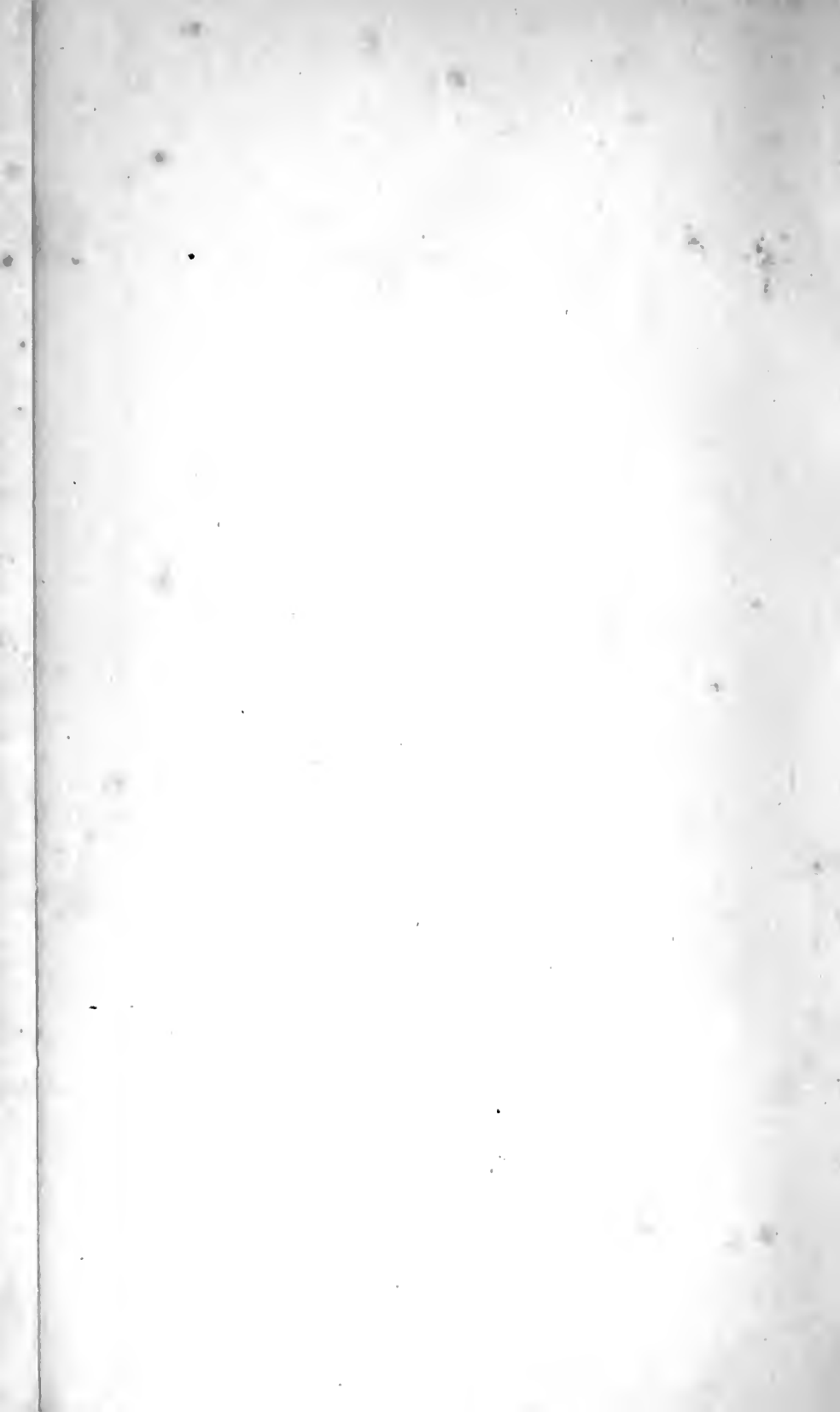


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63D CONGRESS : : 2D SESSION

DECEMBER 1, 1913-OCTOBER 24, 1914

SENATE DOCUMENTS

VOL. 15

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# DIPLOMATIC HISTORY OF THE PANAMA CANAL

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## CORRESPONDENCE

RELATING TO  
THE

NEGOTIATION AND APPLICATION OF CERTAIN  
TREATIES ON THE SUBJECT OF THE CONSTRUCTION OF AN INTEROCEANIC CANAL, AND  
ACCOMPANYING PAPERS



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1914

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**REPORTED BY MR. HITCHCOCK.**

IN THE SENATE OF THE UNITED STATES,  
*April 29, 1914.*

*Resolved*, That there be printed as a Senate document the message from the President of the United States, dated April twenty-fourth, nineteen hundred and fourteen, transmitting a report of the Secretary of State in relation to the negotiation and application of certain treaties on the subject of an interoceanic canal; the message of the President of the United States, dated November sixteenth, nineteen hundred and three, with accompanying papers, included in House Document Numbered Eight, parts one and two, Fifty-eighth Congress, first session; the message of the President of the United States, dated December eighteenth, nineteen hundred and three, with accompanying papers, included in Senate Document Numbered Fifty-one, Fifty-eighth Congress, second session; and certain letters from Jose Vicente Concha, the Colombian minister, and other papers, included in House Document Numbered Six hundred and eleven, Fifty-seventh Congress, first session; together with correspondence relating to said protocol, and that one thousand additional copies be printed for the use of the Senate.

Attest:

JAMES M. BAKER, *Secretary.*

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Copies of other pertinent documents and correspondence are added, as listed below, including the recent correspondence with Great Britain in regard to the interpretation of the Hay-Pauncefote treaty in connection with the levying of canal tolls.

Respectfully submitted,

W. J. BRYAN.

DEPARTMENT OF STATE,  
*Washington, April 23, 1914.*

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## CORRESPONDENCE SUBMITTED APRIL 23, 1914.

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### LETTERS OF TRANSMITTAL.

*To the Senate of the United States:*

I transmit herewith, in response to the resolution of the Senate of the 14th instant, a report of the Secretary of State, with accompanying papers, in relation to the negotiation and application of certain treaties on the subject of the construction of an interoceanic canal.

WOODROW WILSON.

THE WHITE HOUSE,  
*Washington, April 24, 1914.*

---

To the PRESIDENT:

The undersigned, Secretary of State, to whom was referred the resolution of the Senate adopted April 14, 1914, requesting the President—

if not incompatible with the public interest, to cause to be transmitted to the Senate all information, papers, correspondence, messages, dispatches, and records in the Department of State relative to the superseding of the Clayton-Bulwer treaty by the so-called Hay-Pauncefote treaty (signed November eighteenth, nineteen hundred and one), from the beginning of negotiations to this date, and also relative to said Hay-Pauncefote treaty; and also similar information, papers, correspondence, messages, etc., relative to the Hay-Bunau-Varilla treaty between the United States and Colombia—

has the honor to submit herewith a selection of correspondence, comprising all matters of record in the Department of State pertaining to the negotiation and interpretation of the Hay-Pauncefote treaty, as well as a copious selection of unrecorded personal letters bearing upon the provisions thereof which were exchanged between the Secretary of State and the negotiators of that treaty. In adding this unofficial correspondence it has been the desire of the undersigned to make the present compilation as completely as possible a full response to the wish of the Senate by furnishing to that body all accessible information tending to show the motives of the negotiators and their understanding of the provisions of the Hay-Pauncefote treaty.

As it appears from the proceedings in the Senate when the foregoing resolution was adopted that it was contemplated by that body that it should also be possessed of whatever correspondence took place between the United States and Great Britain in connection with the negotiation of the treaty between the United States and Colombia, there has been included in the subjoined collection of papers a selection of the documents of record concerning the attempted negotiation of a conventional adjustment of all matters pending between the United States and the respective Republics of Colombia and Panama.

With respect to the treaty negotiations with Colombia, thus called for by the resolution, a brief summary of the situation may not be amiss.

The convention commonly known as the "Hay-Bunau-Varilla" treaty was signed between the United States and Panama November 18, 1903, for the purpose of providing for the construction of a ship canal across the Isthmus of Panama. By its nineteenth article that convention stipulated the right of the Panaman Government to transport over the canal its vessels and its troops and munitions of war in such vessels without paying charges of any kind. This stipulation followed, *mutatis mutandis*, the text of article 17 of the unperfected Hay-Herran convention of January 22, 1903, with Colombia, it being appropriate that Panama, having succeeded to the territorial control of the canal route, should, as grantor, be given the privileges theretofore rightly due to Colombia when occupying the position of grantor.

Neither the Hay-Herran convention with Colombia nor the Hay-Bunau-Varilla convention with Panama called forth at the time any remonstrance from Great Britain on the score of the privileges offered originally to Colombia and subsequently granted to Panama in respect to the use of the canal by their Government vessels. It was not until six years later, when three treaties between the United States and the Republics of Colombia and Panama, respectively, and between Panama and Colombia, were negotiated with a view to the settlement of all differences growing out of the separation of Panama, that the Government of Great Britain gave attention to a provision found in article 2 of the Root-Cortes treaty of January 9, 1909 (unperfected), stipulating that:

The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war, and ships of war of the Republic of Colombia without paying any duty to the United States, even in case of an international war between Colombia and another country.

\* \* \* \* \*

The foregoing provisions of this article shall not, however, apply in case of war between Colombia and Panama.

This Root-Cortes treaty with Colombia received the advisory consent of the Senate March 3, 1909, but was not ratified by Colombia, and died at the expiration of the term fixed within which to exchange ratifications.

The correspondence herewith submitted had with Great Britain in regard to the exemption proposed to be granted to Colombia by the uncompleted treaty of 1909 shows the ground of the British objection, as well as the answer made thereto by Secretary Root, which elicited the declaration on behalf of Great Britain that—

His Majesty's Government consider that they can forego the making of such a protest as they had formerly contemplated and that they accept the assurance contained in your (Mr. Root's) note.

To the end of making the present compilation as complete as is practicable and with a view to the convenient examination of the subject in its entirety there are added copies of the Clayton-Bulwer treaty of July 5, 1850, and of the first Hay-Pauncefote treaty, signed February 5, 1900, which latter was subsequently replaced by the

# DIPLOMATIC HISTORY OF THE PANAMA CANAL.

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## PART I.

### PAPERS SUBMITTED.

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*Mr. Hay to Mr. White.*

No. 976.]

DEPARTMENT OF STATE,  
*Washington, December 7, 1898.*

SIR: You are probably aware that the commission appointed some time ago, under the chairmanship of Admiral Walker, to examine into the subject of the Nicaragua canal is approaching the completion of its labors and will soon be ready to report. They have gone into the subject with more care, patience, and accuracy than any preceding body which has examined it, and it is to be hoped that when the report is presented it will contain the elements for a final decision of the material problems involved. There is also a bill before the Senate, the result of great pains and research, which, if accepted by both branches of Congress, will open the way for the Government of the United States to take a more efficient part in the execution of this great enterprise than has hitherto been practicable. At the same time there is a growing conviction throughout the country that some definite action of the Government of the United States has now become necessary if the labors of the past are to be made useful and the linking of the Atlantic and the Pacific Oceans by a practicable waterway is to be realized. The events of the past year have made it more than ever necessary that some means of communication between the Atlantic and the Pacific should be at once accomplished. Such means of communication seem at this moment indispensable both for our commercial and national interests. Thus far the results which have been reached, both by way of research and experiment, are not such as to have convinced the President that the canal can be built by any private corporation unassisted by national encouragement or aid; nor is it evident as yet that the returns from the commercial use of such a waterway will for some time to come be adequate for its maintenance and for anything like sufficient interest on the vast amount of capital involved. The intervention of the Government seems, therefore, to be necessary if any practical result is to be achieved.

There has been, as you are aware, a great deal of discussion as to whether the provisions of the Clayton-Bulwer treaty actually stand in the way of any practical action by the Government of the United States in the construction and control of the canal. It is even held by many of our public men that the treaty is already obsolete and that it has been so treated and regarded by the action of both the

British and the American Governments. I do not wish at this moment to revive or to entertain any controversy upon these points. The President thinks it is more judicious to approach the British Government in a frank and friendly spirit of mutual accommodation, and to ask whether it may not be possible to secure such modification of the provisions of the Clayton-Bulwer treaty as to admit such action by the Government of the United States as may render possible the accomplishment of a work which will be for the benefit of the entire civilized world. The President hopes he may take it for granted that the British Government not only have no wish to prevent the accomplishment of this great work, but that they feel a lively interest in it and appreciate the fact that the benefits of its successful achievement will be to the advantage not only of England and America but of all commercial nations.

You will therefore take an early opportunity of conversing with Lord Salisbury upon this matter, of inviting his views in regard to the general situation, and of ascertaining whether he would prefer to let us know the inclinations of the British Government through you or empower Sir Julian Pauncefote to confer with me in regard to it, and, if possible, to come to an agreement which will be satisfactory and profitable to both countries.

I am, etc.,

JOHN HAY.

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*Mr. White to Mr. Hay.*

[Telegram.]

AMERICAN EMBASSY,  
London, December 21, 1898.

Prospects of agreement promising. Principal secretary of state for foreign affairs favorably impressed. Gratified by your dispatch which he pronounced admirable. He seems personally friendly, as I know Balfour is, to the construction of the canal, and admitted in strict confidence during our conversation that a work of such magnitude can only be undertaken by and under the auspices of a government; also that it is better such a canal should be under protection of a single power such as the United States than two or more. He willingly assented to negotiations being conducted through you and Pauncefote. Upon hearing that, I thought you would prefer it. Dispatch and private letter next Saturday bag.

WHITE.

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*Mr. White to Mr. Hay.*

[Telegram.]

AMERICAN EMBASSY,  
London, December 22, 1898.

I had an interview to-day with British minister for foreign affairs on the subject of your dispatch No. 976, which I read to him. He reciprocates very heartily the sentiments it contains; will confer with the board of trade and other departments concerned, and will instruct the British ambassador at Washington to confer with you with

a view to ascertaining the wishes and proposals of our Government and to meet them if possible. He said nothing indicative of opposition, much less hostility, on the part of Her Majesty's Government to the construction of the canal, and I do not believe if it is to be open to all nations on equal terms that there will be any serious difficulty in effecting an agreement satisfactory to both nations.

WHITE.

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*Mr. White to Mr. Hay.*

No. 613]

AMERICAN EMBASSY,  
*London, December 22, 1898.*

SIR: Referring to your instruction numbered 976, of the 7th instant, relative to the proposed Nicaragua Canal and the Clayton-Bulwer treaty, I have the honor to inform you that I had an interview yesterday with the Marquis of Salisbury on the subject.

I read your instruction to his lordship, but did not leave a copy with him. He was evidently gratified at the frank and friendly spirit of mutual accommodation in which you had instructed me to approach Her Majesty's Government, and requested me to inform you that he reciprocated your sentiments very heartily.

Upon my asking him for an expression of his views in the matter, Lord Salisbury said that before complying with my request he would like to know the wishes and proposals of my Government, and exactly what modifications we should like brought about in the Clayton-Bulwer treaty. He added that in any case it would be necessary for him, before expressing an opinion on the subject in behalf of Her Majesty's Government, to consult the board of trade and other departments concerned.

I suggested that the best and most expeditious way to ascertain the views of my Government would be for him to authorize Her Majesty's ambassador at Washington to confer with you in reference thereto, an opinion in which he concurred, and said that he would communicate immediately by telegraph with Sir Julian Pauncefote, which, later in the day, he informed me he had done.

A brief informal conversation followed, during which Lord Salisbury said nothing to lead me to suppose that he is unfavorably disposed—much less hostile—to the construction of the canal under our auspices, provided it is to be open to the ships of all countries on equal terms.

I am inclined to think that the construction of the Nicaragua Canal will be viewed with favor by the people of this country, and consequently that we are not likely to encounter any serious difficulty on the part of the British Government in respect to such modifications as may be necessary, to enable us to make it, in the Clayton-Bulwer treaty; the more so, as, since the construction of the Suez Canal, that of Nicaragua will no longer have the same importance for the British Empire which it had when the treaty in question was negotiated.

In this connection I inclose an article which appeared in the London Spectator of the 10th instant, and which embodies the opinion, I think, of a very considerable majority of those who have given the matter their attention in this country.

I inclose also the translation of a cablegram which I sent you in cipher yesterday after my interview with the Marquis of Salisbury. I have, etc.,

HENRY WHITE.

[Inclosure to No. 613.]

[From the Spectator, December 10, 1898.]

THE NICARAGUA CANAL.

We pointed out at the end of last summer that it could not be long before our statesmen would have to bring their minds to bear upon the question of the Nicaragua Canal and the Clayton-Bulwer treaty, and this is exactly what has happened. The assertion by the President of the United States in his message to Congress that "the construction [of the Nicaragua Canal] is now more than ever indispensable, and our policy more imperatively than ever calls for its control by this Government," has at once brought the matter within the region of practical politics. We make no claim to any special prescience in the matter. The Americans have always longed for an interoceanic canal, and it was evident that directly they had acquired possessions in the West Indies opposite the coasts of Central America, and also an island empire in the Pacific, they would desire to link them by water communication. A revival of interest in the Nicaragua Canal was thus an inevitable sequence of the war. But the Americans can not obtain that control over the Nicaragua Canal which they desire unless we are willing to abandon our rights under the Clayton-Bulwer treaty—an instrument under which both powers bound themselves not to obtain an exclusive control over any interoceanic canal. We and the Americans, that is, agreed some 48 years ago that a canal should only be made and controlled by the two powers acting together, and in no case by either power singly. Thus, if we choose we can no doubt veto the making of the canal and prevent the Americans doing what they so very much want to do. The people of this country have, therefore, to consider whether they will or will not veto the canal. We are glad to see already a good many indications that we do not intend to exercise our right of veto. The Times in its leading article on the President's message uses words which will, we believe, be indorsed not only by the Government but by the majority of English people.

The Times says, most reasonably, that "if the freedom of the waterway were secured to ships of all nations, as in the case of the Suez Canal, we do not see what object we should have in standing strictly upon claims which originated when the circumstances were altogether different." Not less statesmanlike has been the tone adopted by the St. James Gazette. It has, however, been suggested by the Daily Mail, on the other hand, that we ought not to give up our rights, and that we should insist upon a joint control of the waterway. We do not think, however, that this contention will, if it is carefully examined, find favor here. Joint control, in the first place, means joint guaranties and joint expenditure, and we do not believe that the people of this country are prepared to spend money in Nicaragua. We have plenty of objects nearer home on which to



use our spare cash. When we can get all we want out of an inter-oceanic canal controlled by America, why should we burden ourselves in the matter? The United States, as the power most nearly and vitally interested, may think it worth while to construct or help construct the canal, but our interests do not extend so far. All we want is that the canal shall be made, and that when it is made it shall be open and available to our merchant ships and ships of war as freely as to those of the United States or of other powers. We merely want an open waterway that no one will be able to tamper with. Now, our contention is that we secure this object better through American control than by any other means. Indeed, if America holds the canal it will be of more use to us in time of war than if we held it ourselves. Supposing the canal ours or merely the property of Nicaragua, a hostile power might block it in the first instance as our property, and in the second, in defiance of a weak State. If, however, it is controlled by America, we need have no fear of being unable to use it, for it will be in hands strong enough to defend it. Take the case of a war with France, Russia, and Germany, and the canal in the hands of the United States. In such a case we might be hard pressed and should find it most convenient to be able to pass our ships through the canal without having to guard its two mouths by protecting squadrons. The canal would be a great neutral harbor with two outlets. Only in the case of war with the United States would American control be anything but a benefit.

But even in that case we doubt whether American control would be worse than joint control. The command of the sea would have to be fought out, and the canal would fall to the victor as the prize. We fail, then, to see why we should make ourselves disagreeable to the Americans by vetoing the canal. Rather we hold that we ought to look with the greatest possible satisfaction upon its construction. What is meant by "control" is a matter which requires attention. An able American publicist, Prof. Woolsey, of Yale, in his work on America's Foreign Policy, recently published by the Century Co., of New York, has argued, and with considerable force and ingenuity, that America would gain nothing by exclusive control, and that she had much better claim no more rights in the canal than those given to any other power. Possibly he is right in theory, but in practice some one power will always have the control of any piece of territory, and so of every artificial waterway. It was intended, it will be remembered, that the Suez Canal should be neutralized, and Mr. Woolsey, making a most pardonable blunder, imagines that it was neutralized. In reality the neutrality convention was never brought into force and is now a dead letter, as the Spaniards found when they tried to coal their fleet at Port Said. They claimed to regard the Suez Canal as an international piece of water, but Lord Cromer insisted, and maintained his point, that it was part of the waters of a neutral power. The Suez Canal is not internationalized but is under the control of the power that controls Egypt. It is this kind of control, we take it, that America intends to exercise. What we suppose will happen is something of this kind: Congress will refuse to vote money to be used anywhere except in United States territory, and accordingly a narrow strip of land on each side of the proposed

waterway will be granted by Nicaragua and Costa Rica. If this is the plan ultimately adopted there will, of course, be no need of a protectorate treaty with Nicaragua. The canal will be made in United States territory.

We come now to the practical side of the question. What answer are we to make to America if, or rather when, she asks us to agree to the abrogation of the Clayton-Bulwer treaty? It has been suggested that we should ask for compensation elsewhere or try to make a bargain for trade facilities. Possibly the plan might succeed, but we confess we dislike such huckstering between nations, especially when they involve demands upon a nation's internal fiscal policy. We hold that it would not only be more dignified, but also more beneficial to us in the long run, to ask for no payment for giving up what has as a matter of fact proved merely a sort of double-barreled agreement by England and America to play dog in the manger to each other. We would rather abrogate the treaty out of good will and good feeling than for any direct quid pro quo. Let us show the world that, though in the case of foreigners we shall be tenacious of our treaty rights to the last iota, we can in the case of our own kith and kin think of their interests and wishes as well as of our own. The only conditions which we would make should concern the canal itself. We would abrogate the treaty on the following terms:

(1) That within the next 10 years the United States should make or obtain the making of an interoceanic canal; (2) that she and no other power should exercise control over the waterway and banks of the canal; (3) that if the United States ever abandoned her power of control it should be offered first to Great Britain; (4) that the canal should be open at all times to all nations at peace with the United States; (5) that the dues charged should be the same in the case of American and other vessels. If the United States were to agree, as they believe they would, to such terms as these we could have no possible ground for refusing to give up our rights under the Clayton-Bulwer treaty. That treaty was, no doubt, sincerely meant on both sides to be an act of friendship. It has turned out to be at the best an instrument of mortmain; at the worst, a troublesome cause of friction; and it should, therefore, be got rid of.

The "force of circumstances" is often the most ironical of goddesses, but sometimes she brings about things which are curiously fitting and appropriate. When one-half of the Anglo-Saxon race holds the waterway between the Mediterranean and the Indian Ocean, what could be more appropriate than that the other half should hold that between the Atlantic and Pacific? When the Americans hold Lake Nicaragua as we held Lake Timsah the wheel will have come full circle. It is not for us to delay but to hasten that auspicious hour.

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*Mr. Hay to Mr. Choate.*

No. 518.]

DEPARTMENT OF STATE,  
*Washington, December 22, 1900.*

SIR: I have to inform you that the Senate by its resolution of December 20, 1900, has given its advice and consent to the ratification of the convention signed at Washington on February 5, 1900, by

the respective plenipotentiaries of the United States and Great Britain, to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans and to remove any obstacle which might arise out of the convention commonly called the Clayton-Bulwer treaty, with the following amendments:

1. After the words "Clayton-Bulwer convention" and before the word "adopt," in the preamble of Article II, the words "which convention is hereby superseded" are inserted.

2. A new paragraph is added to the end of section 5 of Article II, in the following language:

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered one, two, three, four, and five of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

3. Article III, reading—

The high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers and invite them to adhere to it—

is stricken out.

4. Article IV is made Article III.

I inclose a printed copy of the convention as signed and a typewritten copy of it showing its reading as amended by the Senate.

You will bring the amendments to the notice of the British Government, and express the hope that they will be found acceptable to it.

You may at the same time state that the supplementary convention which I signed with Lord Pauncefote May 5 last, prolonging the time within which the ratifications of the convention of February 5, 1900, shall be exchanged, for a period of seven months from August 5, 1900, has been consented to by the Senate without amendment.

I am, sir, etc.,

JOHN HAY.

*Mr. Hay to Lord Pauncefote.*

No. 2013.]

DEPARTMENT OF STATE,  
Washington, December 22, 1900.

EXCELLENCY: I have the honor to inform you that the Senate, by its resolution of December 20, 1900, has given its advice and consent to the ratification of the convention signed at Washington on February 5, 1900, by the respective plenipotentiaries of the United States and Great Britain, to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans and to remove any objection which might arise out of the convention commonly called the Clayton-Bulwer treaty, with the following amendments:

1. After the words "Clayton-Bulwer convention" and before the word "adopt," in the preamble of Article II, the words "which convention is hereby superseded" are inserted.

2. A new paragraph is added to the end of section 5 of Article II, in the following language:

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered one, two, three, four, and five of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

## 3. Article III, reading—

The high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers and invite them to adhere to it—

is stricken out.

## 4. Article IV is made Article III.

I inclose a printed copy of the convention as signed and a typewritten copy of it showing its reading as amended by the Senate.

I have instructed Mr. Choate to express to the Marquis of Lansdowne this Government's hope that the amendments will be found acceptable to that of Her Majesty.

The supplementary convention which I signed with you on May 5 last, prolonging the time within which the ratifications of the convention of February 5, 1900, shall be exchanged, for a period of seven months, from August 5, 1900, has been consented to by the Senate without amendment.

I have, etc.,

JOHN HAY.

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*Lord Pauncefote to Mr. Hay.*

No. 379.]

BRITISH EMBASSY,  
*Washington, December 26, 1900.*

SIR: I have the honor to acknowledge the receipt of your note No. 2013 of the 22d instant, apprising me for the information of my Government that the United States Senate, by its resolution of December 20, has given its advice and consent to the ratification with certain amendments of the convention signed at Washington on February 5 last by the plenipotentiaries of Great Britain and the United States to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to remove any objections which might arise out of the convention commonly called the "Clayton-Bulwer treaty"; and inclosing copies of the treaty as originally signed and as amended.

I have the honor to express to you my thanks for this communication, a copy of which, with its inclosures, I forwarded by yesterday's mail to Her Majesty's principal secretary of state for foreign affairs.

I have, etc.,

PAUNCEFOTE.

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*Mr. Hay to Mr. Choate.*

[Telegram.]<sup>1</sup>

Confidential.]

DEPARTMENT OF STATE,  
*Washington, December 29, 1900.*

The British press and a portion of ours seem to think the prohibition fortification was stricken out of the treaty. This is altogether erroneous. The clause forbidding fortification remains intact, as well as the provisions for neutrality.

HAY.

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<sup>1</sup> This refers to the first convention, which was amended by the Senate and never ratified.

*Mr. Choate to Mr. Hay.*

[Telegram.]

AMERICAN EMBASSY,  
*London, January 11, 1901.*

Have seen Lord Lansdowne, and told him I was instructed not to press further proposals regarding indemnity and commercial treaties. He fully concurs with you as to danger from delay and in desire to conclude negotiations. I communicated to him on the 4th Senate's amendments to Nicaraguan treaty; expressed hope that they would be found acceptable, and, in furtherance of that hope, asked that when ready to take them up for consideration he would give me an opportunity to confer with him fully. He has named Monday next for that purpose. Have you any further suggestions?

CHOATE.

*Mr. Choate to Mr. Hay.*

No. 479.]

AMERICAN EMBASSY,  
*London, January 12, 1901.*

SIR: With reference to your instruction No. 518, dated the 22d ultimo, relating to the Nicaragua canal treaty, I have the honor to inclose herewith a copy of my note to Lord Lansdowne, dated the 4th instant, and also a translation of my cipher telegram to you, dated the 11th instant.

A copy of my note to Lord Lansdowne should have gone with last Wednesday's dispatch bag but was inadvertently omitted.

I have, etc.,

JOSEPH H. CHOATE.

[Inclosure to No. 479.]

*Mr. Choate to Lord Lansdowne.*

AMERICAN EMBASSY,  
*London, January 4, 1901.*

MY LORD: I have the honor to bring to your lordship's attention the fact that the Senate of the United States has given its advice and consent to the ratification of the convention signed at Washington on the 5th of February, 1900, by the respective plenipotentiaries of the United States and Great Britain, to facilitate the construction of a ship canal between the Atlantic and Pacific Oceans, and to remove any obstacle which might arise out of the convention, commonly called the Clayton-Bulwer treaty, with the following amendments, viz:

1. After the words "Clayton-Bulwer convention" and before the word "adopt," in the preamble of Article II, the words "which convention is hereby superseded" are inserted.

2. A new paragraph is added to the end of section 5 of Article II, in the following language:

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered one, two, three, four, and five of this article

shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

3. Article III, reading—

The high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers and invite them to adhere to it—

is stricken out.

4. Article IV is made Article III.

In bringing these amendments to the attention of Her Majesty's Government, I am instructed to express the hope that they will be found acceptable to them; and, in furtherance of that hope, I should be greatly obliged if your lordship, when ready to take up the matter for consideration, will give me an opportunity to confer with you fully.

I inclose typewritten copies of the convention as signed, and also as amended by the Senate.

I am also instructed to inform your lordship that the supplementary convention, which was signed by the Secretary of State and Her Majesty's ambassador at Washington, on the 5th of May last, prolonging the time within which the ratification of the convention of February 5, 1900, shall be exchanged for a period of seven months, from August 5, 1900, has been consented to by the Senate without amendment.

I have, etc.,

JOSEPH H. CHOATE.

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*Mr. Hay to Mr. Choate.*

DEPARTMENT OF STATE,  
Washington, January 25, 1901.

MY DEAR MR. CHOATE: This being mail day and Cabinet day, I have only one instant, not to answer, but to acknowledge your letter of the 15th of January,<sup>1</sup> which I have read with the greatest interest, and I need not say with the fullest approval of the admirable way in which you presented the matter to Lord Lansdowne. It could not have been better done, though that is a matter of course about everything you do.

I am extremely anxious that the British Government may see their way clear to accepting the treaty as amended, for reasons which I have already mentioned to you. We should have the greatest difficulty in getting any new or modified arrangement through the Senate.

Yours, faithfully,

JOHN HAY.

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*Mr. Hay to Mr. Choate.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, February 16, 1901.

