

SJR

12

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
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907-465-3800

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May, 1988

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Mary Van Nimwegen

House State Affs:

3/28/88

Senator Rick Uehling

Senate District H
Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee
Chair, International Trade Committee
Vice-Chair, State Affairs Committee
Labor & Commerce Committee

March 21, 1988

M E M O R A N D U M

TO: Representative Fran Ulmer
Chair, House State Affairs Committee

FROM: Senator Rick Uehling

RE: Senate Joint Resolution 12 "Relating to the
determination of the state's boundaries with the
Soviet Union and Canada."

I have asked staff to provide the following background and analysis of SJR 12, "Relating to the determination of the state's boundaries with the Soviet Union and Canada."

SJR 12 is designed to gain Alaskan involvement in the current negotiations between the U.S. State Department and the Soviet Union over the ownership of five islands located in the Arctic Ocean off the northern coast of the Soviet Union. The islands in question are the Wrangell and Herald Islands and the three De Long Islands, all located off Alaska's northwest coast in the Arctic Ocean.

I feel the only way to enforce Alaska's boundary interests is to have direct Alaska representation in the negotiating process. This resolution simply states that an Alaskan representative be involved in any future boundary negotiations. The present negotiations over the Wrangell Islands boundary dispute should have Alaskan representation, however, there will also be future negotiations over Alaska's boundaries with Canada in the northern Arctic region and on the southern tip of the Panhandle and there will be further negotiations with the Soviet Union concerning the boundary line in the Bering Sea region. Alaskans should have a presence in the negotiating process.

SJR 12 was heard in the Senate State Affairs and Judiciary Committee, and received favorable testimony. Thomas Koester, Assistant Attorney General, testified before the Senate State Affairs Committee that the Governor strongly supports SJR 12. Mr. Koester emphasized the State's desire to set a precedent in the present negotiations and thus become an active participant in future Alaska boundary disputes.

SJR 12 "Relating to the determination of the state's boundaries with the Soviet Union and Canada."

Information packet includes:

1. A copy of Senate Joint Resolution 12, and a zero fiscal note.
2. Position paper on boundary negotiations by the American Legislative Exchange Council.
3. A copy of the California Assembly Joint Resolution 37 "Relative to the boundaries of Alaska."
4. Letter of thanks to the California Legislature for AJR 37, from Governor Steve Cowper.
5. A copy of a bill by U.S. House of Representative's requiring a treaty to release or transfer any territory or claim of the United States by Representative Dannemeyer.
6. Questions and Answers posed to nominee for Ambassador to Soviet Union by Senate Foreign Relations Committee, March 1987.
7. The Wall Street Journal article, November 13, 1985, regarding State Department negotiations on the Wrangell "boundary dispute."
8. The Washington Times article, January 1, 1988, "5 Frozen Islands Stir A Dispute With The Soviet."
9. Maps of the Arctic region, Wrangell, Herald, Bennett, Henrietta, and Jeannette.
10. A paper on the Northeastern boundary negotiation process.



THE STATE'S ROLE IN FEDERAL BOUNDARY NEGOTIATIONS

The Alaska island controversy centers on the possession of five islands: Bennett, Henrietta, Herald, Jeanette, and Wrangell. Their value lies in the fishery, oil and military potential of the area.

One of our legislative members in Alaska asserts that historical documents prove that American naval explorers were the first to discover the islands. However, The strength or weakness of Alaska's claim is not as significant of an issue to California as the manner in which the boundary negotiations are carried out.

The question as to the roll Alaska should play in the negotiations is of paramount importance to California, as well as to any state that shares a border with a foreign nation (15 at last count). If Alaska is successfully excluded from these negotiations now, a clear precedent will have been set for excluding California from possible future negotiations over its border with Mexico.

Although the Federal Government has negotiated border disputes in the past, it was consistently done with the approval of the states in question. During the negotiations that delineated the border between Canada and the Northeastern States (the Webster-Ashburton Treaty of 1842), President Tyler proposed that "the Governments of Maine and Massachusetts should, severally, appoint a Commissioner, or Commissioners, empowered to confer with the authorities of this Government upon a Conventional line, . . . no such line will be agreed upon without the assent of such commissioners."

This effective veto power was not merely lent to the states but was insinuated to be Constitutionally reserved to the states. The arbitration decision on the same issue rendered by the King of the Netherlands in 1831 had been rejected by the Senate because, according to then Secretary of State Forsyth, "... under the peculiar structure of our political system, the Federal Government cannot alienate any portion of the territory of a State, without its consent."

And finally, a letter was sent in 1838 from the Secretary of State to the Governor of Maine assuring him "That the General Government is not competent to negotiate, unless perhaps on grounds of imperious public necessity, a conventional line involving a cession of territory to which the State of Maine is entitled...without the consent of the State."

It is apparent that the principles which guided the Federal Government in the Northeast Boundary negotiations went a lot further than just informing the States of progress. Clearly then, this is not merely a boundary claim issue, but an issue of State's Rights. A precedent set in Alaska could eventually come back to haunt California.

Enclosed are State Department documents dealing with the negotiations preceding the Northeast Boundary Treaty.

NOTES:

- 1: United States Department of State, Treaties and Other International Acts of the United States, 1776-1863, Vol. IV, (Washington, D.C.: 1931), pg. 383.
- 2: Ibid, pg. 384.
- 3: Ibid, pg. 385.

Assembly Joint Resolution No. 37

RESOLUTION CHAPTER 122

Assembly Joint Resolution No. 37—Relative to the boundaries of Alaska.

[Filed with Secretary of State September 17, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

AJR 37, La Follette. Alaska: boundary negotiations.

This measure would state the Legislature's support for the State of Alaska in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union or Canada. It would memorialize the President and Congress of the United States to ensure that any terms and conditions of any boundary agreement with respect to Alaska's boundaries is consented to by the State of Alaska and that the agreement is drafted in the form of a treaty for ratification by the United States Senate.

WHEREAS, The boundaries of the State of Alaska are of vital concern to the state government of Alaska; and

WHEREAS, The essence of sovereignty of a state within America's federal system requires that a state government have complete and unambiguous jurisdiction over well-defined geographical boundary lines; and

WHEREAS, Any time that boundaries of a state are to be altered in any way, that state has an essential and overriding interest in the determination of the boundary; and

WHEREAS, Alaska is unique among all American states in that it is the only state with the potential for having boundaries with more than one foreign country (i.e. Canada and the Soviet Union); and

WHEREAS, Boundaries with foreign countries and a state are, and ought to be, coterminous with America's national boundaries with those foreign countries; and

WHEREAS, Negotiations are underway between the United States Department of State and the government of the Soviet Union over setting boundaries between the United States and the Soviet Union, and there have been at least seven rounds of negotiations on this issue since 1981; and

WHEREAS, The economic issues of petroleum, fishery, and other valuable resources have great impact on Alaska's welfare and prosperity; and

WHEREAS, At no time has the United States Department of State allowed, or even offered to invite, a representative of the state government of Alaska to be on any negotiating delegation, nor has it formally solicited the input or advice of the state government of Alaska over the content or form of these negotiations; and

WHEREAS, These negotiating delegations, which the United States Department of State has assembled, have included representatives of various other agencies of the federal government; and

WHEREAS, It is settled procedure for negotiation of boundaries that representatives of any affected state not only must be included in the negotiations, but also must consent to the proposed terms of the boundary treaty (such as was the case when Secretary of State Daniel Webster negotiated with Great Britain in 1842 over the boundary between Canada and the State of Maine); and

WHEREAS, A usurpation of one state's rights and sovereignty is an attack on the entire federal system of the United States of America; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California supports the State of Alaska in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union or Canada; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to ensure that any terms and conditions of any boundary agreement with respect to Alaska's boundaries are consented to by the State of Alaska, and that any such boundary agreement is drafted in the form of a treaty for ratification by the United States Senate; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Governor of Alaska.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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P O. BOX K—STATE CAPITOL
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PHONE: (907) 465-3600

October 13, 1987

R. Brian Kidney
Assistant Chief Clerk
Assembly
California Legislature
State Capitol
Sacramento, California 95814

Re: Assembly Joint Resolution
No. 37, relative to the
boundaries of Alaska

Dear Mr. Kidney:

Alaska Governor Steve Cowper asked that I respond to your September 24, 1987 letter which invited our attention to Assembly Joint Resolution No. 37, relating to the boundaries of Alaska.

On behalf of Governor Cowper and all Alaskans, please communicate our thanks for this resolution of support for Alaska sovereignty. As the California Legislature correctly notes, states have "an essential and overriding interest" in the negotiation of the United States' international boundaries when the negotiation may have the effect of altering state boundaries. The United States currently has disputes with Canada over boundary delimitation in Dixon Entrance to the south of Alaska and the Beaufort Sea to the north, as well as the dispute with the Soviet Union to the west.

The United States Supreme Court has repeatedly noted that the treaty power does not authorize the federal government unilaterally to divest a state of territory without its consent. See, e.g., DeGeofroy v. Riggs, 133 U.S. 258, 33 L.Ed. 642, 645 (1890); Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 541 (1885). Rest assured that Alaska will fully assert its sovereign rights in this regard.

R. Brian Kidney
Assistant Chief Clerk

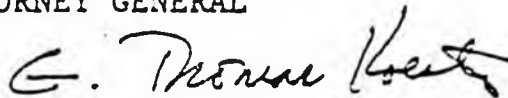
October 13, 1987
Page 2

We appreciate California's support in this effort.
Thank you for communicating our appreciation to both houses of
the California Legislature.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



G. Thomas Koester
Assistant Attorney General

GTK:dln

cc: Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510

Honorable Frank N. Murkowski
United States Senate
709 Hart Building
Washington, D.C. 20510

Honorable Donald E. Young
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Michael W. Ford, Esq.

1 territory, land, exclusive economic zone, or fishery conserva-
2 tion zone unless provided for by a treaty between the United
3 States and that other country.

4 **SEC. 2. BOUNDARIES TO BE ESTABLISHED BY TREATY.**

5 A boundary (including land boundaries, maritime bound-
6 aries, exclusive economic zones, and fishery conservation
7 zone boundaries) between the United States and any other
8 country may be established only by treaty, signed by the
9 President and ratified by the Senate.

○

Q14. With respect to the negotiations between the United States and the Soviet Union concerning our boundary situation and the disposition of Wrangel, Herald, Bennett, Jeanette and Henrietta islands, what are your views? What is the policy of the Department of State with respect to these five islands? Does the Department of State consider these to be U.S. territory? Do you consider these islands to be U.S. territory? Do you consider the 1867 Convention Line between Tsarist Russia and the United State to be the current boundary between the two countries? What are your views with respect to this convention line? What is the policy of the Department of State with respect to this line and to our boundary with the Soviet Union?

A14. The United States is not involved in negotiations with the Soviet Union bearing directly upon the disposition of Wrangel, Herald, Bennett, Jeanette or Henrietta islands. The negotiations in which the United States Government is involved with the Soviet Union on our boundary are discussions concerning the interpretation and application of the line established by the 1867 U.S.-Russian Convention Ceding Alaska. The legal status of the five islands mentioned has not been the subject of negotiation in these discussions. The extent to which any final boundary settlement would have implications for the U.S. position regarding the islands would depend on a number of issues not yet resolved.

The U.S. regards the 1867 Convention Line as our maritime boundary with the U.S.S.R. for the purpose of dividing jurisdiction over maritime resources, including fisheries and continental shelf resources. Following the establishment in 1977 of 200-nautical-mile fisheries zones by the U.S. and the Soviet Union, it became apparent that we had technical differences in depiction of the 1867 Convention Line. The U.S. depicts the Line by arcs of great circles, the shortest distance between two points on the earth appearing as straight lines on a globe. The Soviet Union depicts the Line by rhumb lines, lines of constant direction used mainly by mariners. This difference results in areas in the Bering Sea which each country claims are under its maritime resource jurisdiction.

