to an international committee. Reference to the International Court is provided for in article 9, and an effort is made in article 10 to cope with the problem of enforcement.

A few of the provisions in one document are not found in the other document. For example, the oath of impartiality in article 7 of the Ghana proposal, and the dispute-settlement provision in article 9 of the same document, find no precise counterpart in the Philippine draft. There are, additionally, differences in detail and in nuance, as is to be expected. The Philippines prefer one committee rather than two; and they would allow the reports to go to non-signatories, whereas Ghana would not. And so forth.

Both documents have a good deal in common and it is obvious that both provide us with exceptionally valuable bases for discussion. Their major point of contact, of course, is the recognition of reports, conciliation, and petitions.

Nevertheless, Mr. Chairman, it is a fact, I believe, that there is nothing terribly new or revolutionary in either of the two proposals. Reports, conciliation, and petitions are familiar techniques in the experience of international organizations generally and in the human rights field particularly. They have been used by a number of organizations in a variety of ways, and they have been talked about in the Human Rights Commission for at least 15 years. What is rather new, however, is that we now have a fresh opportunity to give these old ideas practical application in the sensitive field of race relations.

Reporting and conciliation, of course, are techniques tried and true; and there can be no doubt that national experience has proved the value which the cumulative impact of a series of investigations and recommendations can have when they attract the white light of publicity. Reporting and conciliation, therefore, are all right as far as they go. The main difficulty is that they do not go far enough. This is particularly true when conciliation is on a state vs state basis, if for no other reason than that friends do not like to tangle in public, while rivals are only too tempted to do so. The history of the ILO complaints system is good evidence of what might happen were that system to be relied upon in the human rights area.

Reporting and conciliation, in our view, is not enough.

What is needed, we believe, is access for groups and individuals within the state to competent, impartial decision-makers outside the state. The idea is simply to vest competent non-national authorities with no less capacity than the power to pass on the treatment which the home state has meted out to its own national. In this way, the individual will have the opportunity to overleap his tribal organization, and to bring a completely independent mind to bear on the standard which the national state is applying in the human rights area. The individual will no longer be cabined and confined by his local government.

Now, Mr. Chairman, article 16 of the Philippine proposal goes some distance, though certainly not all the way, towards recognizing such an authorization; and the Costa Rican



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proposal for a High Commissioner for Human Rights, co-sponsored by Canada, is of similar design. Both these documents, in this regard, go beyond the suggestion for national committees in article 12 of Ghana's amendment. And because they correspond with our view of the desirability of an open society; of larger groupings in the world; of growing international, as opposed to national, loyalties and identifications; and the individual's fullest possible participation in the processes of power, we prefer the former approach to the latter.

We have no illusions of course about the easy or quick achievement of this objective. We realize that different societies are in different stages of development, and that as long as there is widespread disease, poverty, exploitation and instability in the world, there is little likelihood of any kind of universal acceptance of a really effective right of petition procedure. We are also sensitive to the fact that many, many countries are simply not ready for this kind of an experiment, and that other countries just don't share the concept of human rights that has developed in the Western world.

In the view of our delegation, however, the general views which we have outlined should continue to serve as our unifying and organizing principle - as the standard which we should seek - and we think that we should tend to err, if we must err at all, on the side of the bold, the experimental, the enthusiastic, rather than on the side of the traditional and the conservative. We would do well to remember that the work of the Commission, and of our Committee, has been severely

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criticized by non-governmental, academic and other expert bodies on the ground that enforcement has not gone far enough. We would do well, Mr. Chairman, to remember that we should not be mesmerized by the concept of sovereignty.

To these remarks of a general nature, Mr. Chairman, I would reserve our Delegation's right to intervene in the details of the debate at a later stage.

Opinion's Index

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45-CDA-13-3-4  
25 1 4/5

Ottawa, September 22, 1965.

Dear Mr. Glenn:

I refer to your letter of August 4 addressed to Mr. A.W.J. Robertson, Head of our Treaty Section, who, I understand, has already sent you an interim personal reply. In your letter, you referred to the Treaty of Amity, Commerce and Navigation of November 19, 1794 (Jay's Treaty), and in particular to Article III of it. That Article states that:

"It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's Bay Company only excepted), and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with each other."

As you indicated, it is the opinion of the United States authorities that, although the rest of the treaty is no longer in effect, Article III may still be in effect "as it relates to Indians".