I take it for granted you and Lord Lansdowne have not overlooked the fact that the canal convention expires by limitation unless rati-

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<sup>1</sup> Not on State Department files.

fied by the 5th of March, and failure to act promptly is now equivalent to a rejection of the amended treaty. I have conversed seriously with Lord Pauncefote. He seems to share my opinion, and has doubtless communicated his point of view to the foreign office. You have so admirably stated the case to Lord Lansdowne in former interviews that I have no additional suggestions to make.

HAY.

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*Mr. Choate to Mr. Hay.*

[Telegram.]

Confidential.]

AMERICAN EMBASSY,  
*London, February 19, 1901.*

Interview with the minister for foreign affairs to-day as to canal treaty. Last week when he said he was not yet ready to talk I asked him if he bore in mind that unless something was done before the 4th of March the treaty would then fall through by its own limitation. He said he was well aware of that. To-day he was still not ready to talk yet, and was quite unwilling to be pressed or to discuss the matter, but he said he expected to be ready in a few days to speak of it. Cabinet meeting next Friday, after which he hoped to be more free to talk. Do not think he means to let time run out without doing anything.

CHOATE.

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*The Marquis of Lansdowne to Lord Pauncefote.*

[Handed to the Secretary of State by the British ambassador.]

FOREIGN OFFICE, *February 22, 1901.*

MY LORD: The American ambassador has formally communicated to me the amendments introduced by the Senate of the United States into the convention, signed at Washington in February last, to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans.

These amendments are three in number, namely:

1. The insertion in Article II, after the reference to Article VIII, of the Clayton-Bulwer convention, of the words "which convention is hereby superseded."

2. The addition of a new paragraph after section 5 of Article II in the following terms:

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4, and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

3. The excision of Article III, which provides that—

The high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of other powers and invite them to adhere to it.

Mr. Choate was instructed to express the hope that the amendments would be found acceptable by Her Majesty's Government.

It is our duty to consider them as they stand, and to inform your excellency of the manner in which, as the subject is now presented to us, we are disposed to regard them.

It will be useful, in the first place, to recall the circumstances in which negotiations for the conclusion of an agreement supplementary to the convention of 1850, commonly called the Clayton-Bulwer treaty, were initiated.

So far as Her Majesty's Government were concerned, there was no desire to procure a modification of that convention. Some of its provisions had, however, for a long time past been regarded with disfavor by the Government of the United States, and in the President's message to Congress of December, 1898, it was suggested, with reference to a concession granted by the Government of Nicaragua, that some definite action by Congress was urgently required if the labors of the past were to be utilized and the linking of the Atlantic and Pacific Oceans by a practical waterway was to be realized. It was further urged that the construction of such a maritime highway was more than ever indispensable to that intimate and ready intercommunication between the eastern and western seabords of the United States demanded by the annexation of the Hawaiian Islands and the prospective expansion of American influence and commerce in the Pacific, and that the national policy called more imperatively than ever for the "control" of the projected highway by the Government of the United States.

This passage in the message having excited comment, your excellency made inquiries of the Secretary of State in order to elicit some information as to the attitude of the President. In reply, the views of the United States Government were very frankly and openly explained. You were also most emphatically assured that the President had no intention whatever of ignoring the Clayton-Bulwer convention, and that he would loyally observe treaty stipulations. But in view of the strong national feeling in favor of the construction of the Nicaragua Canal and of the improbability of the work being accomplished by private enterprise, the United States Government were prepared to undertake it themselves upon obtaining the necessary powers from Congress. For that purpose, however, they must endeavor, by friendly negotiation, to obtain the consent of Great Britain to such a modification of the Clayton-Bulwer treaty as would, without affecting the "general principle" therein declared, enable the great object in view to be accomplished for the benefit of the commerce of the world. Although the time had hardly arrived for the institution of formal negotiations to that end, Congress not having yet legislated, the United States Government, nevertheless, were most anxious that your excellency should enter at once into pourparlers with a view to preparing, for consideration, a scheme of arrangement.

Her Majesty's Government agreed to this proposal, and the discussions which took place in consequence resulted in the draft convention which Mr. Hay handed to your excellency on the 11th January, 1899.

At that time the joint high commission over which the late Lord Herschell presided was still sitting. That commission was appointed in July, 1898, to discuss various questions at issue between Great Britain and the United States, namely, the fur-seal fishery, the



fisheries off the Atlantic and Pacific coasts, the Alaskan boundary, alien-labor laws, reciprocity, transit of merchandise, mining rights, naval vessels on the Great Lakes, definition and marking of frontiers, and conveyance of persons in custody. But serious difficulties had arisen in the attempt to arrive at an understanding, and it had become doubtful whether any settlement would be effected.

In reply, therefore, to a request for a speedy answer with regard to the convention, the Marquis of Salisbury informed Mr. White, the American chargé d'affaires, that he could not help contrasting the precarious prospects and slowness of the negotiations which were being conducted by Lord Herschell with the rapidity of decision proposed in the matter of the convention. Her Majesty's Government might be reproached with having come to a precipitate agreement on a proposal which was exclusively favorable to the United States, while they had come to no agreement at all on the controversy where there was something to be conceded on both sides.

Shortly afterwards Lord Herschell intimated that the difficulties in regard to the question of the Alaskan boundary seemed insuperable, and that he feared it might be necessary to break off the negotiations of which he had hitherto had the charge. Upon this Lord Salisbury informed Mr. White that he did not see how Her Majesty's Government could sanction any convention for amending the Clayton-Bulwer treaty, as the opinion of this country would hardly support them in making a concession which would be wholly to the benefit of the United States, at a time when they appeared to be so little inclined to come to a satisfactory settlement in regard to the Alaskan frontier.

The last meeting of the joint high commission took place on the 20th February, 1899. Except for the establishment of a *modus vivendi* on the Alaskan frontier, no progress has been made since that date toward the adjustment of any of the questions which the high commissioners were appointed to discuss.

It was in these circumstances that the proposal for a canal convention was revived at the beginning of last year.

On the 21st January your lordship reported that a bill, originally introduced in 1899, had been laid before Congress, empowering the President to acquire from the Republics of Costa Rica and Nicaragua the control of such portion of territory as might be desirable or necessary, and to direct the Secretary of War, when such control had been secured, to construct the canal and make such provisions for defense as might be required for the safety and protection of the canal and the terminal harbors.

It was probable that the bill would be passed, and it was clear that additional embarrassment would be caused by an enactment opposed to the terms of the proposed convention and in direct violation of the Clayton-Bulwer treaty. On the other hand, your lordship's information led to the confident expectation that the convention as signed would, if agreed to by Her Majesty's Government, be ratified by the Senate.

In these circumstances Her Majesty's Government consented to reopen the question, and, after due consideration, determined to accept the convention unconditionally, as a signal proof of their friendly disposition and of their desire not to impede the execution

of a project declared to be of national importance to the people of the United States.

Your excellency stated that the United States Government expressed satisfaction at this happy result and appreciation of the conciliatory disposition shown by Her Majesty's Government.

The convention was forthwith submitted to the Senate for ratification, and on the 9th March the committee charged with its examination reported in favor of ratification, with the insertion, subsequently adopted, after section 5 of Article II, of a paragraph containing provision that the rules laid down in the preceding sections should not apply to measures for the defense of the United States by its own forces and the maintenance of public order. This alteration was discussed by the Senate in secret session on the 5th April, but no vote was taken upon it nor upon the direct question of ratification.

The bill empowering the President to construct and provide for the defense of the canal passed the House of Representatives by a large majority on the 2d of May. The Senate, however, postponed consideration of the bill, although favorably reported by the Committee on Inter-oceanic Canals.

After the recess, during which the presidential election took place, the discussion was resumed in the Senate. On the 20th of December the vote was taken, and resulted in the ratification of the convention with the three amendments which have been presented for the acceptance of His Majesty's Government.

The first of these amendments, that in Article II, declares the Clayton-Bulwer treaty to be "hereby superseded."

Before attempting to consider the manner in which this amendment will, if adopted, affect the parties to the Clayton-Bulwer treaty, I desire to call your excellency's attention to a question of principle which is involved by the action of the Senate at this point.

The Clayton-Bulwer treaty is an international contract of unquestionable validity, a contract which, according to well-established international usage, ought not to be abrogated or modified, save with the consent of both the parties to the contract. In spite of this usage, His Majesty's Government find themselves confronted by a proposal communicated to them by the United States Government, without any previous attempt to ascertain their views, for the abrogation of the Clayton-Bulwer treaty.

The practical effect of the amendment can best be understood by reference to the inclosed copy of the articles of the treaty, Nos. I and VI, which, assuming that the United States Government would undertake all the obligations imposed by Article IV of the treaty, contain the only provisions<sup>1</sup> not replaced by new provisions covering the same ground, in the convention.

Under Article I of the Clayton-Bulwer treaty the two powers agreed that neither would occupy or fortify or colonize, or assume or exercise any dominion over any part of Central America, nor attain any of the foregoing objects by protection afforded to or alliance with any State or people of Central America. There is no similar agreement in the convention. If, therefore, the treaty were wholly abrogated, both powers would, except in the vicinity of the canal,

<sup>1</sup> Printed in italics.

recover entire freedom of action in Central America. The change would certainly be of advantage to the United States, and might be of substantial importance.

Under the other surviving portion of the treaty (part of Article VI) provision is made for treaties with the Central American States in furtherance of the object of the two powers and for the exercise of good offices should differences arise as to the territory through which the canal will pass. In this case abrogation would, perhaps, signify but little to this country. There is nothing in the convention to prevent Great Britain from entering into communication, or exercising good offices, with the Central American States, should difficulties hereafter arise between them and the United States.

The other two amendments present more formidable difficulties.

The first of them, which reserves to the United States the right of taking any measures which it may find necessary to secure by its own forces the defense of the United States, appears to His Majesty's Government to involve a distinct departure from the principle which has until now found acceptance with both Governments—the principle, namely, that in time of war as well as in time of peace the passage of the canal is to remain free and unimpeded, and is to be so maintained by the power or powers responsible for its control.

Were this amendment added to the convention the United States would, it is presumed, be within their rights, if at any moment when it seemed to them that their safety required it, in view of warlike preparations not yet commenced, but contemplated or supposed to be contemplated by another power, they resorted to warlike acts in or near the canal—acts clearly inconsistent with the neutral character which it has always been sought to give it, and which would deny the free use of it to the commerce and navies of the world.

It appears from the report of the Senate committee that the proposed addition to Article II was adopted from Article X of the Suez Canal convention, which runs as follows:

Similarly, the provisions of Articles IV, V, VII, and VIII,<sup>1</sup> shall not interfere with the measures which His Majesty the Sultan and His Highness the Khedive, in the name of His Imperial Majesty, and within the limits of the firmans granted, might find it necessary to take for securing by their own forces the defense of Egypt and the maintenance of public order.

In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this article provides, the signatory powers of the declaration of London shall be notified thereof by the Imperial Ottoman Government.

It is likewise understood that the provisions of the four articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to insure by its own forces the defense of its other possessions situated on the eastern coast of the Red Sea.

It is, I understand, contended in support of the Senate amendment that the existence of the above provisions in the Suez Canal conven-

<sup>1</sup> Article IV guarantees that the Maritime Canal shall remain open in time of war as a free passage even to the ships of war of belligerents, and regulates the revictualing, transit, and detention of such vessels in the canal.

Article V regulates the embarkation and disembarkation of troops, munitions or materials of war by belligerent powers in time of war.

Article VII prohibits the powers from keeping any vessel of war in the waters of the canal.

Article VIII imposes on the agents of the signatory powers in Egypt the duty of watching over the execution of the treaty and taking measures to secure the free passage of the canal.

tion justifies the demand now made for the insertion of analogous provisions in regard to the proposed Nicaragua Canal.

But the analogy which it has attempted to set up fails in one essential particular. The banks of the Suez Canal are within the dominions of a territorial sovereign, who was a party to the convention, and whose established interests it was necessary to protect, whereas the Nicaragua Canal will be constructed in territory belonging not to the United States, but to Central American States, of whose sovereign rights other powers can not claim to dispose.

Moreover, it seems to have escaped attention that Article X of the Suez Canal convention receives most important modification from Article XI, which lays down that "the measures which shall be taken in the cases provided for by Articles IX and X of the present treaty shall not interfere with the free use of the canal." The article proceeds to say that "in the same cases, the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited."

The last paragraph of Article VIII, which is specially alluded to, runs as follows:

They [i. e., the agents of the signatory powers in Egypt] shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

The situation which would be created by the addition of the new clause is deserving of serious attention. If it were to be added, the obligation to respect the neutrality of the canal in all circumstances would, so far as Great Britain is concerned, remain in force; the obligation of the United States, on the other hand, would be essentially modified. The result would be a one-sided arrangement under which Great Britain would be debarred from any warlike action in or around the canal, while the United States would be able to resort to such action to whatever extent they might deem necessary to secure their own safety.

It may be contended that if the new clause were adopted, section 7 of article 2, which prohibits the erection of fortifications, would sufficiently insure the free use of the canal. This contention is, however, one which His Majesty's Government are quite unable to admit. I will not insist upon the dangerous vagueness of the language employed in the amendment, or upon the absence of all security as to the manner in which the words might, as some future time, be interpreted. For even if it were more precisely worded, it would be impossible to determine what might be the effect if one clause permitting defensive measures and another forbidding fortifications were allowed to stand side by side in the convention. To His Majesty's Government it seems, as I have already said, that the amendment might be construed as leaving it open to the United States at any moment, not only if war existed, but even if it were anticipated, to take any measures, however stringent or far-reaching, which, in their own judgment, might be represented as suitable for the purpose of protecting their national interests. Such an enactment would strike at the very root of that "general principle" of neutralization upon which the Clayton-Bulwer treaty was based, and which was reaffirmed in the convention as drafted.

But the import of the amendment stands out in stronger relief when the third proposal is considered. This strikes out article 3

of the convention, under which the high contracting parties engaged, immediately upon the convention being ratified, to bring it to the notice of other powers and to invite their adherence. If that adherence were given, the neutrality of the canal would be secured by the whole of the adhering powers. Without that adherence it would depend only upon the guaranty of the two contracting powers. The amendment, however, not only removes all prospect of the wider guaranty, but places this country in a position of marked disadvantage, compared with other powers which would not be subject to the self-denying ordinance which Great Britain is desired to accept. It would follow, were His Majesty's Government to agree to such an arrangement, that while the United States would have a treaty right to interfere with the canal in time of war, or apprehended war, and while other powers could with a clear conscience disregard any of the restrictions imposed by the convention, Great Britain alone, in spite of her enormous possessions on the American continent, in spite of the extent of her Australasian colonies and her interests in the East, would be absolutely precluded from resorting to any such action, or from taking measures to secure her interests in and near the canal.

I request that your excellency will explain to the Secretary of State the reasons, as set forth in this dispatch, why His Majesty's Government feel unable to accept the convention in the shape presented to them by the American ambassador, and why they prefer, as matters stand at present, to retain unmodified the provisions of the Clayton-Bulwer treaty. His Majesty's Government have, throughout these negotiations, given evidence of their earnest desire to meet the views of the United States. They would on this occasion have been ready to consider in a friendly spirit any amendments of the convention, not inconsistent with the principles accepted by both Governments, which the Government of the United States might have desired to propose, and they would sincerely regret a failure to come to an amicable understanding in regard to this important subject.

Your lordship is authorized to read this dispatch to the Secretary of State and to leave a copy in his hands.

I am, etc.,

LANSDOWNE.

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[Inclosure.]

Articles I and VI of convention between Her Majesty and the United States of America relative to the establishment of a communication by ship canal between the Atlantic and Pacific Oceans, signed at Washington, April 19, 1850:

#### ARTICLE I.

The Governments of Great Britain and the United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship canal; *agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either*

*make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America, or of assuming or exercising dominion over the same. Nor will Great Britain or the United States take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any State or Government through whose territory the said canal may pass for the purpose of acquiring or holding, directly or indirectly, for the subjects or citizens of the one, any rights or advantages in regard to commerce or navigation through the said canal, which shall not be offered, on the same terms, to the subjects or citizens of the other.*

#### ARTICLE VI.

The contracting parties in this convention engage to invite every State with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other to the end that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated; *and the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations; and should any differences arise as to right or property over the territory through which the said canal shall pass between the States or Governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of Great Britain and the United States will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.*

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*Mr. Hay to Mr. Choate.*

[Confidential—Telegram.]

DEPARTMENT OF STATE.

*Washington, March 13, 1901.*

Lord Lansdowne answer has been received. Paragraph beginning "no indication" is inadmissible. We have protested against it, and British ambassador is in correspondence with foreign office. Keep the whole matter absolutely confidential.

HAY.

(Cable refers to Lord Lansdowne's note to Lord Pauncefoot of February 22, 1901.)

*Mr. Hay to Mr. Choate.*

(Telegram.)

DEPARTMENT OF STATE,  
*Washington, March 15, 1901.*

Paragraph is omitted at our request. Most confidential.

HAY.

*Mr. Hay to Lord Pauncefote.*

No. 2119.]

DEPARTMENT OF STATE,  
*Washington, March 25, 1901.*

EXCELLENCY: I have the honor to acknowledge the receipt of the instruction of Lord Lansdowne to your excellency bearing date the 22d of February and delivered to me on the 11th of March.

As the convention of the 5th of February, 1900, expired by limitation on the 5th of this month in default of ratification, I shall not at this moment enter into any examination of the considerations which have induced His Majesty's Government to decline to accept the convention as amended by the Senate.

Referring to the passage of Lord Lansdowne's note in which he says His Majesty's Government "would sincerely regret a failure to come to an amicable understanding in regard to this important subject," I have the honor to say I am directed by the President to seek an early opportunity to converse with your excellency in regard to a possible basis of agreement.

I have, etc.,

JOHN HAY.

CORRESPONDENCE RESPECTING THE TREATY SIGNED AT WASHINGTON NOVEMBER 18, 1901. RELATIVE TO THE ESTABLISHMENT OF A COMMUNICATION BY SHIP CANAL BETWEEN THE ATLANTIC AND PACIFIC OCEANS.

[Printed in British Blue Book. "United States, 1902, No. 1."]

No. 1.

*Lord Pauncefote to the Marquis of Lansdowne.*

WASHINGTON, *April 25, 1901.*

MY LORD: Since the rejection by His Majesty's Government of the amendments introduced by the Senate in the Interoceanic Canal Convention of the 5th of February, 1900, Mr. Hay has been engaged in framing a new draft, which, as I understand, he has drawn up after consultation with prominent Senators, and which he trusts will be acceptable to His Majesty's Government.

Mr. Hay has handed me a copy of the draft, which I have the honor to forward herewith for your lordship's consideration.

I have, etc.,

PAUNCEFOTE.

[Inclosure No. 1.]

*Draft of convention relative to the construction of an interoceanic canal.*

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objection which may arise out of the convention of the 19th April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that convention, have for that purpose appointed as their plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And His Majesty the King of Great Britain and Ireland, Emperor of India, the Right Honorable Lord Pauncefote, G. C. B., G. C. M. G., His Majesty's ambassador extraordinary and plenipotentiary to the United States;

Who, having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following articles:

## ARTICLE I.

The high contracting parties agree that the present convention shall supersede the aforementioned convention of the 19th of April, 1850.

## ARTICLE II.

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present convention, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

## ARTICLE III.

The United States adopts as the basis of the neutralization of said ship canal the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal; that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic or otherwise.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.



3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal except in case of accidental hinderance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such water longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purpose of this convention, and in time of war as in time of peace shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

#### ARTICLE IV.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within ——— months from the date hereof.

In faith whereof the respective plenipotentiaries have signed this convention, and thereunto affixed their seals.

Done, in duplicate, at Washington the ——— day of ———, in the year of our Lord one thousand nine hundred and one.

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*Mr. Hay to Mr. Choate.*

[Extract from a private, personal letter not of record.]

DEPARTMENT OF STATE,  
*Washington, April 27, 1901.*

Private and personal.]

MY DEAR MR. CHOATE: I seize an instant in my last hurried day before starting West with the President to send you the inclosed project for a convention between the United States and Great Britain, to take the place of the extinct Hay-Pauncefote treaty, so called.<sup>1</sup>

I have drawn this up with very great care, after serious and extended conversations with Lord Pauncefote and with leading Mem-

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<sup>1</sup> See printed ante, Lord Pauncefote to Marquis Lansdowne, Apr. 25, 1901.

bers of the Senate. You will see, by a careful perusal of it and comparison with the extinct treaty, that it contains substantially all that was asked for in the amended treaty, but in a form which, I hope, will not be objectionable to the British Government. The provision superseding the Clayton-Bulwer treaty is, as you see, contained in a special article instead of being introduced in a parenthesis. In Article III you will notice that the United States "adopts" the rules of neutralization instead of making it a joint guaranty in company with England. The seventh section of Article III is left out entirely, and the provision for the military police of the canal is transferred to section 2. The question of fortification is thus passed sub silentio. I hope it will not be considered important enough for the British Government to take exceptions to this omission. In this new redaction the Davis amendment disappears, as you see, entirely. By eliminating the words "in peace as well as in war," in the first section of Article III, and by the omission of the seventh section it has been thought by many Senators that the necessity for the Davis amendment has disappeared. The third section, omitted by the Senate, is also omitted in this new draft. If we release Great Britain from the obligation of the joint guaranty there is no reason why the rest of the world should not be released in like manner, and the United States assume alone the duty of guaranteeing the neutrality of the canal. Nobody loses by it except ourselves.

In the hurry of my departure I am unable to enter into any elaborate explanation of the provisions of this treaty. When Mr. White returns he can tell you somewhat at length the considerations which have entered into its composition.

As to this new project, I have sent it for your own private consideration. You are not instructed to bring it before the foreign office until further advised, but as Lord Pauncefote is sending a copy to Lord Lansdowne about this time it is possible that his lordship may refer to the matter in conversation with you. In that case I should be obliged if you would say what you can in advocacy of its adoption, precisely on the line of your clear and strong argument in favor of the Senate amendments. But I think altogether probable that Lord Lansdowne may not refer to the subject until the arrival of Lord Pauncefote, who now expects to sail for England about the 5th of June. When he arrives I hope you will converse freely with him in regard to the matter. He and I are entirely in agreement as to the leading principles to be observed in making such a treaty, and also in regard to the peculiar necessities of the political situation in Washington, which, of course, you understand but which neither Lord Lansdowne nor any European public official can possibly understand who has not lived in America.

Very sincerely, yours,

JOHN HAY.

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[Extracts from a private letter not of record; original not in Department of State.]

*Mr. Choate to Col. Hay, June 24, 1901.*

You must not think, from hearing nothing from me thus far, that the canal business is being neglected. On Lord Pauncefote's

arrival, I asked for an interview and put myself at his service, telling him that you had written me that he was fully possessed of your views, and that you wished me to talk the matter fully over with him. But he said, sensibly enough, that perhaps it would be better not to go into the matter with me until he had discussed it with his own people—and I have reason to think that he has ever since been so engaged. I know that he has gone over it with the lord chancellor, upon whose advice on legal construction Lord Lansdowne naturally relies, and with Lord Lansdowne himself, and I believe that it has been once at least considered by the cabinet. Lord Lansdowne told me week before last that he and Lord Pauncefote both would be ready to talk with me about it in a few days, from which I infer that Lord Pauncefote's reticence was not self-imposed. He also intimated, or at least I so understood him, that they were preparing a new draft as a counter proposition, which probably accounts for the delay. If they do, I hope any change will be all in the direction of general expressions, avoiding detailed phraseology over which Senators may dispute. Would not an ideal treaty under all the circumstances be in three articles? (1) Abrogating the Clayton-Bulwer treaty; (2) providing that the canal should be wholly American in building, ownership, and control; (3) that it should be absolutely neutral, and free and open to the ships of all nations on equal terms? Under such a treaty, would not all questions about war settle themselves, or rather could any such questions arise?

Meanwhile, I have been carefully considering your project for a convention, and I understand from the elimination of the words "in time of war as in time of peace," in the first section of Article III, and from Mr. White's recollection of your views, that this project of treaty is not intended to apply to a state of war between the United States and Great Britain; that such a war, while it lasted, would have upon this treaty the usual effect of war upon treaties, and suspend its operation as between us and the enemy. So that during its continuance the canal and the waters adjacent within the 3-mile limit would not as between us and Great Britain be neutral ground. Practically this would be so. The treaty no longer stipulating for the neutrality of the canal in time of war, we should certainly close it in that event against her ships of war, whenever we found it necessary for our safety and interest to do so, and we should not permit a hostile British fleet to go through to destroy San Francisco. Suppose the two hostile fleets to rendezvous in the neighborhood of the canal, as upon the outbreak of war they would be likely to do. Each would certainly do its best to destroy the other wherever it could be found, whether within or without the 3-mile limit, and I understand your purpose to be that this treaty shall not in that case stand in the way; that in case of war, notwithstanding the elision of the Davis amendment, each of the contracting parties is left free to defend itself whenever and wherever, as best it can—or as Lord Lansdowne put it in a desultory talk we had, "In case we got into a war with you we both fall back on our reserved rights." Perhaps in the course of further consideration this idea may be a little more clearly expressed, and not left so much to inference, and I should not wonder if Great Britain her-

self should suggest some such thing. In this view or construction the word "belligerent" wherever used in Article III would not include the United States and Great Britain when engaged in war with each other. Nor would the first clause of section 2 of that article, "That the canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it," or (sec. 5) "in waters adjacent to the canal within 3 marine miles of either end," apply to either of the combatants in such a war. At first blush this first clause of section 2 might be seized upon by a Senator, not committed to the exact phraseology of the "project" and desirous of defeating it, as stipulating that even in time of war with Great Britain we would not blockade the canal to prevent a British ship of war from going through, or exercise any right of war or commit any act of hostility within the 3-mile limit, but I assume that your answer would be that considering there are rules of neutrality and that nothing belonging to one combatant can be neutral as to the other combatant while engaged in actual war unless so expressly agreed, and so settled by the established rules of international law and considering that the words "in time of war as well as in time of peace" have been studiously omitted, the suggestion of the Senator was not well founded.

Assuming this to be the correct view of the purpose of the "project"—perhaps the sixth clause of Article IV, clause 6, providing expressly that "in time of war as in time of peace" the canal, plant, etc., shall enjoy complete immunity from attack or injury by belligerents, it may be regarded as an exception, and be intended to secure such immunity at all events as against everybody in war and in peace—but as it seems to be limited to immunity from "belligerents," I should like, if universal immunity was intended, to have it made a little more clear. Considering the retention in this "project" of the references to the Suez Canal treaty and to the eighth clause of the Clayton-Bulwer treaty, there is some chance for dispute in the Senate about any construction that may be put upon particular phrases of it, and I am very glad to infer from your letter that the Senate or the necessary two-thirds, are prepared to accept it if it should prove acceptable to Great Britain. What Mr. White understood to be your construction of the "project" conforms to the idea of Mr. Lodge, who has been here, that no treaty could pass the Senate which would permit a war ship of Great Britain to use the canal in time of war between us and that power. He appeared not to have seen the text of your "project," and so I did not feel at liberty to show it to him. He called on Lord Lansdowne at the latter's request, and lunched with Mr. Balfour in company with Lord L. The latter expressed himself to me as much pleased with the interview and with the Senator, and I believe that Mr. Lodge gave him the senatorial view very straight. Perhaps, if I have not correctly apprehended your view as to the intended construction and effect of this "project" you will at once set me right. If they propose a new draft as a counter-project, as I am now expecting, this may not be important, but at any rate I would like to have your views a little more fully and precisely.

*The Marquis of Lansdowne to Mr. Lowther.*<sup>1</sup>

FOREIGN OFFICE, August 3, 1901.

SIR: The draft convention dealing with the question of the inter-oceanic canal, forwarded in Lord Pauncefote's despatch of the 25th April, has been most carefully examined.

I inclose, for your information, the accompanying copy of a memorandum explaining the views of His Majesty's Government, which I have authorized Lord Pauncefote, should he think proper, to communicate to Mr. Hay.

His Majesty's Government have approached the consideration of this important question with a sincere desire to facilitate the progress of the great enterprise in which both Governments take such interest. They feel confident that the United States Government will give them credit for the friendly spirit in which Mr. Hay's proposals have been examined and that they will recognize that if it has been deemed necessary to suggest amendments at one or two points it has been because they are considered requisite for the purpose of bringing about the conclusion of a treaty which shall be accepted as equitable and satisfactory by the public of both countries.

I am, etc.,

LANSDOWNE.

[Inclosure 1 in No. 2.]

[Memorandum.]

In the despatch which I addressed to Lord Pauncefote on the 22d February last, and which was communicated to Mr. Hay on the 11th March, I explained the reasons for which His Majesty's Government were unable to accept the amendments introduced by the Senate of the United States into the convention, signed at Washington in February, 1900, relative to the construction of an inter-oceanic canal.

The amendments were three in number, namely:

1. The insertion in Article II, after the reference to Article VIII of the Clayton-Bulwer convention, of the words "which convention is hereby superseded."

2. The addition of a new paragraph after section 5 of Article II in the following terms:

"It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4, and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order."

3. The excision of Article III, which provides that "the high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers and invite them to adhere to it."

2. The objections entertained by His Majesty's Government may be briefly stated as follows:

(1) The Clayton-Bulwer convention being an international compact of unquestionable validity could not be abrogated or modified save with the consent of both parties to the contract. No attempt

<sup>1</sup> British Bluebook, United States, 1902, No. 1.

had, however, been made to ascertain the views of Her Late Majesty's Government. The convention dealt with several matters for which no provision had been made in the convention of February, 1900, and if the former were wholly abrogated both powers would, except in the vicinity of the canal, recover entire freedom of action in Central America, a change which might be of substantial importance.

(2) The reservation to the United States of the right to take any measures which it might find necessary to secure by its own forces the defense of the United States appeared to His Majesty's Government to involve a distinct departure from the principle of neutralization which until then had found acceptance with both Governments, and which both were, under the convention of 1900, bound to uphold. Moreover, if the amendment were added, the obligation to respect the neutrality of the canal in all circumstances would, so far as Great Britain was concerned, remain in force; the obligation of the United States, on the other hand, would be essentially modified. The result would be a one-sided arrangement, under which Great Britain would be debarred from any warlike action in or around the canal, while the United States would be able to resort to such action even in time of peace to whatever extent they might deem necessary to secure their own safety.