As for the islands you mentioned, the Department of State has informed me that each was formally claimed by the Russian government in 1916 and by the U.S.S.R. in 1924 and 1926. Wrangel, the largest of the five, has been occupied by the Soviet Union since 1924. Although American citizens were involved in the discovery and early exploration of several of the islands, the Department of State has found no evidence that the Government of the United States has ever formally asserted a claim to any of these islands or protested the Russian or Soviet claims.

(Source: Questions and Answers posed to nominee for Ambassador to Soviet Union by Senate Foreign Relations Committee, March 1987)

Q15. Exactly how many sessions have been held between the United States and the Soviet Union with respect to this issue? Exactly what were the dates and where the meetings? Exactly who was present on the Soviet side during each of these meetings? What issues were discussed and what decisions were reached?

A15. As authorized by the President, we have had seven rounds of discussions with the Soviets since 1981, the latest in October 1986, for the purpose of resolving differences in the interpretation and application of the Convention Line. The meeting sites have alternated between Washington and Moscow. The most recent U.S. delegations were led by Assistant Secretary John Negroponte and were composed of representatives from the Departments of State, Defense, Interior, Energy and Transportation. The Soviet delegations have been composed of representatives from similar Soviet governmental entities.

As I noted above, the issue in these discussions is the interpretation and application of the 1867 Convention Line. No decisions have been reached and we anticipate further discussions. In connection with the October 1986 talks, however, the U.S. and the Soviet Union reached an informal understanding that pending resolution of the boundary each would not take enforcement action against the fishing vessels of the other in areas of the Bering Sea which both claim as part of their fisheries zones.

Q16. What is the exact status of Wrangel, Herald, Bennett, Jeanette and Henrietta island? Are these today legal possessions of the United States? Precisely who in the Department of State has been assigned to work on this issue?

A16. As I noted in reply to question 14, above, these islands were claimed by the Russian government in 1916 and the Soviet Union in 1924 and 1926, and the Soviets have occupied Wrangel since 1924. The United States has never formally recognized Soviet sovereignty over these islands, and has from time to time indicated that it has not formally relinquished any claims to these islands. Extensive research has not produced evidence of any formal United States assertion of claims or of United States protest of the Soviet claims or their occupation of Wrangel.

Several State Department bureaus have been involved in this issue, including: the Bureau of International Oceanic, Environmental and Scientific Affairs; The Office of the Legal Adviser; the Bureau of Intelligence and Research; and the Bureau of European and Canadian Affairs.

Border Dispute

Question: What country was the first to lose territory to Soviet aggression?

Answer: Not Finland, not even the unfortunate Baltic States, but the United States of America.

That happened on Aug. 20, 1924 when the crew of the Soviet gunboat Krasny Oktober (Red October) landed on Wrangell Island off the northeast coast of Siberia and took as prisoners the 14 American fur trappers encamped there. Twelve survivors were eventually released. Two men died in captivity. The Soviets claimed Wrangell and now operate a political prison camp on the island.

On "Face the Nation" last month, National Security Adviser Robert McFarlane indicated that the Wrangell "boundary dispute" will be on the table at the Geneva summit. Some members of Congress believe the State Department wants to finally resolve the island's status—in the Soviets' favor. Resolutions demanding that any agreement be subject to congressional approval have been drafted by Sen. Jesse Helms and Rep. Mark Slijander.

A U.S. irredentist claim to a chilly piece of Arctic real estate might sound like small potatoes. But the congressmen figure that it doesn't make much sense to complain to the Soviets about their expansionist tendencies—as President Reagan clearly intends to do—while at the same time politely forgetting that they once grabbed some land from the U.S. itself.

The U.S. claim to Wrangell and four small nearby islands dates from 1881. A U.S. Revenue Marine (Coast Guard) party that included John Muir, the famed naturalist and founder of the Sierra Club, visited the area that year. Mr. Muir later wrote that they "landed on Wrangell Land and took possession of it in the name of the United States." A czarist explorer, Lt. Ferdinand Wrangell, ad-

mitted in his memoirs that he never actually discovered the island that bears his name. Until the Krasny Oktober showed up, there was no official Russian presence.

Several U.S. oil companies are interested in searching for oil on the continental shelf between the U.S. and the Soviet Union. When last year the Interior Department announced it would begin leasing tracts in the Arctic Ocean, the State Department warned that anyone bidding on tracts to the west of the so-called 1867 Convention Line should be aware that the area might become Soviet territory.

As recently as 1973, the State Department maintained that the U.S. had never relinquished its claims to Wrangell and the other islands, and that the "convention lines" depicted on maps *did not* constitute an international boundary. But in December 1984, after some negotiations in Moscow, the department said it had not found any evidence that the Government of the United States has ever formally asserted a claim to any of the islands. That seems to contradict the John Muir account. It also ignores a 1959 ruling of the Foreign Claims Settlement Board that the property of the fur trappers was illegally expropriated. Russian maps made early in this century show the islands as American.

We've had our own doubts about irredentist claims. The further back in history you go, the greater amount of disputed acreage there is. But the Soviets themselves are among history's most aggressive irredentists. Aside from their grab of the Baltic States and their expansion of the old czarist empire westward to the Elbe and southward to Kandahar, they have border disputes with Norway, Sweden, Japan and China. Whatever the prospects for satisfaction, the U.S. should hang tough over Wrangell Island just to demonstrate its resistance to Soviet imperialism.

**SUMMIT MEETING
IN GENEVA IN 1985
HAD THE GIVEAWAY OF
ALASKAN ISLANDS TO
THE SOVIET UNION
ON THE AGENDA.**

If you want the Wall Street Journal to publish a hard-hitting editorial on the Alaska giveaway, as it did just before the Summit Meeting in 1985, please write ASAP to:

Mr. John Fund
Editorial Page Asst. Editor
Wall Street Journal
200 Liberty Street
New York, NY 10281

THE WALL STREET JOURNAL

WEDNESDAY, NOVEMBER 13, 1985

Time to Sober Up

Let's hope President Reagan's pre-summit TV address tonight will sober up the Washington community, which is suffering from a terminal case of silliness over its hopes about what Mr. Reagan's sitdown with Mikhail Gorbachev is likely to accomplish.

Contributing to the air of unreality are tales of White House gnomes delivering tons of briefing papers to the Oval Office and setting up projectors to show the president the Gorbachev-Mitterrand game films. Newspaper Style sections this Sunday will describe in infinite detail what Nancy will wear when she has tea in Geneva with the lovely Raisa. Tip O'Neill is taking time out from the budgetary chaos he presides over on Capitol Hill to make the outrageous claim that Congress has given the president the support he needs for a summit "success."

On a more serious level, George Shultz has been treating with the Soviets since his meeting with Andrei Gromyko last January, laying the summit groundwork. Without knowing the game plan, it's impossible to assess how well Mr. Shultz is doing. But we mostly have been hearing about gifts the State Department might like to lay before Mr. Gorbachev. Surrender of the U.S. claim to Wrangell Island (discussed in this space yesterday) is one possibility. An offer to pool fusion energy research with the Russians is another. And the U.S. is prepared to go on pretending SALT II is a real agreement, however much abuse it gets from the Russian side.

In short, the Washington community, by merely following its own instincts, is once again setting the president up to have his pockets picked. Mr. Reagan's Strategic Defense Initiative is being negotiated and renegotiated on Mr. Gorbachev's behalf. The president is being urged to rush back, as Richard Nixon once did, to dramatically present some "breakthrough" to a joint session of Congress. Word is going around, as it always does, that the Soviet leader is in deep trouble and will be eager to make deals.

Mr. Reagan has tried to discourage such nonsense. He has wisely rejected the idea of a post-summit communique, for example, saying that you don't promise a communique when all you are doing is having a little get-acquainted session. He has discouraged the notion that there will be any "agreements." But even for a president with Mr. Reagan's keen understanding of what the U.S.-Soviet relationship is and must be, there are dangers of being trapped. Arms control is, as always, the biggest area of danger.

The policy of abiding by SALT II, which Mr. Shultz seems prepared to continue, hasn't made much sense. Consider the just-published "Military Balance" report of London's well-respected International Institute for Strategic Studies. It says the Soviets have increased their supply of long-range nuclear warheads by 37% in just three years. They now enjoy a 2.4-to-one advantage over the U.S. in land and submarine based megatonnage. That's mutual restraint?

U.S. soft-liners want the president to promise that the U.S. will not over the next five years exercise its option to withdraw, on one year's notice, from the 1972 anti-ballistic missile treaty. That treaty also has not placed much restraint on the Soviets. The IISS says the Soviets are actively pursuing their own space-based nuclear defense research even while they attack the U.S. effort. A Pentagon report sent to the White House Tuesday cites a series of serious Soviet ABM treaty violations. So while Mr. Reagan temporizes and generously offers to make future U.S. defense technology available to all comers, the Russians are actually putting a defense in place. The danger in this is clearly outlined in the open letter to the president from Rep. Kemp and Sen. Wallop excerpted nearby.

People often ask why the Russians have invested so much in weapons of mass destruction while living standards in the Soviet Union are, on the whole, only slightly above Third World levels. The summit ballyhoo in the U.S. provides the obvious answer. They want to be feared. They surround themselves in mystery so that American congressmen, permitted an audience with the Great Gorbachev, will come away awed by having been spoken to in English or fixed with his steely gaze. Showmanship of this skill level wins concessions.

Richard Nixon, who has had some experience with summits, wrote in the latest Foreign Affairs some cautionary words: "This is a long struggle with no end in sight. Whatever their faults, the Soviets will be firm, patient and consistent in pursuing their foreign policy goals. We must match them in that respect."

A good way to match them will be for Mr. Reagan to go to the summit, complain as he intends about Soviet aggressions and abuses of human rights and make no promises. And tonight will not be too soon to start damping down the mindless euphoria that has overtaken pre-summit Washington.

STATE DEPARTMENT BOWS TO SOVIET DEMANDS AND FORCES HUNDREDS OF PRO-AMERICAN AND ANTI-SOVIET PROTESTERS AWAY FROM THE STATE DEPARTMENT'S PUBLIC BUILDING IN WASHINGTON.

A foreign mission

Reaction around town indicates this column was not taken overly seriously when we reported last week that during the visit of Soviet Foreign Minister Eduard Shevardnadze, the State Department designated its main building a foreign mission.

It's no joke. That astonishing move, reflecting what Sen. Jesse Helms and other conservative critics have been saying all along, enabled State to invoke a law to keep protesters 500 feet away from the building. At least for the duration of Mr. Shevardnadze's visit, our State Department was a foreign mission.

— John Elvin

The Washington Times

TUESDAY, SEPTEMBER 22, 1987

The Washington Times

FRIDAY, JANUARY 1, 1988

WASHINGTON, D.C.

5 frozen islands stir a dispute with the Soviets

By John McCaslin
THE WASHINGTON TIMES

The State Department and a 40-year-old Agriculture Department bureaucrat are locked in a bitter dispute over whether the United States or the Soviet Union should control five frozen, wind-swept islands near a disputed section of the U.S.-Soviet border.

The Agriculture Department employee accuses the FBI of harassing him at the State Department's request.

Since 1981, a secret U.S. negotiating delegation has held eight meetings with Soviet counterparts to establish an exact boundary between Alaska and the Soviet Union, according to a State Department official who asked not to be named.

"Once a boundary line is agreed to by both nations, which could come early this year, it's a safe bet that the five-island chain will become official Soviet territory," the official said.

But Mark Seilenberg, an Agriculture Department employee, has spent more than a decade battling to reassert what he claims is U.S. sovereignty over Wrangell Island, a patch of frozen tundra in the Arctic Ocean that has been suggested to be the site of a Soviet concentration camp.