As far as concerns the Canadian position, it is clear that the latter articles (XI and after) are spent. However, there has never been, to our knowledge, any formal abrogation of Article III or, indeed, of the first ten articles of the Treaty, other than Lord Bathurst's contention that the

H.P. Glenn, Esq.,  
Faculty of Law,  
Queen's University,  
KINGSTON, Ontario.

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provisions of the Treaty were brought to an end by the War of 1812 (as cited in "U.S. Treaties in Force" and in W. M. Malloy's "Treaties, Conventions, International Articles, etc. ... Between the United States and Other Powers", Vol. 1, page 580, footnote "a", and as referred to in the Note to the Department of External Affairs' prewar compilation of treaties mentioned in paragraph 3 of your letter). Since, however, the Canadian Government has not itself pronounced officially on this matter, the actual status of these sections of the Treaty remains unresolved.

As far as Earl Bathurst's statement is concerned, it is clear from the contrary American contention, at the time of the war in question, that, even then, the effect of war on the treaty relationships of the belligerents was open to question. It is obvious that the particular circumstances and the nature of a given treaty relationship would have a bearing on any decision in regard to the effect of a war on such a treaty relationship. You may, however, be interested in the fact that in Section III of Part II of the Draft Articles on the Law of Treaties which are presently under discussion by the International Law Commission, dealing with the termination of treaties, the effect of subsequent war between the parties is not dealt with directly. Article 42-1, "Termination, suspension and operation of a treaty as a consequence of its breach", only states that:

"1- A material breach of a bilateral treaty by one party entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part."

You might also be interested in the American and Canadian court cases which refer to this matter. It is dealt with in Karnuth v. United States (279 U.S. 231-1929) and in Louis Francis v. Her Majesty The Queen (Supreme Court of Canada Reports 1956, page 618). In the United States, where treaties form a part of the law of the land, their legal effect is, of course, rather different than is the case in Canada, where they have no domestic legal effect unless necessary implementing legislation has been provided.

In practical terms, as far as concerns the regime of the Great Lakes, these detailed consideration relating to Article III of Jay's Treaty are probably of very little relevance today.

Yours sincerely,

J. S. NUTT for the  
Under-Secretary of State  
for External Affairs.



*Re Jay's Treaty*

*The Gazette*

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45-CDA-13.3-4  
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## Indian Seeks Out Of Draft By Old Treaty

ALBANY, N.Y. (AP) — A 25-year-old Mohawk Indian contends in a federal court case that he is free from the U.S. military draft because of a 180-year-old treaty.

Brant J. Maracle asked dismissal Monday of an indictment charging him with wilful failure to report for induction.

His lawyer, Omar Ghobasy, of New York, cited the Jay Treaty, signed in 1795. The main question dumped in the lap of Judge James T. Foley appeared to be that of Maracle's citizenship.

Maracle was born in Rochester but has lived most of his life in Shawville, Que. Ghobasy argued that Maracle was entitled to dual U.S.-Canadian citizenship.

Ghobasy said that, by renouncing American citizenship, Maracle becomes a Canadian and is not required to obey the U.S. military draft.

A state official said that the treaty had been construed to grant free border passage for hunting, fishing and trading to Indians living along the Canadian-New York border.

## CANADIAN INSTITUTE OF INTERNATIONAL AFFAIRS

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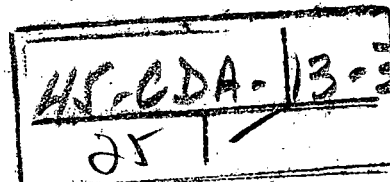
Bradley M. Webb

Honorary Treasurer

George Armstrong

Mailing Address:  
Faculty of Law,  
Queen's University,  
Kingston, Ontario,  
Aug. 4, 1965.

A.W.J.  
Mr. R. Robinson,  
c/o Treaty Section,  
Legal Division,  
Department of External Affairs,  
Ottawa, Ontario.



Dear Mr. Robinson,

I am undertaking a study for the Canadian Institute of International Affairs on the law of the Great Lakes. One of my terms of reference is to compile a list of all treaties which relate to the Lakes.

I have completed a list of these treaties but I am not clear as to the Canadian Government's position on the status of treaties entered into between Great Britain and the United States prior to the War of 1812. I spoke to Mr. Gotlieb a few weeks ago and he suggested I contact you for any help you might be able to offer.