(3) The omission of the article inviting the adherence of other powers placed this country in a position of marked disadvantage compared with other powers; while the United States would have a treaty right to interfere with the canal in time of war or apprehended war, and while other powers could with a clear conscience disregard any of the restrictions imposed by the convention of 1900. Great Britain alone would be absolutely precluded from resorting to any such action or from taking measures to secure her interests in and near the canal.

For these reasons His Majesty's Government preferred, as matters stood, to retain unmodified the provisions of the Clayton-Bulwer convention. They had, however, throughout the negotiations given evidence of their earnest desire to meet the views of the United States, and would sincerely regret a failure to come to an amicable understanding in regard to this important subject.

3. Mr. Hay, rightly apprehending that His Majesty's Government did not intend to preclude all further attempt at negotiation, has endeavored to find means by which to reconcile such divergences of view as exist between the two Governments, and has communicated a further draft of a treaty for the consideration of His Majesty's Government.

Following the order of the Senate amendments, the convention now proposed—

(1) Provides by a separate article that the Clayton-Bulwer convention shall be superseded.

(2) The paragraph inserted by the Senate after section 5 of Article II is omitted.

(3) The article inviting other powers to adhere is omitted.

There are three other points to which attention must be directed:

(a) The words "in time of war as in time of peace" are omitted in rule 1.

(b) The draft contains no stipulation against the acquisition of sovereignty over the Isthmus or over the strip of territory through

which the canal is intended to pass. There was no stipulation of this kind in the Hay-Pauncefote convention; but, by the surviving portion of Article I of the Clayton-Bulwer convention, the two Governments agreed that neither would ever "occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America," nor attain any of the foregoing objects by protection offered to, or alliance with, any State or people of Central America.

(c) While the amendment reserving to the United States the right of providing for the defense of the canal is no longer pressed for, the first portion of rule 7, providing that "no fortifications shall be erected commanding the canal or the waters adjacent," has been omitted. The latter portion of the rule has been incorporated in rule 2 of the new draft, and makes provision for military police to protect the canal against lawlessness and disorder.

4. I fully recognize the friendly spirit which has prompted Mr. Hay in making further proposals for the settlement of the question, and while in no way abandoning the position which His Majesty's Government assumed in rejecting the Senate amendments, or admitting that the despatch of the 22d February was other than a well-founded, moderate, and reasonable statement of the British case, I have examined the draft treaty with every wish to arrive at a conclusion which shall facilitate the construction of an interoceanic canal by the United States without involving on the part of His Majesty's Government any departure from the principles for which they have throughout contended.

5. In form the new draft differs from the convention of 1900, under which the high contracting parties, after agreeing that the canal might be constructed by the United States, undertook to adopt certain rules as the basis upon which the canal was to be neutralized. In the new draft the United States intimate *their* readiness "to adopt" somewhat similar rules as the basis of the neutralization of the canal. It would appear to follow that the whole responsibility for upholding these rules, and thereby maintaining the neutrality of the canal, would henceforward be assumed by the Government of the United States. The change of form is an important one; but in view of the fact that the whole cost of the construction of the canal is to be borne by that Government, which is also to be charged with such measures as may be necessary to protect it against lawlessness and disorder, His Majesty's Government are not likely to object to it.

6. The proposal to abrogate the Clayton-Bulwer convention is not, I think, inadmissible if it can be shown that sufficient provision is made in the new treaty for such portions of the convention as ought, in the interests of this country, to remain in force. This aspect of the case must be considered in connection with the provisions of Article I of the Clayton-Bulwer convention which have already been quoted, and Article VIII referred to in the preamble of the new treaty.

Thus, in view of the permanent character of the treaty to be concluded and of the "general principle" reaffirmed thereby as a perpetual obligation, the high contracting parties should agree that no change of sovereignty or other change of circumstances in the territory through which the canal is intended to pass shall affect such

“general principle” or release the high contracting parties, or either of them, from their obligations under the treaty, and that the rules adopted as the basis of neutralization shall govern, so far as possible, all interoceanic communications across the Isthmus.

I would therefore propose an additional article in the following terms, on the acceptance of which His Majesty's Government would probably be prepared to withdraw their objections to the formal abrogation of the Clayton-Bulwer convention:

In view of the permanent character of this treaty, whereby the general principle established by Article VIII of the Clayton-Bulwer convention is reaffirmed, the high contracting parties hereby declare and agree that the rules laid down in the last preceding article shall, so far as they may be applicable, govern all interoceanic communications across the Isthmus which connects North and South America, and that no change of territorial sovereignty, or other change of circumstances, shall affect such general principle or the obligations of the high contracting parties under the present treaty.

7. The various points connected with the defense of the canal may be conveniently considered together. In the present draft the Senate amendment has been dropped, which left the United States at liberty to apply such measures as might be found “necessary to take for securing by its own forces the defense of the United States.” On the other hand, the words “in time of war as in time of peace” are omitted from rule 1, and there is no stipulation, as originally in rule 7, prohibiting the erection of fortifications commanding the canal or the waters adjacent.

I do not fail to observe the important difference between the question as now presented to us and the position which was created by the amendment adopted in the Senate.

In my despatch I pointed out the dangerous ambiguity of an instrument of which one clause permitted the adoption of defensive measures, while another prohibited the erection of fortifications. It is most important that no doubt should exist as to the intention of the contracting parties. As to this, I understand that by the omission of all reference to the matter of defense the United States Government desire to reserve the power of taking measures to protect the canal, at any time when the United States may be at war, from destruction or damage at the hands of an enemy or enemies. On the other hand, I conclude that, with the above exceptions, there is no intention to derogate from the principles of neutrality laid down by the rules. As to the first of these propositions I am not prepared to deny that contingencies may arise when, not only from a national point of view, but on behalf of the commercial interests of the whole world, it might be of supreme importance to the United States that they should be free to adopt measures for the defense of the canal at a moment when they were themselves engaged in hostilities.

It is also to be borne in mind that, owing to the omission of the words under which this country became jointly bound to defend the neutrality of the canal, and the abrogation of the Clayton-Bulwer treaty, the obligations of Great Britain would be materially diminished.

This is a most important consideration. In my despatch of the 22d February I dwelt upon the strong objection entertained by His Majesty's Government to any agreement under which, while the United States would have a treaty right to interfere with the canal



in time of war, or apprehended war, Great Britain alone, in spite of her vast possessions on the American Continent and the extent of her interests in the East, would be absolutely precluded from resorting to any such action, or from taking measures to secure her interests in and near the canal. The same exception could not be taken to an arrangement under which, supposing that the United States, as the power owning the canal and responsible for the maintenance of its neutrality, should find it necessary to interfere temporarily with its free use by the shipping of another power, that power would thereupon at once and *ipso facto* become liberated from the necessity of observing the rules laid down in the new treaty.

8. The difficulty raised by the absence of any provision for the adherence of other powers still remains. While indifferent as to the form in which the point is met, I must emphatically renew the objections of His Majesty's Government to being bound by stringent rules of neutral conduct not equally binding upon other powers. I would therefore suggest the insertion in rule 1, after "all nations," of the words "which shall agree to observe these rules." This addition will impose upon other powers the same self-denying ordinance as Great Britain is desired to accept, and will furnish an additional security for the neutrality of the canal, which it will be the duty of the United States to maintain.

As matters of minor importance, I suggest the renewal of one of the stipulations of Article VIII of the Clayton-Bulwer convention by adding to rule 1 the words "such conditions and charges shall be just and equitable," and the adoption of "treaty" in lieu of "convention" to designate the international agreement which the high contracting parties may conclude.

Mr. Hay's draft, with the proposed amendments shown in italics, is annexed.

LANSDOWNE.

AUGUST 3, 1901.

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[Inclosure 2 in No. 2.]

*Draft of treaty relative to the construction of an interoceanic canal.*

The United States of America and His Majesty, the King of the United Kingdom of Great Britain and Ireland, etc., being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objection which may arise out of the convention of the 19th April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that convention, have for that purpose appointed as their plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And His Majesty the King of Great Britain and Ireland, etc., the Right Honourable Lord Pauncefoot, G. C. B., G. C. M. G., His Majesty's ambassador extraordinary and plenipotentiary to the United States;

Who, having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following articles:

#### ARTICLE I.

The high contracting parties agree that the present *treaty* shall supersede the aforementioned convention of the 19th April, 1850.

#### ARTICLE II.

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present *treaty*, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

#### ARTICLE III.

The United States adopts, as the basis of the neutralization of said ship canal, the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations *which shall agree to observe these rules*, on terms of entire equality, so that there shall be no discrimination against any nation *so agreeing*, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. *Such conditions and charges of traffic shall be just and equitable.*

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal except in case of accidental hinderance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof for the purposes of this *treaty*, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

#### ARTICLE III-A.

*In view of the permanent character of this treaty whereby the general principle established by Article VIII of the Clayton-Bulwer convention is reaffirmed, the high contracting parties hereby declare and agree that the rules laid down in the last preceding article shall, so far as they may be applicable, govern all interoceanic communications across the isthmus which connects North and South America, and that no change of territorial sovereignty, or other change of circumstances, shall affect such general principle or the obligations of the high contracting parties under the present treaty.*

#### ARTICLE IV.

The present *treaty* shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within — months from the date hereof.

In faith whereof the respective plenipotentiaries have signed this *treaty*, and thereunto affixed their seals.

Done in duplicate at Washington, the — day of —, in the year of our Lord one thousand nine hundred and one.

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*Mr. Choate to Col. Hay, 16 August, 1901.*

DEAR COL. HAY: I have your kind letter of the 5th,<sup>1</sup> and was much pleased to know that I correctly understood your views about your project of treaty, which you sent for my information in your private letter of April 27.

On Tuesday last I had from Lord Lansdowne's hands a copy (printed) of the private memorandum, without date, which has been sent to you by Lord Pauncefoot. At our next interview, on the following day, he asked me if I had read it and what I thought of it. I told him that I admired the friendly spirit and evident desire to agree which were manifest on the face of the paper. But I told him there were two points which I apprehended you would regard as very debatable. First, his new Article III-A is much more definite and certain than the eighth article of the Clayton-Bulwer treaty, and I should anticipate objection on our side on that account. I called his attention to the fact that while the preamble of the Clayton-Bulwer treaty limits the object and subject of the treaty to the Nicaragua route and the eighth article carefully avoids the use of the word

<sup>1</sup> Not on State Department files.

"neutrality," but merely agrees to extend the "protection" of the two Governments to other routes, and that in granting such joint "protection" the understanding is that canals by another route shall be open on equal terms to the subjects and citizens of the two nations and of every other State which is willing to grant the same "protection." All of which was extremely vague and uncertain, and omitted the "guaranty of neutrality"; that wanting to get rid of the Clayton-Bulwer treaty altogether, we shouldn't want to make any part of it by a new covenant stronger than it was before. Whereas his new Article III-A makes the eighth article a great deal stronger than it was before, and saying nothing about "protection," which is, of course, inapplicable to a canal wholly American, fastens the rules of neutrality of Article III, which he calls "stringent rules," upon all future routes. He said he thought Article VIII of the Clayton-Bulwer treaty clearly inferred neutrality. But I said it was only an inference—the word used was "protection." (I know that the "general principle" referred to in the eighth article is recited in the preamble of the Hay-Pauncefote treaty and of your new "project" and of his amended draft as the "general principle" "of neutralization," but it seems to me there is no reason why we should make it any stronger than it was and define in advance the exact rules to be applied to any future canals. However, as no more than one canal will ever be built, you may not think it worth while to take any such point.)

Secondly, I told him that I thought his amendment of the first clause of the third article, insisting upon bringing in other nations as parties to the agreement after the Senate had struck out of the H.-P. treaty the article inviting them to come in, would seem counter to the very strong conviction in the Senate, sustained, as I believe, by an equally strong and general popular conviction, that we ought not to accord to other nations any contract rights whatever in the canal which we were to build and own; that none of them, though invited, ever came in or offered to come in under the C.-B. treaty; that at present they had no rights; that they must be content to rely on our national honor to keep the canal open to them, as declared in this treaty with Great Britain. I told him that I thought he had no idea of the intensity of the feeling in the Senate and the Nation against the intervention of other nations in our affairs such as this, especially upon any footing of contract right, and that if you should conclude that this clause as amended by him does give them such a contract right, you could hardly be expected after the Senate's former action to accept it without modification.

I said to him that I supposed his mind was still open to conviction, and he said, oh, yes; of course—Mr. Hay's project was only tentative. He asked Lord Pauncefote to sound me, and I have made these suggestions in the hope of coming to an agreement, and herewith expect you to offer your counter suggestions. I don't really see why they insist on lugging in the other nations. The reason given by him that Great Britain objects to being bound to stringent rules of neutral conduct not equally binding upon other powers seems to me without substance. It is we that are bound by stringent rules. We accord to Great Britain clear contract rights to have these rules observed by us as owners of the canal; and the other nations can only use it under the same rules.

Great Britain has something to give us in exchange for this agreement with her—the relinquishment of her rights under the C.-B. treaty—but the other nations part with us and no such consideration. I also told Lord Lansdowne, in respect to this clause 1 of article 3, that in one respect it was worse than the provision [art. 3] of the H.-P. treaty which the Senate struck out. That only invited the other nations to come in, and left it optional with them to stay out, as they did under the C.-B. treaty, but this actually compels them to come in at the start. They can not use the canal, as I read it, unless they agree. The question is whether, if they agree as he proposes, they would become parties to the agreement in the sense in which they would have done under article 3 of the H.-P. treaty, which the Senate vetoed. I've not had time to study this question carefully, but my present strong impression is that they would. Lord Lansdowne claims to desire only that the other nations parting with nothing should not be on a better footing with respect to the canal than Great Britain, who parts with so much, and that she shall not be bound by these "stringent" rules of neutrality, while the others are not so bound. I think they are practically all treated alike by the instrument as you have drawn it. I venture, however, to suggest, in view of his amendment of clause 1, article 3, that it might possibly meet the views both of the Senate and the British Cabinet if you should propose further to amend by striking out the words "agree" and "so agreeing," which I dislike so much, considering the previous action of the Senate, and make it read, "The canal shall be free and open to the vessels of commerce and war of all nations observing these rules," etc.

These are only my hasty suggestions after having Lord Lansdowne's papers in my hands for only two busy days. I told him what I thought because he wanted to know, and I give them to you for what they are worth. Perhaps you will not agree with them at all. If not, no harm will come; but if you and the Senators whom you may consult concur in this objection to his amendment of clause 1, article 3, Lord Lansdowne will be prepared to have you dissent.

I think it must be conceded that Lord Lansdowne has very gracefully yielded on the main point that was covered by the Davis amendment in subdivision 7, page 5, of his paper, where he seems to construe the new draft substantially, I think, as we do. He recognizes "our desire to reserve the power of taking measures to protect the canal at any time when we are engaged in war," that "contingencies may arise when it might be of supreme importance to the United States that they should be free to adopt measures for the defense of the canal at a moment when they were themselves engaged in hostilities," and "the necessity"—and, of course, the right—"of the United States to interfere temporarily with the free use of the canal by the shipping of another power." Whether, however, such other power would thereupon and ipso facto become liberated from the necessity of observing the rules laid down in the "war treaty" I am not yet prepared to say. It ought not even in war to be at liberty to violate clause 6 of article 5.

Upon the whole the prospect of a satisfactory settlement of this troublesome matter seems to me better than it has ever been before,

and I am sure that you will appreciate the friendly tone of Lord Lansdowne's advances. I have not yet seen Lord Pauncefote, but have an appointment with him for Tuesday, after which I may write to you again.

Yours, very truly,

JOSEPH H. CHOATE.

*Mr. Choate to Mr. Hay.*

LONDON, August 20, 1901.

DEAR COL. HAY: Yesterday I had a most satisfactory interview with Lord Pauncefote about the canal business, with the result that I am still more encouraged to hope for and expect a final draft at your hands that will suit both Senate and British cabinet. I went over with him fully the two points which I had discussed with Lord Lansdowne and in my answer to you. He recognized the full force of what I had to say as to the inexpediency of inserting the words "which shall agree" and "so agreeing" in clause 1 of article 3, after the striking out by the Senate of Article III in the H.-P. treaty. He should emphatically favor omitting them, and thought his Government would assent to the omission, and he seemed to agree that making it read "all nations observing the rules" etc., would reach this object, which is that Great Britain and all other nations should be served alike and be on an equal footing as to obligation to observe the neutrality of the canal.

I also gathered from what he said that the new Article III-A might be modified somewhat to meet my objection that it not only confirmed the general principle of article 8 of the C.-B. treaty but made it a great deal stronger than it stands in that treaty.

Although naturally this point did not impress him as much as the other. But the more thought I give it the more substantial it seems. As article 8 stands in the C.-B. treaty it undoubtedly contemplates further treaty stipulations—not "new" treaty stipulations, in case any other interoceanic route, either by land or by water, should "prove to be practicable," and it proceeds to state that the general principle to be applied is to be, viz, no other charges or conditions of traffic thereon "than are just and equitable," and that said "canals or railways" being open to the subjects and citizens of Great Britain and the United States on equal terms shall also be open on like terms to the subjects and citizens of other States, by which I believe to be the real general principle of neutralization (if you choose to call it so) intended to be asserted by this eighth article of the C.-B. treaty. But under cover of reasserting this "general principle" this new Article III-A instead of postponing the making of new treaty stipulations as to other routes until some other route by land or by water proves to be practicable immediately and for all time fastens these six crystallized rules of Article III upon all interoceanic communications across the Isthmus as well as providing that no change of sovereignty or other change of circumstances shall affect such "general principle or the obligations of the high contracting parties under the present treaty," and I shall be surprised if objection is not encountered in the Senate to this result of making the old eighth article of the C.-B. treaty so much more comprehensive,

definite, and binding than it was before. The idea "change of sovereignty," of course, relates to the report of an intention on the part of the United States to acquire a strip of territory on each side of the canal, and "other change of circumstances" is aimed at the argument in some future epoch against the continuance of this treaty that has often been directed against the continued binding force of the C.-B. treaty that "change of circumstance" since 1850 has put an end to it.

Lord Lansdowne's object in insisting upon Article III-A is to be able to meet the objectors in Parliament by saying that although they have given up the C.-B. treaty they have saved the "general principle," and have made it immediately effective and binding upon the United States as to all future routes, and have dispensed with future "treaty stipulations" by making it much stronger than it was before. I think his all-sufficient answer is that by giving up the C.-B. treaty, which stood in the way of building any canal, he has insured the building of a canal for the benefit of Great Britain at the expense of the United States, relieved Great Britain of all responsibility about it now and forever, and imposed upon the United States stringent rules of neutrality as to Great Britain and all mankind.

Assuming that some such article must be retained, how would this do?

In view of the permanent character of this treaty, whereby the general principle established by article 8 of the C.-B. treaty is reaffirmed, the United States hereby declares (and agrees) that it will impose no other charges or conditions of traffic upon any other canal that may be built across the Isthmus (or between the Atlantic and Pacific Oceans) than such as are just and equitable, and that such canals shall be open to the subjects and citizens of the United States and of all other nations on equal terms.

Lord Pauncefote's expectation is now that you will in due time answer Lord Lansdowne's paper, and that he and Lord L. will give full consideration to the matter in time to enable him to bring back an agreed instrument when he returns in October, which I sincerely hope may be the case.

Yours, very truly,

JOSEPH H. CHOATE.

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*Mr. Hay to Mr. Choate.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, August 22, 1901.

Lord Lansdowne's counter draft received with very few changes.<sup>1</sup> I await some intimation of tenor of your conversation with Lord Lansdowne before answering Lord Pauncefote.

HAY.

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<sup>1</sup> See Marquis of Lansdowne's note, Aug. 3, 1901. Ante.

*Mr. Hay to Mr. Choate.*

[Extracts from private letter not of record; original not on department files.]

NEWBURY, N. H., *September 2, 1901.*

MY DEAR MR. CHOATE: I went to Canton immediately on receiving Lord Lansdowne's memorandum and consulted the President about it. You can understand my satisfaction, on returning to Washington and receiving your letter containing your conversation with Lord Lansdowne and Lord Pauncefote, to find that you had arrived at the same conclusion which the President and I had reached and that you saw a possibility of our views being taken into favorable consideration by the British Government. I have written a brief letter to Lord Pauncefote, of which I inclose you a copy. Your views are so clear and definite and so entirely in accord with my own, that I find it unnecessary to give you any extended instructions as to this very important matter. I have, as you will see, requested Lord Pauncefote to confer freely with you, and I hope you will be able to go into the business pretty thoroughly with Lord Lansdowne. What we should wish, best of all, would be to have them accept our project just as it stands. But this is a counsel of perfection and probably unattainable. They have treated the matter in a friendly and generous spirit, and we must do what we can to meet them.

If they will not accept our clause 1, Article III as it is, then I think your proposition—"observing"—is an excellent suggestion. I do not see how they could object to it, and it would help us greatly here.

As to the additional article, we must try to get it modified. It is cumbrous, vague, and mischievously far-reaching. The suggestion I make to Lord Pauncefote is satisfactory to the President and was virtually presented to me by Lord Pauncefote himself last spring. I would rather have nothing at all of the sort, but if we must concede something of that nature, I imagine we could stand what I have suggested.

You know the line to take better than I can tell you. The necessity of the canal; the interest England has in it; the advantage to her of our building and managing it; the desire of the President to get rid of the Clayton-Bulwer treaty not only without impairment of our good relations with England, but, if possible, in such a way as to make them more intimately friendly. Press the considerations you have already brought forward as reported in your letters to me. I do not think they can fail to impress Lord Lansdowne; he is too intelligent not to see that the briefer and simpler the treaty can be made the better.

I am profoundly gratified at the way the matter now presents itself. Even with all Lord Lansdowne's suggestions accepted, it would be a great success to have gained such a treaty. But we must do our best to improve it still further. If we can clean up that Article IV, it will be a great piece of work well done.

If Lord Pauncefote brings it back next month in the form we have indicated, I shall be ready to intone my *nunc dimittis*.

Yours, faithfully,

JOHN HAY.



*Mr. Hay to Lord Pauncefote.*

[Private letter; original not on files of department.]

NEWBURY, N. H., *September 2, 1901.*

DEAR LORD PAUNCEFOTE: Immediately on receipt of your letter transmitting Lord Lansdowne's letter to you of the 3d of August,<sup>1</sup> and his private memorandum on the canal treaty, I proceeded to Canton and laid the papers before the President. He regarded, as I had done, the consideration accorded by Lord Lansdowne to my draft of a new treaty as in the highest degree friendly and reasonable, and he charged me to express to you his appreciation of it.

As to the changes suggested by Lord Lansdowne, while they may not be in themselves objectionable, we are forced to regard them in the light of the previous action of the Senate, and of the probable discussion to which they would give rise. And although this is a consideration which we have no right to bring forward in discussing a matter of principle with a friendly power, we ourselves must always bear in mind the conditions under which we labor, through that provision of our Constitution which permits one-third of the Senate, plus one, to veto the action of the Executive and the will of the majority of their own body in treaty matters.

I am apprehensive that the first amendment proposed to clause 1 of Article III, amounting, as it virtually does, to the restoration of Article III of our former treaty, which was stricken out by the Senate because of the strong objection to inviting other powers to become contract parties to a treaty affecting the canal, would meet with great opposition. If His Majesty's Government find it not convenient to accept our draft as it stands, they might, perhaps, consider favorably the substitution for the words italicized after "vessels of commerce and of war of all nations" of the words "observing these rules," and instead of "any nation *so agreeing,*" the words "any such nation." This, it seems to me, would accomplish the purpose aimed at by Lord Lansdowne, with less likelihood of hostile discussion on this side. The second amendment in the same clause, providing that conditions and charges of traffic shall be just and equitable, is acceptable to the President.

Coming to the article numbered III-A, which might, perhaps, as well be called Article IV, I can not help seeing in it a formidable obstacle to the acceptance of the treaty. I considered the adoption by the Senate, without change, of the preamble of our former treaty, by which it was declared that the general principle of neutralization established in Article VIII of the Clayton-Bulwer convention was not impaired thereby, a fortunate circumstance, as it enabled us, in passing a new draft, to retain the important utterance in the preamble in the same form to which the Senate had already given its assent. To reiterate this in still stronger language in a separate article, and to give to Article VIII of the Clayton-Bulwer treaty what is, in my opinion, a wider application than it originally had, would, I fear, gravely endanger this treaty. I doubt if it would pass the Senate without amendment.

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<sup>1</sup> See Ante, from British Blue Book; not on State Department files.

When I had the pleasure of conversing with your excellency on this subject in the spring, you made a suggestion to the effect that some clause should be inserted providing for the contingency of a change in sovereignty. It did not seem to me necessary, and for that reason I hoped that it might not be insisted on. But if it should seem indispensable to His Majesty's Government that such an article should be inserted, would it not be sufficient to cover the point in some brief and simple way like this:

ARTICLE IV.

It is agreed that no change of territorial sovereignty or of the international relations of the countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligations of the high contracting parties under the present treaty.

I should be greatly obliged if your excellency would talk over these matters freely with Mr. Choate, who is in possession of our views, and of whose good will I need not assure you. I beg you also to express to Lord Lansdowne my sincere appreciation of the friendly and magnanimous spirit he has shown in his treatment of this matter, and my hope that we may arrive at a solution which may enable us to start at once upon this great enterprise which so vitally concerns the entire world, and especially Great Britain, as the first of commercial nations.

I am, my dear Lord Pauncefote,

Faithfully, yours,

J. HAY.

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*Mr. Choate to Mr. Hay.*

[Extract.]

LONDON, *September 3, 1901.*

DEAR COL. HAY: The more I reflect upon it the more confident I feel that striking out "which shall agree" and "so agreeing," in clause 1 of Article III, and a very slight modification of Article III-A to bring it back to the real meaning of Article VIII of the C.-B. treaty, will produce a result that will suit everybody or at least ought to. I saw a recent notice that Lord Salisbury would go to the Continent for his autumn holiday about the third week of September which probably means a month's absence, and October, as you know, is quite a holiday month here, but such slight changes should, I think, be easily settled by correspondence unless their plan requires a cabinet meeting.

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*The Marquis of Lansdowne to Mr. Lowther.<sup>1</sup>*

FOREIGN OFFICE, *September 12, 1901.*

SIR: I have to inform you that I have learned from Lord Pauncefote that Mr. Hay has laid before the President the memorandum, a copy of which was forwarded to you in my despatch of the 3d August.

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<sup>1</sup> British Blue Book "United States, 1902, No. 1."

Mr. McKinley regarded, as did Mr. Hay, the consideration shown to the last proposals of the United States Government relative to the interoceanic canal treaty as in the highest degree friendly and reasonable.

With regard to the changes suggested by His Majesty's Government, Mr. Hay was apprehensive that the first amendment proposed to clause 1 of Article III would meet with opposition because of the strong objection entertained to inviting other powers to become contract parties to a treaty affecting the canal. If His Majesty's Government found it not convenient to accept the draft as it stood, they might perhaps consider favourably the substitution for the words "the canal shall be free and open to the vessels of commerce and of war of all nations which shall agree to observe these rules" the words "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules," and instead of "any nation so agreeing" the words "any such nation." This it seemed to Mr. Hay, would accomplish the purpose aimed at by His Majesty's Government.

The second amendment in the same clause, providing that conditions and charges of traffic shall be just and equitable, was accepted by the President.

Coming to article numbered III-A, which might be called Article IV, Mr. Hay pointed out that the preamble of the draft treaty retained the declaration that the general principle of neutralization established in Article VIII of the Clayton-Bulwer convention was not impaired. To reiterate this in still stronger language in a separate article, and to give to Article VIII of the Clayton-Bulwer convention what seemed a wider application than it originally had, would, Mr. Hay feared, not meet with acceptance.

If, however, it seemed indispensable to His Majesty's Government that an article providing for the contingency of a change in sovereignty should be inserted, he thought it might state that:

It is agreed that no change of territorial sovereignty or of the international relations of the country traversed by the before mentioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

This would cover the point in a brief and simple way.

In conclusion, Mr. Hay expressed his appreciation of the friendly and magnanimous spirit shown by His Majesty's Government in the treatment of this matter, and his hope that a solution would be attained which would enable the United States' Government to start at once upon the great enterprise which so vitally concerned the whole world, and especially Great Britain, as the first of commercial nations.

I am, etc.,

LANSDOWNE.

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*Mr. Choate to Mr. Hay.*

Confidential.]

AMERICAN EMBASSY,  
London, September 20, 1901.

(Received 5.40 p. m.)

Have had long interview with British ambassador at Washington. British minister for foreign affairs still absent in Ireland. British

ambassador at Washington thinks amendments of clause 1, Article III, striking out "which shall agree to observe" and substituting "observing" and striking out "so agreeing," will be acceptable. Assuming this, would you not consent to add to your Article IV, in letter to British ambassador at Washington, if accepted as a substitute for III-A, these words:

Or the freedom of the canal to the vessels of commerce and war of all nations on terms of entire equality and without discrimination, as provided by article 3.

He apprehends that without this addition your IV might be regarded as limited to technical neutrality and as not including freedom of passage and equality of terms. I thought you had no such idea; that taking all your language in IV you meant it include all that is in your telegram, adding that if not included in "general principles of neutralization," it certainly is in obligation of parties under treaty. With this addition he would approve and thinks could carry it through. Certainly this would get rid of all obnoxious features of eighth article, C B, and of British minister of foreign affairs, III-A, and put in their place substantially what you propose.

CHOATE.

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*Mr. Choate to Mr. Hay.*

Private and confidential.]

SEPTEMBER 21, 1901.

DEAR COL. HAY: In re canal treaty. I regret to say that Lord Lansdowne, who left on the 17th for Ireland, has not as yet been accessible for a conference, and I fear will not be until October. He was to have come on the 19th to attend the service at the Abbey, but unfortunately he had another sharp attack of sciatica, which prevented. Both Lord Pauncefote and I had hoped that he would come and remain here a few days to enable us to advance, if not to dispose of, this important matter. But I have had a full discussion of the matter with Lord Pauncefote, which has, I think, materially advanced it and which resulted in my confidential cipher cable of yesterday, of which I inclose a copy. It is needless to say that I found Lord Pauncefote very reasonable. I pressed upon him your great desire, if possible, to restore clause 1 of Article III to the form you originally proposed, eliminating Lord Lansdowne's amendment altogether, except the clause as to just and equitable charges and conditions. But he thought the idea of amending it had gone too far to dispense with it altogether. He had sent to Lord Lansdowne your letter to him of September 2, and both he and I thought that the best that could be done was what you there propose, viz, to strike out after "nations" the words "which shall agree to observe" and substituting therefor "observing," and in the next line to strike out the words "any nation so agreeing" and to substitute therefor "any such nation."