ALASKA

From page A1

Also in dispute are four smaller islands off the same Soviet coastline — Herald, Bennett, Henrietta and Jeannette.

Carl Olson, chairman of State Department Watch, a group which has also fought for U.S. rights to the islands, said in a telephone interview from Los Angeles that he is "equally optimistic the United States will retain the islands."

"The important thing is to get the State Department on our side, but so far they have shown zero initiative," Mr. Olson said.

"We have not been able to get anything out of State," he said. "They

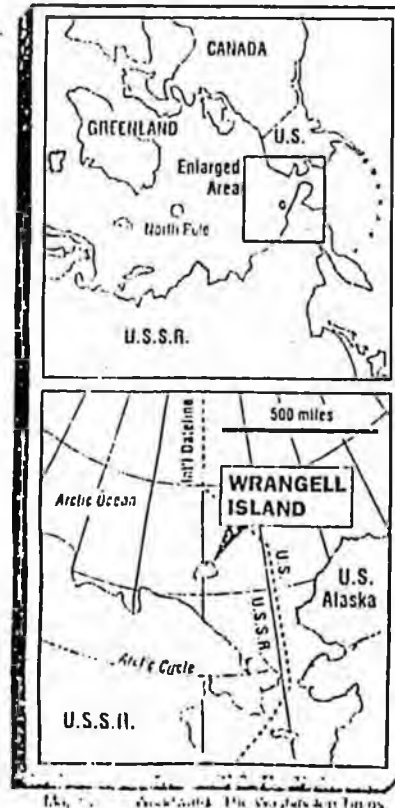
refuse to talk about it — point blank. And they've stonewalled the House Foreign Affairs Committee and the Senate Foreign Relations Committee."

A House bill introduced last Jan. 6 by Rep. William E. Dannemeyer, California Republican, would require that Congress approve any treaty for "transfer of territory or setting of a boundary line" between the United States and any foreign country. The bill has at least 30 co-sponsors.

On the Senate side, Sen. Jesse Helms, North Carolina Republican, has introduced similar legislation, complaining that surrendering the five islands would amount to handing over half of the entire outer continental shelf, which Mr. Olson said contains "vast oil-rich seabeds."

The State Department official said the United States "obviously hasn't sent any drilling ships to the area."

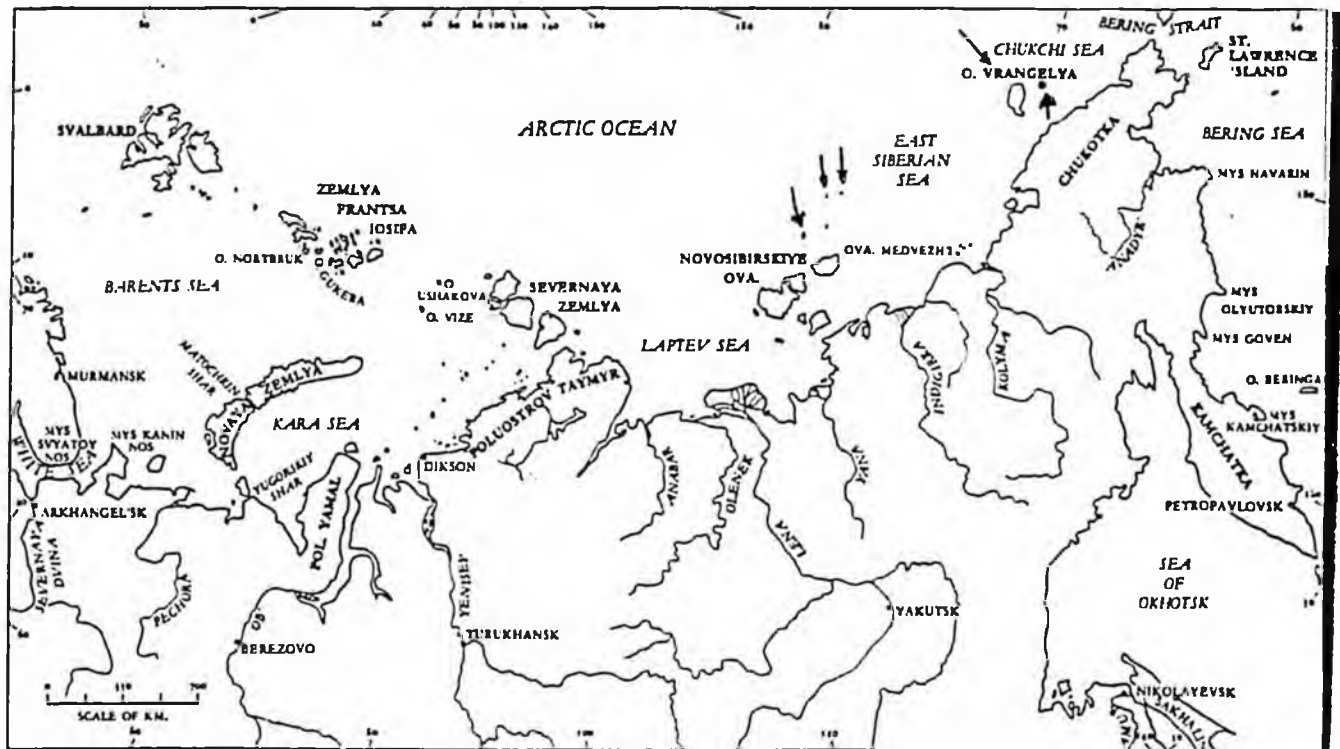
But he added: "The Department of Interior and other geologists haven't found any indication of any



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703-379-1070



1 The Soviet Arctic

by virtue of possession, and more; that she obtained much more than she could claim under the letter of the Treaty of Paris; and that she obtained nearly 800 square miles of territory in the basin of the upper St John over and above that awarded by the king of the Netherlands. She conceded an area of 150 square miles in the basin of the upper Connecticut River. She also conceded a strip between the 45th parallel and the 'old line' with an area of 73 square miles, but, as the 'old line' is in places south of the 45th parallel, she received, east of St Regis, a strip containing $11\frac{1}{2}$ square miles. So far as these 'strips' were concerned, the United States and Great Britain had valid titles by virtue of occupation, and the concessions were simply validations. In addition to the foregoing the Ashburton settlement ended a controversy that had disturbed the relations of the two countries for nearly sixty years; that had, on several occasions, brought two great nations to the verge of war; and that had seriously interfered with commercial intercourse. Finally, it is worthy of note that the commission appointed to adjust the respective claims of New Brunswick and Quebec to the area west of the 'due north line' awarded to Great Britain by the Ashburton Treaty, reported in 1848, six years later, 'that a tract of country lies between the north highlands westward of the due north line, and the line of the United States, which, according to the strict legal rights of the two provinces, belongs to neither, . . . and which, in 1763, formed part of the ancient territory of Sagadahock.' This 'tract of country' was confirmed to Great Britain by the Ashburton Treaty.

THE NORTHEASTERN BOUNDARY NEGOTIATIONS

While the negotiations were carried on at Washington by Secretary of State Daniel Webster and Lord Ashburton, those negotiations, so far as they concerned the northeastern boundary, were in a very real sense participated in by commissioners of Maine and of Massachusetts appointed at the suggestion and request of President Tyler. In the letters of Webster to the Governors of Maine and Massachusetts dated April 11, 1842 (published correspondence, 64-66), it was expressly stated that no conventional line would be agreed on "without the assent of such commissioners"; and the first formal note written on the northeastern boundary question was that of Ashburton to Webster of June 13, 1842, the day on which Webster had his first conference with the commissioners of the two States, who were Edward Kavanagh, Edward Kent, John Otis, and William Pitt Preble, for Maine, and Abbott Lawrence, John Mills, and Charles Allen, for Massachusetts (*ibid.*, 34-37, 71, 72).

Massachusetts had property interests which were affected by any settlement of the northeastern boundary, for in the public lands of Maine a half interest was reserved by Massachusetts upon the separation (act of June 19, 1819, Laws of the Commonwealth of Massachusetts, 1819, 248-60; and act of March 3, 1820, 3 Statutes at Large, 544); and the frontier in dispute was very largely that of Maine, though partly that of New Hampshire, Vermont, and New York. Indeed, the Legislature of the State of Maine did not consider that the Government of the United States possessed "the constitutional power to conclude any such negotiation without the assent of Maine" (published correspondence, 70), a view which was also expressed by the Legislature of Massachusetts (*ibid.*, 64); that theory should doubtless be considered in the light (*inter alia*) of Article 5 of the Treaty of Ghent (Document 33) and the proceedings thereunder, and particularly of the fact that under that article and the convention

of September 29, 1827 (Document 58), a reference had been made of the northeastern boundary question to arbitration by the King of the Netherlands.

That constitutional theory, moreover, had been explicitly supported by the Federal Government during the negotiations with Great Britain which followed the decision of the King of the Netherlands of January 10, 1831, regarding the northeastern boundary, and the subsequent refusal of the Senate, on June 23, 1832, to accept that award; the British Government at various times and in varied language had been officially informed that "under the peculiar structure of our political system, the Federal Government cannot alienate any portion of the territory of a State, without its consent" (Secretary of State Forsyth to Sir Charles R. Vaughan, D.S., 6 Notes to the British Legation, 18, April 28, 1835). President Jackson in 1832 had had negotiated and signed an agreement between the United States and the State of Maine providing for the relinquishment to the United States of any rights of that State in the disputed territory; the text of that agreement is printed in the notes to Document 58, which should be consulted generally; that agreement, however, failed to go into force, owing to the decision of the Maine Legislature that a referendum thereon would be necessary (see Burrage, *Maine in the Northeastern Boundary Controversy*, ch. X). So far as the Executive could decide such a question, the constitutional view of the State of Maine had been accepted by the Government of the United States, although the extreme Maine view, which went so far as to maintain that the convention of September 29, 1827, with Great Britain (Document 58) "tended to violate the Constitution of the United States and to impair the sovereign rights and powers of the State of Maine, and that Maine is not bound by the Constitution to submit to the decision, which is or shall be made under that convention" (Resolves of Maine, 1831, 245, resolve of February 28, 1831), was not supported at Washington (D.S., 6 Notes to the British Legation, 16, April 28, 1835):

If the distinguished Arbitrator agreed upon had found himself able to come to a decision upon the subject satisfactory to his own judgment, the Government of the United States would not have hesitated for a moment, whatever might have been its opinion of the justice of such decision, to have united with His Majesty's Government in carrying it fully and immediately into effect.

In a long letter to Governor Kent, of Maine, dated March 1, 1838, reviewing the history of the northeastern boundary negotiations up to that time, Secretary of State Forsyth thus restated the constitutional principles involved as seen by President Van Buren; and it is to be noted that "imperious public necessity" was mentioned as a possible ground of competence (to negotiate a cession) which otherwise the Federal Government would lack (D.S., 29 Domestic Letters, 336-66; Richardson, III, 442-59):

The principles which have hitherto governed every successive administration of the Federal Government, in respect to its powers and duties in the matter, are—

1st That it has power to settle the boundary line, in question, with Great Britain, upon the principles and according to the stipulations of the treaty of

1783, either by direct negotiation, or, in case of ascertained inability to do so, by arbitration; and that it is its duty to make all proper efforts to accomplish this object by one or the other of those means.

2^d That the General Government is not competent to negotiate, unless perhaps on grounds of imperious public necessity, a conventional line involving a cession of territory to which the state of Maine is entitled, or the exchange thereof for other territory not included within the limits of that State, according to the true construction of the treaty without the consent of the State.

In these views of his predecessors in office, the President fully concurs, and it is his design to continue to act upon them.