I am concerned about Article III of the Jay Treaty (Signed at London, November 19, 1794) and the Explanatory Article thereto (Signed at Philadelphia, May 4, 1796). The U.S. Department of State's list of treaties in force on January 1, 1965, states that Article III, so far as it relates to Indians, appears to remain in force. Contrary to this view is the Introductory Note to the Department of External Affairs' compilation of Treaties and Agreements affecting Canada in force between His Majesty and the United States of America, 1814-1925. That Note cites a statement made by Earl Bathurst which reads,

- 2 -

"To a position of this novel nature Great Britain cannot accede. She knows of no exception to the rule that all Treaties are put an end to by a subsequent War between the same Parties."

It is my understanding that the effect of war on the treaty relations of the belligerents is not so clearly defined as Earl Bathurst's statement suggests. Can you indicate to me if that statement accurately represents the Canadian opinion, or is the matter unresolved?

I would be very grateful for any opinion you might have to offer.

Yours very truly,

H.P. Glenn

H.P. Glenn

HPG:sm

Ne Sker-no, Ne Gai Wuo, Ne Gasha Sa

Peace, Prosperity, Power and Equality to All

# Indian Defense League of America

Home Office, Box 305, Niagara Falls, N.Y.

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Treasurer and Assistant Secretary

Annual Border Crossing Celebration Every 3rd Saturday of July, Niagara Falls, N.Y., and Niagara Falls, Ontario

6-30-64

Honourable M.H. Weisbog  
Legal Adviser  
Department of External Affairs  
Government House  
Ottawa, Canada

Dear Mr. Weisbog;

Acknowledging your letter of the 22nd inst., in reply to question posed regarding what is commonly known as Jay's Treaty, signed and ratified between His Britannic Majesty and the United States, in which you state in the second paragraph "The simple answer to your enquiry is that there has never been, to our knowledge, any formal abrogation to these particular Articles or of the Treaty as a whole".

In order to set the record straight, we are not representing U.S. citizens but North American Six Nations Indians. We do have in our possession a letter from the Legal Adviser of the Secretary of State, Washington with excerpts of Court Decisions and an Order from the Attorney General, confirming the Right of North American Indians free access between the Countries of Canada and the United States. The Above confirming the permanency of the treaty as binding and obligatory to both parties. *See also Article XXVIII of Jay's Treaty*

Thanking you for your favorable and courteous reply.

Respectfully

*Lehigh Antone Secy*

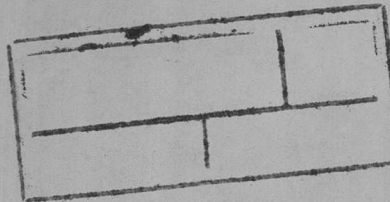
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cc: Historical Division  
Minister's Office

*Please return to legal  
when signed*

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, June 22, 1964.

Dear Mr. Antone,

This will acknowledge your letter of May 29th addressed to the Secretary of State for External Affairs in which you asked whether the first ten articles of the 1794 "Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States of America", commonly known as Jay's Treaty, had "ever been abrogated with the concurrence of the United States".

The simple answer to your enquiry is that there has never been, to our knowledge, any formal abrogation of these particular articles or of the treaty as a whole.

However, as you are apparently representing U.S. citizens in the United States, it might be better for you to address your enquiry to the U.S. Department of State in Washington.

Yours very truly,

M. H. WERSHOF

Legal Adviser

Mr. Lehigh Antone,  
Grand Secretary,  
Indian Defense League of America,  
Box 305, Niagara Falls,  
N.Y., U.S.A.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

*File*

TO: Legal Adviser

Security ... UNCLASSIFIED

Date June 22, 1964.

FROM: Legal Division

File No.

REFERENCE: Nil

SUBJECT: Jay's Treaty.

We attach for your signature, if you agree, a revised letter in reply to the enquiry directed to the Minister by Mr. Lehigh Antone, Secretary of the Indian Defense League of America.

*Supred*  
*ML*

*[Signature]*  
Legal Division

CIRCULATION

Historical Div.  
Minister's  
Office

Mr Robertson

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

7/1/64

TO: ..... Legal Adviser

Security UNCLASSIFIED

Date June 18, 1964.

FROM: ..... Legal Division (A. M. L.)

File No.

REFERENCE: ..... Nil

SUBJECT: ..... Jay's Treaty.

We attach for your signature, if you agree, a revised letter in reply to <sup>the</sup> an enquiry (just come to our hand) directed to the Minister by Mr. Lehigh Antone, Secretary of the Indian Defense League of America. In his letter (copy also attached) Mr. Antone enquired whether the 1st ten article of Jay's Treaty had "ever been abrogated with the concurrence of the United States".