As to Article III-A, proposed by Lord Lansdowne, Lord Pauncefote realizes, I think, the full force of our objections to it, as I stated them to him before and repeated to you in my former letter. I told him emphatically that meaning to get rid of the Clayton-Bulwer treaty altogether we did not want to have Article VIII of that

treaty fastened upon us forever in a more intensified form, and as to any and all future interoceanic communication, with these crystallized rules, dissenting with any future negotiation about the matter when it should arise at some distant day. I told him how you and President McKinley had raised the same objections on first reading Lord Lansdowne's paper, and without a word from me yet received. Rather to my surprise he yielded very readily on the point of the future canal or other interoceanic communication, which, to my mind, was the worst part of it. He said that the only two possible routes for a canal were, he was satisfied, the Panama route and the Nicaragua route; and that the Panama route was so hedged about by many treaties with several powers and that without their consent nothing in the direction of our wishes could be done, and that it was sufficient in this treaty to provide for the Nicaragua route. This I thought a decided advance. He no longer insisted upon the words "or other change of circumstances" not affecting the treaty, against my insistence that there might be changes of circumstances which would affect or even nullify a treaty; that there was such a principle of international law, which we can not let go; that what such change of circumstances might be is not determined, nor was it easy to foresee what change of circumstances might come upon the United States in the next hundred years. But he said they could not give up Article III-A altogether; that it was quite obvious that we might in the future acquire all the territory on both sides of the canal; that we might then claim that a treaty providing for the neutrality of a canal running through a neutral country could no longer apply to a canal that ran through American territory only; and he again insisted, as Lord Lansdowne had insisted, that they must have something to satisfy Parliament and the British public that in giving up the Clayton-Bulwer treaty they had retained and reasserted the "general principle" of it, that the canal should be technically neutral and should be free to all nations on terms of equality, and especially that in the contingency supposed, of the territory on both sides of the canal becoming ours, the canal, its neutrality, its being free and open to all nations on equal terms should not be thereby affected; that without securing this they could not justify the treaty either to Parliament or the public; that the preamble which had already passed the Senate was not enough, although he recognized the full importance of the circumstance of its having so passed.

I then called his attention to your Article IV in your letter, which did seem to me to cover and secure all that he now claimed and insisted on. He said no; that it only preserved the principle of neutralization, which, it might be insisted on, did not include freedom of passage for all nations and equality of terms, and that without an explicit provision, which should leave that freed from doubt, he could not expect to sustain it before the Parliament and people. I insisted that those ideas were already included in your IV, i. e., within the words "the general principle of neutralization," especially in the light of that phrase as used in the preamble, where it is "neutralization established in Article VIII of the C.-B. treaty"; that if not included within that it certainly was in the phrase "obligations of the high contracting parties under this treaty," for what could be clearer than our obligation by Article III to keep it open

and on terms of equality as provided there, and what your IV meant was that no change of territorial sovereignty should affect any of the obligations of the present treaty, including that. He still insisted that it should not be left to the construction of general clauses, but should be explicitly stated. Believing, as I do, that you had no thought of escaping from the obligations of Article III, clause 1, in any such contingency as change of territorial sovereignty, and that you had intended it to be included in your language in IV, I wrote down the words "or the freedom of passage of the canal to the vessels of commerce and of war of all nations on terms of entire equality and without discrimination, as provided by Article III," and asked him if those words were added to your IV, it would satisfy him as a substitute for Lord Lansdowne's III-A. He said it would, and that with those words added the treaty could, he thought, be sustained before Parliament and the British public; that he should approve it, and he thought Lord Lansdowne could and would, although it would have to be submitted to the cabinet or to a majority of its members. This seemed to bring the matter to a very satisfactory point so far as we could go, and I agreed to cable our result to you, in the hope of getting your approval before he submitted it to Lord Lansdowne. I did not give him the words I wrote on paper, but said I would cable them to you. (MEMO.—I observe that in the brevity of my cable I omitted the words "and without discrimination," but I don't see that the omission affects the meaning at all, as it is all included in the words "on terms of entire equality, as provided by Article III." But if on reading this you think it does make a difference, please cable me.) It still looks to me most propitious for a satisfactory conclusion being reached.

Yours, very truly,

JOSEPH H. CHOATE.

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*Mr. Hay to Mr. Choate.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, September 21, 1901.*

Yours 20th received. The President cordially approves draft of canal treaty and your instructions. I do not consider the proposed addition to article 4 as necessary or as improving the article, but if the British Government strongly insists you may accept it. I think we are to be congratulated on this happy conclusion of the matter.

HAY.

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*Mr. Choate to Mr. Hay.*

LONDON, *September 25, 1901.*

DEAR COL. HAY: I received your cipher dispatch of the 21st on Sunday the 22d, instructing that if the British Government strongly insisted on the proposed addition to article 4, I might accept it, and that you thought we were to be congratulated on this happy conclusion of the matter.

It can hardly be regarded as concluded yet, for it is one thing to satisfy Lord Pauncefote, and quite another to satisfy Lord Lansdowne and the cabinet, especially the lord chancellor.

On Monday, the 23d, I had an interview with Lord Pauncefote and tried, as I had before, to persuade him that it was neither wise nor necessary to mar your Article IV by the addition proposed in my cable to you. But he thought as he did before, and more strongly than he did before, that with the addition Parliament and the British press and public could be made to accept the treaty, but that without it they could not, and so with the members of the Government. He thought it very necessary that they should be able to say very emphatically that although they had abrogated the Clayton-Bulwer treaty, they had preserved the principle of it. I rather think he was a good deal governed by the old English maxim of never giving anything for nothing, and he wanted to have some equivalent, or apparent equivalent, for giving up the "other interoceanic communication." So I gave him the words that I cabled to you, and he seemed to think that the words "and without discrimination," did not alter the meaning and he left them out. I judged from your cable that you agreed with me that the words proposed to be added did not really alter the meaning of your 4, but only added a specification of what was there included in general terms. He was not willing to have it rest upon the construction of general words, and wished to be able to point to the specific language as removing all doubt. The same ground was again gone over as in our former interview. He undertook to report our conversation to Lord Lansdowne immediately, and hopes for a speedy answer and a favorable one. Meantime, hearing that Senator Lodge was coming here on Friday, and thinking it might be well to enlist him at this stage, I cabled to you asking if I should show him the papers up to date. I recalled, then, when he was here in June, he appeared not to have seen the language of your original project, but had only a general idea of its substance. I have Dr. Hill's answer, "treaty may be communicated to Lodge confidentially." I think it will be very wise to do so.

I am very much delighted with your statement that the President cordially approves draft of canal treaty and my instructions. I knew that he would and have every confidence in his wisdom and discretion. The general disposition here toward us just now is better than ever, and I have every hope that a favorable result will be reached here. There may be some delay. Lord Lansdowne is not very well and will stay in Ireland till October 1, and the members of the Cabinet are scattered to the four winds, not to return, I suppose, till about the same time.

By the way, I'm afraid that in my last I misinterpreted Lord Pauncefote's idea about the Panama route being hedged in by treaties so that it was not necessary to provide about that in this treaty. I asked him to state it again, and it was not, as I wrote, that the Panama route was so hedged about by treaties "that nothing in the direction of our wishes could be done without the consent of the powers who were parties," etc., but that the various treaties did so effectually secure the neutrality of that route that they had stamped the principle of neutrality so irrevocably upon it that it was not necessary to secure it by this treaty; that even if we should acquire

the Panama route, that we should take it cum onere; and he said that in fact our whole program about any canal was to have it neutral. He evidently will impress himself very strongly upon Lord Lansdowne to the effect that no provision about any other canal is necessary in this treaty.

Yours, very truly,

JOSEPH H. CHOATE.

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*Mr. Choate to Mr. Hay.*

Confidential.]

AMERICAN EMBASSY,  
London, September 27, 1901.  
(Received 12.55 p. m.)

[Telegram.]

Lord Pauncefote now finds he was mistaken about existing treaty satisfactorily securing neutrality of canal by Panama route, as stated in my letters of 21st and 25th. Is also disturbed by late reports of our perhaps adopting that route in preference to Nicaragua and fears that treaty as drawn might be claimed to cover Nicaragua route only, leaving Panama, if adopted, unprovided for. Do you not regard treaty as drawn by you as applying to the canal which shall be built by whatever route?

Lord Lansdowne has arrived. Please consider nothing settled until he is heard from. Shall write to-morrow.

CHOATE.

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*Mr. Choate to Mr. Hay.*

LONDON, September 27, 1901.

DEAR COL. HAY: Lord Pauncefote called upon me yesterday to say that upon an examination of the existing treaties bearing upon a canal by the Panama route, he found he was mistaken in what he said to me the other day, and that there were no provisions satisfactorily securing the neutralization of the canal. He also called my attention to an elaborate article in yesterday's Times, which I inclose, the last paragraph of which seemed somewhat to imperil his "general principle of neutralization." He also alluded to the rumors now very rife here that we might after all decide to acquire and complete a canal by the Panama route and abandon the Nicaragua route altogether, in which case it had been suggested to him by some of the experts at the foreign office that it might be claimed that our treaty as it now stands is for a canal by the Nicaragua route only and does not apply at all to the Panama route, which, of course, as he said would place the British Government in the most ridiculous position of having signed a treaty abrogating the Clayton-Bulwer treaty, and yet having no reference to the canal that we were actually proceeding to build. He could not conceal his disturbance of mind at this suggestion. I told him I was sure you had no such idea as that, or of putting them in such a predicament—that, of course, this had always been called the Nicaragua Canal treaty; that the original H.-P. treaty was for a Nicaragua canal, because it left the C.-B. treaty with its preamble and its eighth article in force; but that by the plain reading of this treaty, abrogating the C.-B.



treaty, and retaining no reference to any particular route, it would apply to the first canal that we should build by whichever route, and that there was so little possibility of any second canal being built that it was not worth while to think about it or to provide for it, and this I think was his own view. I saw him again to-day, and he was just going to see Lord Lansdowne, who has unexpectedly come to London. He has prepared a memorandum to submit to Lord L., showing the propriety of their accepting your 4 for his 3A. If they adhere to the point suggested, as raised at the foreign office, he may want to insert a few words in the preamble or elsewhere to remove all doubt that it is to apply to the canal we actually first build by whichever route. On conference with him I sent you to-day the confidential cipher cable, of which I inclose a copy. Lord Pauncefote is quite hopeful of satisfying Lord Lansdowne to adopt 4 as amended.

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*Mr. Hay to Mr. Choate.*

[Telegram.]

Confidential.]

DEPARTMENT OF STATE,  
Washington, September 29, 1901.

I think it hardly conceivable that any other route than Nicaragua will be chosen. The House of Representatives has declared for it by a vote of two to one, and the Senate is apparently of the same mind; but whatever route shall be chosen I think our draft of treaty pledges us to adopt the principle of neutralization therein set forth, as you will observe that no particular route is mentioned. I am anxious that the treaty shall not be overloaded by any specific engagements, which may give occasion to our opponents to say we are abrogating Clayton-Bulwer treaty with one hand and reenacting it with the other.

HAY.

*Mr. Hay to Mr. Choate.*

[Telegram.]

Confidential.]

DEPARTMENT OF STATE,  
Washington, October 2, 1901.

Second. Our intention is that the treaty shall cover all isthmian routes, and we consider that this object is attained by our draft. I am authorized by the President to say this.

HAY.

*Mr. Choate to Mr. Hay.*

[Telegram.]

Confidential.]

AMERICAN EMBASSY,  
London, October 2, 1901.  
(Received 8.05 p. m.)

Interview with the minister for foreign affairs yesterday. He had received memorandum from Lord Pauncefote and personally ap-

proves the treaty, with the amendments next stated, and will submit it to the premier and his colleagues in the cabinet with least possible delay.

Amendments:

Preamble, line 3, after "Atlantic and Pacific Oceans," insert "by whatever route may be deemed expedient." This insisted on by Lord Pauncefote.

Article 3, line 1, for "said ship canal" read "such ship canal."

Article 3, line 4, for "which shall agree to observe these rules" read "observing these rules."

Article 3, line 6, for "any nation so agreeing" read "any such nation."

For article 3A substitute:

ART. 4. It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by such ship canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty, or the freedom of passage of the canal to the vessels of commerce and of war of all nations on terms of entire equality as provided by article 3.

"Of the country or," suggested by Senator Lodge and approved by me and by Lord Lansdowne. "Such ship" for "the before mentioned," Lord Lansdowne's. Article 4 becomes article 5.

I promised to submit these for your immediate approval; said I thought them unobjectionable. They have certainly been more than considerate. If you object to any phraseology cable me immediately; otherwise your entire approval. Hope for the approval of the premier and the lord chancellor, which would, I think, be conclusive, though no cabinet meeting till November.

Have gone through whole matter with Senator Lodge, who approves absolutely and thinks it will pass Senate.

CHOATE.

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*Mr. Choate to Mr. Hay.*

LONDON, *October 2, 1901.*

DEAR COL. HAY: I was very glad of the opportunity to place the present position of the canal treaty before Senator Lodge, with whom I went through the whole matter very carefully on Monday, and he approved of it as last amended absolutely, and authorized me to say so in my cable of to-day. You can rely upon his strenuous support in the Senate. The insertion in the preamble after the words "Atlantic and Pacific Oceans," of the words "by whatever route may be considered expedient," which are insisted on by Lord Pauncefote to remove all doubt that the treaty applies to the canal we actually build, whether by the Nicaragua or the Panama route, Mr. Lodge liked and thought rather an improvement, and I could see no objection. His position, however, seems to differ from yours as to the possibility of Panama being adopted as the route. He thinks there will be quite a strong movement in that direction. His views on Lord Lansdowne's original amendment to article 3, clause 1, by which the other nations were required to come in as agreeing parties, were in full accord with ours, and he emphatically approves the amendment striking out the "agree" and "agreeing" and substituting "observing

these rules." He also saw the full force of our objection to Lord Lansdowne's 3A and heartily approves your IV as a substitute for 3A, with the amendment to it prepared by Lord Pauncefote and me and authorized by you. All this with Mr. Lodge, of course, in absolute confidence.

Before seeing Mr. Lodge, and upon the receipt of your cable on Sunday, I had communicated to Lord Pauncefote your conviction as to the extreme improbability of any Panama route, and how strong both Senate and House were for Nicaragua, and your agreement with him and me as to the necessary construction of the treaty, as drawn by you, as applying to the canal we shall first build by whichever route. He still clung to the necessity of adding a few words to make the meaning unmistakable. Hence the insertion of "by whatever route may be considered expedient" in the preamble. He spoke of some utterance of Mr. Blaine, to the effect that the Clayton-Bulwer treaty had no reference whatever to a canal by the Panama route, as an additional reason for being very precise this time.

Yesterday I had an interview with Lord Lansdowne who had already received and considered Lord Pauncefote's memorandum advocating the amendments in which we concurred, and I am happy to say that he had no fault to find with them. He thought them satisfactory—personally approved of them, and would submit them to Lord Salisbury and his colleagues in the cabinet, and hoped for their approval. So I hadn't to argue the case with him at all. He recalled my former argument as to the impossibility of our giving other nations a "contractual right" in the canal, and thought the amendment to article 3, clause 1, which Lord Pauncefote and I had arranged was quite right. He also recognized our objections to III-A and was ready to accept as a substitute your 4, as amended at Lord Pauncefote's request. I thanked him very much for this, as substantially bringing the parties together and ending the long controversy so far as you and he could do it. I told him of Mr. Lodge's suggestion to say "country or countries" in four instead of "countries," inasmuch as by one route, the Nicaragua, there were two countries, Costa Rica and Nicaragua, while by the other there was only one, and he thought the change should be made. He thought at first that my added words "or the freedom of passage," etc., would not run smoothly and grammatically after your words "high contracting parties under this treaty," but, on trying, he found they did and was satisfied. He promised to send me a memorandum of the exact words of each amendment approved by him, which he has done this morning.

I pressed upon him the urgency of getting the treaty to a point as soon as possible, the great desirableness of having it ready for the President to send to the Senate on the first Monday of December, which, he noted, was December 2. I told him that it would be necessary to have it in the President's hands a good while before that, and that you confidently hoped that Lord Pauncefote would be able to bring it over in October. He promised to do the best he could as to time, would send it at once to Lord Salisbury and the lord chancellor, whom I consider the most important men in the matter. Certainly if we get their concurrence with him, they will carry the cabinet. He said Lord Salisbury did not like to be troubled much with such things at Beaulieu, but under the circumstances he would send

it to him at once and ask for an early answer, and would hunt up the lord chancellor, who has been spending his vacation on the Continent, but is now, I think, somewhere near London.

I am sure that in this whole matter, since the receipt by him of your new draft, Lord Lansdowne has been most considerate and more than generous. He has shown an earnest desire to bring to an amicable settlement, honorable alike to both parties, this long and important controversy between the two nations. In substance, he abrogates the Clayton-Bulwer treaty, gives us an American canal—ours to build as and where we like, to own, control, and govern—on the sole condition of its being always neutral and free for the passage of the ships of all nations on equal terms, except that if we get into a war with any nation we can shut its ships out and take care of ourselves.

I shall be disappointed—in fact, mortified—if now, after Great Britain has met us so manfully, we fail to come to a final agreement.

Very truly, yours,

JOSEPH A. CHOATE.

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*Mr. Hay to Mr. Choate.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, October 3, 1901.

All amendments cordially approved.

HAY.

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*Mr. Choate to Mr. Hay.*

LONDON, October 9, 1901.

DEAR COL. HAY: I called on Lord Lansdowne yesterday in the hope of learning that he had heard from some other of his colleagues to whom he had submitted the treaty besides the Lord Chancellor, but he had not. Vacation is still the paramount interest, and why not; for they did not get away until after the middle of August. However, he was most sanguine, said he apprehended no difficulty, and that I might go away with a light heart. "The most pessimistic view," he said, "might be some verbal suggestions or change of some very minor detail." He said that this matter had been discussed so much among them that he knew the minds of his colleagues in regard to it, and seemed to have no doubt of their approval. His plan seemed to be to get the approval of four or five of his leading colleagues, and then to submit it to the others with the sanction of their approval; all of which, of course, will take considerable time, and there is to be no cabinet meeting, to which, I suppose, it will have to be formally submitted, until November. Lord Lansdowne himself left last night for Scotland for about a week. He showed me a print of the text as he had submitted it to his colleagues. There were one or two verbal differences from that which I cabled you, but which are of absolutely no moment; for instance, in "four" he had not substituted "such ship canal" for "the before-mentioned canal,"

which he had himself suggested and had sent me in writing as an amendment, and the words inserted in the preamble after "Oceans" are "by whatever route may be considered expedient" instead of "decided expedient," as I had the word of absolutely identical meaning. Doubtless after all is arranged it will be left for you and Lord Pauncefote to revise the verbiage of the text. I saw Lord Pauncefote yesterday after my interview with Lord Lansdowne. He, like Lord L., thinks there is no doubt of the satisfactory result, and hopes to bring the treaty settled home with him on the 26th, on which day he will certainly sail. They both seem to know Lord Salisbury's mind pretty well, and expect no difficulty from that quarter, though he may take his time in attending to it. Lord Pauncefote suggested, and Lord L. seemed to concur, that when the treaty was in final shape it would be a good opportunity for you to offer it as finally settled, with a memorandum showing why you regarded it as satisfactory and expedient for the United States, and for him to supply you with a similar memorandum showing why it was regarded as satisfactory to Great Britain, thus giving each a chance to explain it to his constituents. Of course, a name will have to be given to the treaty by you and Lord Pauncefote. I should think it would not be bad to call it just as it is, "Convention superseding the convention of 19th April, 1850, and providing for the building under the auspices of the United States of a neutral ship canal." The first clause would commend it to the Senate, though standing alone it would not be approved here.

In this situation, as I do not see anything likely to be required of me that may not be just as well done by Mr. White, who knows your mind and mine exactly, and has been fully advised of all that has been done, I propose to keep my long cherished purpose of sailing on the *Philadelphia* on Saturday, the 12th, unless something to the contrary turns up in the meantime. Quite possibly I may hear before Saturday that Lord Salisbury has approved. I do not really expect that there will be anything to be done but to notify you that the Government agrees to the treaty, as Lord Lansdowne expects them to do.

The publication yesterday of the substance of the treaty with a most distorted gloss is most unfortunate, but I do not think it will do any serious harm. I inclose the most mischievous cable and editorial from yesterday's Chronicle.

Yours, most truly,

JOSEPH H. CHOATE.

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*Mr. Choate to Mr. Hay.*

[Telegram.]

Confidential.]

AMERICAN EMBASSY,  
London, October 9, 1901.

(Received 8.48 p. m.)

Expect to sail next Saturday. Lord Lansdowne is very confident that his colleagues will approve. So is Lord Pauncefote, who will sail 26th. Everybody away. It takes much time.

CHOATE.

*Mr. White to Mr. Hay.*

[Telegram.]

AMERICAN EMBASSY,  
London, October 23, 1901.

Confidential.]

(Received 7.05 p. m.)

I had an interview with British minister for foreign affairs to-day at his request. He officially informed me that His Majesty's Government are prepared to negotiate an Isthmian Canal treaty on the terms already communicated to you by Mr. Choate, with one exception, viz: They will not press for addition to article 4, but prefer omissions of following words: "or the freedom of passage of the canal to the vessels of commerce and of war of all nations on terms of entire equality as provided by article 3." In view of your telegram September 21, I replied that these words will accordingly be omitted. Lord Lansdowne added that Lord Pauncefote, who sails next Saturday, will be in a position to settle details with you as to arrangement of documents for future publication showing how present arrangement was arrived at.

WHITE.

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*The Marquis of Lansdowne to Lord Pauncefote.<sup>1</sup>*

FOREIGN OFFICE, October 23, 1901.

MY LORD: I informed the United States chargé d'affaires to-day that His Majesty's Government had given their careful attention to the various amendments which had been suggested in the draft inter-oceanic canal treaty, communicated by Mr. Hay to your lordship on the 25th April last, and that I was now in a position to inform him officially of our views.

Mr. Hay had suggested that in Article III, rule 1, we should substitute for the words "the canal shall be free and open to the vessels of commerce and of war of all nations which shall agree to observe these rules." etc., the words "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules," and in the same clause, as a consequential amendment, to substitute for the words "any nation so agreeing" the words "any such nation." His Majesty's Government were prepared to accept this amendment, which seemed to us equally efficacious for the purpose which we had in view, namely, that of insuring that Great Britain should not be placed in a less advantageous position than other powers, which they stopped short of conferring upon other nations a contractual right to the use of the canal.

We were also prepared to accept, in lieu of Article III-A, the new Article IV proposed by Mr. Hay, which, with the addition of the words "or countries" proposed in the course of the discussions here, runs as follows:

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

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<sup>1</sup> British Blue Book, United States, 1902.

I admitted that there was some force in the contention of Mr. Hay, which had been strongly supported in conversation with me by Mr. Choate, that Article III-A, as drafted by His Majesty's Government, gave to Article VIII of the Clayton-Bulwer treaty a wider application than it originally possessed.

In addition to those amendments, we proposed to add in the preamble after the words "being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans," the words "by whatever route may be considered expedient," and "such ship canal" for "said ship canal" in the first paragraph of Article III, words which, in our opinion, seemed to us desirable for the purpose of removing any doubt which might possibly exist as to the application of the treaty to any other interoceanic canals as well as that through Nicaragua.

I handed to Mr. White a statement showing the draft as it originally stood and the amendments proposed on each side.

I am, etc.,

LANSDOWNE.

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*Mr. White to Mr. Hay.*

[Personal—Confidential—Not of record—Extracts.]

Confidential.]

AMERICAN EMBASSY,

*London, October 26, 1901.*

DEAR MR. SECRETARY: Lord Lansdowne asked me to call upon him at the foreign office on the 23d instant, which I did. He said that his object in asking me to come to see him was that he might inform me, which it afforded him much pleasure to do, that His Majesty's Government was prepared to conclude a new Isthmian Canal treaty on the terms which, after having been discussed between himself and Mr. Choate, had been finally agreed upon by them—and he added that he wished me to understand that he made the communication officially—subject, however, to one exception, viz., that they would not press for the inclusion in the treaty of the proposed addition to Article IV of the following words: "or the freedom of passage of the canal to the vessels of commerce and of war of all nations on terms of entire equality, as provided by Article III."

Lord Lansdowne said that the Government, after considering these words, had arrived at the conclusion that they were of no particular advantage, and being desirous of keeping the treaty as free as possible from any unnecessary phraseology which might lead to controversy in the Senate, they thought it best to omit the proposed addition aforesaid. I replied that as they had only been inserted to meet the views of His Majesty's Government, and I knew (having in mind your cablegram to Mr. Choate of September 21) that you did not consider the words in question either necessary or as improving the article, I was quite sure that you would be glad to hear that this Government had arrived at the same conclusion and that the proposed addition would, therefore, subject to your approval, be omitted.

Lord Lansdowne suggested before I left him, as he had previously done to the ambassador, that it would be necessary for the two Governments to agree upon the series of documents<sup>1</sup> which should

<sup>1</sup> See British Blue Book, "United States, 1902," and Senate Document 746, 61st Cong., 3d sess.

eventually be laid before Parliament and Congress showing how the agreement to negotiate the new treaty had been arrived at, and that Lord Pauncefote, who sails to-day, would be furnished with his views on the subject and be in a position to settle the question with you on his arrival.

I also inclose a confidential paper which Lord Lansdowne marked in my presence and handed to me showing the paragraph which is now to be omitted. I observe that in Article IV the word "before-mentioned" is used instead of "such" before "ship canal," whereas in a memorandum sent to Mr. Choate by Lord Lansdowne, on the 1st instant, of the proposed amendments, the word "such" is used, but it does not appear to be material and I have not called the attention of the foreign office thereto, feeling that you will be able to do so when discussing the final draft with Lord Pauncefote if you deem it necessary or important.

I have, etc.,

HENRY WHITE.

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*Mr. Hay to Lord Pauncefote.*

WASHINGTON, November 8, 1901.

EXCELLENCY: Upon your return to Washington, I had the honor to receive from you a copy of the instruction addressed to you on the 23d October last<sup>1</sup> by the Marquis of Lansdowne, accepting and reducing to final shape the various amendments in the draft of an Interoceanic Canal treaty, as developed in the course of the negotiations lately conducted in London, through Mr. Choate, with yourself and Lord Lansdowne.

The treaty being thus brought into a form representing a complete agreement on the part of the negotiators, has been submitted to the President, who approves of the conclusions reached and directs me to proceed to the formal signature thereof.

I have, accordingly, the pleasure to send you a clear copy of the text of the treaty, embodying the several modifications agreed upon. Upon being advised by you that this text correctly represents your understanding of the agreement thus happily brought about, the treaty will be engrossed for signature at such time as may be most convenient to you.

I have, etc.,

JOHN HAY.

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*Lord Pauncefote to the Marquis of Lansdowne.*<sup>2</sup>

WASHINGTON, November 19, 1901.

MY LORD: I have the honor to report that, by appointment with Mr. Hay, I yesterday went to the State Department, accompanied by Mr. Wyndham, and signed the new treaty for the construction of an interoceanic canal.

I have, etc.

PAUNCEFOTE.

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<sup>1</sup> Printed, ante.

<sup>2</sup> British Blue Book "United States, 1902."



[Telegraphic.]

*Lord Pauncefote to the Marquis of Lansdowne.*<sup>1</sup>WASHINGTON, *December 16, 1901.*

Canal treaty ratified by 72 votes to 6 in Senate to-day.

*Lord Pauncefote to the Marquis of Lansdowne.*<sup>1</sup>WASHINGTON, *November 18, 1901.*

MY LORD: I have the honor to transmit to your lordship herewith a copy of a communication from Mr. Hay, dated the 8th November, formally placing on record the President's approval of the various amendments made in the draft of the new interoceanic canal treaty in the course of the negotiations, and particularly set forth in your lordship's dispatch to me of the 23d October.

I have, etc.

PAUNCEFOTE.

[Inclosure in No. 5.]

*Mr. Hay to Lord Pauncefote.*WASHINGTON, *November 8, 1901.*

EXCELLENCY: Upon your return to Washington I had the honor to receive from you a copy of the instruction addressed to you on the 23d October last by the Marquis of Lansdowne, accepting and reducing to final shape the various amendments in the draft of an interoceanic canal treaty, as developed in the course of the negotiations lately conducted in London, through Mr. Choate, with yourself and Lord Lansdowne.

The treaty, being thus brought into a form representing a complete agreement on the part of the negotiators, has been submitted to the President, who approves of the conclusions reached, and directs me to proceed to the formal signature thereof.

I have, accordingly, the pleasure to send you a clear copy of the text of the treaty, embodying the several modifications agreed upon. Upon being advised by you that this text correctly represents your understanding of the agreement thus happily brought about, the treaty will be engrossed for signature at such time as may be most convenient to you.

I have, etc.

JOHN HAY.

[Personal—Not of record—Original not in department files.]

DEPARTMENT OF STATE,  
*Washington, December 12, 1901.*

MY DEAR MR. CULLOM: The treaty with England in respect to the construction of a ship canal between the Atlantic and Pacific Oceans,

<sup>1</sup> British Blue Book "United States, 1902."

which the President has sent to the Senate, is the result of careful negotiations conducted between the two Governments since the receipt of Lord Lansdowne's dispatch of the 22d of February last, whereby His Majesty's Government declined to accept, for the reasons therein stated, the former convention of February 5, 1900, as amended by the Senate on the 20th of January, 1901. Under the instructions of the President I have signed on behalf of the United States the treaty now prepared.