In the similar letters of Webster to the Governors of Maine and Massachusetts dated April 11, 1842 (D.S., 32 Domestic Letters, 288-91; published correspondence, 64-66), were these paragraphs:

The opinion of this Government upon the justice and validity of the American claim has been expressed, at so many times, and in so many forms, that a repetition of that opinion is not necessary. But the subject is a subject in dispute. The Government has agreed to make it matter of reference and arbitration; and it must fulfil that agreement, unless another mode for settling the controversy should be resorted to, with the hope of producing a speedier decision. The President proposes, then, that the Governments of Maine and Massachusetts should, severally, appoint a Commissioner or Commissioners empowered to confer with the authorities of this Government upon a Conventional line, or line by agreement, with its terms, conditions, considerations and equivalents, with an understanding that no such line will be agreed upon without the assent of such commissioners.

This mode of proceeding, or some other which shall express assent before hand, seems indispensable, if any negotiation for a Conventional line is to be had, since if happily, a treaty should be the result of the negotiation, it can only be submitted to the Senate of the United States for ratification.

The Legislature of Massachusetts had previously (March 3, 1842) granted plenary power to "the governor, with the advice and consent of the council, . . . to adopt such measures to secure the rights and interests of the Commonwealth in said territory, and to produce an honorable and satisfactory adjustment as the emergency may demand"; under that authorization the three commissioners of Massachusetts were named (Acts and Resolves Passed by the Legislature of Massachusetts, 1839-42, 564; published correspondence, 63-64, 66-69); Webster was formally notified by the Secretary of State of Massachusetts of their appointment (D.S., Northeastern Boundary, envelope 18, letter of John P. Bigelow of May 28, 1842).

The Legislature of Maine was summoned in extra session; and a preamble and five resolutions were adopted on May 26, which included the following (Acts and Resolves Passed by the Legislature of Maine, 1842, 111; published correspondence, 69-71):

Resolved, That there shall be chosen, by ballot, in convention of both branches of the legislature, four persons who are hereby constituted and appointed commissioners, on the part of this state, to repair to the seat of government of the United States, and to confer with the authorities of that government touching a conventional line, or line by agreement, between the state of Maine and the British provinces, having regard to the line designated by the treaty of 1783 as uniformly claimed by this state, and to the declarations and views expressed in the foregoing preamble, and to give the assent of this state to any such conventional line, with such terms, conditions, considerations and equivalents as they shall deem consistent with the honor and interests of the state; with the understanding that no such line be agreed upon without the unanimous assent of such commissioners.

President Tyler was formally notified by the Governor of Maine (John Fairfield) of the election of the four commissioners of Maine (published correspondence, 69, letter of May 27, 1842).

By a resolution of the Legislature of New Hampshire of June 23, 1842, the Senators and Representatives of that State in Congress were requested "to take such measures as may be necessary, during the pending negotiations at Washington relative to the Northern and North Eastern Boundary of the United States, to best sustain the rights of this State to the territory over which we have always heretofore claimed and exercised jurisdiction" (Laws of New Hampshire, June 1842, 599). That resolution, however, was not communicated to President Tyler until July 15, 1842, when the northeastern boundary had been settled as between Webster and Ashburton, with full satisfaction of the claim of New Hampshire; and the participation of the New Hampshire delegation in Congress in the proceedings appears to have been limited to the submission, on July 19, 1842, of a brief statement citing certain documents and papers (see published correspondence, 99-102).

Aside from the formal exchanges of June 17, 1842 (*ibid.*, 38), the written negotiations regarding the northeastern boundary comprised four notes (*ibid.*, 34-37, 39-56), three of Ashburton (June 13, June 21, and July 11) and one of Webster (July 8), with which is to be read its enclosure, the letter of the Maine commissioners to Webster of June 29 (*ibid.*, 72-80); also to be mentioned is a second letter of the Maine commissioners to Webster of July 16 (*ibid.*, 84-91), which, while dated after the accord of the two Plenipotentiaries, was doubtless drafted before the terms thereof were communicated. Moreover, during the period of the correspondence there were informal communications of one sort and another (see *ibid.*, 77, 79).

There was expressed a common desire to avoid "the interminable discussion on the general grounds on which each party considers their claims respectively to rest"; notwithstanding this, a considerable portion of the correspondence was argumentative, with historical and geographical references.

In his first note, of June 13, Ashburton gave no precise indication of a line to be proposed; but he spoke of the portion of the disputed territory which might come to Great Britain as being "as worthless for any purposes of habitation or cultivation as probably any tract of equal size on the habitable globe"; and he even suggested that Great Britain would have given up the controversy "if it were not for the obvious circumstance of its connecting the British North American provinces". That necessity of intercolonial communication was the admitted basis of any agreement for a conventional line; it is mentioned in each of the two above-cited letters of the Maine commissioners and is spoken of with emphasis in the note of Webster, who acknowledged "the general justice and propriety of this object" and agreed that "a conventional line ought to be such as to secure it to England".

Ashburton made the first proposal in his note of June 21, after a formal conference on June 18, of which there is no protocol. He

proposed a line north from the source of the St. Croix to the St. John (the line of 1817-18, regardless of its deviation from the true north), and the line of the St. John "up to some one of its sources" (a somewhat ambiguous expression, but meaning approximately up to the source of the southwest branch as mentioned in Article 1 of the treaty), except for a deviation on the right bank so as to include in New Brunswick the whole of the Madawaska settlement, which extended on both sides of the river "from the mouth of the Madawaska up to that of the Fish river"; and with that boundary he was willing to engage that "all lumber and produce of the forest of the tributary waters of the St. John's shall be received freely without duty, and dealt with in every respect like the same articles of New Brunswick", to agree to the old Valentine and Collins line from the Connecticut to the St. Lawrence, and also to accept the American contention as to the source of the Connecticut.

The note of Webster of July 8 presented and supported the counterproposal of Maine (see the letter of the Maine commissioners of June 29). The yielding of any territory on the south side of the St. John so as to include the Madawaska settlement in New Brunswick was definitely rejected. The counterproposal of boundary, with the concurrence of the commissioners of Massachusetts and with the condition that the United States would furnish to the two States "an equivalent", was the main channel of the St. John (from the crossing point of the due-north line from the source of the St. Croix) to a point three miles above the mouth of the Madawaska; thence straight to the outlet of Long Lake; thence westerly by a direct line to the point where the St. Francis enters Lake Pohenegamook; and thence, continuing the same line, to the highlands dividing the waters of the River du Loup from those of the St. Francis (the various *loci* may be conveniently seen on the map in Moore, International Arbitrations, I, between pp. 148 and 149); and while it was intimated that equivalents to some extent might be found if territorial cessions by Great Britain were possible, such as the island of Grand Manan, the islands in Passamaquoddy Bay, or a portion of the so-called strip between the north line and the St. John, it was understood that the British Plenipotentiary was without power to consent thereto.

The last note written before the verbal accord was that of Ashburton of July 11. He intimated that he would yield on the question of the Madawaska settlement; but he made it clear that he could not and would not yield as to the territory north and east of the St. Francis, which was British territory under the line proposed by the King of the Netherlands; Ashburton's final instructions as to the northeastern boundary had definitely limited him to that line (Ashburton Papers, instruction No. 8, May 26, 1842).

Thus the correspondence ended; as Ashburton urged, it was succeeded by conferences, of which there is no formal record. Sending to the Maine commissioners the note of Ashburton of July 11, Webster wrote on July 12 that he would soon meet with them, "being very desirous of making progress in the business in which we are engaged,

and satisfied that the various parties in interest are as well prepared now to come to a decision as they are likely to be at any time hereafter" (published correspondence, 81).

The position as it was left by the correspondence was this: North from the source of the St. Croix to the St. John and thence as far up the St. John as a point just beyond the mouth of the Madawaska, there was common ground; the portion of the region north of the St. John and between the St. Francis and the Madawaska which Maine had demanded, Ashburton had positively refused; for any agreement to be reached it was essential that that part of the claim of Maine should be abandoned; there was left for discussion an area which may be described as bounded on its three sides by a line as follows: (a) along the upper St. John from the mouth of the St. Francis to Met-jarmette¹ portage (the line proposed by Ashburton); (b) along the highlands from that portage north to a point about due west of the entrance to Lake Pohenegamook; and (c) thence to and through that lake and down the St. Francis to the St. John. The result was that the claim of Maine to any territory between the St. Francis and the Madawaska north of the St. John was given up; and the remaining area in dispute was divided. One may learn something of the verbal discussions from the despatches of Ashburton of July 28 and August 9 (Nos. 15 and 17, quoted below).

An accord on the northeastern boundary was reached by the negotiators for the two Governments just prior to July 15, 1842. That it had not been reached by July 13 appears from Ashburton's despatch No. 13 of that date, as follows (Ashburton Papers):

The last Despatch which I had the honor of addressing your Lordship the 29th of last month N^o 10 on the subject of my negotiations relating to the North Eastern Boundary must have conveyed expectations of an earlier and more satisfactory settlement than I regret to say, I have, with every exertion on my part, been hitherto able to realize. Delay and difficulties have resulted from the present condition of this Government and from the pertinacious resistance of the Commissioners from the North by whom that Government is in this business guided and over-ruled. If I were not warned by the past from over-confidence, I should say that two or three days more could not fail to bring us to a settlement and to the outlines of a convention, but I fear that it may be on rather less favorable terms, than I had given your Lordship to expect. I now proceed to state what has occurred on this subject since I last wrote.

The written proposals submitted by me having circulated among the Commissioners from Maine and Massachusetts, I soon learned that although they differed much among themselves about some parts of them, they all concurred with great earnestness on the one point that we were not to be permitted to cross the St. John, nor consequently to save the southern portion of the Madawaska settlements. I was assured by the best-informed and by the best-disposed persons from New England, that the Commissioners would not dare to return to their own country after making such a concession, and finding indirectly that our pretensions in this respect would be considered extravagant in the Senate, and through the whole country, I made up my mind not further to press this part of our claim, especially as I had no equivalent to offer in territory, and I thought it neither prudent nor expedient to offer any in money.

The Commissioners from Maine submitted to the Secretary of State an answer to my proposals, and after keeping it some time the latter sent it to me with his own formal reply, as no regular communications could take place between the

¹ Now spelled "Metzermette".

Commissioners and me. Your Lordship will find these two papers inclosed. As these discussions began to be talked of abroad, as it was rumoured that serious differences existed, and as I was sensible that injury might arise from drawing the public press into the controversy, I lost no time and sent Mr Webster my note the day after the receipt of his. It is also enclosed herewith. [The three enclosures to this despatch are (a) Webster to Ashburton, July 8, 1842 (published correspondence, 44-50); (b) the Maine commissioners to Webster, June 29, 1842 (*ibid.*, 72-80); (c) Ashburton to Webster, July 11, 1842 (*ibid.*, 50-56).]

These papers will shew your Lordship the present state of this question, and require little explanation. You will see that I invite personal conference in preference to a long desultory controversial correspondence because at this advanced period of the Session, and in the state of parties here, delay might wholly defeat our object, and there can be no doubt that, with some at least, that defeat is much desired.

It will be observed that the informal memorandum of the Maine Commissioners contains some rather coarse insinuations which would hardly have passed unnoticed, if presented in any other form. Your Lordship will see that, though I thought it best to give them no direct attention, they induced me to state our sense of our own rights in rather a firmer tone than I otherwise should have done, and I have reason to believe that this has been of service towards accelerating a termination of these discussions.

I can hardly now hope to communicate by this packet any final settlement of this question. Various rumours will of course reach Europe, as to the probability of any settlement whatever. I am not myself apprehensive of not coming to some terms within the limits of my powers, but the difficulties of my task have certainly increased, owing to the character of the persons who influence this negotiation, and of those whose duty it is more immediately to conduct it with me. I trust your Lordship will be assured that it has not failed to receive from me the most anxious and cautious attention.