2. Last year, on April 18th in response to a not dissimilar enquiry, you signed a reply along somewhat different lines (see copy attached) which we do not consider appropriate to the present enquiry. You also apparently requested this Division to do a study of Jay's Treaty (see copy of our memorandum of April 22, 1963 also attached). However this was postponed.

3. We propose as time permits to enter into a detailed study of Jay's treaty, particularly with regard to Article III. Further to that study, we propose to consult with the State Department and with both the Indian Affairs Branch and with the Immigration and Customs authorities.

CIRCULATION

Historical Div.  
Minister's  
Office

Mr. D. H. Berzoke. I don't think we should be advising US citizens on US or points involving Cda-US legal or political relations. I've suggested revision of letter - Copies of correspondence to be referred 19.6.15/US for info to our Embassy in Wash DC

Legal Division

002224

MR

Historical/G.W. Hriborn/RB

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

*File*

TO: .....Legal Division.....

Security **Unclassified**.....

Date ...June 4, 1964.....

FROM: .....Historical Division.....

File No.

REFERENCE: ...Letter of May 29, 1964 from Secretary..

.....of Indian Defence League of America....

SUBJECT:.....Enquiry concerning Jay's Treaty.....

I attach the letter under reference which was sent to this Division by the Minister's Office with the request that it be dealt with in the Department. The letter contains an enquiry about the first ten Articles of Jay's Treaty of 1794 and the possibility of their having been abrogated.

Since your Division is the official repository for details concerning which treaties affecting Canada are still in force, it appears appropriate that you should reply to this enquiry. We should be interested, however, in receiving a copy of your reply for our general information, as some aspects of this Treaty have been of interest to us in connection with previous enquiries to this Division.

*J. F. M. Newton*

CIRCULATION



# Indian Defense League of America

Home Office, Box 305 Niagara Falls, N. Y.

CHIEF CLINTON RICKARD  
Grand President,  
Tuscarora Reserve, Sanborn, N. Y.

DAVID HILL  
First Vice Grand President,  
449 - 4th Street,  
Niagara Falls, N. Y.

MR. LEHIGH ANTOINE  
Grand Secretary



CHIEF DES-KA-HEH  
Grand Chaplain  
R-R-I Ohsweken, Ont.  
Six Nation Reservation

Annual Border Crossing Celebration Every 3rd Saturday of July, Niagara Falls, N. Y. and Niagara Falls, Ontario.

5-29-64

Honourable Paul J.J. Martin  
Secretary of State for External Affairs  
Government House  
Ottawa, Canada

Dear Mr. Martin;

I have been instructed to write a letter of inquiry concerning the first ten Articles of the Jay Treaty, consummated between the United States and Great Britain having to do with what is now known as Canada.

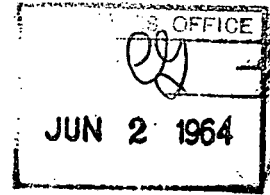
Will you please advise if the above said ten Articles has ever been abrogated with the concurrence of the United States.

Thanking you in anticipation for a detailed reply.

Respectfully

*Lehigh Antoine* Secty.

JUN 1- 1964



Legal/M.D.Copithorne/ts.

DEPARTMENT OF EXTERNAL AFFAIRS  
MEMORANDUM

TO: Mr. Wershof

Security UNCLASSIFIED

Date April 22, 1963

FROM: Legal Division

File No.

11724-40

REFERENCE:

SUBJECT: Article III of Jay's Treaty.

On the basis of priorities of work already

in hand and in view of the personnel situation, we

doubt whether we shall be in a position to look

into the question of the Canadian government's

position on this treaty - which promises to

involve quite a bit of research - for at least a

month, unless of course, you feel it should be

accorded privileged treatment.

H. Bentley Kipton  
Legal Division

CIRCULATION

cc: Dept. of Cit. & Immig.  
Dept. of Justice

Legal/ ~~M. H. Wershow~~ /ts.  
P. Charpentier


Ottawa, April 18, 1963.

Dear Mrs. Stillman,

The Minister of Justice referred to me your letter of March 27, 1962 concerning Jay's Treaty of 1794. It is noted that you have already written in the same sense to President Kennedy.

In the context in which it is raised, your question calls for an appreciation of law and facts, and I regret, therefore, to have to inform you that it is not considered appropriate for this Department to give legal opinions in such cases.

Yours sincerely,

 M. H. WERSHOF  
Under-Secretary of State  
for External Affairs.

Mrs. L.G. Stillman,  
6 Frear Ave.,  
Troy, N.Y.,  
U.S.A.