The Clayton-Bulwer treaty of 1850, which contemplated the construction of a canal under the joint auspices of the two Governments, to be controlled by them jointly, its neutrality and security to be guaranteed by both, was almost from the date of its ratification the subject of frequent discussion and occasional irritation between the two Governments. Nearly half a century elapsed without any step being taken by either toward carrying it into practical effect by the construction of a canal under its provisions. Instead of being, as was intended, an instrument for facilitating the construction of a canal it became a serious obstacle in the way of such construction. In the meantime the conditions which had existed at the time of its ratification had wholly changed. The commerce of the world had multiplied many fold. The growth of the United States in population, resources, and ability had been greater still. The occupation and development of its Pacific coast and its commercial necessities upon the Pacific Ocean created a state of things hardly dreamt of at the date of the treaty. At last the acquisition of the Hawaiian and the Philippine Islands rendered the construction of the canal a matter of imperative and absolute necessity to the Government and people of the United States, and a strong national feeling in favor of such construction arose, which grew with the progress of events into an irrevocable determination to accomplish that object at the earliest possible moment.

The incident of one of our great ships of war lying in the North Pacific, being ordered to join our fleet in the West Indies in time of actual war, and being obliged for that purpose to round Cape Horn, when through an isthmian canal she could in much less than half the time have reached the scene of action in which she was destined to take part, was an unanswerable illustration of the urgent and immediate need of such a canal for the protection and safety of the interests of the United States. But the Clayton-Bulwer treaty stood in the way. Great Britain did not manifest, and it is believed did not entertain, the remotest idea of joining or aiding in such a work. The United States was able to bear alone the entire cost of the canal, but was apparently prohibited by the existing treaty from undertaking the enterprise which, although carried out at its own expense, would redound to the benefit of the world's commerce quite as much as to its own advantage. The President, loyal to treaty obligations, was unwilling to countenance any demand, however widespread, for proceeding with the construction of the canal until he could obtain by friendly negotiation, on which he confidently relied, the consent of Great Britain to the abrogation of the Clayton-Bulwer treaty, or such a modification of its terms as would enable the United States untrammelled to enter upon the great work whose successful accomplishment was vitally necessary to its own security,

and would benefit the people of all other nations according to their respective interests in the commerce of the world.

Such was the situation in which the negotiations for the supersession of the treaty were commenced and have been conducted, and we can not but recognize the fair and friendly spirit in which the successive overtures of the United States toward that end have been met by Great Britain. It has been my firm and constant hope throughout these negotiations that a solution of this difficult and important question between the two Governments would finally be reached which, instead of disturbing the amicable relations which have recently existed and ought always to exist between the United States and Great Britain, would make them more friendly still, and I believe that the treaty now presented, if finally established, will have this desired effect.

It is unnecessary to recall the discussions and negotiations which resulted in the making of the treaty of February 5, 1900, its deliberate consideration by the Senate, the amendments proposed by that body as a condition of its ratification by the United States, and its rejection as so amended by the British cabinet.

In rejecting the amended treaty, in the memorandum of February 22, 1901, Lord Lansdowne gave evidence of the sincere desire of His Majesty's Government to meet the views of the United States and earnestly deprecated any final failure to come to an understanding on this important subject.

Reciprocating these friendly intentions and determined, if possible, to devise a form of treaty which should reconcile the conflicting views which had proved fatal to that of 1900, I prepared and submitted to Lord Pauncefoot in March last, for the consideration of his Government, a project for a treaty which, after long and careful consideration and negotiation, has been so perfected as to receive the approval both of the President and of the British Government in the form now presented.

The points on which there was failure to agree in the former treaty consisted of the amendments proposed by the Senate and were three in number:

First. The insertion of the clause relating to the Clayton-Bulwer treaty "superseding" the same.

Second. The addition of the clause providing that the stipulations and conditions of the first five clauses of the third article, as to the neutrality of the canal, should not "apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order." and

Third. The omission of the invitation to other powers to adhere to the treaty when ratified.

Although on all three of these important points the opposing views of the Senate and of the British Government were most emphatic, I deemed it not impossible that a project might be framed which would satisfy both, without a sacrifice of any essential principle on either side and that the supreme importance of the end in view would justify the attempt.

In the new draft of treaty the clause superseding the Clayton-Bulwer treaty was made the subject of a separate article and was

submitted to the consideration of the British Government upon terms which would permanently secure the neutrality of the canal for the use of all nations on terms of entire equality and at the same time would relieve Great Britain of all responsibility and obligation to enforce the conditions which, by the former treaty, had been imposed upon or assumed by her jointly with the United States. And to this end instead of the provision that the United States alone adopted them and undertook the whole of that burden.

Second. No longer insisting upon the language of the amendment, which had in terms reserved to the United States express permission to disregard the rules of neutrality prescribed when necessary to secure its own defense—which the Senate had apparently deemed necessary because of the provision in rule 1 that the canal should be free and open “in time of war as in time of peace” to the vessels of all nations—it was considered that the omission of the words “in time of war as in time of peace” would dispense with the necessity of the amendment referred to, and that war between the contracting parties or between the United States and any other power would have the ordinary effect of war upon treaties and would remit both parties to their original and natural right of self-defense and give to the United States the clear right to close the canal against the other belligerent and to protect it by whatever means might be necessary.

Third. While omitting to invite other nations to adhere to the treaty when ratified, and so to acquire contract rights in the canal, it was thought that the provision that the canal should be free and open to all nations on terms of entire equality, now that Great Britain was relieved of all obligation to defend such neutrality, would practically meet the objection which had been made by Lord Lansdowne to the Senate’s third amendment, viz, that Great Britain was thereby placed in a worse position than other nations in case of war.

Fourth. In view of the facts that the enormous cost of constructing the canal was to be borne by the United States alone; that when constructed the canal was to be the absolute property of the United States, and to be managed, controlled, and defended by it; and that now by the new project the whole burden of maintaining its neutrality and security was thrown upon the United States, it was deemed fair to omit the prohibition contained in the former treaty forbidding the fortification of the canal and the waters adjacent.

Fifth. The sixth clause of article 3 was retained, which provides that “in time of war as in time of peace” the canal itself shall enjoy complete immunity from attack or injury by belligerents, in the belief that such a provision was in the general interest of commerce and civilization, and that all nations should and would regard such a work as sacred under all circumstances.

With the exception of the changes above enumerated, which were made to reconcile conflicting views, care was taken to preserve in the new draft the exact language which had already passed the Senate without objection, and so far as known without criticism. The draft of the new treaty was transmitted by Lord Pouncefote to Lord Lansdowne, and its treatment by him manifested a most conciliatory spirit and an earnest desire to reach a conclusion which should be satisfactory to the United States, if this could be done without departing

from the great principle of neutrality, including the use of the canal by all nations on equal terms, for which Great Britain had always contended.

After months of careful deliberation he announced the readiness of himself and his colleagues to approve the form and substance of the new treaty, with certain amendments hereinafter referred to. He recognized the important bearing upon all the questions involved of the change by which Great Britain was to be relieved of all the burden and responsibility of maintaining the neutrality and security of the canal, which were to be wholly assumed by the United States as the owner of this great work of public improvement built at its own cost. He considered that the abrogation of the Clayton-Bulwer treaty, which had been inserted by way of amendment in the former treaty without any previous opportunity for consideration of the matter by Great Britain, would not now be regarded as inadmissible if sufficient provision were made in the new treaty for anything in the Clayton-Bulwer treaty which it was any longer of material interest to Great Britain to preserve.

In this connection he referred to the fact that the new treaty contained no stipulation against the acquisition of sovereignty over the territory through which the canal should pass, and that, although the former treaty as approved by Great Britain before its amendment by the Senate had contained no such stipulation, it had left undisturbed that portion of Article I of the Clayton-Bulwer treaty by which the two Governments agreed that neither would ever occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; and also to Article VIII of the Clayton-Bulwer treaty, which is referred to in the preamble of the new treaty and in that of the original treaty of February 5, 1900, as amended by the Senate, as establishing the "general principle" of neutralization which was not to be thereby impaired.

It was claimed that if Great Britain were now to be called upon to surrender the interests and the principle thus secured by what remained of the Clayton-Bulwer treaty, there should be, in view of the character of the treaty now to be concluded and of the "general principle" of neutralization thus reaffirmed in the preamble, some clause inserted agreeing that no change of sovereignty or other change of circumstances in the territory through which the canal is intended to pass shall affect such "general principle" or release the parties, or either of them, from their obligations under this treaty, and that the rules adopted as the basis of neutralization shall govern so far as possible all interoceanic communication across the Isthmus. He therefore proposed, as an additional article, on the acceptance of which His Majesty's Government would probably be prepared to withdraw their objections to the formal abrogation of the Clayton-Bulwer treaty the following, viz:

In view of the permanent character of this treaty, whereby the "general principle" established by Article VIII of the Clayton-Bulwer convention is reaffirmed, the high contracting parties hereby declare and agree that the rules laid down in the last preceding article shall, so far as they may be applicable, govern all interoceanic communication across the isthmus which connects North and South America, and that no change of territorial sovereignty or other change of circumstances shall affect such general principle or the obligations of the high contracting parties under the present treaty.

The clause so proposed was regarded by the President as more far-reaching than the purpose demanded and as converting the vague and indefinite provisions of the eighth article of the Clayton-Bulwer treaty—which only contemplated future treaty stipulations to be entered into when any other route should prove to be practicable—into a very definite and certain present treaty which would fasten the crystallized rules of this treaty upon every other interoceanic communication across the Isthmus; and as perpetuating in a much stricter and more definite and more extended form, by a revision and re-enactment of the eighth article, the mischievous effects of the Clayton-Bulwer treaty, of which it was the desire and hope of the United States to be relieved altogether.

The President considered that now that a canal between the two oceans was actually about to be built, it was sufficient for the treaty now to be concluded to provide for that alone; that there was hardly a possibility of more than this one canal ever being built between the two oceans—that in that remote and almost impossible contingency the rules and principles governing the use and status of the canal to be constructed under this treaty would be regarded as precedents for the consideration of the parties if they should be approved and sanctioned by experience and by the judgment of the commercial nations; but that for the present a convention for the building of one canal at the cost of the United States for the equal benefit of them all was all that could be wisely attempted. He not only was willing but earnestly desired that the "general principle" of neutralization referred to in the preamble of this treaty and in the eighth article of the Clayton-Bulwer treaty should be perpetually applied to this canal. This, in fact, had always been insisted upon by the United States. He recognized the entire justice and propriety of the demand of Great Britain that if she was asked to surrender the material interest secured by the first article of that treaty, which might result at some indefinite future time in a change of sovereignty in the territory traversed by the canal, the "general principle" of neutralization as applied to the canal should be absolutely secured, and that a clause should be added to the draft treaty by which the parties should agree that no change of sovereignty or of international relations of the territory traversed by the canal should affect this general principle or the obligations of the parties under this treaty.

These views were in substance submitted to Lord Lansdowne on the part of the United States, and after considerable discussion and deliberation the following additional clause, to be known as Article IV of the new treaty, was agreed upon as a substitute for that proposed by him:

It is agreed that no change of territorial sovereignty, or of the international relations of the country or countries traversed by the before-mentioned canal, shall affect the general principle of neutralization or the obligations of the high contracting parties under the present treaty.

It transpired, in the course of the discussion already referred to, that although the draft of the new treaty mentioned no particular route which the canal should traverse, there was an apprehension that, as the canal had been so often referred to as the Nicaragua Canal, and the intended treaty as the Nicaragua Canal treaty, it might possibly be claimed that it would not apply to a canal by the Panama route or by any other route, if any such should be selected.

But it had always been the purpose of the President that the treaty should apply to the canal which should be first built, by whichever or whatever route, and when this apprehension was communicated to the President, he declared such to be his purpose, and, to exclude all doubt, it was agreed that the preamble should be amended by inserting, after the word "oceans," the words "by whatsoever route may be considered expedient."

His Majesty's Government recognized the material importance of the changes from the former treaty as amended by the Senate, by the omission of the Senate amendment that the first five rules of neutrality should not apply to measures which "might be found necessary to take for securing by its own forces the defense of the United States," and by the omission, as an offset thereto, of the words "in time of war as in time of peace" from rule 1, and of the stipulation prohibiting the erection of fortifications commanding the canal or the waters adjacent. These changes, in the first place, removed what Lord Lansdowne had criticized as a dangerous ambiguity in the former treaty as amended, of which one clause permitted the adoption of defensive measures, while another prohibited the erection of fortifications.

The obvious effect of these changes is to reserve to the United States, when engaged in war, the right and power to protect the canal from all damage and injury at the hands of the enemy, to exclude the ships of such enemy from the use of the canal while the war lasts, and to defend itself in the waters adjacent to the canal, the same as in any other waters, without derogation in other respects from the principles of neutrality established by the treaty; and it was clearly recognized by His Majesty's Government "that contingencies may arise when, not only from a national point of view but on behalf of the commercial interests of the whole world, it might be of supreme importance to the United States that they should be free to adopt measures for the defense of the canal at a moment when they were themselves engaged in hostilities."

The omission of the words in the former treaty by which Great Britain was bound jointly with the United States to maintain the neutrality of the canal, enabled His Majesty's Government to waive their former objection insisted upon under the former treaty as amended by the Senate, to an agreement which permitted the United States in time for war or apprehended war to interfere with the canal or its use, as its interests might require, while Great Britain alone, in spite of her vast commercial interests, was precluded from taking any measures to secure her interests in or near the canal. By the omission of the words "in time of war as in time of peace," in the event of the remote and well-nigh impossible contingency of a war between the United States and Great Britain, each party is remitted to its natural right of self-defense, but, even in that emergency, by force of the sixth clause of Article III—which is the only clause in the treaty by its terms expressly applying in time of war as in time of peace—the plant, establishment, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, and shall enjoy complete immunity from attack or injury by the enemy, and from acts calculated to impair their usefulness as part of the canal.

Finally, the absence from the draft treaty of any provision for the adherence of other powers was at first strenuously objected to by the British Government. It protested against being bound by stringent rules of neutral conduct not equally binding upon other powers, and to remedy this proposed the insertion in rule 1, after the word "nations," of the words "which shall agree to observe these rules," so as to make it read that "the canal shall be free and open to the vessels of commerce and of war of all nations, who shall agree to observe these rules, on terms of entire equality, so that there shall be no discrimination against any nation so agreeing," etc.

But the President was apprehensive that such a provision would give to the other nations the footing of parties to the contract and give them a contract right to the use of the canal. And in view of the action of the Senate on the former treaty, striking out Article III, which provided for bringing the treaty, when ratified, to the notice of other powers and inviting them to adhere to it, which seemed to mean practically the same thing, he believed that the proposed provision would meet the same fate. This was represented to His Majesty's Government, and it was also insisted on the part of the United States that there was a strong national feeling among the peoples of the United States against giving to foreign powers a contract right to intervene in an affair so peculiarly American as this canal when constructed would be; that, notwithstanding the similar provision in the Clayton-Bulwer treaty, no foreign powers in the 50 years that had elapsed had effectively intimated a desire to participate in or contribute to the construction of the canal; that no other power had now any right in the premises, or anything to give up or part with as the consideration for acquiring such a contract right; that they must rely upon the good faith of the United States in its declaration to Great Britain in the treaty that it adopts the rules and principles of neutralization therein set forth, and that it was not quite correct to speak of the nations other than the United States as being bound by the rules of neutralization set forth in the treaty; that it was the United States which bound itself by them as a consideration for getting rid of the Clayton-Bulwer treaty, and that the only way in which they were bound by them was that they must comply with them if they would use the canal.

It was further insisted that the proposed provision was much more objectionable than the third article of the former treaty, which was struck out by the Senate, for that only invited the other powers to come in and become parties to the contract after ratification. But the proposed provision would rather compel the other powers to come in and agree in the first instance as a condition precedent to any use of the canal by them.

These views were appreciated, and a modification suggested on the part of the United States to Lord Lansdowne's proposed amendment was accepted which omits the words "which shall agree to observe" and substitutes for them the word "observing," and omits the words "so agreeing" and inserts the word "observing," and omits the words "so agreeing" and inserts "such," before "nations," in the next line, so as to make the provision read: "The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation," etc. Thus the whole idea of contract



right disappears, and any nation whose ships refuse or fail to observe the rules will be deprived of the use of the canal.

The further amendment proposed by Lord Lansdowne, and taken from the eighth article of the Clayton-Bulwer treaty, that the conditions and charges of traffic on the canal shall be just and equitable, was so obviously reasonable that it was accepted by the President as soon as suggested.

I am, etc.,

JOHN HAY.

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#### HISTORY OF AMENDMENTS PROPOSED AND CONSIDERED AFTER THE ACTION OF THE SENATE AND WHICH RESULTED IN THE SECOND HAY-PAUNCEFOTE TREATY.

[Prepared in the Department of State and sent by Mr. Hay to the Senate Committee on Foreign Relations.]

The Senate's amendments to the former treaty required (first) that there should be in plain and explicit terms an express abrogation of the Clayton-Bulwer treaty; (second) that the rules of neutrality adopted should not deprive the United States of the right to defend itself and to maintain public order; and (third) that other powers should not in any manner be made parties to the treaty by being invited to adhere to it.

For a better understanding of the scheme of the new treaty, it may be well briefly to advert to the objections suggested by Great Britain to these several amendments.

#### AS TO THE ABROGATION OF THE CLAYTON-BULWER TREATY.

Lord Lansdowne's objections were as to the manner of doing this and as to the substance. It was insisted that in the negotiations which led to the making of the former treaty no attempt had been made to ascertain the views of the British Government on such complete abrogation, and that the Clayton-Bulwer treaty being, as it claimed, an international compact of unquestionable validity, could not be abrogated without the consent of both parties to the contract.

There was in this connection an apparent misconception on the part of His Majesty's Government in respect to the proper function of the Senate in advising the ratification of a treaty with amendments proposed by it. It seemed to be regarded as an attempt on the part of the Senate to accomplish by its own vote, as a final act, the abrogation of an existing treaty, without an opportunity for full consideration of the matter by the other party. It was overlooked that the Senate was simply exercising its undoubted constitutional function of proposing amendments to be communicated to the other party to the contract, to ascertain its views upon the question, and it was hoped by the President—and the hope was expressed in submitting the treaty as amended by the Senate to the British Government—that the amendments would be found acceptable by it. Failing this, there was a full opportunity for His Majesty's Government, by counter propositions, to express its views on this and the other amendments, and so by a continuous negotiation to arrive, if possible, at a mutually satisfactory solution of all questions involved. Neverthe-

less, in view of the great importance of the Senate's amendments, taken together, it was deemed more expedient by Lord Lansdowne to reject them, but to leave the door open for fresh negotiations, which might have a more happy issue; and he earnestly deprecated a final failure of the parties to agree, and emphatically expressed the desire of his Government to meet the views of the United States on this most important matter.

The principal substantial objection to the Senate's amendment, completely superseding the Clayton-Bulwer treaty, was that if this were done, the provisions of Article I of that treaty, which had been left untouched by the original Hay-Pauncefote treaty, would be annulled, and thereby both powers would, except in the vicinity of the canal, acquire entire freedom of action in Central America, a change which Lord Lansdowne thought would certainly be of advantage to the United States, and might be of substantial importance.

AS TO THE RIGHT OF THE UNITED STATES, NOTWITHSTANDING THE NEUTRAL RULES ADOPTED BY THE TREATY, TO DEFEND ITSELF BY ITS OWN FORCES, AND TO SECURE THE MAINTENANCE OF PUBLIC ORDER, COVERED BY WHAT WAS GENERALLY KNOWN AS THE DAVIS AMENDMENT.

His Majesty's Government criticized the vagueness of the language employed in the amendment, and the absence of all security as to the manner in which its ends might at some future time be interpreted; but thought that, however precisely it might be worded, it would be impossible to determine what might be the effect if one clause permitting defensive measures and another clause (which has now been omitted) prohibiting fortification of the canal were allowed to stand side by side in the same convention.

This amendment was strenuously objected to by Great Britain as involving a distinct departure from the principle of neutrality which had theretofore found acceptance by both Governments, inasmuch as it would, as construed by Lord Lansdowne, permit the United States in time of peace as well as in time of war to resort to whatever warlike acts it pleased in and near the canal, which would be clearly inconsistent with its intended neutral character and would deprive the commerce and navies of the world of the free use of it.

It was insisted that by means of the amendment the obligation of Great Britain to respect the neutrality of the canal under all circumstances would remain in force, while that of the United States, on the other hand, would be essentially modified, and that this would result in a one-sided agreement, by which Great Britain would be debarred from any warlike act in or near the canal, while the United States could resort to any such acts, even in time of peace, which it might deem necessary to secure its own safety.

Moreover, it was insisted that by this amendment, in connection with the third amendment, which excluded other powers from becoming parties to the contract, Great Britain would be placed at a great disadvantage as compared with all other powers, inasmuch as she alone, with all her vast interests in the commerce of the world, would be bound under all circumstances to respect the neutrality of the canal, while the United States, even in time of peace, would have a treaty right to interfere with the canal on the plea of necessity

for its own safety, and all other powers not being bound by the treaty could at their pleasure disregard its provisions.

AS TO THE AMENDMENT STRIKING OUT THE ARTICLE IN THE TREATY AS SUBMITTED TO THE SENATE, WHICH PROVIDED FOR AN INVITATION TO THE OTHER POWERS TO COME IN AND ADHERE TO IT.

This was emphatically objected to because if acquiesced in by Great Britain she would be bound by what Lord Lansdowne described as the "stringent rules of neutral conduct" prescribed by the treaty, which would not be equally binding upon the other powers, and it was urged that the adhesion of other powers to the treaty as parties would furnish an additional security for the neutrality of the canal.

In the hope of reconciling the conflicting views thus presented between the former treaty as amended by the Senate and the objections thereto of the British Government, the treaty now submitted for the consideration of the Senate was drafted.

The substantial differences from the former treaty are as follows:

First. In the new draft of treaty *the provision superseding the Clayton-Bulwer treaty as a whole*, instead of being parenthetically inserted, as by the former Senate amendment, was made the subject of an independent article and presented as the first article of the treaty. It was thus submitted to the consideration of the British Government in connection with the other substantial provisions of the treaty which declared the neutrality of the canal for the use of all nations on terms of entire equality.

Second. *By a change in the first line of Article III, instead of the United States and Great Britain jointly adopting as the basis of the neutralization of the canal, the rules of neutrality prescribed for its use as was provided by the former treaty, the United States now alone adopts them.*

This was regarded as a very radical and important change and one which would go far toward a reconciliation of the conflicting views of the two Governments.

It relieves Great Britain of all responsibility and obligation to enforce the neutrality of the canal, which by the former treaty had been imposed upon or assumed by her jointly with the United States, and thus meets the main stress of the objection which seemed to underlie or be interwoven with her other objections to the former Senate amendments. The United States alone as the sole owner of the canal, as a purely American enterprise, adopts and prescribes the rules by which the use of the canal shall be regulated, and assumes the entire responsibility and burden of enforcing, without the assistance of Great Britain or of any other nation, its absolute neutrality.

It was also believed that this change would be in harmony with the national wish that this great interoceanic waterway should not only be constructed and owned, but exclusively controlled and managed by the United States.

Third. The next important change from the former treaty consists in *the omission of the words "in time of war as in time of peace" from clause 1 of Article III.*

No longer insisting upon the language of the Davis amendment—which had in terms reserved to the United States express permission to disregard the rules of neutrality prescribed, when necessary to secure its own defense, which the Senate had apparently deemed necessary because of the provision in Rule I, that the canal should be free and open “in time of war as in time of peace” to the vessels of all nations—it was considered that the omission of the words “in time of war as in time of peace” would dispense with the necessity of the amendment referred to, and that war between the contracting parties, or between the United States and any other power, would have the ordinary effect of war upon treaties when not specially otherwise provided, and would remit both parties to their original and natural right of self-defense and give to the United States the clear right to close the canal against the other belligerent, and to protect it and defend itself by whatever means might be necessary.

Fourth. *In conformity with the Senate's emphatic rejection of Article III of the former treaty, which provided that the high contracting parties would, immediately upon the exchange of ratifications, bring it to the notice of other powers and invite them to adhere to it, no such provision was inserted in the draft of the new treaty.*

It was believed that the declaration that the canal should be free and open to all nations on terms of entire equality (now that Great Britain was relieved of all responsibility and obligation to enforce and defend its neutrality) would practically meet the force of the objection which had been made by Lord Lansdowne to the Senate's excision of the article inviting the other powers to come in, viz, that Great Britain was placed thereby in a worse position than other nations in case of war with the United States.

Fifth. *The next change from the former treaty is the omission of the provision in clause 7 of Article III, which prohibited the fortification of the canal, and the transfer to clause 2 of the remaining provision of clause 7, that the United States shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.*

The whole theory of the treaty is that the canal is to be an entirely American canal. The enormous cost of constructing it is to be borne by the United States alone. When constructed it is to be exclusively the property of the United States and is to be managed, controlled, and defended by it. Under these circumstances, and considering that now by the new treaty Great Britain is relieved of all the responsibility and burden of maintaining its neutrality and security, it was thought entirely fair to omit the prohibition that “no fortification shall be erected commanding the canal or the waters adjacent.”

Sixth. It will be observed that although the words “in time of war as in time of peace” had been omitted from clause 1 of Article III, upon the theory that the omission of these words would dispense with the necessity of the Davis amendment, and that war between the United States and any other power would have the ordinary effect of war upon treaties and remit both parties to their natural right of self-defense, the same words are retained in the sixth clause of Article III, which provides that the plant, establishment, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed part of it for the purposes of this treaty, and “in time of war as in time of peace” shall enjoy complete

immunity from attack or injury by belligerents and from acts calculated to impair their usefulness.

It was considered that such specific provision was in the general interest of commerce and of civilization, and that all nations would regard such a work as sacred under all circumstances.

It was hoped that the changes above enumerated from the former treaty would practically reconcile the conflicting contentions of the two Governments and would lead to the much-desired result of an entire concurrence of views between them.

With the exception of these changes care was taken in the draft of the new treaty to preserve the exact language, which had passed both the Senate and the British Government without objection, and, as is believed, without criticism.

The hope that the changes thus made had effectually met the British objections to the former treaty as amended by the Senate was almost realized.

The proposed draft of the new treaty was transmitted to Lord Lansdowne, and after mature deliberation he proposed on the part of His Majesty's Government only three substantial amendments.

He recognized the weighty importance of the change by which Great Britain was relieved of all responsibility for enforcing the neutrality and maintaining the security of the canal, and that all this burden was solely assumed by the United States. He also appreciated the importance of the other proposed changes in the direction of harmony.

Under this modified aspect of the relations of the two nations to the canal, he was not indisposed to consent to the abrogation of the Clayton-Bulwer treaty if the "general principle" of neutrality, which was reaffirmed in the preamble of the new treaty as well as of the former one, should be preserved and secured against any change of sovereignty or other change of circumstances in the territory through which the canal is intended to pass, and that the rules adopted as the basis of neutralization should govern, as far as possible, all interoceanic communication across the Isthmus. He referred in this connection to Articles I and VIII of the Clayton-Bulwer treaty.

He therefore proposed, by way of amendment, the insertion of an additional article, on the acceptance of which His Majesty's Government would be inclined to withdraw its objection to the formal abrogation of the Clayton-Bulwer treaty.

The amendment thus proposed by him was in the following language, viz:

*In view of the permanent character of this treaty, whereby the general principle established by Article VIII of the Clayton-Bulwer treaty is reaffirmed, the high contracting parties hereby declare that the rules laid down in the last preceding article shall, so far as they may be applicable, govern all interoceanic communication across the Isthmus which connects North and South America, and that no change of territorial sovereignty or other change of circumstances shall affect such general principle or the obligations of the high contracting parties under this treaty.*

This proposed article was regarded by the President as too far-reaching for the purpose in view, and as converting the vague and indefinite provisions of the eighth article of the Clayton-Bulwer treaty, which contemplated only future treaty stipulations when any

new route should prove to be practicable, into a very definite and certain present treaty, fastening the crystallized rules of neutrality adopted now for this canal upon every other interoceanic communication across the Isthmus, and as perpetuating in a more definite and extended form, by a sort of reenactment of the eighth article, the embarrassing effects of the Clayton-Bulwer treaty, of which the United States hoped to be relieved altogether.

He believed that now that a canal is about to be built at the sole cost of the United States for the equal benefit of all nations, it was sufficient for the present treaty to provide for that one canal, and that it was hardly within the range of possibility that the United States would ever build more than one canal between the two oceans.

The President was, however, not only willing, but desirous, that the "general principle" of neutralization referred to in the preamble of this treaty should be applicable to this canal now intended to be built, notwithstanding any change of sovereignty or of international relations of the territory through which it should pass. This "general principle" of neutralization had always in fact been insisted upon by the United States, and he recognized the entire justice of the request of Great Britain that if she should now surrender the material interest which had been secured to her by the first article of the Clayton-Bulwer treaty, which might result in the indefinite future should the territory traversed by the canal undergo a change of sovereignty, this "general principle" should not be thereby affected or impaired.

These views were communicated to His Majesty's Government, and as a substitute for the article proposed by Lord Lansdowne the following was proposed on the part of the United States:

*It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligations of the high contracting parties under the present treaty.*

Upon a full exchange of views, this article proposed by the United States was accepted by Great Britain and becomes Article IV of the treaty now submitted. It is thought to do entire justice to the reasonable demands of Great Britain in preserving the general principle of neutralization and at the same time to relieve the United States of the vague, indefinite, and embarrassing obligations imposed by the eighth article of the Clayton-Bulwer treaty.

During the discussions upon this article it was suggested that although no particular route was mentioned in the proposed treaty as the route to be traversed by the canal, yet as the canal had been so commonly mentioned as the "Nicaragua Canal," and the intended treaty as the "Nicaragua Canal treaty," it might possibly be claimed that the treaty did not apply to a canal by the Panama route, or by any other possible route. But it had always been intended by the President that the treaty should apply to the canal which should be first constructed, by whichever or whatever route, and to remove the apprehension referred to and to exclude all possible doubt in the matter, it was agreed that the preamble should be amended by inserting in the preamble after the word "oceans" the words "by whatever route may be considered expedient."

His Majesty's Government at first strenuously objected to the absence from the treaty of any provision for other powers coming in,

so as to be bound by its terms. It protested against being bound by what it regarded as stringent rules of neutrality which should not be equally binding upon other powers.

Lord Lansdowne accordingly proposed the following amendment, viz:

To insert in rule 1 of Article III, after the word "nation," the words, "which shall agree to observe these rules," and in the following line, after the word "nation," the words "so agreeing," so as to make the clause read:

"1. The canal shall be free and open to the vessels of commerce and of war of all nations *which shall agree to observe these rules, on terms of entire equality, so that there shall be no discrimination against any nation so agreeing,*" etc.