July 14 is almost certainly the exact date of the agreement reached by the two Plenipotentiaries regarding the northeastern boundary. In the archives of the Department of State is an annotated copy of the second edition of Dashiell's Map, the edition which was issued after the award of the King of the Netherlands of January 10, 1831, regarding the northeastern boundary; Dashiell's Map, which was based, in its watercourses and its disputed boundary lines, on Map A of the convention of September 29, 1827 (Document 53, the notes to which, particularly p. 356, should be consulted), showed, as originally issued in 1830, the northeastern boundary lines as claimed by the two countries, drawn in green for the United States and in red for Great Britain; the second edition of that map (of which the archives of the Department of State contain some fifty examples, of one or the other of the editions) added a yellow line as the line "of the Arbiter" or the line suggested by the King of the Netherlands; the annotated copy mentioned is signed "W. S. Derrick" in the upper margin; it has, in the handwriting of William S. Derrick, then a senior clerk and soon afterwards Chief Clerk of the Department of State, the notation, "The blue ink marks the proposed conventional line. 14 July, 1842"; the signature and the notation are written in the same blue ink as is the line drawn to show the northeastern boundary according to the Webster-Ashburton Treaty; the evidence is convincing that that copy of Dashiell's Map was annotated by Derrick on July 14, 1842, to show the agreement of Webster and Ashburton then reached (see "An Annotated Dashiell's Map", in *American Historical Review*, XXXVIII, 70-73); and it may be added that it was William

S. Derrick who took to London for exchange the United States instrument of ratification of the Webster-Ashburton Treaty, with authority, if occasion arose, to act in place of Everett in making the exchange (D.S., 15 Instructions, Great Britain, 58-59; 3 Credences, 26).

In his letters of July 15 to the commissioners of Maine and Massachusetts, enclosing a statement of the proposed line of the northeastern boundary in almost the exact language of Article 1 of the treaty, Webster wrote as follows (published correspondence, S1-S3; a draft in Webster's handwriting is in D.S., Northeastern Boundary, envelope 18):

You have had an opportunity of reading Lord Ashburton's note to me of the 11th of July. Since that date I have had full and frequent conferences with him respecting the eastern boundary, and believe I understand what is practicable to be done on that subject, so far as he is concerned. In these conferences he has made no positive or binding proposition, thinking perhaps it would be more desirable, under present circumstances, that such proposition should proceed from the side of the United States. I have reason to believe, however, that he would agree to a line of boundary between the United States and the British provinces of Canada and New Brunswick, such as is described in a paper accompanying this (marked B), and identified by my signature [see published correspondence, S3-S4; D.S., Northeastern Boundary, envelope 18, a draft copy with interlineations and corrections].

In establishing the line between the monument and the St. John, it is thought necessary to adhere to that run and marked by the surveyors of the two Governments in 1817 and 1818. There is no doubt that the line recently run by Major Graham is more entirely accurate; but, being an *ex parte* line, there would be objections to agreeing to it without examination, and thus, another survey would become necessary. Grants and settlements, also, have been made, in conformity with the former line, and its errors are so inconsiderable that it is not thought that their correction is a sufficient object to disturb these settlements. Similar considerations have had great weight in adjusting the line in other parts of it.

The territory in dispute between the two countries contains 12,027 square miles, equal to 7,697,280 acres.

By the line described in the accompanying paper, there will be assigned to the United States 7,015 square miles, equal to 4,489,600 acres; and to England 5,012 square miles, equal to 3,207,680 acres.

By the award of the King of the Netherlands, there was assigned to the United States 7,908 square miles, 5,061,120 acres; to England 4,119 square miles, 2,636,160 acres.

The territory proposed to be relinquished to England, south of the line of the King of the Netherlands, is, as you will see, the mountain range, from the upper part of the St. Francis river to the meeting of the two contested lines of boundary, at the Metjarmette Portage, in the highlands, near the source of the St. John's. This mountain tract contains 893 square miles, equal to 571,520 acres. It is supposed to be of no value for cultivation or settlement. On this point you will see, herewith, a letter from Captain Talcott, who has been occupied two summers in exploring the line of the highlands, and is intimately acquainted with the territory. The line leaves to the United States, between the base of the hills and the left bank of the St. John, and lying along upon the river, a territory of 657,280 acres, embracing, without doubt, all the valuable land south of the St. Francis and west of the St. John. Of the general division of the territory, it is believed it may be safely said that while the portion remaining with the United States is, in quantity, seven twelfths, in value it is at least four fifths of the whole. [For the letter of Captain Talcott, see published correspondence, S4.]

Nor is it supposed that the possession of the mountain region is of any importance, in connexion with the defence of the country or any military operations. It lies below all the accustomed practicable passages for troops into and out of Lower Canada; that is to say, the Chaudière, Lake Champlain, and the Richelieu, and the St. Lawrence. If an army, with its *materiel*, could possibly pass into

Canada over these mountains, it would only find itself on the banks of the St. Lawrence below Quebec; and, on the other hand, it is not conceivable that an invading enemy from Lower Canada would attempt a passage in this direction, leaving the Chaudière on one hand and the route by Madawaska on the other.

If this line should be agreed to, on the part of the United States, I suppose that the British minister would, as an equivalent, stipulate, first, for the use of the river St. John, for the conveyance of the timber growing on any of its branches, to tide water, free from all discriminating tolls, impositions, or disabilities of any kind, the timber enjoying all the privileges of British colonial timber. All opinions concur that this privilege of navigation must greatly enhance the value of the territory and the timber growing thereon, and prove exceedingly useful to the people of Maine. Second: That Rouse's Point, in Lake Champlain, and the lands heretofore supposed to be within the limits of New Hampshire, Vermont, and New York, but which a correct ascertainment of the 45th parallel of latitude shows to be in Canada, should be surrendered to the United States.

It is probable, also, that the disputed line of boundary in Lake Superior might be so adjusted as to leave a disputed island within the United States.

These cessions on the part of England would enure partly to the benefit of the States of New Hampshire, Vermont, and New York, but principally to the United States. The consideration on the part of England, for making them, would be the manner agreed upon for adjusting the eastern boundary. The price of the cession, therefore, whatever it might be, would in fairness belong to the two States interested in the manner of that adjustment.

Under the influence of these considerations, I am authorized to say, that if the commissioners of the two States assent to the line as described in the accompanying paper, the United States will undertake to pay to these States the sum of two hundred and fifty thousand dollars, to be divided between them in equal moieties; and, also, to undertake for the settlement and payment of the expenses incurred by those States for the maintenance of the civil posse, and also for a survey which it was found necessary to make.

The line suggested, with the compensations and equivalents which have been stated, is now submitted for your consideration. That it is all which might have been hoped for, looking to the strength of the American claim, can hardly be said. But, as the settlement of a controversy of such duration is a matter of high importance, as equivalents of undoubted value are offered, as longer postponement and delay would lead to further inconvenience, and to the incurring of further expenses, and as no better occasion, or perhaps any other occasion, for settling the boundary by agreement, and on the principle of equivalents, is ever likely to present itself, the Government of the United States hopes that the commissioners of the two States will find it to be consistent with their duty to assent to the line proposed, and to the terms and conditions attending the proposition.

The President has felt the deepest anxiety for an amicable settlement of the question, in a manner honorable to the country, and such as should preserve the rights and interests of the States concerned. From the moment of the announcement of Lord Ashburton's mission, he has sedulously endeavored to pursue a course the most respectful towards the States, and the most useful to their interests, as well as the most becoming to the character and dignity of the Government. He will be happy if the result shall be such as shall satisfy Maine and Massachusetts, as well as the rest of the country. With these sentiments on the part of the President, and with the conviction that no more advantageous arrangement can be made, the subject is now referred to the grave deliberation of the commissioners.

Both Maine and Massachusetts gave their formal assent to the proposal, subject to certain conditions. The assent of the commissioners of Massachusetts is dated July 20, 1842 (D.S., *Northeastern Boundary*, envelope 18; published correspondence, 92-93), and concludes as follows:

Whether the national Boundary, suggested by you, be suitable or unsuitable; whether the compensations that Great Britain offers to the United States for the territory conceded to her, be adequate or inadequate; and whether the Treaty,

which shall be effected, shall be honorable to the Country, or incompatible with its rights and dignity,—are questions, not for Massachusetts, but for the General Government, upon its responsibility to the whole country, to decide. It is for the State to determine, for what equivalents she will relinquish to the United States her interests in certain lands in the Disputed Territory, so that they may be made available to the Government of the United States, in the establishment of the North-Eastern Boundary, and in a general settlement of all matters in controversy, between Great Britain and the United States. In this view of the subject, and with the understanding that by the words, "the nearest point of the highlands", in your description of the proposed line of boundary, is meant, the nearest point of the crest of the highlands; that the right to the free navigation of the river Saint John shall include the right to the free transportation thereupon of all products of the soil as well as of the forest; and that the pecuniary compensation to be paid by the Federal Government to the State of Massachusetts, shall be increased to the sum of one hundred and fifty thousand dollars, the State of Massachusetts, through her Commissioners, hereby relinquishes to the United States her interest in the lands, which will be excluded from the dominion of the United States, by the establishment of the Boundary aforesaid.

The conditions stated on behalf of Massachusetts were all met by the terms of the treaty; the words "the nearest point of the summit or crest of the highlands" are in Article 1 (they are indeed in the print of the paper "B" in published correspondence; but in the draft copy thereof "summit or crest of the" are interlined, and at the end of the same sentence "summit or crest" replace "dividing highlands"); "produce . . . of agriculture" is included in Article 3; and the sum to be paid to Maine and Massachusetts "in equal moieties" (Article 5) is \$300,000.

The assent of the commissioners of Maine was under date of July 22 (D.S., Northeastern Boundary, envelope 18; published correspondence, 93-99); its concluding paragraph and the memorandum therein mentioned are in these terms:

We are, now, given to understand that the Executive of the United States, representing the sovereignty of the Union, assents to the proposal, and that this Department of the Government at least is anxious for its acceptance, as, in its view, most expedient for the general good. The Commissioners of Massachusetts have already given their assent, on behalf of that Commonwealth. Thus situated, the Commissioners of Maine, invoking the spirit of attachment and patriotic devotion of their State to the Union, and being willing to yield to the deliberate convictions of her Sister-States as to the path of duty, and to interpose no obstacles to an adjustment which the general judgment of the Nation shall pronounce as honorable and expedient, even if that judgment shall lead to a surrender of a portion of the birth-right of the People of their State, and prized by them because it is their birth-right, have determined to overcome their objections to the proposal, so far as to say, that if, upon mature consideration, the Senate of the United States shall advise, and consent to, the ratification of a Treaty, corresponding in its terms with your proposal, and with the conditions in our Memorandum accompanying this note, marked A, and identified by our signatures, they, by virtue of the power vested in them by the Resolves of the Legislature of Maine, give the assent of that State to such Conventional line, with the terms, conditions and equivalents herein mentioned.

(A)

The Commissioners of Maine request that the following provisions, or the substance thereof, shall be incorporated into the proposed Treaty, should one be agreed on:

1st That the amount of the "disputed territory fund" (so called) received by the authorities of New Brunswick, for timber cut on the disputed territory, shall be paid over to the United States, for the use of Maine and Massachusetts, in

full, and a particular account rendered; or a gross sum to be agreed upon by the Commissioners of Maine and Massachusetts shall be paid by Great Britain, as a settlement of that fund; and that all claims, bonds and securities taken for timber cut upon the territory be transferred to the Authorities of Maine and Massachusetts:

2^d That all grants of land, within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, shall be confirmed; and all equitable possessory titles shall be quieted to those who possess the claims; and we assent to a reciprocal provision for the benefit of settlers falling within the limits of Maine. And we trust that the voluntary suggestion of the British Minister, in regard to John Baker and any others, if there be any similarly situated, will be carried into effect, so as to secure their rights:

3^d That the right of free navigation of the St John, as set forth in the proposition of Mr Webster on the part of the United States, shall extend to, and include, the products of the soil, in the same manner as the products of the forest; and that no toll, tax or duty be levied upon timber coming from the territory of Maine.

The conditions of Maine were also embodied in the treaty text; Article 5 deals with the "Disputed Territory Fund"; by Article 4 grants of land in the disputed territory are confirmed; and the clauses of Article 3 are broad enough to cover the provisions desired by the commissioners of Maine regarding the navigation of the St. John River. The "voluntary suggestion of the British Minister, in regard to John Baker", is referred to below.

A statement of the agreement reached on the northeastern boundary question (Articles 1 and 3-6 of the treaty) was part of the note of Webster of July 27, which set forth the entire boundary settlement (Articles 1-7), with a detailed description of the line "proposed to be agreed to" (Articles 1 and 2). The answering note of Ashburton of July 29 gave his assent; there remained only the drafting of certain of the articles, some of which had been already written (see published correspondence, 58-62).

In the presidential message to the Senate of August 11 the assent of the two States to the boundary clauses was prominently mentioned. That message, which deals with the whole negotiation and which was written by Daniel Webster (*The Writings and Speeches of Daniel Webster*, XII, 21), follows (published correspondence, 19-25):

I have the satisfaction to communicate to the Senate the results of the negotiations recently had in this city with the British minister special and extraordinary.

These results comprise—

1st. A treaty to settle and define the boundaries between the territories of the United States and the possessions of her Britannic Majesty in North America, for the suppression of the African slave-trade, and the surrender of criminals, fugitive from justice, in certain cases.

2d. A correspondence on the subject of the interference of the colonial authorities of the British West Indies with American merchant vessels driven by stress of weather, or carried by violence, into the ports of those colonies.

3d. A correspondence upon the subject of the attack and destruction of the steamboat *Caroline*.

4th. A correspondence on the subject of impressment.

If this treaty shall receive the approbation of the Senate, it will terminate a difference respecting boundary which has long subsisted between the two Governments—has been the subject of several ineffectual attempts at settlement, and has sometimes led to great irritation, not without danger of disturbing the

existing peace. Both the United States and the States more immediately concerned, have entertained no doubt of the validity of the American title to all the territory which has been in dispute; but that title was controverted, and the Government of the United States had agreed to make the dispute a subject of arbitration. One arbitration had been actually had, but had failed to settle the controversy; and it was found, at the commencement of last year, that a correspondence had been in progress between the two Governments for a joint commission, with an ultimate reference to an umpire or arbitrator, with authority to make a final decision. That correspondence, however, had been retarded by various occurrences, and had come to no definite result when the special mission of Lord Ashburton was announced. This movement on the part of England afforded, in the judgment of the Executive, a favorable opportunity for making an attempt to settle this long-existing controversy by some agreement or treaty, without further reference to arbitration. It seemed entirely proper that, if this purpose were entertained, consultation should be had with the authorities of the States of Maine and Massachusetts. Letters, therefore, of which copies are herewith communicated, were addressed to the Governors of those States, suggesting that commissioners should be appointed by each of them, respectively, to repair to this city and confer with the authorities of this Government, on a line by agreement or compromise, with its equivalents and compensations. This suggestion was met by both States in a spirit of candor and patriotism, and promptly complied with. Four commissioners on the part of Maine, and three on the part of Massachusetts, all persons of distinction and high character, were duly appointed and commissioned, and lost no time in presenting themselves at the seat of the Government of the United States. These commissioners have been in correspondence with this Government during the period of the discussions; have enjoyed its confidence and freest communications; have aided the general object with their counsel and advice; and, in the end, have unanimously signified their assent to the line proposed in the treaty.

Ordinarily, it would be no easy task to reconcile and bring together such a variety of interests in a matter in itself difficult and perplexed; but the efforts of the Government in attempting to accomplish this desirable object have been seconded and sustained by a spirit of accommodation and conciliation on the part of the States concerned, to which much of the success of these efforts is to be ascribed.

Connected with the settlement of the line of the northeastern boundary, so far as it respects the States of Maine and Massachusetts, is the continuation of that line along the highlands to the northwesternmost head of Connecticut river. Which of the sources of that stream is entitled to this character, has been matter of controversy, and is of some interest to the State of New Hampshire. The King of the Netherlands decided the main branch to be the northwesternmost head of the Connecticut. This did not satisfy the claim of New Hampshire. The line agreed to in the present treaty follows the highlands to the head of Hall's stream, and thence down that river, embracing the whole claim of New Hampshire, and establishing her title to 100,000 acres of territory more than she would have had by the decision of the King of the Netherlands.

By the treaty of 1783, the line is to proceed down the Connecticut river to the 45th degree of north latitude and thence west, by that parallel, till it strikes the St. Lawrence. Recent examinations having ascertained that the line heretofore received as the true line of latitude between those points was erroneous, and that the correction of this error would not only leave, on the British side, a considerable tract of territory heretofore supposed to belong to the States of Vermont and New York, but also Rouse's point, the site of a military work of the United States; it has been regarded as an object of importance, not only to establish the rights and jurisdiction of those States up to the line to which they have been considered to extend, but also to comprehend Rouse's point within the territory of the United States. The relinquishment by the British Government of all the territory south of the line heretofore considered to be the true line, has been obtained; and the consideration for this relinquishment is to ensure, by the provisions of the treaty, to the States of Maine and Massachusetts.

The line of boundary, then, from the source of the St. Croix to the St. Lawrence, so far as Maine and Massachusetts are concerned, is fixed by their own consent, and for considerations satisfactory to them; the chief of these considerations being the privilege of transporting the lumber and agricultural products grown and raised in Maine on the waters of the St. John's and its tributaries down that river to the ocean, free from imposition or disability. The importance of this privilege, perpetual in its terms, to a country covered at present by pine forests of great value, and much of it capable hereafter of agricultural improvement, is not a matter upon which the opinion of intelligent men is likely to be divided.

So far as New Hampshire is concerned, the treaty secures all that she requires; and New York and Vermont are quieted to the extent of their claim and occupation. The difference which would be made in the northern boundary of these two States, by correcting the parallel of latitude, may be seen on Tanner's maps (1836), new atlas, maps Nos. 6 and 9. [A copy of that atlas is in the Division of Maps, Library of Congress; it is entitled "New Universal Atlas Containing Maps of the various Empires, Kingdoms, States and Republics of the World With a special map of each of the United States, Plans of Cities &c. Comprehended in seventy sheets and forming a series of One Hundred and Seventeen Maps Plans and Sections", by H. S. Tanner, Philadelphia, 1836.]

From the intersection of the 45° of north latitude with the St. Lawrence, and along that river and the lakes to the water communication between Lake Huron and Lake Superior, the line was definitively agreed on by the commissioners of the two Governments, under the 6th article of the treaty of Ghent. But between this last-mentioned point and the Lake of the Wood[s], the commissioners acting under the 7th article of that treaty found several matters of disagreement, and therefore made no joint report to their respective Governments. The first of these was Sugar island, or St. George's island, lying in St. Mary's river, or the water communication between Lakes Huron and Superior. By the present treaty this island is embraced in the territories of the United States. Both from soil and position, it is regarded as of much value.

Another matter of difference was the manner of extending the line from the point at which the commissioners arrived, north of Isle Royale, in Lake Superior, to the Lake of the Woods. The British commissioner insisted on proceeding to Fond du Lac, at the southwest angle of the lake, and thence, by the river St. Louis, to the Rainy Lake. The American commissioner supposed the true course to be, to proceed by way of the Dog river. Attempts were made to compromise this difference, but without success. The details of these proceedings are found at length in the printed, separate reports of the commissioners (cited below).

From the imperfect knowledge of this remote country, at the date of the treaty of peace, some of the descriptions in that treaty do not harmonize with its natural features, as now ascertained. "Long Lake" is nowhere to be found under that name. There is reason for supposing, however, that the sheet of water intended by that name, is the estuary, at the mouth of Pigeon river. The present treaty, therefore, adopts that estuary and river, and afterward pursues the usual route, across the height of land by the various portages and small lakes, till the line reaches Rainy Lake; from which the commissioners agreed on the extension of it to its termination, in the northwest angle of the Lake of the Woods. The region of country on and near the shore of the lake, between Pigeon river on the north, and Fond du Lac and the river St. Louis on the south and west, considered valuable as a mineral region, is thus included within the United States. It embraces a territory of four millions of acres, northward of the claim set up by the British commissioner under the treaty of Ghent. From the height of land at the head of Pigeon river, westerly to the Rainy Lake, the country is understood to be of little value, being described by surveyors, and marked on the map, as a region of rock and water.

From the northwest angle of the Lake of the Woods, which is found to be in latitude 45°23'55" north, existing treaties require the line to be run due south to its intersection with the 45th parallel, and thence along that parallel, to the Rocky mountains. [As in Article 2 of the treaty, the latitude is 49°23'55" north, and the line runs south to the 49th parallel; but the erroneous figures are in all

the official prints of the message: the Senate document here cited; Executive Journal, VI, 121; Richardson, IV, 166; and House Document No. 2, 27th Congress, 3d session, serial 418, p. 20.]

After sundry informal communications with the British minister upon the subject of the claims of the two countries to territory west of the Rocky mountains, so little probability was found to exist of coming to any agreement on that subject at present, that it was not thought expedient to make it one of the subjects of formal negotiation, to be entered upon between this Government and the British minister, as part of his duties under his special mission.

By the treaty of 1783, the line of division along the rivers and lakes, from the place where the 45th parallel of north latitude strikes the St. Lawrence, to the outlet of Lake Superior, is invariably to be drawn through the middle of such waters, and not through the middle of their main channels. Such a line, if extended according to the literal terms of the treaty, would, it is obvious, occasionally intersect islands. The manner in which the commissioners of the two Governments dealt with this difficult subject, may be seen in their reports. But where the line, thus following the middle of the river, or water course, did not meet with islands, yet it was liable sometimes to leave the only practicable navigable channel altogether on one side. The treaty made no provision for the common use of the waters by the citizens and subjects of both countries.

It has happened, therefore, in a few instances, that the use of the river, in particular places, would be greatly diminished, to one party or the other, if, in fact, there was not a choice in the use of channels and passages. Thus, at the Long Sault, in the St. Lawrence, a dangerous passage, practicable only for boats, the only safe run is between the Long Sault islands and Barabart's island, all which belong to the United States on one side, and the American shore on the other. On the other hand, by far the best passage for vessels of any depth of water, from Lake Erie into the Detroit river, is between Bois Blanc, a British island, and the Canadian shore. So again there are several channels or passages, of different degrees of facility and usefulness, between the several islands in the river St. Clair, at or near its entry into the lake of that name. In these three cases, the treaty provides that all the several passages and channels shall be free and open to the use of the citizens and subjects of both parties.

The treaty obligations subsisting between the two countries for the suppression of the African slave-trade, and the complaints made to this Government within the last three or four years, many of them but too well founded, of the visitation, seizure, and detention of American vessels on that coast, by British cruisers, could not but form a delicate and highly important part of the negotiations which have now been held.

The early and prominent part which the Government of the United States has taken for the abolition of this unlawful and inhuman traffic, is well known. By the tenth article of the treaty of Ghent, it is declared that the traffic in slaves is irreconcilable with the principles of humanity and justice, and that both his Majesty and the United States are desirous of continuing their effort to promote its entire abolition; and it is thereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object. The Government of the United States has, by law, declared the African slave-trade piracy; and at its suggestion other nations have made similar enactments. It has not been wanting in honest and zealous efforts, made in conformity with the wishes of the whole country, to accomplish the entire abolition of the traffic in slaves upon the African coast; but these efforts and those of other countries directed to the same end have proved, to a considerable degree, unsuccessful. Treaties are known to have been entered into some years ago between England and France, by which the former power, which usually maintains a large naval force on the African station, was authorized to seize, and bring in for adjudication, vessels found engaged in the slave-trade under the French flag. [Citations of certain acts mentioned in this and the following paragraph are in the notes below, under the heading "Article 8".]