The President, however, could not consent to this amendment, because he apprehended that it might be construed as making the other powers parties to the contract, and as giving them contract rights in the canal, and that it would thus practically restore to the treaty the substance of the provision which the Senate had struck out as Article III of the former treaty. He believed also that there was a strong national feeling against giving to the other powers anything in the nature of a contract right in an affair so peculiarly American as the canal; that no other powers had now any right in the premises or anything to give up or part with as consideration for acquiring such a contract right; that they are to rely on the good faith of the United States in its declaration to Great Britain in this treaty; and that it adopts the rules and principles of neutralization there set forth. These rules are adopted in the treaty with Great Britain as a consideration for getting rid of the Clayton-Bulwer treaty, and the only way in which other nations are bound by them is that they must comply with them if they would use the canal.

It was also apparent that the proposed amendment, if accepted, would make rule 1 more objectionable than the third article of the former treaty, which was stricken out by the Senate's amendment, for that only invited other powers to come in and become parties to the contract *after ratification*, whereas the proposed provision would rather compel other powers to come in and become parties to the contract *in the first instance* as a condition precedent to the use of the canal by them.

Upon due consideration of these suggestions, and at the same time to put all the powers upon the same footing, viz, that they could use the canal only by complying with the rules of neutrality adopted and prescribed—an amendment to Lord Lansdowne's amendment was proposed and agreed upon, viz:

To strike out from his amendment the words, "which shall agree to observe" and substitute therefor the word "observing," and in the next line to strike out the words "so agreeing," and to insert before the word "nation" the word "such."

This made the clause as finally agreed upon and found in the treaty as now submitted for the consideration of the Senate:

*The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation, etc.*

Thus the whole idea of contract right in the other powers is eliminated, and the vessels of any nation which shall refuse or fail to observe the rules adopted and prescribed may be deprived of the use of the canal.

One other amendment proposed by Lord Lansdowne was regarded by the President as so entirely reasonable that it was agreed to without discussion. This was the insertion at the end of clause 1 of Article III the words: "*Such conditions and charges of traffic shall be just and equitable,*" and the word "convention," wherever it occurs, has been changed to "treaty."

It is believed that this memorandum will put the Senate Committee on Foreign Relations in full possession of the history of all changes in the treaty since the action of the Senate on the former amendment.

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*Mr. Hay to Lord Pauncefote.*

No. 2316.]

DEPARTMENT OF STATE,  
Washington, December 16, 1901.

EXCELLENCY: I have the honor, as well as the pleasure, to inform you that, by its resolution of the 16th instant, the Senate of the United States gave its advice and consent to the ratification of the convention between the United States and Great Britain to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, which I signed with you on the 18th ultimo.

Congratulating you on this successful outcome of our labors,  
I have, etc.,

JOHN HAY.

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*Lord Pauncefote to Mr. Hay.*

No. 49.]

BRITISH EMBASSY,  
Washington, February 18, 1902.

SIR: I have the honor to inform you that I have received from His Majesty's Government the King's ratification of the treaty between Great Britain and the United States for facilitating the construction of a ship canal to connect the Atlantic and Pacific Oceans, which was signed at Washington on the 18th of November last.

I have consequently the honor to state that if you will be good enough to appoint a day and hour for the exchange of the ratifications, it will give me much pleasure to attend at the State Department for that purpose.

I have, etc.,

PAUNCEFOTE.

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*Mr. Hay to Lord Pauncefote.*

No. 2372.]

DEPARTMENT OF STATE,  
Washington, February 20, 1902.

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 49, of the 18th instant, informing me that you have received from His Majesty's Government the King's ratification of the treaty between the United States and Great Britain for facilitating the construction of a ship canal to connect the Atlantic and Pacific Oceans, which we signed on November 18 last.

If you will kindly call at the department to-morrow (Friday) morning at 10 o'clock, it will give me pleasure to effect with you the exchange of ratifications.

I have, etc.,

JOHN HAY.



**PART II.**  
**PAPERS SUBMITTED.**

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*Mr. Root to Mr. Bryce.*

DEPARTMENT OF STATE,  
*Washington, January 8, 1909.*

DEAR MR. AMBASSADOR: I send you confidentially a memorandum regarding an arrangement which we are proposing to bring about between Panama and Colombia and the United States, and which we consider of importance as enabling the United States to execute peaceably the purposes of the Hay-Pauncefote treaty concluded between the United States and Great Britain on November 18, 1901.

Very sincerely, yours,

ELIHU ROOT.

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[Inclosure.]

*Memorandum.*

In 1903, in settling with Colombia the terms upon which the United States might obtain the opportunity to construct the Panama Canal, as contemplated in the Hay-Pauncefote treaty of November 18, 1901, Mr. Hay included in the Hay-Herran treaty of January 22, 1903, a provision under which the war vessels of Colombia might pass through the canal free of duty. The United States has now, by the use of good offices and additional concessions on its own part, brought the Governments of the two sections which at that time constituted the Republic of Colombia—namely, Colombia and Panama—to the point of entering into an agreement under which Colombia will recognize the independence of Panama and confirm the title which Panama undertook to give to the United States to construct the canal, by renouncing all Colombia's claims. The proposed agreement will adjust the relations of the two to the public debt of Colombia, arrange for the settlement of the boundary, and provide for the exercise of election as to citizenship, and will constitute in general a treaty of separation.

As a part of this same arrangement of separation and to help bring it about, the United States is about to agree to the continuance of the right of passage on the part of Colombia which was formerly stipulated in the Hay-Herran treaty. The United States has not been unmindful of the provision of the Hay-Pauncefote treaty under which the Suez rules were adopted as bases for the neutrality of the canal, including the rule against discrimination between different nations; but we have assumed that that rule had no relation to the terms by means of which the title to the site of the canal and the opportunity to build might be obtained.

The Government of the United States will communicate a copy of the different treaties immediately upon the final settlement of their terms, and hopes that the accomplishment of this very important step toward executing the purposes which the United States and Great Britain have shared for so many years, and an expression of which is embodied in the Hay-Pauncefote treaty, will be received by Great Britain with special satisfaction.

DEPARTMENT OF STATE,  
*Washington, January 8, 1909.*

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*Mr. Bryce to Mr. Root.*

BRITISH EMBASSY,  
*Washington, January 8, 1909.*

DEAR MR. SECRETARY OF STATE: I have to acknowledge the receipt of, and to thank you for, your letter of this day's date inclosing a memorandum relating to the treaty contemplated with the Republic of Colombia, and have communicated the substance of it by cable to my Government.

I note that the privilege proposed to be given to the Republic of Colombia of passing vessels through the Panama Canal without payment, to which the memorandum refers, is therein stated to apply to vessels of war only.

I am, dear Mr. Secretary of State,  
Very, truly yours,

JAMES BRYCE.

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*Mr. Root to Mr. Reid.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, January 9, 1909.*

Following memorandum was sent yesterday to Ambassador Bryce:<sup>1</sup>

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The proposed treaty with Colombia referred to is not yet signed, but when signed copy will be forwarded you. Meantime, as soon as practicable, explain situation to Sir Edward Grey as described in the memorandum. Tell him we are making very considerable sacrifices, including payment of a million and a quarter dollars, to clear the title and secure peaceable possession of canal site. Discreetly give him to understand that we should be both surprised and put out if there were any objection from Great Britain under Hay-Pauncefote treaty, the purpose of which we are making sacrifices to accomplish.

\* \* \* \* \*

Root.

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<sup>1</sup> Printed ante.

*Mr. Reid to Mr. Root.*

[Telegram.]

AMERICAN EMBASSY,  
London, January 11, 1909.

(Received 11.15 p. m.)

No. 350. Confidential. January 11—11 p. m.]

Saw Sir Charles Hardinge, in the absence of Sir Edward Grey, with reference to Panama arrangement summarized in your memorandum to Mr. Bryce, as stated in your cipher telegram to me of January 10.

He was familiar with memorandum, and moment I mentioned it said: "We shall have to enter a protest."

I hastened to present to him the considerations you mentioned, sacrifices made, and surprise and disappointment felt that objections should now be made under Hay-Pauncefote treaty.

I ventured to urge also that the very thing they now protested against, the free passage of Colombian war vessels, had been agreed to in the Hay-Herran treaty, with the full knowledge and assent, as we understood, of the British Embassy at the time.

He did not deny this, but said the circumstances were entirely changed, and that this consideration was given solely because the canal was then to pass through Colombian territory.

I pointed out that nevertheless this had been the foundation agreement under which we were enabled to build the canal, and that the consideration now given was the same.

He said, "Yes; but the country that gets it is not now the country through which the canal runs," and insisted that for the sake of the precedent they should be compelled to enter their protest.

In that case, I urged that it should be worded so as to cause as little embarrassment as possible. He assured me that we need have no apprehensions on that score, but insisted tenaciously that, with a view to the future, it was their duty to protest against any inequality in the treatment accorded foreign nations in the use of the canal, and that Colombia was now as much a foreign nation as any other.

REID.

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*Mr. Reid to Mr. Root.*

[Telegram.]

No. 352. Confidential. January 15—7 p. m.]

AMERICAN EMBASSY,  
London, January 15, 1909.

(Received 7.08 p. m.)

\* \* \* \* \*

Learned at the same time that protest in Colombian matter is not likely to be of a nature to create much embarrassment.

REID.

*Mr. Root to the British Ambassador.*

DEPARTMENT OF STATE,  
Washington, January 16, 1909.

DEAR MR. AMBASSADOR: I think on reflection that I better follow your suggestion and put in writing the gist of the ideas which I conveyed to you orally in our interview last Thursday regarding the proposed concession to Colombia of the right to pass her war vessels through the Panama Canal, when completed, without the payment of any dues to the United States. The view of the United States upon this is, in substance, as follows:

The Hay-Pauncefote treaty of November 18, 1901, provided for the building of a canal in territory which was not under the jurisdiction of either of the contracting parties. The title to the land through which the canal was to be built, the authority to construct and operate, and jurisdiction and control over the canal when finished, manifestly remained to be secured before the purposes of the treaty could be effected. The treaty said nothing about the way in which this should be accomplished. It follows by necessary implication that the agreements and arrangements to be made with the power or powers having right to grant or withhold the opportunity to construct and operate the canal must be quite different from the mere application of a scale of tolls to the nations of the world in general which had nothing whatever to do with the creation of the canal. Such agreements are *ex necessitate* outside of the rule of equality to all the world which was embodied in the Suez rules.

This view was recognized in the Hay-Herrán treaty of January 22, 1903, in which the United States of Colombia, while undertaking to grant the right to the construction of the canal, reserved the right "to pass their vessels, troops, and munitions of war at all times without paying any dues whatever." This treaty was confirmed by the Senate of the United States, but failed of confirmation by the Congress of Colombia. Then followed the revolution inaugurated on the 3d of November, 1903, and the recognition of the independence of Panama by both the United States and Great Britain and thereafter the grant by the Republic of Panama to the United States of various rights connected with the canal, including, as well as the direct grant, a consent by Panama to the purchase by the United States of the property and concessions of the New Panama Canal Co., which had been for a long time engaged in canal construction across the Isthmus and which had rights, the acquisition or removal of which was necessary to vest in the United States the right to construct the canal in accordance with the terms of the Hay-Pauncefote treaty.

Notwithstanding the grant by Panama in her treaty with the United States, there remained three subjects for serious consideration by the United States as affecting the peaceable and unquestioned title to the property and rights, the acquisition of which was necessary to the execution of the canal project. One of these was that there still remained in force a treaty made in 1846 between the United States and Colombia, which was in existence at the time the Hay-Pauncefote treaty was made and under which the United States remained under special obligation to Colombia in respect of the very status of the canal. The second was that the only way to

dispose of the prior and conclusive rights of the French Panama Canal Co., which stood in the way of the construction of the canal by the United States pursuant to the Hay-Pauncefote treaty, was by purchasing those rights and becoming the successor of the Panama Canal Co. under the concessionary contracts. In those contracts there were stipulations and reservations running to Colombia, including rights of forfeiture of property and including an express stipulation for the right to pass her war vessels through the canal without the payment of dues. The third was the fact that Colombia had continuously refused to recognize the independence of Panama and stood ready to retake possession of the Isthmus and resume her control over it the moment that she was not prevented by the superior military and naval force of the United States, so that the only possession which was possible under the grant of Panama alone was the possession to be continuously maintained by force.

Under these circumstances the United States has deemed it to be its duty, in the performance of the obligations which it assumed in the Hay-Pauncefote treaty with Great Britain, to fortify its title and assure its peaceable possession of the canal for the purposes of the Hay-Pauncefote treaty by securing the assent of Colombia to the separation of Panama, the renunciation of Colombia's claims, and the consent of Colombia to the necessary modification of the treaty engagements of 1846 between the United States and Colombia. In order to accomplish this the United States has found it necessary to renew the reservation of the specific right of Colombia to send its warships through the canal without the payment of dues, which has been insisted upon by that country in every concession and treaty she has made regarding it (for example, the Panama Canal concession of 1878, Article VI; the Hay-Concha accepted proposal for a treaty between the United States and Colombia of April 18, 1902, sent by Mr. Hay to the American Congress and printed as a public document; and the Hay-Herrán treaty of January 22, 1903, Articles XVI, XVII, and XVIII, and also to make the very substantial payment of a million and a quarter dollars, which the United States proposes to contribute toward the payment of Panama for the purpose of securing these rights.

The United States has considered not only that in prescribing the rule of equality in the Hay-Pauncefote treaty the parties must have contemplated the making of special arrangement by the United States with Colombia as the necessary source of title, but that the right to make such an exceptional arrangement still continues, in view of Colombia's continued special relation to the title; and this view is supported by the provision of the fourth article of the Hay-Pauncefote treaty, which declares—

that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

Of course, in agreeing to accord to Colombia this reservation the United States is not dealing with the general subject of canal tolls. It is treating Colombia, for the reasons which I have described, as being in a wholly exceptional position, not subject to the rule of equality of the Hay-Pauncefote treaty and not to come within any

schedule of tolls which may hereafter be established, which must, of course, under the treaty, be equal for all nations to whom the rule of equality is properly applicable.

The United States is especially desirous that its course shall be understood by Great Britain and that there shall be no thought on the part of that Government that the Government of the United States is unmindful of its obligations under the Hay-Pauncefote treaty or is willing, in any degree whatever, to fail in strict compliance with those obligations, and for this reason I am making this explanation in the hope that the Government of Great Britain will agree with us regarding the situation of Colombia as to the title to the canal to be so exceptional as not to come within the rule of equality of the Hay-Pauncefote treaty and will agree that the contemplated provision will constitute no precedent for the exception of any other nations from the payment of equal dues for the passage of war vessels in accordance with such schedules as shall be established in accordance with the Hay-Pauncefote treaty.

Faithfully, yours,

ELIHU ROOT.

*Mr. Root to Mr. Reid.*

[Telegram.]

DEPARTMENT OF STATE.

*Washington, January 16, 1909.*

Confidential and for your own information and guidance only.  
The following letter<sup>1</sup> sent to Ambassador Bryce to-day:

\* \* \* \* \*

I presume Bryce will mail it. Meantime you are at liberty to use it as you think best in your discretion to forestall premature action by British Government.

Your cable January 15, No. 352, saying that protest in Colombia matter is not likely to be of nature to be of much embarrassment, is reassuring, but it is important to avoid anything called a protest. We feel that the case does not warrant any protest, and that Great Britain instead of embarrassing ought to aid and encourage the consummation of an arrangement so useful for accomplishment of the purpose of Hay-Pauncefote treaty and so exceptional in character. Great Britain ought to consider that the good faith of the judgment of the United States as to the importance and necessity of this arrangement in aid of the enterprise is proved by our being willing not only to forego all dues from Colombia, but to pay a million and a quarter of dollars for the purpose of securing the arrangement. The position of the United States toward Great Britain in this matter is analogous to that of trustee securing advantage for the trust by means of personal sacrifices on his own part, and any objection by Great Britain would be like a beneficiary of a trust taking the benefit of the arrangement made by his trustee and at the same time making a very technical objection to his action. We are confident that the

<sup>1</sup> Printed ante.

idea of protests by Great Britain arose before the full nature of the arrangement was made known to her and under a misconception as to its nature and extent.

Root.

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*Mr. Reid to Mr. Root.*

No. 824.]

AMERICAN EMBASSY, LONDON.

*January 25, 1909.*

SIR: On receipt of your letter to Mr. Bryce \* \* \* concerning the passage of Colombian war vessels through the Panama Canal, I sought an interview with the minister of foreign affairs.

But, as reported in my cipher telegram of the 19th instant, Sir Edward Grey was absent, and not expected to return much before the reassembling of Parliament. I then had an interview with Sir Charles Hardinge, the permanent undersecretary, and presented orally your representations as to the propriety and necessity of the arrangement with Colombia as forcibly as I could and at considerable length. Sir Charles was obviously impressed by the facts, and did not insist so positively as at our first interview that Great Britain would be compelled to protest. He assured me that at any rate nothing in that direction would be done till there was ample time to consider your statement of the case. When I pointed out the inconvenience of long delay because of your approaching retirement he asked if I could not give him a memorandum of your views as I had just stated them. I promised to do so at once, and accordingly forwarded it the next day. He has since advised me that he sent it at once to Sir Edward Grey, in the north of England.

A copy of this memorandum is herewith inclosed. You will see that, in view of the danger of betraying our cipher, I felt bound to condense it materially, and also to put it in the form of a paraphrase instead of using your words. I hope you may find that the argument did not suffer too much in this process.

We have at least, by means of these interviews and the memorandum, secured the promptest attention and at the same time prevented premature action.

I have, etc.,

WHITELAW REID.

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[Inclosure to No. 824.]

*Mr. Reid to Sir Edward Grey.*

MEMORANDUM.

Great Britain and the United States having no territory for an isthmian canal, nevertheless entered into a treaty looking to the construction of one by the United States.

They must have contemplated whatever arrangements were found necessary by the United States for securing the route and authority to build.

These arrangements could not have been thought to be involved in any subsequent toll sheet for the canals, and a payment in tolls due to itself promised by the United States in return for the right of way could not be considered a violation of the rule of equality as to tolls.

The Hay-Herran treaty promised such a payment, and it was duly ratified by the United States.

That treaty failing in Colombia, a revolution occurred on the Isthmus. The new State of Panama, after being recognized by Great Britain and the United States, gave consent to the purchase by the United States of the concession granted long before by Colombia to the French Panama Co. through territory now a part of Panama. There was no other way to dispose of the earlier and positive rights of the French company. But the concession thus taken over included, among various other obligations, this express agreement for freedom of tolls on the canal for Colombian war vessels.

Under the obligations assumed in the Hay-Pauncefote treaty, it was the duty of the United States to get a good title for the canal route and secure peaceful possession of the same.

But Colombia refused to recognize the independence of Panama and stood ready to seize and reannex it the moment the United States ceased to maintain it by force.

Under these circumstances the United States thought it was discharging its duty under the Hay-Pauncefote treaty in regularizing the title to the canal route, and in securing the peaceable acquiescence of Colombia by a large money payment and by foregoing the tolls on Colombian war vessels, as required in the French concession it had been forced to take over.

The United States is most desirous that Great Britain should realize the necessity under which it was placed, its full recognition of all its real obligations under the Hay-Pauncefote treaty, and its unreserved agreement that the concession demanded by Colombia in every treaty she has ever negotiated on this subject shall constitute no precedent for any other nation.

The good faith of the United States is certainly shown in its willingness to lose these tolls and to pay a large sum in administering the canal trust created between the two parties to the Hay-Pauncefote treaty. As trustee it is thus securing advantage for the trust by its own sacrifices. Great Britain, a beneficiary of the trust, while receiving the benefit of this action, will surely not, on full consideration, interpose a mere technical objection to it by anything in the shape of a protest.

JANUARY 20, 1909.

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*Memorandum received by the Secretary of State from British ambassador, February 3, 1909.*

[Not of record in the Department of State.]

A telegram has been received from the foreign office informing Mr. Bryce that in view of the special circumstances of the case and in view of the explanation that Mr. Root has offered the Secretary of State may be informed that His Majesty's Government, on the



receipt of a formal assurance that a precedent for similar and other occasions shall not be constituted by the special treatment granted to Colombia with regard to free transit for her warships, are ready to forego the protest against the infringement of the Hay-Pauncefote treaty which they had intended to make.

This formal assurance and the acknowledgment thereof should be set forth in an exchange of notes.

The telegram further states that Mr. Bryce might further request the United States Government to use their good offices with the Government of Colombia to persuade them to devote an early installment of the sum received under the treaty of peace with Panama to settle the claims of British subjects against the Colombian Government.

It is believed that the amount of these claims is only about £6,000, but the claimants are for the most part persons of the laboring classes who can ill afford to lose these sums and the Colombian Government have more than once given an assurance to His Majesty's Government that provision for their payment would be made by the treaty under contemplation.

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*Mr. Bacon to Mr. Bryce.*

No. 540.]

DEPARTMENT OF STATE,  
*Washington, February 20, 1909.*

EXCELLENCY: On the 8th of January, ultimo, Secretary Root communicated to you, confidentially, a memorandum regarding an arrangement then in progress of negotiation between Panama and Colombia and the United States which was deemed of considerable importance, especially to us, because enabling the United States to execute peaceably the purposes of the Hay-Pauncefote treaty concluded between the United States and Great Britain on November 18, 1901. That memorandum reads as follows:

In 1903, in settling with Colombia the terms upon which the United States might obtain the opportunity to construct the Panama Canal as contemplated in the Hay-Pauncefote treaty of November 18, 1901, Mr. Hay included in the Hay-Herrán treaty of January 22, 1903, a provision under which the war vessels of Colombia might pass through the canal free of duty. The United States has now, by the use of good offices and additional concessions on its own part, brought the Governments of the two sections which at that time constituted the Republic of Colombia, namely, Colombia and Panama, to the point of entering into an agreement under which Colombia will recognize the independence of Panama and confirm the title which Panama undertook to give to the United States to construct the canal by renouncing all Colombia's claims. The proposed agreement will adjust the relations of the two to the public debt of Colombia, arrange for the settlement of the boundary, and provide for the exercise of election as to citizenship, and will constitute in general a treaty of separation.

As a part of this same arrangement of separation and to help bring it about, the United States is about to agree to the continuance of the right of passage on the part of Colombia which was formerly stipulated in the Hay-Herrán treaty. The United States has not been unmindful of the provision of the Hay-Pauncefote treaty under which the Suez rules were adopted as bases for the neutrality of the canal, including the rule against discriminations between different nations; but we have assumed that that rule had no relation to the terms by means of which the title to the site of the canal and the opportunity to build might be obtained.

The Government of the United States will communicate a copy of the different treaties immediately upon the final settlement of their terms and hopes that the accomplishment of this very important step toward executing the purposes which the United States and Great Britain have shared for so many years, and an expression of which is embodied in the Hay-Pauncefote treaty, will be received by Great Britain with special satisfaction.

DEPARTMENT OF STATE,

*Washington, January 8, 1909.*

The arrangement thus described took the shape of formal treaties, which were signed on the 9th ultimo, and are now before the Senate of the United States with a view to the advice and consent of that body being given to their ratification. They are still under the injunction of secrecy, but it seems necessary and proper to a full understanding of the foregoing memorandum and the subsequent comparison of views between the Governments of the United States and Great Britain that the provision thereof pertinent to the present communication should be cited herein:

Article II of the treaty between the United States and Colombia reads:

In consideration of the provisions and stipulations hereinafter contained it is agreed, as follows:

The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war, and ships of war of the Republic of Colombia, without paying any duty to the United States, even in the case of an international war between Colombia and another country.

While the said interoceanic canal is in course of construction the troops and materials for war of the Republic of Colombia, even in the case of an international war between Colombia and any other country, shall be transported on the railway between Ancon and Cristobal, or on any other railway substituted therefor, upon the same conditions on which similar service is rendered to the United States.

The officers, agents, and employees of the Government of Colombia shall, during the same period, be entitled to free passage upon the said railway across the Isthmus of Panama upon due notification to the railway officials and the production of evidence of their official character.

The foregoing provisions of this article shall not, however, apply in case of war between Colombia and Panama.

After conference with you on the subject, Secretary Root amplified the ideas of the Government of the United States on the subject in a personal note to you, dated January 16, which so fully sets forth the policy and motives of the United States in the premises that I can not do better than cite it textually, as follows:

DEPARTMENT OF STATE,

*Washington, January 16, 1909.*

DEAR MR. AMBASSADOR: I think, on reflection, that I should follow your suggestion and put in writing the gist of the ideas which I conveyed to you orally in our interview last Thursday regarding the proposed concession to Colombia of the right to pass her war vessels through the Panama Canal, when completed, without the payment of any dues to the United States. The view of the United States upon this is, in substance, as follows:

The Hay-Pauncefote treaty of November 18, 1901, provided for the building of a canal in territory which was not under the jurisdiction of either of the contracting parties. The title to the land through which the canal was to be built, the authority to construct and operate, and jurisdiction and control over the canal when finished manifestly remained to be secured before the purposes of the treaty could be effected. The treaty said nothing about the way in which this should be accomplished. It follows by necessary implication that the agreements and arrangements to be made with the power or powers having right to grant or withhold the opportunity to construct and operate the canal must be

quite different from the mere application of a scale of tolls to the nations of the world in general which had nothing whatever to do with the creation of the canal. Such agreements are ex necessitate outside of the rule of equality to all the world which was embodied in the Suez rules.

This view was recognized in the Hay-Herrán treaty of January 22, 1903, in which the United States of Colombia, while undertaking to grant the right to the construction of the canal, reserved the right "to pass their vessels, troops, and munitions of war at all times without paying any dues whatever." This treaty was confirmed by the Senate of the United States, but failed of confirmation by the Congress of Colombia. Then followed the revolution inaugurated on the 3d of November, 1903, and the recognition of the independence of Panama by both the United States and Great Britain, and thereafter the grant by the Republic of Panama to the United States of various rights connected with the canal, including as well as the direct grant a consent by Panama to the purchase by the United States of the property and concessions of the New Panama Canal Co., which had been for a long time engaged in canal construction across the Isthmus, and which had rights the acquisition or removal of which was necessary to vest in the United States the right to construct the canal in accordance with the terms of the Hay-Pauncefote treaty.

Notwithstanding the grant by Panama in her treaty with the United States, there remained three subjects for serious consideration by the United States as affecting the peaceable and unquestioned title to the property and rights the acquisition of which was necessary to the execution of the canal project. One of these was that there still remained in force a treaty made in 1846 between the United States and Colombia, which was in existence at the time the Hay-Pauncefote treaty was made and under which the United States remained under special obligation to Colombia in respect of the very status of the canal. The second was that the only way to dispose of the prior and conclusive rights of the French Panama Canal Co., which stood in the way of the construction of the canal by the United States pursuant to the Hay-Pauncefote treaty, was by purchasing these rights and becoming the successor of the Panama Canal Co. under the concessionary contracts. In those contracts there were stipulations and reservations running to Colombia, including rights of forfeiture of property, and including an express stipulation for the right to pass her war vessels through the canal without the payment of dues. The third was the fact that Colombia had continuously refused to recognize the independence of Panama and stood ready to retake possession of the Isthmus and resume her control over it the moment that she was not prevented by the superior military and naval force of the United States; so that the only possession which was possible under the grant of Panama alone was the possession to be continuously maintained by force.

Under these circumstances the United States has deemed it to be its duty in the performance of the obligations which it assumed in the Hay-Pauncefote treaty with Great Britain, to fortify its title and assure its peaceable possession of the canal for the purposes of the Hay-Pauncefote treaty by securing the assent of Colombia to the separation of Panama, the renunciation of Colombia's claims, and the consent of Colombia to the necessary modification of the treaty engagements of 1846 between the United States and Colombia. In order to accomplish this the United States has found it necessary to renew the reservation of the specific right of Colombia to send its warships through the canal without the payment of dues, which has been insisted upon by that country in every concession and treaty she has made regarding it (for example, the Panama Canal concession of 1878, Article VI; the Hay-Concha accepted proposal for a treaty between the United States and Colombia of April 18, 1902, sent by Mr. Hay to the American Congress and printed as a public document; and the Hay-Herrán treaty of January 22, 1903, Articles XVI, XVII, and XVIII), and also to make the very substantial payment of a million and a quarter dollars, which the United States proposes to contribute toward the payment of Panama for the purpose of securing these rights.

The United States has considered not only that in prescribing the rule of equality in the Hay-Pauncefote treaty the parties must have contemplated the making of special arrangement by the United States with Colombia as the necessary source of title, but that the right to make such an exceptional arrangement still continues in view of Colombia's continued special relation to the title; and this view is supported by the provision of the fourth article of the Hay-Pauncefote treaty, which declares that no change of territorial sovereignty or of the international relations of the country or countries

traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

Of course, in agreeing to accord to Colombia this reservation, the United States is not dealing with the general subject of canal tolls. It is treating Colombia for the reasons which I have described, as being in a wholly exceptional position, not subject to the rule of equality of the Hay-Pauncefote treaty, and not to come within any schedule of tolls which may hereafter be established, which must, of course, under the treaty, be equal for all nations to whom the rule of equality is properly applicable.

The United States is especially desirous that its course shall be understood by Great Britain, and that there shall be no thought on the part of that Government that the Government of the United States is unmindful of its obligations under the Hay-Pauncefote treaty, or is willing, in any degree whatever, to fail in strict compliance with those obligations, and for this reason I am making this explanation in the hope that the Government of Great Britain will agree with us regarding the situation of Colombia as to the title to the canal to be so exceptional as not to come within the rule of equality of the Hay-Pauncefote treaty, and will agree that the contemplated provision will constitute no precedent for the exception of any other nations from the payment of equal dues for the passage of war vessels in accordance with such schedules as shall be established in accordance with the Hay-Pauncefote treaty.

Faithfully, yours,

ELIHU ROOT.

In the meantime the ambassador of the United States at London had held similar conference with the foreign office and communicated our views in a memorandum dated January 20, in which the considerations above set forth were substantially reproduced.

I have now had the pleasure to receive from you, on the 3d instant, an aide mémoire confirming your oral communication of that day, to the effect that you had been instructed by the foreign office, in view of the special circumstances of the case and in view of the explanation that Mr. Root had offered, to inform me that His Majesty's Government, on the receipt of a formal assurance that a precedent for similar and other occasions shall not be constituted by the special treatment granted to Colombia with regard to free transit for her warships, are ready to forego the protest against the infringement of the Hay-Pauncefote treaty which they had intended to make. You added a proposal that this formal assurance and the acknowledgment thereof should be set forth in an exchange of notes.

Being thus in accord as to what is mutually understood to be an exceptional contingency growing out of the special circumstances of the case, and is, as explained by Mr. Root, a necessity toward the realization of the purpose for which the Hay-Pauncefote treaty was concluded, I have much pleasure in responding to your proposal by giving, on the part of the Government of the United States, through you, to His Majesty's Government, formal confirmation of the assurance heretofore given to you by Secretary Root, that should the contemplated provision in favor of Colombia for the passage of Colombian warships through the Panama Canal become effective through the consummation of the treaty by ratification and exchange it will constitute no precedent for the exception of any other nations from the payment of equal dues for the passage of war vessels in accordance with such schedules as shall be established in conformity with the Hay-Pauncefote treaty.

Your acknowledgment and acceptance of this formal assurance will make it clear by exchange of notes that the Government of Great Britain agrees with the Government of the United States in regard-

ing the situation of Colombia as to the title to the canal to be so exceptional as not to come within the rule of equality of the Hay-Pauncefote treaty.

I have, etc.,

ROBERT BACON.

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*Mr. Bryce to Mr. Bacon.*

No. 45.]

BRITISH EMBASSY.

*Washington, February 24, 1909.*

SIR: I have the honor to acknowledge receipt of your note No. 540, of the 20th instant, on the subject of the treaty between the United States and the Republic of Colombia, and to say in reply that His Majesty's Government are glad to receive the full explanation given by you of the view which the Government of the United States take of the circumstances which appear to them to place the Republic of Colombia in a wholly different relation to the Panama Canal from that in which other countries stand, and which, as they conceive, distinguish the concession to that Republic of exceptional treatment from any case in which the question of making a similar concession to any other country could hereafter arise. Without entering on any discussion of the argument by which the view of your Government is supported and illustrated, His Majesty's Government are content to note that the United States Government hold that the right of the free passage for warships which the present treaty proposes to extend to Colombia is deemed by them to grow out of the entirely special and exceptional position of Colombia toward the canal and the title thereto, and accordingly does not constitute a precedent, and will not hereafter be drawn into a precedent, for the exception of any other nation from the payment of equal dues for the passage of war vessels in accordance with such schedules as shall be hereafter constituted in conformity with the Hay-Pauncefote treaty, or for any other concession of a special nature to Colombia or to any other power.

I have accordingly the honor of stating to you that His Majesty's Government consider that they can forego the making of such a protest as they had formerly contemplated, and that they accept the assurance contained in your note.

I have, etc.,

JAMES BRYCE.

**PART III.**  
**PAPERS SUBMITTED.**

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*Chargé d'Affaires Innes to the Secretary of State.*

BRITISH EMBASSY,  
*Kineo, Me., July 8, 1912.*

SIR: The attention of His Majesty's Government has been called to the various proposals that have from time to time been made for the purpose of relieving American shipping from the burden of the tolls to be levied on vessels passing through the Panama Canal, and these proposals, together with the arguments that have been used to support them have been carefully considered with a view to the bearing on them of the provisions of the treaty between the United States and Great Britain of November 18, 1901.

The proposals may be summed up as follows:

(1) To exempt all American shipping from the tolls; (2) to refund to all American ships the tolls which they may have paid; (3) to exempt American ships engaged in the coastwise trade; (4) to repay the tolls to American ships engaged in the coastwise trade.

The proposal to exempt all American shipping from the payment of the tolls would, in the opinion of His Majesty's Government, involve an infraction of the treaty, nor is there, in their opinion, any difference in principle between charging tolls only to refund them and remitting tolls altogether. The result is the same in either case, and the adoption of the alternative method of refunding the tolls in preference to that of remitting them, while perhaps complying with the letter of the treaty, would still contravene its spirit.

It has been argued that a refund of the tolls would merely be equivalent to a subsidy and that there is nothing in the Hay-Pauncefote treaty which limits the right of the United States to subsidize its shipping. It is true that there is nothing in that treaty to prevent the United States from subsidizing its shipping, and if it granted a subsidy His Majesty's Government could not be in a position to complain. But there is a great distinction between a general subsidy, either to shipping at large or to shipping engaged in any given trade, and a subsidy calculated particularly with reference to the amount of user of the canal by the subsidized lines or vessels. If such a subsidy were granted it would not, in the opinion of His Majesty's Government, be in accordance with the obligations of the treaty.

As to the proposal that exemption shall be given to vessels engaged in the coastwise trade, a more difficult question arises. If the trade should be so regulated as to make it certain that only bona fide coastwise traffic which is reserved for United States vessels would be benefited by this exemption, it may be that no objection could be taken. But it appears to my Government that it would be impossible

to frame regulations which would prevent the exemption from resulting, in fact, in a preference to United States shipping and consequently in an infraction of the treaty.

I have, etc.,

A. MITCHELL INNES.

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*Mr. Innes to Mr. Knox.*

BRITISH EMBASSY,  
Washington, August 27, 1912.

SIR: On the 8th July I had the honor to present to the Government of the United States the views of His Majesty's Government on certain proposals which had been formulated with the object of relieving United States ships using the Panama Canal from the payment of tolls, while levying such tolls on foreign ships.

In view of the bill which has now been passed and of the memorandum issued by the President on signing it, I am instructed to inform you that His Majesty's Government adhere to the views expressed in that note, and that when His Majesty's Government have had time to consider fully the act and the memorandum a further communication will be made to you on the subject.

I am instructed to add at the same time that should there eventually be a difference between the two countries as to the correct interpretation of the Hay-Pauncefote treaty which can not be settled by other means, His Majesty's Government, would then ask that it should be referred to arbitration in accordance with the provisions of the existing arbitration treaty concluded in 1908.

I have, etc.,

A. MITCHELL INNES.

HON. PHILANDER C. KNOX,  
*Secretary of State.*

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*Mr. Wilson to Mr. Innes.*

DEPARTMENT OF STATE,  
Washington, August 30, 1912.

SIR: I have the honor to acknowledge the receipt of your note of the 27th instant in further expression of the views of His Britannic Majesty's Government concerning the relieving of American vessels using the Panama Canal from the payment of tolls.

Due note has been taken of the information which you communicate by instruction of your Government that His Majesty's Government adhere to the views expressed in your note of the 8th ultimo and that when His Majesty's Government has had time to consider fully the act and the memorandum issued by the President upon signing the act a further communication will be made to this Government on the subject.

I have, etc.,

HUNTINGTON WILSON,  
*Acting Secretary of State.*

*Mr. Phillips to Mr. Knox.*

No. 2121.]

AMERICAN EMBASSY,  
*London, October 11, 1912.*

SIR: I have the honor to report that, in reply to a question asked yesterday in the House of Commons respecting the Panama Canal dues, Sir Edward Grey announced the action which the Government had taken during the passage of the bill through Congress and explained that in his communication to the Government of the United States he had said that should there eventually be a difference between the two countries respecting the interpretation of the Hay-Pauncefote treaty that could not be settled by other means His Majesty's Government would ask that it be referred to arbitration in accordance with the provisions of the existing arbitration treaty concluded with the United States in 1908.

Sir E. Grey added that the whole subject was one of great importance and, together with the opinions of the legal advisers of the Crown, is now under the consideration of His Majesty's Government.

I beg to inclose herewith the questions and answers referred to as they appear in this morning's Times.

I have, etc.,

WILLIAM PHILLIPS.

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[Inclosure.]

[From London Times, October 11, 1912. The Panama Canal dues.]

#### THE PANAMA CANAL DUES.

Mr. Hewins (Hereford, opp.) asked the secretary of state for foreign affairs whether he had received any definite reply to the representations made to the Government of the United States in regard to the bill which was then passing through Congress for regulating the Panama Canal dues; and whether His Majesty's Government were making any further representations, now that the bill had become law, so as to secure equitable treatment for British and Canadian ships.

Sir E. GREY. The Panama Canal bill underwent some alterations in the course of its passage through Congress, and after it was passed toward the end of August we informed the Government of the United States that we would address a communication to them after we had received and had time to consider the full text of the bill as signed by the President and his memorandum respecting it; it was added that should there eventually be a difference between the two countries respecting the interpretation of the Hay-Pauncefote treaty that could not be settled by any other means, we should ask that it be referred to arbitration in accordance with the provisions of the existing arbitration treaty concluded with the United States in 1908. The whole subject is one of great importance and, together with the views of the legal advisers of the Crown upon it, is now under consideration of His Majesty's Government. As soon as we are in a position to do so we shall be glad to make a further statement to the House.



Sir C. HUNTER (Bath, opp.). Has the right honorable gentleman noticed the remark of President Taft that British representation was made rather tardily?

Sir. E. GREY. I have not seen that remark. I shall be very glad to know the date when that remark was made, for the bill would not pass in its final form, which is the important matter, until toward the end of August, and immediately after the receipt of the news that the bill had passed we stated that we would consider it in its final form and made a further communication.

Mr. HEWINS. Did not the British Government make representations before the bill was passed?

Sir. E. GREY. It is quite true that we did express our views while the bill was in progress through Congress, but it was impossible to make a final communication with regard to a bill which was then being shaped, and we expressly stated that we would address a further communication after the bill had reached its final form and had been considered.

Mr. LEE (Hants, Fareham opp.). Will the right honorable gentleman consider the advisability of postponing those further representations until after the United States elections?

Sir. E. GREY. The subject is one of great importance, and when we do make our communication it ought to be the result of the very fullest consideration of all legal points of view. That we hope to complete this month, and we shall address our communication then to the United States. Of course, I can not say that it will be dependent upon internal affairs in the United States, but it must take a little time.

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*The Secretary of State for Foreign Affairs of Great Britain to  
Ambassador Bryce.*

[Handed to the Secretary of State by the British ambassador December 9, 1912.]

FOREIGN OFFICE, *November 14, 1912.*

SIR: Your excellency will remember that on the 8th July, 1912, Mr. Mitchell Innes communicated to the Secretary of State the objections which His Majesty's Government entertained to the legislation relating to the Panama Canal, which was then under discussion in Congress, and that on the 27th August, after the passing of the Panama Canal act and the issue of the President's memorandum on signing it, he informed Mr. Knox that when His Majesty's Government had had time to consider fully the act and the memorandum a further communication would be made to him.

Since that date the text of the act and the memorandum of the President have received attentive consideration at the hands of His Majesty's Government. A careful study of the President's memorandum has convinced me that he has not fully appreciated the British point of view, and has misunderstood Mr. Mitchell Innes's note of the 8th July. The President argues upon the assumption that it is the intention of His Majesty's Government to place upon the Hay-Pauncefote treaty an interpretation which would prevent

the United States from granting subsidies to their own shipping passing through the canal, and which would place them at a disadvantage as compared with other nations. This is not the case; His Majesty's Government regard equality of all nations as the fundamental principle underlying the treaty of 1901 in the same way that it was the basis of the Suez Canal convention of 1888, and they do not seek to deprive the United States of any liberty which is open either to themselves or to any other nation; nor do they find either in the letter or in the spirit of the Hay-Pauncefote treaty any surrender by either of the contracting powers of the right to encourage its shipping or its commerce by such subsidies as it may deem expedient.

The terms of the President's memorandum render it essential that I should explain in some detail the view which His Majesty's Government take as to what is the proper interpretation of the treaty, so as to indicate the limitations which they consider it imposes upon the freedom of action of the United States, and the points in which the Panama Canal act, as enacted, infringes what His Majesty's Government hold to be their treaty rights.

The Hay-Pauncefote treaty does not stand alone; it was the corollary of the Clayton-Bulwer treaty of 1850. The earlier treaty was, no doubt, superseded by it, but its general principle, as embodied in article 8, was not to be impaired. The object of the later treaty is clearly shown by its preamble; it was "to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans by whatever route may be deemed expedient, and to that end to remove any objection which may arise out of the Clayton-Bulwer treaty to the construction of such canal under the auspices of the Government of the United States, without impairing the general principle of neutralization established in article 8 of that convention." It was upon that footing, and upon that footing alone, that the Clayton-Bulwer treaty was superseded.

Under that treaty both parties had agreed not to obtain any exclusive control over the contemplated ship canal, but the importance of the great project was fully recognized, and therefore the construction of the canal by others was to be encouraged, and the canal when completed was to enjoy a special measure of protection on the part of both the contracting parties.

Under article 8 the two powers declared their desire, in entering into the convention, not only to accomplish a particular object, but also to establish a general principle, and therefore agreed to extend their protection to any practicable transisthmian communication, either by canal or railway, and either at Tehuantepec or Panama, provided that those who constructed it should impose no other charges or conditions of traffic than the two Governments should consider just and equitable, and that the canal or railway, "being open to the subjects and citizens of Great Britain and the United States on equal terms, should also be open to the subjects of any other State which was willing to join in the guaranty of joint protection."

So long as the Clayton-Bulwer treaty was in force, therefore, the position was that both parties to it had given up their power of independent action, because neither was at liberty itself to construct

the canal and thereby obtain the exclusive control which such construction would confer. It is also clear that if the canal had been constructed while the Clayton-Bulwer treaty was in force, it would have been open, in accordance with article 8, to British and United States ships on equal terms, and equally clear, therefore, that the tolls leviable on such ships would have been identical.

The purpose of the United States in negotiating the Hay-Pauncefote treaty was to recover their freedom of action, and obtain the right, which they had surrendered, to construct the canal themselves; this is expressed in the preamble to the treaty, but the complete liberty of action consequential upon such construction was to be limited by the maintenance of the general principle embodied in article 8 of the earlier treaty. That principle, as shown above, was one of equal treatment for both British and United States ships, and a study of the language of article 8 shows that the word "neutralization," in the preamble of the later treaty, is not there confined to belligerent operations, but refers to the system of equal rights for which article 8 provides.

If the wording of the article is examined it will be seen that there is no mention of belligerent action in it at all. Joint protection and equal treatment are the only matters alluded to, and it is to one, or both, of these that neutralization must refer. Such joint protection has always been understood by His Majesty's Government to be one of the results of the Clayton-Bulwer treaty of which the United States was most anxious to get rid, and they can scarcely therefore believe that it was such joint protection that the United States were willing to keep alive, and to which they referred in the preamble of the Hay-Pauncefote treaty. It certainly was not the intention of His Majesty's Government that any responsibility for the protection of the canal should attach to them in the future. Neutralization must therefore refer to the system of equal rights.

It thus appears from the preamble that the intention of the Hay-Pauncefote treaty was that the United States was to recover the right to construct the transisthmian canal upon the terms that, when constructed, the canal was to be open to British and United States ships on equal terms.

The situation created was in fact identical with that resulting from the boundary waters treaty of 1909 between Great Britain and the United States, which provided as follows:

The high contracting parties agree that the navigation of all navigable boundary waters shall for ever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation, and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters and now existing, or which may hereafter be constructed on either side of the line. Either of the high contracting parties may adopt rules and regulations governing the use of such canals within its own territory, and may charge tolls for the use thereof; but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the high contracting parties, and they \* \* \* shall be placed on terms of equality in the use thereof.

A similar provision, though more restricted in its scope, appears in article 27 of the treaty of Washington, 1871, and Your Excellency will no doubt remember how strenuously the United States protested, as a violation of equal rights, against a system which Canada had introduced of a rebate of a large portion of the tolls on certain freight on the Welland Canal, provided that such freight was taken as far as Montreal, and how in the face of that protest the system was abandoned.

The principle of equality is repeated in article 3 of the Hay-Pauncefote treaty, which provides that the United States adopts, as the basis of the neutralization of the canal, certain rules, substantially as embodied in the Suez Canal convention. The first of these rules is that the canal shall be free and open to the vessels of commerce and war of all nations observing the rules on terms of entire equality, so that there shall be no discrimination against any such nation.

The word "neutralization" is no doubt used in article 3 in the same sense as in the preamble, and implies subjection to the system of equal rights. The effect of the first rule is therefore to establish the provision, foreshadowed by the preamble and consequent on the maintenance of the principle of article 8 of the Clayton-Bulwer treaty, that the canal is to be open to British and United States vessels on terms of entire equality. It also embodies a promise on the part of the United States that the ships of all nations which observe the rules will be admitted to similar privileges.

The President in his memorandum treats the words "all nations" as excluding the United States. He argues that, as the United States is constructing the canal at its own cost on territory ceded to it, it has, unless it has restricted itself, an absolute right of ownership and control, including the right to allow its own commerce the use of the canal upon such terms as it sees fit, and that the only question is whether it has by the Hay-Pauncefote treaty deprived itself of the exercise of the right to pass its own commerce free or remit tolls collected for the use of the canal. He argues that article 3 of the treaty is nothing more than a declaration of policy by the United States that the canal shall be neutral and all nations treated alike and no discrimination made against any one of them observing the rules adopted by the United States. "In other words, it was a conditional favored-nation treatment, the measure of which, in the absence of express stipulations to that effect, is not what the country gives to its own nationals, but the treatment it extends to other nations."

For the reasons they have given above His Majesty's Government believe this statement of the case to be wholly at variance with the real position. They consider that by the Clayton-Bulwer treaty the United States had surrendered the right to construct the canal, and that by the Hay-Pauncefote treaty they recovered that right upon the footing that the canal should be open to British and United States vessels upon terms of equal treatment.

The case can not be put more clearly than it was put by Mr. Hay himself, who, as Secretary of State, negotiated the Hay-Pauncefote treaty, in the full account of the negotiations which he sent to the

Senate Committee on Foreign Relations (see S. Doc. No. 746, 61st Cong., 3d sess.):

These rules are adopted in the treaty with Great Britain as a consideration for getting rid of the Clayton-Bulwer treaty.

If the rules set out in the Hay-Pauncefote treaty secure to Great Britain no more than most-favored-nation treatment, the value of the consideration given for superseding the Clayton-Bulwer treaty is not apparent to His Majesty's Government. Nor is it easy to see in what way the principle of article 8 of the Clayton-Bulwer treaty, which provides for equal treatment of British and United States ships, has been maintained.

I notice that in the course of the debate in the Senate on the Panama Canal bill the argument was used by one of the speakers that the third, fourth, and fifth rules embodied in article 3 of the treaty show that the words "all nations" can not include the United States, because, if the United States were at war, it is impossible to believe that it could be intended to be debarred by the treaty from using its own territory for revictualing its war ships or landing troops.

The same point may strike others who read nothing but the text of the Hay-Pauncefote treaty itself, and I think it is therefore worth while that I should briefly show that this argument is not well founded.

The Hay-Pauncefote treaty of 1901 aimed at carrying out the principle of the neutralization of the Panama Canal by subjecting it to the same régime as the Suez Canal. Rules 3, 4, and 5 of article 3 of the treaty are taken almost textually from articles 4, 5, and 6 of the Suez Canal convention of 1888. At the date of the signature of the Hay-Pauncefote treaty the territory on which the Isthmian Canal was to be constructed did not belong to the United States, consequently there was no need to insert in the draft treaty provisions corresponding to those in articles 10 and 13 of the Suez Canal convention, which preserve the sovereign rights of Turkey and of Egypt, and stipulate that articles 4 and 5 shall not affect the right of Turkey, as the local sovereign, and of Egypt, within the measure of her autonomy, to take such measures as may be necessary for securing the defense of Egypt and the maintenance of public order, and, in the case of Turkey, the defense of her possessions on the Red Sea.

Now that the United States has become the practical sovereign of the canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection.

For these reasons, His Majesty's Government maintain that the words "all nations," in rule 1 of article 3 of the Hay-Pauncefote treaty include the United States, and that, in consequence, British vessels using the canal are entitled to equal treatment with those of the United States, and that the same tolls are chargeable on each.

This rule also provides that the tolls should be "just and equitable." The purpose of these words was to limit the tolls to the amount representing the fair value of the services rendered, i. e., to the interest on the capital expended and the cost of the operation and maintenance of the canal. Unless the whole volume of shipping which passes through the canal, and which all benefits equally by its

services, is taken into account, there are no means of determining whether the tolls chargeable upon a vessel represent that vessel's fair proportion of the current expenditure properly chargeable against the canal—that is to say, interest on the capital expended in construction and the cost of operation and maintenance. If any classes of vessels are exempted from tolls in such a way that no receipts from such ships are taken into account in the income of the canal, there is no guarantee that the vessels upon which tolls are being levied are not being made to bear more than their fair share of the upkeep. Apart altogether, therefore, from the provision in rule 1 about equality of treatment for all nations, the stipulation that the tolls shall be just and equitable, when rightly understood, entitles His Majesty's Government to demand, on behalf of British shipping, that all vessels passing through the canal, whatever their flag or their character, shall be taken into account in fixing the amount of the tolls.

The result is that any system by which particular vessels or classes of vessels were exempted from the payment of tolls would not comply with the stipulations of the treaty that the canal should be open on terms of entire equality, and that the charges should be just and equitable.

The President, in his memorandum, argues that if there is no difference, as stated in Mr. Mitchell Innes's note of the 8th July, between charging tolls only to refund them and remitting tolls altogether, the effect is to prevent the United States from aiding its own commerce in the way that all other nations may freely do. This is not so. His Majesty's Government have no desire to place upon the Hay-Pauncefote treaty an interpretation which would impose upon the United States any restriction from which other nations are free, or reserve to such other nation any privilege which is denied to the United States. Equal treatment, as specified in the treaty, is all they claim.

His Majesty's Government do not question the right of the United States to grant subsidies to United States shipping generally or to any particular branches of that shipping, but it does not follow therefore that the United States may not be debarred by the Hay-Pauncefote treaty from granting a subsidy to certain shipping in a particular way, if the effect of the method chosen for granting such subsidy would be to impose upon British or other foreign shipping an unfair share of the burden of the upkeep of the canal, or to create a discrimination in respect of the conditions or charges of traffic, or otherwise to prejudice rights secured to British shipping by this treaty.

If the United States exempt certain classes of ships from the payment of tolls, the result would be a form of subsidy to those vessels which His Majesty's Government consider the United States are debarred by the Hay-Pauncefote treaty from making.

It remains to consider whether the Panama Canal act, in its present form, conflicts with the treaty rights to which His Majesty's Government maintain they are entitled.

Under section 5 of the act the President is given, within certain defined limits, the right to fix the tolls, but no tolls are to be levied upon ships engaged in the coastwise trade of the United States, and

the tolls, when based upon net registered tonnage for ships of commerce, are not to exceed \$1.25 per net registered ton, nor be less, *other than for vessels of the United States and its citizens*, than the estimated proportionate cost of the actual maintenance and operation of the canal. There is also an exception for the exemptions granted by article 19 of the convention with Panama of 1903.

The effect of these provisions is that vessels engaged in the coastwise trade will contribute nothing to the upkeep of the canal. Similarly vessels belonging to the Government of the Republic of Panama will, in pursuance of the treaty of 1903, contribute nothing to the upkeep of the canal. Again, in the cases where tolls are levied, the tolls in the case of ships belonging to the United States and its citizens may be fixed at a lower rate than in the case of foreign ships and may be less than the estimated proportionate cost of the actual maintenance and operation of the canal.

These provisions (1) clearly conflict with the rule embodied in the principle established in article 8 of the Clayton-Bulwer treaty of equal treatment for British and United States ships, and (2) would enable tolls to be fixed which would not be just and equitable, and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote treaty.

It has been argued that as the coastwise trade of the United States is confined by law to United States vessels, the exemption of vessels engaged in it from the payment of tolls can not injure the interests of foreign nations. It is clear, however, that the interests of foreign nations will be seriously injured in two material respects.

In the first place, the exemption will result in the cost of the working of the canal being borne wholly by foreign-going vessels, and on such vessels, therefore, will fall the whole burden of raising the revenue necessary to cover the cost of working and maintaining the canal. The possibility, therefore, of fixing the toll on such vessels at a lower figure than \$1.25 per ton, or of reducing the rate below that figure at some future time, will be considerably lessened by the exemption.

In the second place, the exemption will, in the opinion of His Majesty's Government, be a violation of the equal treatment secured by the treaty, as it will put the "coastwise trade" in a preferential position as regards other shipping. Coastwise trade can not be circumscribed so completely that benefits conferred upon it will not affect vessels engaged in the foreign trade. To take an example, if cargo intended for a United States port beyond the canal, either from east or west, and shipped on board a foreign ship could be sent to its destination more cheaply, through the operation of the proposed exemption, by being landed at a United States port before reaching the canal, and then sent on as coastwise trade, shippers would benefit by adopting this course in preference to sending the goods direct to their destination through the canal on board the foreign ship.

Again, although certain privileges are granted to vessels engaged in an exclusively coastwise trade, His Majesty's Government are given to understand that there is nothing in the laws of the United States which prevents any United States ship from combining foreign commerce with coastwise trade, and consequently from entering into

direct competition with foreign vessels while remaining "prima facie" entitled to the privilege of free passage through the canal. Moreover, any restriction which may be deemed to be now applicable might at any time be removed by legislation, or even, perhaps, by mere changes in the regulations.

In these and in other ways foreign shipping would be seriously handicapped, and any adverse result would fall more severely on British shipping than on that of any other nationality.

The volume of British shipping which will use the canal will in all probability be very large. Its opening will shorten by many thousands of miles the waterways between England and other portions of the British Empire, and if, on the one hand, it is important to the United States to encourage its mercantile marine and establish competition between coastwise traffic and transcontinental railways, it is equally important to Great Britain to secure to its shipping that just and impartial treatment to which it is entitled by treaty, and in return for a promise of which it surrendered the rights which it held under the earlier convention.

There are other provisions of the Panama Canal act to which the attention of His Majesty's Government has been directed. These are contained in section 11, part of which enacts that a railway company subject to the interstate-commerce act of 1887 is prohibited from having any interest in vessels operated through the canal with which such railways may compete, and another part provides that a vessel permitted to engage in the coastwise or foreign trade of the United States is not allowed to use the canal if its owner is guilty of violating the Sherman Antitrust Act.

His Majesty's Government do not read this section of the act as applying to or affecting British ships, and they therefore do not feel justified in making any observations upon it. They assume that it applies only to vessels flying the flag of the United States, and that it is aimed at practices which concern only the internal trade of the United States. If this view is mistaken and the provisions are intended to apply under any circumstances to British ships, they must reserve their right to examine the matter further and to raise such contentions as may seem justified.

His Majesty's Government feel no doubt as to the correctness of their interpretation of the treaties of 1850 and 1901 and as to the validity of the rights they claim under them for British shipping; nor does there seem to them to be any room for doubt that the provisions of the Panama Canal act as to tolls conflict with the rights secured to their shipping by the treaty. But they recognize that many persons of note in the United States, whose opinions are entitled to great weight, hold that the provisions of the act do not infringe the conventional obligations by which the United States is bound, and under these circumstances they desire to state their perfect readiness to submit the question to arbitration if the Government of the United States would prefer to take this course. A reference to arbitration would be rendered unnecessary if the Government of the United States should be prepared to take such steps as would remove the objections to the act which His Majesty's Government have stated.

Knowing, as I do, full well the interest which this great undertaking has aroused in the New World, and the emotion with which



its opening is looked forward to by United States citizens, I wish to add before closing this dispatch that it is only with great reluctance that His Majesty's Government have felt bound to raise objection on the ground of treaty rights to the provisions of the act. Animated by an earnest desire to avoid points which might in any way prove embarrassing to the United States, His Majesty's Government have confined their objections within the narrowest possible limits and have recognized in the fullest manner the right of the United States to control the canal. They feel convinced that they may look with confidence to the Government of the United States to insure that in promoting the interests of United States shipping nothing will be done to impair the safeguards guaranteed to British shipping by treaty.

Your excellency will read this dispatch to the Secretary of State and will leave with him a copy.

I am, &c..

E. GREY.

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*The Secretary of State to Chargé d'Affaires Laughlin.*

No. 1833.]

DEPARTMENT OF STATE,  
Washington, January 17, 1913.

IRWIN B. LAUGHLIN, Esq.,

*American Chargé d'Affaires, London, England.*

SIR: I inclose a copy of an instruction from Sir Edward Grey to His Britannic Majesty's ambassador at Washington, dated November 14, 1912,<sup>1</sup> a copy of which was handed to me by the ambassador on the 9th ultimo, in which certain provisions in the Panama Canal act of August 24 last are discussed in their relation to the Hay-Pauncefote treaty of November 18, 1901; and I also inclose a copy of the note addressed to me on July 8, 1912, by Mr. A. Mitchell Innes, His Britannic Majesty's chargé d'affaires, stating the objections which his Government entertained to the legislation relating to the Panama Canal, which was then under discussion in Congress. A copy of the President's proclamation of November 13, 1912, fixing the canal tolls, is also inclosed.

Sir Edward Grey's communication, after setting forth the several grounds upon which the British Government believe the provisions of the act are inconsistent with the stipulations of the Hay-Pauncefote treaty, states the readiness of his Government "to submit the question to arbitration if the Government of the United States would prefer to take this course" rather than "to take such steps as would remove the objections to the act which His Majesty's Government have stated." It therefore becomes necessary for this Government to examine these objections in order to ascertain exactly in what respects this act is regarded by the British Government as inconsistent with the provisions of that treaty, and also to explain the views of this Government upon the questions thus presented, and to consider the advisability at this time of submitting any of these questions to arbitration.

It may be stated at the outset that this Government does not agree with the interpretation placed by Sir Edward Grey upon the Hay-

<sup>1</sup> Printed *ante*.

Pauncefote treaty, or upon the Clayton-Bulwer treaty, but for reasons which will appear hereinbelow it is not deemed necessary at present to amplify or reiterate the views of this Government upon the meaning of those treaties.

In Sir Edward Grey's communication, after explaining in detail the views taken by his Government as to the proper interpretation of the Hay-Pauncefote treaty, "so as to indicate the limitations which" His Majesty's Government "consider it imposes upon the freedom of action of the United States," he proceeds to indicate the points in which the canal act infringes what he holds to be Great Britain's treaty rights.