It is known that, in December last, a treaty was signed in London by the representatives of England, France, Russia, Prussia, and Austria, having for its professed object, a strong and united effort of the five powers to put an end to the traffic. This treaty was not officially communicated to the Government of

the United States, but its provisions and stipulations are supposed to be accurately known to the public. It is understood to be not yet ratified on the part of France.

No application or request has been made to this Government to become party to this treaty; but the course it might take in regard to it, has excited no small degree of attention and discussion in Europe, as the principle upon which it is founded, and the stipulations which it contains, have caused warm animadversions and great political excitement.

In my message at the commencement of the present session of Congress, I endeavored to state the principles which this Government supports respecting the right of search and the immunity of flags. Desirous of maintaining those principles fully, at the same time that existing obligations should be fulfilled, I have thought it most consistent with the honor and dignity of the country, that it should execute its own laws, and perform its own obligations, by its own means and its own power. The examination or visitation of the merchant vessels of one nation, by the cruisers of another, for any purpose, except those known and acknowledged by the law of nations, under whatever restraints or regulations it may take place, may lead to dangerous results. It is far better, by other means, to supersede any supposed necessity, or any motive, for such examination or visit. Interference with a merchant vessel by an armed cruiser, is always a delicate proceeding, apt to touch the point of national honor, as well as to affect the interests of individuals. It has been thought, therefore, expedient, not only in accordance with the stipulations of the Treaty of Ghent, but at the same time as removing all pretext on the part of others for violating the immunities of the American flag upon the seas, as they exist and are defined by the law of nations, to enter into the articles now submitted to the Senate.

The treaty which I now submit to you, proposes no alteration, mitigation, or modification of the rules of the law of nations. It provides simply that each of the two Governments shall maintain on the coast of Africa a sufficient squadron to enforce, separately and respectively, the laws, rights, and obligations of the two countries, for the suppression of the slave-trade.

Another consideration of great importance has recommended this mode of fulfilling the duties and obligations of the country. Our commerce along the western coast of Africa is extensive, and supposed to be increasing. There is reason to think that, in many cases, those engaged in it have met with interruptions and annoyances, caused by the jealousy and instigation of rivals engaged in the same trade. Many complaints on this subject have reached the Government. A respectable naval force on the coast is the natural resort and security against further occurrences of this kind.

The surrender to justice of persons who, having committed high crimes seek an asylum in the territories of a neighboring nation, would seem to be an act due to the cause of general justice, and properly belonging to the present state of civilization and intercourse. The British provinces of North America are separated from the States of the Union by a line of several thousand miles; and, along portions of this line, the amount of population on either side is quite considerable, while the passage of the boundary is always easy.

Offenders against the law, on the one side, transfer themselves to the other. Sometimes, with great difficulty, they are brought to justice, but very often they wholly escape. A consciousness of immunity, from the power of avoiding justice in this way, instigates the unprincipled and reckless to the commission of offences; and the peace and good neighborhood of the border are consequently often disturbed.

In the case of offenders fleeing from Canada into the United States, the Governors of States are often applied to for their surrender; and questions of a very embarrassing nature arise from these applications. It has been thought highly important, therefore, to provide for the whole case by a proper treaty stipulation. The article on the subject in the proposed treaty is carefully confined to such offences as all mankind agree to regard as heinous, and destructive of the security of life and property. In this careful and specific enumeration of crimes, the object has been to exclude all political offences, or criminal charges, arising from wars or intestine commotions. Treason, misprision of treason, libels, desertion from military service, and other offences of similar character, are excluded.

And, lest some unforeseen inconvenience or unexpected abuse should arise from the stipulation, rendering its continuance, in the opinion of one or both of the parties, not longer desirable, it is left in the power of either to put an end to it at will.

The destruction of the steamboat *Caroline* at Schlosser, four or five years ago, occasioned no small degree of excitement at the time, and became the subject of correspondence between the two Governments. That correspondence having been suspended for a considerable period, was renewed in the spring of the last year, but, no satisfactory result having been arrived at, it was thought proper, though the occurrence had ceased to be fresh and recent, not to omit attention to it on the present occasion. It has only been so far discussed, in the correspondence now submitted, as it was accomplished by a violation of the territory of the United States. The letter of the British minister, while he attempts to justify that violation upon the ground of a pressing and overruling necessity, admitting, nevertheless, that, even if justifiable, an apology was due for it, and accompanying this acknowledgment with assurances of the sacred regard of his Government for the inviolability of national territory, has seemed to me sufficient to warrant forbearance from any further remonstrance against what took place, as an aggression on the soil and territory of the country.

On the subject of the interference of the British authorities in the West Indies, a confident hope is entertained, that the correspondence which has taken place, showing the grounds taken by this Government, and the engagements entered into by the British minister, will be found such as to satisfy the just expectation of the people of the United States.

The impressment of seamen from merchant vessels of this country by British cruisers, although not practised in time of peace, and, therefore, not at present a productive cause of difference and irritation, has, nevertheless, hitherto been so prominent a topic of controversy, and is so likely to bring on renewed contentions at the first breaking out of an European war, that it has been thought the part of wisdom now to take it into serious and earnest consideration. The letter from the Secretary of State to the British minister explains the ground which the Government has assumed, and the principles which it means to uphold. For the defence of these grounds, and the maintenance of these principles, the most perfect reliance is placed on the intelligence of the American people, and on their firmness and patriotism, in whatever touches the honor of the country, or its great and essential interests.

The negotiations on subjects other than the northeastern boundary question are to some extent discussed elsewhere in these notes.

Ashburton's report of the northeastern boundary settlement is contained in two of his despatches; that of July 28, 1842, is the first; it has references of interest to the position of the "Delegates from the North" (Ashburton Papers, despatch No. 15):

It is with much satisfaction that I have now the honor of informing your Lordship that I have at last settled the terms of the Convention of Boundaries from the River St Croix to the Lake of the Woods. The Convention itself will be ready in a day or two, and I hope to be able to send a Copy home by the Great Western Steamer in the course of next week. In the mean-time the substance will be found in a letter received this morning by me from Mr Webster, of which Copy is inclosed [Webster to Ashburton, July 27, 1842, published correspondence, 58-61].

After last addressing your Lordship on this subject by my Despatch of the 13th inst^l, N^o 13., the negotiations continued formally with the Secretary of State, but informally with the Delegates from the North who were more immediately concerned. You will have seen that I had already given up the Madawaska settlement on the South of the St John's, but that I had hoped to retain the upper part of that River as a boundary. At this point I made my stand for some time, but finding the Maine commissioners obstinate, supported by all their deputation in Congress, and, as I believe, really ready to return home re infecta, I yielded to the mediation of a third party and consented to an intermediate line between the Highlands, as claimed by America, and the River. This was still resisted for some time; but on the 22^d inst^l the Commissioners from Maine and Massachu-

setts signified their consent in their notes to the Secretary of State forwarded by him to me, of which your Lordship will find copies inclosed [*ibid.*, 92-99]. Two of the four Commissioners from Maine are returned home little satisfied with what has been done, and complaining of having been forced by their associates, and I am bound to add that the public of this place generally consider the terms severe, in as far as they are, imperfectly, known to them. The prevailing idea is, that the Netherlands Boundary was the utmost possible pretention on our part; and they listen unwillingly to the explanation that we yield otherwise a large equivalent for the additional strip given to us, to give a better width to our line on the St Lawrence. I trust however that when the whole case with the correspondence comes before the Senate, the convention will be approved and ratified. I hear, as is common in such cases, of some murmurs and threats, but I can not say I am seriously apprehensive of the result. Much will however depend upon the Senate being satisfied on other subjects.

I must ask your Lordship's permission to defer until I send a correct Copy of the Treaty my observations more in detail on its provisions, being at this time very much occupied with this and other parts of my duties, and being anxious that no time should be lost in bringing what may be done before the Senate whose session cannot be much further prolonged.

In the mean-time the inclosed map marked with red ink will give some idea of the line agreed, as also of the proportionate division of the country between the Highlands and the upper St John. It will be seen that it removes the boundary completely from the Crest of the Hills over-looking the St Lawrence to their feet towards the River St John, and that in no part it will run nearer than 50 miles from Quebec. I have been obliged to give rather an unsatisfactory description of the line from want of more perfect surveys, but this I shall have hereafter to explain.

It will be seen in the notification of Maine and Massachusetts that they make the addition of the words "produce of the soil" to those of "produce of the forest" in the article for the navigation of the St John, a condition of their assent. I did not think it prudent to object to this, although I made this alteration unwillingly. The persons here connected with New Brunswick attach no importance to it, the articles are few which can be so admitted, and they are now actually admitted duty free, so that the inhabitants of Maine will only obtain by the stipulation of Treaty, what they now enjoy by sufferance. I added to the word produce the word "unmanufactured" which would exclude flour, although no flour can come from Maine which gets supplied from the Middle States, and I stipulate for a right to call for proof of origin, if it should be necessary.

I congratulate your Lordship upon the favorable prospect of at last terminating this tedious controversy on terms which will, I trust, be approved by Her Majesty's Government. In the course of another fortnight I hope to be able to turn my steps towards home. I am rather in doubt at present whether I shall remain here during the discussion of this business in the Senate but I shall be guided in this respect entirely by what may on consideration appear most conducive to the public service.

The "inclosed map marked with red ink", which is mentioned in the foregoing despatch, was a reduced copy, but with minor modifications resulting principally in simplification, of a map, marked "Map A", which was prepared by, and which accompanied the report of, Lieutenant Colonel Richard Zachariah Mudge, of the Royal Engineers, and George William Featherstonhaugh, the British Commissioners appointed on July 9, 1839, to examine and survey the territory in dispute; it is entitled "Map of that portion of Her Majesty's Colonies of New Brunswick and Lower Canada the Title to Which is Disputed by the Government of the U. States with Parts of the Adjacent Country The Rise and Course of the Rivers, with the direction of the Highlands, and their elevation above the Sea, . . . to accompany a report of the investigation of that Country which

the R^t Hon^{ble} Viscount Palmerston G.C.B. Her Majesty's Principal Secretary of State directed to be made A.D. 1839". The facsimile in the Ashburton Papers shows the line of the boundary only from Lake Pohenegamook (not named) to the Metjarmette portage; another line, to the west, marks the "highlands" for the corresponding distance; the line of the boundary was drawn apparently on the theory that the "seven miles" clause of Article 1 would come into play, for the shortest distance between the "point on the northwest branch of the river St John" and the line of the "highlands", as shown on that facsimile, is from 13 to 15 miles, and between that "point" and the St. John River, 7 miles or less. The facsimile is on a scale, not indicated, of about 30 miles to an inch (1:1,900,800); and the Commissioners' map, marked "Map A", is on a scale, shown graphically, of about 15 miles to an inch (1:950,400). In their printed report, dated April 16, 1840, the Commissioners describe the preparation of their map (see Blue Book, 1840, North American Boundary, pt. 2, "Correspondence Relating to the Boundary between the British Possessions in North America and the United States of America, under the Treaty of 1783"; a copy thereof is in D.S., Northeastern Boundary, envelope 19½).

The other despatch of Ashburton to be quoted in this connection is one of August 9, 1842 (Ashburton Papers, despatch No. 17), which transmitted the treaty (in its earlier form; but as the article numbers mentioned are the same, the fact is not here material). Except for its opening paragraph, previously quoted, and for two others relating respectively to the boundary "further west" and to the clauses of Article 7, which are quoted below, that despatch is here set forth:

My correspondence since I have been here will have made your Lordship acquainted with the difficulties which have in succession attended these negotiations, arising mainly from the variety of persons and interests which it was necessary to consult and consider. I shall feel well rewarded for my trouble and anxiety should the final result be honored by Her Majesty's approbation. I believe the terms as well calculated as circumstances would permit for securing the interests of the Colonies; but above all I am persuaded of the importance of arriving, on terms not inconsistent with those interests, and with the honor of the country, at some settlement of these border dissensions, which it is very evident could not have been suffered long to continue without endangering the maintenance of peace, and rendering at all times the presence of a considerable military force necessary on the frontier. There are parts of this Treaty which it becomes my duty to accompany with some explanations, and I proceed to submit them to your Lordship in the order in which they present themselves.

Starting from the monument at the Source of the St Croix, the North line to its intersection with the St John's is declared, "to follow the exploring line run and marked by the Surveyors of the two Governments in the years 1817 and 1818 "under the fifth Article of the Treaty of Ghent". It had been long known in the Province as well as in Maine that this North line had been incorrectly run, and last year Major Graham a distinguished officer of Engineers of the United States, marked a new line, which was generally believed to be correct. This would, by becoming gradually wider as it departed from the monument, have taken from New Brunswick about half a mile at the St John's near the falls, and as the strip of land is there narrow, the difference was important. All the grants and occupations of land had been formed on the basis of the old imperfect line, and for the same reason that we give up a more considerable strip on the 45th parallel of Latitude, I pressed the justice and convenience of this arrangement, and it was conceded.

Proceeding up the St John's from the intersection of the North Line, the river forms the boundary and it divides the Madawaska settlements. Here there are a number of small Islands in the river, which the Commissioners will have to distribute. They will have to be guided by what is deemed to be the "main channel" but there will be nevertheless occasional questions of doubt. We have promised that our Commissioners shall deal with these questions equitably, and with the least possible contention; consulting where it can be done, the interests of the inhabitants with whose farms the islands, which are not generally large, may be connected [cf. British and Foreign State Papers, XXXIII, 769].

Following the river upwards, there lives at its fork with the St Francis, a man named Baker, who has a mill, and about 100 acres of land. He has been an active partisan and agitator on the part of Maine, and the Maine Commissioners fearing that his situation as a British subject might expose him to difficulties, made many efforts to throw his property within the Maine line. As this was in every respect objectionable, and seeing the object they were aiming at, I got over the difficulty by a voluntary promise, not put into the Treaty, that, if Baker wishes to leave the Province, and is not able to find at once a purchaser for his property, it shall be taken over at a reasonable price. I have written to this effect a letter to Governor Kent one of the Maine Commissioners. This engagement must if necessary be fulfilled, and that rather liberally, but not extravagantly. I do not know what the expence of so doing may amount to, but I think it cannot well exceed a thousand pounds. Care has been taken to give security to the settlers generally whose titles arising from possession are not always strictly legal, and it is believed that the provision for this purpose will be found effectual.

The Boundary further proceeds up the St Francis to the outlet of the Lake Pohenagamook, and from thence in a straight line to a given point on the North-west branch of the River St John. This was the most difficult and is the least clearly defined part of these Boundaries. When in the course of negotiation Maine would not yield, as I had at one time hoped, the line of the Upper St John, and I refused to take that of the Crest of the Highlands, a middle line was after much discussion consented to, which would about divide the territory then in dispute, and bring our boundary every-where off the Hills which might overlook the Valley of the St Lawrence into the Valley of the St Johns. There were no maps to enable us to define with the desired accuracy this line, and there was no time for even the roughest survey: we therefore took the map which seemed most accurate, and which could not have been made with any purpose to mislead, and we described the point as intended, on the presumption that the map was accurate. A copy of this map will accompany the treaty. To guard myself however against the possibility that this point on the north-west branch of the St John's might run too far into the Highlands, the reservation was made, that it should recede to within seven miles thereof, should that be the case. It is my belief that the result of the survey, and final determination of this line will be satisfactory, but I must admit that this part of our work has not been as perfectly and accurately executed, as it would have been, if we could have had proper maps. I trust however that every precaution has been taken which the circumstances of the case admitted, considering always that it was highly desirable, that no further delay for the purpose of obtaining more correct information should be interposed.

The remainder of the line to St Regis requires no explanation. It was agreed that the hilly ground at the Head of Connecticut River, should be conceded to New Hampshire, and the strip of land by the 45th degree of Latitude, to New York and Vermont, and I had the satisfaction of learning that these concessions, while they were acceptable to the several States concerned, are considered as doing no injury whatever to Canada.

That Article of the Treaty which concedes to those parts of the State of Maine watered by the St John's and its tributaries, the free conveyance of their produce by that River, was the subject of many repeated discussions with the Deputies from Maine. The only part to which I had any objection was, the adding the words "agricultural produce" to the produce of the forest, but seeing that the Deputies, on signifying their consent to the Boundary, on leaving Washington made this a part of their consent, I did not think it expedient further to resist. Although I

objected for some time to have this condition forced upon me, I do not consider it to be of much importance, and I am confirmed in this opinion by that of the best-informed persons of the Province. The unmanufactured produce of Agriculture is in fact now admitted free of duty, and consists mainly in potatoes and onions, and the merchants of St John's consider with reason that the prosperity of their port and shipping depends mainly in making it the general mart of the great river on which it is situated.

The Article 5 which engages for the distribution of the fund called, the Disputed Territory Fund, confirms only what would be fairly due, if no notice were taken of this subject in the Treaty. This fund arises from monies received for Lumber cut on the Disputed Territory, and which was always promised to be held and ultimately distributed according to the stipulations of this article. When the account is made up as directed, the portion fairly belonging to Maine will be to be paid, deducting the charges applicable thereto. I would recommend that this be done rather liberally. Real charges of collection or recovery must be made, but I have promised that there shall be no general charge of Salaries to the Warden or others. I have no correct information of the probable amount of this fund but it can not exceed from five to ten thousand pounds.

I have only further to observe that this Treaty of boundaries will only require one Commissioner on each side with such assistants as each may think necessary. The marking the old line and the distribution of the Islands in the St John will be attended with little difficulty, but the running the straight line from the Lake Pohenagamook through the wilderness will take more time. This can not now be done until next summer, and I would recommend our Commissioner being instructed to do this work so as to avoid, if possible, contention, and I am assured that the American officer shall have the same conciliatory instructions.

I shall communicate to the Governor General of Her Majesty's North American Provinces, a copy of this Treaty, recommending that the communication may be considered as confidential, until he is informed from home of its ratification.

The negotiations for this Treaty of Boundaries were connected with a settlement of claims and accounts between the General Government and the States of Maine and Massachusetts. With these we had nothing to do, and I much objected to let any notice be taken of them in the Treaty, but there were great difficulties arising from leaving them out and not giving to this settlement the sanction of the Treaty. The subject is accordingly introduced in the 5th Article, but I thought it expedient to exchange notes [of August 9, 1842, printed above immediately following the treaty text] with the Secretary of State, copies of which accompany this Despatch to explain that Great Britain is without interest or responsibility in the subject of that Article.

Three engagements of the British Government, collateral to the treaty, are mentioned in the foregoing despatch. Two of them, it seems, were promises made verbally by Ashburton: first, that with questions of doubt regarding small islands in the St. John River the British Commissioner under Article 6 would "deal . . . equitably, and with the least possible contention; consulting where it can be done, the interests of the inhabitants with whose farms the islands . . . may be connected"; and, secondly, that in the settlement of the Disputed Territory Fund, pursuant to Article 5, "there shall be no general charge of Salaries to the Warden or others."

The other collateral engagement related to the real property of an American citizen, John Baker, which was located on the New Brunswick side of the St. John; "the voluntary suggestion of the British Minister, in regard to John Baker", was mentioned in the conditions with the assent of the Maine commissioners to the boundary clauses (July 22, 1842, quoted above); the engagement entered into was evidenced by a letter from Ashburton to Edward Kent, one of the Maine commissioners and previously (1838 and 1841) Governor of

Maine. This is spoken of by Ashburton as "a voluntary promise, not put into the Treaty", and was to the effect "that, if [John] Baker wishes to leave the Province [of New Brunswick], and is not able to find at once a purchaser for his property, it shall be taken over at a reasonable price." It seems that no copy of that letter from Ashburton to Kent was sent by the former to London; and no record thereof has been found in the archives of the Department of State, in the Maine archives in the State Library at Augusta, in the collections of the Maine Historical Society at Portland, in the archives of the Province of New Brunswick, or in the papers of the New Brunswick Historical Society at St. John. It is to be added that no necessity for the fulfilment of the engagement regarding the property of John Baker arose, for Baker remained a resident of New Brunswick until his death in the year 1868 (see Thomas Albert, *Histoire du Madawaska*, 223-24, and *Resolves of Maine*, 1895, ch. 114).

The remarks regarding "this map" in the despatch last quoted are somewhat obscure; with the despatch in the Ashburton Papers is a copy of the Mudge and Featherstonhaugh map that is identical in its map base with the copy, in the same papers, of the map transmitted with Ashburton's despatch of July 28; it is marked to show the line of the treaty as well as the lines of the rival claims, and it bears in its lower margin an annotated legend; but the "point on the Northwest branch of the River St John" is about 17 miles farther upstream, and the line connecting it with Lake Pohenegamook and with the southwest branch runs much nearer the highlands, than as drawn on the copy with Ashburton's despatch No. 15, of July 28; the statement in the despatch of August 9 that "A copy of this map will accompany the treaty" presumably can refer only to the enclosure with the despatch; and it seems that by "the map which seemed most accurate" Ashburton meant the Mudge and Featherstonhaugh map.

THE MAPS KNOWN IN 1842¹

There were two maps which, because of the lines drawn on them, had a great influence on the official representatives of Maine and were persuasive in inducing their assent to the conventional line of the northeastern boundary which is described in Article 1 of the Webster-Ashburton Treaty.

One of those two maps was the Steuben-Webster copy of Mitchell's Map, which is briefly described in the notes to Document 58 (vol. 3, pp. 338-40, 350-51) and a facsimile reproduction of which is in a pocket inside the back cover of volume 3.

Neither historically nor legally was the line on that Steuben-Webster Map any evidence whatever of the intent of the negotiators of the treaties of 1782 and 1783 or of the meaning of the boundary provisions there written; Baron Steuben had no part in those negotia-

¹ The paragraphs under this heading are in large part based upon the studies of Colonel Lawrence Martin, including in particular the draft of his unpublished book on Mitchell's Map, the manuscript of which the editor of these volumes has read (see vol. 3, p. 328, footnote 1).

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSSJR 12 (Jud)
Publish Date: 3/8/88

Revision Date: _____
Title: Relating to the determination of the state's boundaries with the
Sponsor: Denling
Requestor: _____

Agency Affected: _____
BRU: _____
Soviet Union
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Senate Judiciary Committee Phone: 465-3717

Division: _____ Date: _____

Approved by ~~Commissioner~~ Senator Jay Kerttula Date: 3-8-88

Agency: Senate Judiciary Committee

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/16/88

FURTHER REFERRALS: Judiciary

DATE: 3-28-88

The State Affairs Committee has considered CSSJR 12(Jud)

Relating to the determination of the state's boundaries with the Soviet Union and Canada.

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO-PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

**STATE OF ALASKA
1988 LEGISLATIVE SESSION**

BILL VERSION: CS SJR 12 (JUD)
PUBLISH DATE: 5/9/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: DETERMINATION OF THE STATE'S
BOUNDARIES WITH THE SOVIET UNION & CANADA
Sponsor: SENATE JUDICIARY COMMITTEE
Requestor: _____

Agency Affected: N/A
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: FRAN ULMER, CHAIR Phone: 465-4947
Division: HOUSE STATE AFFAIRS COMMITTEE Date: 5/23/88

Approved by Commissioner: _____ Date: _____
Agency: _____

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