It is obvious from the whole tenor of Sir Edward Grey's communication that in writing it he could not have taken cognizance of the President's proclamation fixing the canal tolls. Indeed, a comparison of the dates of the proclamation and the note, which are dated, respectively, November 13 and November 14 last, shows that the proclamation could hardly have been received in London in time for consideration in the note. Throughout his discussion of the subject, Sir Edward Grey deals chiefly with the possibilities of what the President might do under the act, which in itself does not prescribe the tolls, but merely authorizes the President to do so; and nowhere does the note indicate that Sir Edward Grey was aware of what the President actually had done in issuing this proclamation. The proclamation, therefore, has entirely changed the situation which is discussed by Sir Edward Grey, and the diplomatic discussion, which his note now makes inevitable, must rest upon the bases as they exist at present, and not upon the hypothesis formed by the British Government at the time this note was written.

Sir Edward Grey presents the question of conflict between the act and the treaty in the following language:

It remains to consider whether the Panama Canal act, in its present form, conflicts with the treaty rights to which His Majesty's Government maintain they are entitled.

Under section 5 of the act the President is given, within certain defined limits, the right to fix the tolls, but no tolls are to be levied upon ships engaged in the coastwise trade of the United States, and the tolls, when based upon net registered tonnage for ships of commerce, are not to exceed 1 dollar 25 c. per net registered ton, nor be less, *other than for vessels of the United States and its citizens*, than the estimated proportionate cost of the actual maintenance and operation of the canal. There is also an exception for the exemptions granted by article 19 of the convention with Panama of 1903.

The effect of these provisions is that vessels engaged in the coastwise trade will contribute nothing to the upkeep of the canal. Similarly vessels belonging to the Government of the Republic of Panama will, in pursuance of the treaty of 1903, contribute nothing to the upkeep of the canal. Again, in the cases where tolls are levied, the tolls in the case of ships belonging to the United States and its citizens may be fixed at a lower rate than in the case of foreign ships, and may be less than the estimated proportionate cost of the actual maintenance and operation of the canal.

These provisions (1) clearly conflict with the rule embodied in the principle established in article 8 of the Clayton-Bulwer treaty of equal treatment for British and United States ships and (2) would enable tolls to be fixed which would not be just and equitable and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote treaty.

From this it appears that three objections are made to the provisions of the act; first, that no tolls are to be levied upon ships engaged in the coastwise trade of the United States; second, that a discretion appears to be given to the President to discriminate in fixing tolls

in favor of ships belonging to the United States and its citizens as against foreign ships; and, third, that an exemption has been given to the vessels of the Republic of Panama under article 19 of the convention with Panama of 1903.

Considered in the reverse order of their statement, the third objection, coming at this time, is a great and complete surprise to this Government. The exemption under that article applies only to the government vessels of Panama and was part of the agreement with Panama under which the canal was built. The convention containing the exemption was ratified in 1904, and since then to the present time no claim has been made by Great Britain that it conflicted with British rights. The United States has always asserted the principle that the status of the countries immediately concerned by reason of their political relation to the territory in which the canal was to be constructed was different from that of all other countries. The Hay-Herran treaty with Colombia of 1903 also provided that the war vessels of that country were to be given free passage. It has always been supposed by this Government that Great Britain recognized the propriety of the exemptions made in both of those treaties. It is not believed, therefore, that the British Government intend to be understood as proposing arbitration upon the question of whether or not this provision of the act, which in accordance with our treaty with Panama exempts from tolls the government vessels of Panama, is in conflict with the provisions of the Hay-Pauncefote treaty.

Considering the second objection based upon the discretion thought to be conferred upon the President to discriminate in favor of ships belonging to the United States and its citizens, it is sufficient, in view of the fact that the President's proclamation fixing the tolls was silent on the subject, to quote the language used by the President in the memorandum attached to the act at the time of signature, in which he says:

It is not, therefore, necessary to discuss the policy of such discrimination until the question may arise in the exercise of the President's discretion.

On this point no question has as yet arisen which, in the words of the existing arbitration treaty between the United States and Great Britain, "it may not have been possible to settle by diplomacy," and until then any suggestion of arbitration may well be regarded as premature.

It is not believed, however, that in the objection now under consideration Great Britain intends to question the right of the United States to exempt from the payment of tolls its vessels of war and other vessels engaged in the service of this Government. Great Britain does not challenge the right of the United States to protect the canal. United States vessels of war and those employed in Government service are a part of our protective system. By the Hay-Pauncefote treaty we assume the sole responsibility for its neutralization. It is inconceivable that this Government should be required to pay canal tolls for the vessels used for protecting the canal, which we alone must protect. The movement of United States vessels in executing governmental policies of protection are not susceptible of explanation or differentiation. The United States could not be called upon to explain what relation the movement of a particular vessel through the canal has to its protection. The

British objection, therefore, is understood as having no relation to the use of the canal by vessels in the service of the United States Government.

Regarding the first objection, the question presented by Sir Edward Grey arises solely upon the exemption in the canal act of vessels engaged in our coastwise trade.

On this point Sir Edward Grey says that "His Majesty's Government do not question the right of the United States to grant subsidies to United States shipping generally, or to any particular branches of that shipping," and it is admitted in his note that the exemption of certain classes of ships would be "a form of subsidy" to those vessels; but it appears from the note that His Majesty's Government would regard that form of subsidy as objectionable under the treaty if the effect of such subsidy would be "to impose upon British or other foreign shipping an unfair share of the burden of the upkeep of the canal, or to create a discrimination in respect of the conditions or charges of traffic, or otherwise to prejudice rights secured to British shipping by this treaty."

It is not contended by Great Britain that equality of treatment has any reference to British participation in the coastwise trade of the United States, which, in accordance with general usage, is reserved to American ships. The objection is only to such exemption of that trade from toll payments as may adversely affect British rights to equal treatment in the payment of tolls, or to just and equitable tolls. It will be helpful here to recall that we are now only engaged in considering (quoting from Sir Edward Grey's note) "whether the Panama Canal act in its present form conflicts with the treaty rights to which His Majesty's Government maintain they are entitled," concerning which he concludes:

*These provisions* (1) clearly conflict with the rule embodied in the principle established in article 8 of the Clayton-Bulwer treaty of equal treatment for British and United States ships, and (2) *would enable* tolls to be fixed which would not be just and equitable, and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote treaty.

On the first of these points the objection of the British Government to the exemption of vessels engaged in the coastwise trade of the United States is stated as follows:

\* \* \* the exemption will, in the opinion of His Majesty's Government, be a violation of the equal treatment secured by the treaty, as it will put the "coastwise trade" in a preferential position as regards other shipping. Coastwise trade can not be circumscribed so completely that benefits conferred upon it will not affect vessels engaged in the foreign trade. To take an example, if cargo intended for a United States port beyond the canal, either from east or west, and shipped on board a foreign ship could be sent to its destination more cheaply through the operation of proposed exemption by being landed at a United States port before reaching the canal and then sent on as coastwise trade, shippers would benefit by adopting this course in preference to sending the goods direct to their destination through the canal on board the foreign ship.

This objection must be read in connection with the views expressed by the British Government while this act was pending in Congress, which were stated in the note of July 8, 1912, on the subject from Mr. Innes, as follows:

As to the proposal that exemption shall be given to vessels engaged in the coastwise trade, a more difficult question arises. If the trade should be so

regulated as to make it certain that only bona fide coastwise traffic which is reserved for United States vessels would be benefited by this exemption, it may be that no objection could be taken.

This statement may fairly be taken as an admission that this Government may exempt its vessels engaged in the coastwise trade from the payment of tolls, provided such exemption be restricted to bona fide coastwise traffic. As to this it is sufficient to say that obviously the United States is not to be denied the power to remit tolls to its own coastwise trade because of a suspicion or possibility that the regulations yet to be framed may not restrict this exemption to bona fide coastwise traffic.

The answer to this objection, therefore, apart from any question of treaty interpretation, is that it rests on conjecture as to what may happen rather than upon proved facts, and does not present a question requiring submission to arbitration, as it has not as yet passed beyond the stage where it can be profitably dealt with by diplomatic discussion. It will be remembered that only questions which it may not be possible to settle by diplomacy are required by our arbitration treaty to be referred to arbitration.

On this same point Sir Edward Grey urges another objection to the exemption of coastwise vessels, as follows:

Again, although certain privileges are granted to vessels engaged in an exclusively coastwise trade, His Majesty's Government are given to understand that there is nothing in the laws of the United States which prevents any United States ship from combining foreign commerce with coastwise trade, and consequently from entering into direct competition with foreign vessels while remaining "prima facie" entitled to the privilege of free passage through the canal. Moreover any restriction which may be deemed to be now applicable might at any time be removed by legislation or even perhaps by mere changes in the regulations.

This objection also raises a question which, apart from treaty interpretation, depends upon future conditions and facts not yet ascertained, and for the same reasons as are above stated its submission to arbitration at this time would be premature.

The second point of Sir Edward Grey's objection to the exemption of vessels engaged in coastwise trade remains to be considered. On this point he says that the provisions of the act "would enable tolls to be fixed which would not be just and equitable, and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote treaty."

It will be observed that this statement evidently was framed without knowledge of the fact that the President's proclamation fixing the tolls had issued. It is not claimed in the note that the tolls actually fixed are not "just and equitable" or even that all vessels passing through the canal were not taken into account in fixing the amount of the tolls, but only that either or both contingencies are possible.

If the British contention is correct that the true construction of the treaty requires all traffic to be reckoned in fixing just and equitable tolls, it requires at least an allegation that the tolls as fixed are not just and equitable and that all traffic has not been reckoned in fixing them before the United States can be called upon to prove that this course was not followed, even assuming that the burden of proof would rest with the United States in any event, which is open to

question. This Government welcomes the opportunity, however, of informing the British Government that the tolls fixed in the President's proclamation are based upon the computations set forth in the report of Prof. Emory R. Johnson, a copy of which is forwarded herewith for delivery to Sir Edward Grey, and that the tolls which would be paid by American coastwise vessels, but for the exemption contained in the act, were computed in determining the rate fixed by the President.

By reference to page 208 of Prof. Johnson's report, it will be seen that the estimated net tonnage of shipping using the canal in 1915 is as follows:

	Tons.
Coast to coast American shipping-----	1,000,000
American shipping carrying foreign commerce of the United States--	720,000
Foreign shipping carrying commerce of the United States and foreign countries-----	8,780,000

It was on this estimate that tolls fixed in the President's proclamation were based.

Sir Edward Grey says, "This rule [1 of article 3 of the Hay-Pauncefote treaty] also provides that the tolls should be 'just and equitable.'" The purpose of these words, he adds, "was to limit the tolls to the amount representing the fair value of the services rendered, i. e., to the interest on the capital expended and the cost of the operation and maintenance of the canal." If, as a matter of fact, the tolls now fixed (of which he seems unaware) do not exceed this requirement, and as heretofore pointed out there is no claim that they do, it is not apparent under Sir Edward Grey's contention how Great Britain could be receiving unjust and inequitable treatment if the United States favors its coastwise vessels by not collecting their share of the tolls necessary to meet the requirement. There is a very clear distinction between an omission to "take into account" the coastwise tolls in order to determine a just and equitable rate, which is as far as this objection goes, and the remission of such tolls, or their collection coupled with their repayment in the form of a subsidy.

The exemption of the coastwise trade from tolls, or the refunding of tolls collected from the coastwise trade, is merely a subsidy granted by the United States to that trade, and the loss resulting from not collecting, or from refunding those tolls, will fall solely upon the United States. In the same way the loss will fall on the United States if the tolls fixed by the President's proclamation on all vessels represent less than the fair value of the service rendered, which must necessarily be the case for many years; and the United States will, therefore, be in the position of subsidizing or aiding not merely its own coastwise vessels, but foreign vessels as well.

Apart from the particular objections above considered, it is not understood that Sir Edward Grey questions the right of the United States to subsidize either its coastwise or its foreign shipping, inasmuch as he says that His Majesty's Government do not find "either in the letter or in the spirit of the Hay-Pauncefote treaty any surrender by either of the contracting powers of the right to encourage its shipping or its commerce by such subsidies as it may deem expedient."

To summarize the whole matter: The British objections are, in the first place, about the canal act only; but the canal act does not fix the tolls. They ignore the President's proclamation fixing the tolls which puts at rest practically all of the supposititious injustice and inequality which Sir Edward Grey thinks might follow the administration of the act, and concerning which he expresses so many and grave fears. Moreover, the gravamen of the complaint is not that the canal act will actually injure in its operation British shipping or destroy rights claimed for such shipping under the Hay-Pauncefote treaty, but that such injury or destruction may possibly be the effect thereof; and further, and more particularly, Sir Edward Grey complains that the action of Congress in enacting the legislation under discussion foreshadows that Congress or the President may hereafter take some action which might be injurious to British shipping and destructive of its rights under the treaty. Concerning this possible future injury, it is only necessary to say that in the absence of an allegation of actual or certainly impending injury there appears nothing upon which to base a sound complaint. Concerning the infringement of rights claimed by Great Britain, it may be remarked that it would, of course, be idle to contend that Congress has not the power or that the President, properly authorized by Congress, may not have the power to violate the terms of the Hay-Pauncefote treaty in its aspect as a rule of municipal law. Obviously, however, the fact that Congress has the power to do something contrary to the welfare of British shipping or that Congress has put or may put into the hands of the President the power to do something which may be contrary to the interests possessed by British shipping affords no just ground for complaint. It is the improper exercise of a power and not its possession which alone can give rise to an international cause of action; or, to put it in terms of municipal law, it is not the possession of the power to trespass upon another's property which gives a right of action in trespass, but only the actual exercise of that power in committing the act of trespass itself.

When and if complaint is made by Great Britain that the effect of the act and the proclamation together will be to subject British vessels, as a matter of fact, to inequality of treatment or to unjust and inequitable tolls in conflict with the terms of the Hay-Pauncefote treaty, the question will then be raised as to whether the United States is bound by that treaty both to take into account and to collect tolls from American vessels, and also whether under the obligations of that treaty British vessels are entitled to equality of treatment in all respects with the vessels of the United States. Until these objections rest upon something more substantial than mere possibility it is not believed that they should be submitted to arbitration. The existence of an arbitration treaty does not create a right of action; it merely provides a means of settlement to be resorted to only when other resources of diplomacy have failed. It is not now deemed necessary, therefore, to enter upon a discussion of the views entertained by Congress and by the President as to the meaning of the Hay-Pauncefote treaty in relation to questions of fact which have not yet arisen but may possibly arise in the future in connection with the administration of the act under consideration.

It is recognized by this Government that the situation developed by the present discussion may require an examination by Great

Britain into the facts above set forth as to the basis upon which the tolls fixed by the President's proclamation have been computed, and also into the regulations and restrictions circumscribing the coastwise trade of the United States, as well as into other facts bearing upon the situation, with the view of determining whether or not, as a matter of fact, under present conditions there is any ground for claiming that the act and proclamation actually subject British vessels to inequality of treatment or to unjust and inequitable tolls.

If it should be found as a result of such an examination on the part of Great Britain that a difference of opinion exists between the two Governments on any of the important questions of fact involved in this discussion, then a situation will have arisen which, in the opinion of this Government, could with advantage be dealt with by referring the controversy to a commission of inquiry for examination and report in the manner provided for in the unratified arbitration treaty of August 3, 1911, between the United States and Great Britain.

The necessity for inquiring into questions of fact in their relation to controversies under diplomatic discussion was contemplated by both parties in negotiating that treaty, which provides for the institution, as occasion arises, of a joint high commission of inquiry, to which, upon the request of either party, might be referred for impartial and conscientious investigation any controversy between them, the commission being authorized upon such reference "to examine into and report upon the particular questions or matters referred to it, for the purpose of facilitating the solution of disputes by elucidating the facts, and to define the issues presented by such questions, and also to include in its report such recommendations and conclusions as may be appropriate."

This proposal might be carried out, should occasion arise for adopting it, either under a special agreement or under the unratified arbitration treaty above mentioned, if Great Britain is prepared to join in ratifying that treaty, which the United States is prepared to do.

You will take an early opportunity to read this dispatch to Sir Edward Grey; and if he should so desire, you will leave a copy of it with him.

I am, etc.,

P. C. KNOX.

[Inclosure.]

[Panama Canal toll rates.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

#### A PROCLAMATION.

I, William Howard Taft, President of the United States of America, by virtue of the power and authority vested in me by the Act of Congress, approved August twenty-fourth, nineteen hundred and twelve, to provide for the opening, maintenance, protection and operation of the Panama Canal and the sanitation and government of the Canal Zone, do hereby prescribe and proclaim the following rates of toll to be paid by vessels using the Panama Canal:

1. On merchant vessels carrying passengers or cargo one dollar and twenty cents (\$1.20) per net vessel ton—each one hundred (100) cubic feet—of actual earning capacity.



2. On vessels in ballast without passengers or cargo forty (40) per cent less than the rate of tolls for vessels with passengers or cargo.

3. Upon naval vessels, other than transports, colliers, hospital ships and supply ships, fifty (50) cents per displacement ton.

4. Upon army and navy transports, colliers, hospital ships and supply ships one dollar and twenty cents (\$1.20) per net ton, the vessels to be measured by the same rules as are employed in determining the net tonnage of merchant vessels.

The Secretary of War will prepare and prescribe such rules for the measurement of vessels and such regulations as may be necessary and proper to carry this proclamation into full force and effect.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of November in the year of our Lord one thousand nine hundred and twelve and of the independence of the United States the one hundred an thirty-seventh.

[SEAL.]

By the President:

P. C. KNOX,

*Secretary of State.*

WM. H. TAFT.

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*The British Ambassador to the Secretary of State.*

BRITISH EMBASSY,

*Washington, February 27, 1913.*

SIR: His Majesty's Government are unable before the administration leaves office to reply fully to the arguments contained in your dispatch of the 17th ultimo to the United States chargé d'affaires at London regarding the difference of opinion that has arisen between our two Governments as to the interpretation of the Hay-Pauncefote treaty, but they desire me in the meantime to offer the following observations with regard to the argument that no case has yet arisen calling for any submission to arbitration of the points in difference between His Majesty's Government and that of the United States on the interpretation of the Hay-Pauncefote treaty, because no actual injury has as yet resulted to any British interest and all that has been done so far is to pass an act of Congress under which action held by His Majesty's Government to be prejudicial to British interests might be taken.

From this view His Majesty's Government feel bound to express their dissent. They conceive that international law or usage does not support the doctrine that the passing of a statute in contravention of a treaty right affords no ground of complaint for the infraction of that right, and that the nation which holds that its treaty rights have been so infringed or brought into question by a denial that they exist, must, before protesting and seeking a means of determining the point at issue, wait until some further action violating those rights in a concrete instance has been taken, which in the present instance would, according to your argument, seem to mean, until tolls have been actually levied upon British vessels from which vessels owned by citizens of the United States have been exempted.

The terms of the proclamation issued by the President fixing the canal tolls, and the particular method which your note sets forth as having been adopted by him, in his discretion, on a given occasion

for determining on what basis they should be fixed do not appear to His Majesty's Government to affect the general issue as to the meaning of the Hay-Pauncefote treaty which they have raised. In their view the act of Congress, when it declared that no tolls should be levied on ships engaged in the coasting trade of the United States and when, in further directing the President to fix those tolls within certain limits, it distinguished between vessels of the citizens of the United States and other vessels, was in itself and apart from any action which may be taken under it, inconsistent with the provisions of the Hay-Pauncefote treaty for equality of treatment between the vessels of all nations. The exemption referred to appears to His Majesty's Government to conflict with the express words of rule 1 of article 3 of the Hay-Pauncefote treaty, and the act gave the President no power to modify or discontinue the exemption.

In their opinion the mere conferring by Congress of power to fix lower tolls on United States ships than on British ships amounts to a denial of the right of British shipping to equality of treatment, and is therefore inconsistent with the treaty, irrespective of the particular way in which such power has been so far actually exercised.

In stating thus briefly their view of the compatibility of the act of Congress with their treaty rights His Majesty's Government hold that the difference which exists between the two Governments is clearly one which falls within the meaning of Article I of the arbitration treaty of 1908.

As respects the suggestion contained in the last paragraph but one of your note under reply His Majesty's Government conceive that Article I of the treaty of 1908 so clearly meets the case that has now risen that it is sufficient to put its provisions in force in whatever manner the two Governments may find the most convenient. It is unnecessary to repeat that a reference to arbitration would be rendered superfluous if steps were taken by the United States Government to remove the objection entertained by His Majesty's Government to the act.

His Majesty's Government have not desired me to argue in this note that the view they take of the main issue—the proper interpretation of the Hay-Pauncefote treaty—is the correct view, but only that a case for the determination of that issue has already arisen and now exists. They conceive that the interest of both countries requires that issue to be settled promptly before the opening of the canal, and by means which will leave no ground for regret or complaint. The avoidance of possible friction has been one of the main objects of those methods of arbitration of which the United States has been for so long a foremost and consistent advocate. His Majesty's Government think it more in accordance with the general arbitration treaty that the settlement desired should precede rather than follow the doing of any acts which could raise questions of actual damage suffered; and better also that when vessels begin to pass through the great waterway in whose construction all the world has been interested there should be left subsisting no cause of difference which could prevent any other nation from joining without reserve in the satisfaction the people of the United States will feel at the completion of a work of such grandeur and utility.

I have, etc.,

JAMES BRYCE.

## CORRESPONDENCE SUBMITTED MAY 7, 1914.

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REPORTED BY MR. HITCHCOCK.

IN THE SENATE OF THE UNITED STATES,

*April 29, 1914.*

*Resolved*, That the President is hereby requested, if not incompatible with the public interest, to cause to be transmitted to the Senate all papers, correspondence, messages, and dispatches in the Department of State, not heretofore communicated to Congress, having relation to certain tripartite agreements or conventions, concluded between the United States and the Republic of Panama, the United States and the Republic of Colombia, and the Republic of Colombia and the Republic of Panama, all dated the ninth day of January, nineteen hundred and nine, together with all correspondence relating to the Hay-Concha protocol not included in the House document six hundred and eleven, Fifty-seventh Congress, first session.

Attest:

JAMES M. BAKER, *Secretary.*

PART IV.  
LETTERS OF TRANSMITTAL.

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*To the Senate of the United States:*

In response to the resolution of the Senate of the 29th ultimo, calling for certain correspondence relating to the so-called tripartite conventions concluded in 1909 between the United States, Colombia, and Panama, and for correspondence not heretofore communicated relating to the "Hay-Concha protocol," I transmit herewith a report of the Secretary of State communicating the correspondence called for.

WOODROW WILSON.

THE WHITE HOUSE,  
*Washington, May 7, 1914.*

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To the PRESIDENT:

The undersigned, Secretary of State, to whom was referred a resolution reported from the Committee on Foreign Relations and adopted April 29, 1914, by which the President was—

requested, if not incompatible with the public interest, to cause to be transmitted to the Senate all papers, correspondence, messages, and dispatches in the Department of State, not heretofore communicated to Congress, having relation to certain tripartite agreements or conventions concluded between the United States and the Republic of Panama, the United States and the Republic of Colombia, and the Republic of Colombia and the Republic of Panama, all dated the ninth day of January, nineteen hundred and nine, together with all correspondence relating to the Hay-Concha protocol, not included in House Document Numbered Six hundred and eleven, Fifty-seventh Congress, first session—

has the honor to submit the following report:

The resolution calls for papers and correspondence under two heads, apparently distinct, but in fact relating to different stages of one and the same protracted negotiation, namely, that which culminated in the signature of the conventions, generally known as the tripartite treaties of 1909, between the United States, Colombia, and Panama.

The latter part of the resolution, relating as it does to correspondence earlier in point of time than the first part of the resolution, may be first considered. This correspondence is, in part, contained in House Document No. 611, Fifty-seventh Congress, first session, to which the resolution refers. It was appended to a letter addressed, under date of May 15, 1902, by the then Secretary of State, to the chairman of the Committee on Interstate and Foreign Com-

merce of the House of Representatives, and was described by Mr. Hay as comprising—

copies of letters from the Colombian minister, dated the 31st of March and the 18th and 23d of April, accompanied by the letter of exposition and the letter of William Nelson Cromwell, both dated the 31st of March, referred to in the minister's letter of that date; and also a memorandum of a convention which the Government of Colombia is ready to sign with that of the United States of America, respecting the completion, maintenance, control, and protection of an interoceanic canal over the Isthmus of Panama—

together with pertinent correspondence relating, not alone to the contingent offer to the United States of title and rights in respect to the Panama Canal, but also to the alternative title and rights in respect to the previously proposed canal by the Nicaraguan route, the latter comprising, among other papers, copies of protocols entered into between this Government and those of Nicaragua and Costa Rica, December 1, 1900.

The hitherto unpublished correspondence in connection with the Hay-Concha negotiations is herewith submitted in order to meet the request of the Senate.

There was not in May, 1902, nor at any time, a "Hay-Concha protocol," such as is specified in the resolution. House Document No. 611 contains substantially all the material correspondence antecedent to the formulation of the original Hay-Herran treaty, signed January 22, 1903. The negotiation taken up with Minister Concha got no further than the submission of the draft convention (printed in H. Doc. No. 611) and the announcement made by Mr. Hay to Minister Concha that he would be ready to sign with him the proposed convention—

as soon as the Congress of the United States shall have authorized the President to enter into such an arrangement and the law officers of this Government shall have decided upon the question of the title which the New Panama Canal Co. is able to give of all the properties and rights claimed by it and pertaining to a canal across the Isthmus and covered by the pending proposal.

The conditions thus prescribed by Mr. Hay precedent to the conclusion of a canal treaty with Colombia were not effected until several months later. After a prolonged discussion of the relative merits of the Nicaraguan and the Panaman routes, the Congress, by the act approved June 28, 1902, preferentially approved the construction of a ship canal over the Isthmus of Panama. The title offered by the New Panama Co. was later pronounced to be good and sufficient. By this time Minister Concha had quitted Washington. The Colombian negotiation was then taken up at the point where Minister Concha had left it, and carried to a conclusion with his successor, Minister Herran, January 22, 1903. Although its ratification was advised and consented to on the part of the United States Senate, it failed to receive approval at Bogota. The secession of Panama followed, changing the conditions of the isthman problem and necessitating negotiations *de novo* with the actual sovereign power of the Territory of Panama.

The history of the negotiation of the present Hay-Bunau Varilla canal treaty with Panama, and of the position then assumed by Colombia has been abundantly recorded in the voluminous correspondence heretofore communicated to the Congress. Many of the papers in regard to these events have been printed in the annual

volumes of diplomatic correspondence entitled "Foreign Relations of the United States," and cover the period between the separation of Panama and the initiation of the negotiation which culminated in the signature of the tripartite treaties of 1909. The course of this latter negotiation, stretching over a period of some three years, is reviewed in the report made by Secretary Knox to the President February 20, 1913 (H. Doc. No. 1444, 62d Cong., 3d sess.), but the correspondence incident to the conduct of the negotiations was not submitted therewith.

It would seem that the request of the Senate for information, not heretofore communicated to the Congress, having relation to the described tripartite conventions, will be met by the communication of a concordant selection of hitherto unpublished correspondence, of record in the Department of State, showing the course of the negotiations which led up to the signature of the three treaties mentioned in the resolution. With this view the accompanying collection of papers is laid before the President. In the opinion of the undersigned, their communication to the Senate would not be incompatible with the public interests.

Respectfully submitted.

W. J. BRYAN.

DEPARTMENT OF STATE,

*Washington, May 6, 1914.*

(List of papers follows.)

**PART IV—a.**

**LIST OF PAPERS RELATING TO THE NEGOTIATION OF THE  
TRIPARTITE TREATIES OF JANUARY, 1909.**

1904.

From American legation at Bogota, December 20.

1905.

To same, January 9.

From same, January 13. No. 17.

From same, May 8. Telegram.

From Colombian minister at Washington, October 21. Not included.  
(Printed S. Doc. No. 542, 2d sess., 60th Cong.)<sup>1</sup>

1906.

To same, February 2. Not included. Printed in above document.

From same, April 6. Not included. Printed in above document.

From American legation at Bogota, April 7. No. 66.

From same May 23.

From same, June 12. Telegram.

From same, June 13.

From same, June 13. No. 103.

To same, June 14. Telegram.

From Colombian minister at Washington, July 2.

From American legation at Bogota, July 14. Telegram.

To American legation at Bogota, July 2. No. 27.

Memorandum signed by Mr. Vasquez Cobo, and handed to Mr. Root,  
September 20.

From American legation at Bogota, August 20. Not included.  
(Printed S. Doc., No. 542, 60th Cong., 2d sess.)

Memorandum (confidential) from legation of Colombia at Wash-  
ington, November 8, 1906.

1907.

From Colombian legation, January 3.

From same, March 4.

From same, March 7. Personal note to Mr. Buchanan.

To same, April 24.

From same, April 25.

From same, May 10. Substance.

(At this point there were numerous oral conferences between Mr.  
Taft, Mr. Cortes, the Colombian minister, and Mr. Cromwell, etc.)

<sup>1</sup> See No. 16, Appendix.

Protocol for a treaty between Colombia and Panama, signed August 17, by Minister Cortes, for Colombia; by Mr. Arango, for Panama; and approved by William H. Taft, for the United States (by direction of the President).

Protocol of same date, for a treaty between the United States and Panama, signed by W. H. Taft and Mr. Arango.

From Colombian minister at Washington, August 18.

To same, August 26. Substance.

From same, December 5.

To same, December 17.

From same, December 20. No. 277.

From same, December 28.

1908.

From same, January 26.

To same, January 28.

To same, February 18.

From same, February 19.

From Mr. Taft, March 11.

From Colombian minister, March 12.

From Secretary of State to London and County Banking Co. (Ltd.), March 17.

To Colombian minister, March 17.

From same, March 31.

To Colombian minister, April 9.

From American legation at Bogota, October 6. No. 174.

To Colombian minister, December 29.

To same, December 30.

From same, December 31.

1909.

To same, January 1.

From same, January 10. Substance.

To the President, January 11 (submitting the tripartite treaties for the Senate, printed Ex. N., 60th Cong., 2d sess.) Not included.

From President of Colombia to Colombian minister at Washington, January 12. Telegram.

From American legation at Bogota, January 13.

From American legation at Panama, January 30.

From Panama minister, January 31.

To American legation at Bogota, telegram, February 9.

From same, February 12.

From same, February 14. Telegram.

From same, February 17. Telegram.

From same, No. 235, February 17.

From same, February 23. Telegram.

To same, February 26. Telegram.

From same, February 26. No. 241.

From same, March 1.

From same, telegram, March 10.

From same, telegram, March 14.

To same, March 15. Telegram.

From Colombian minister, March 16.

From American legation at Bogota, March 16. Telegram.

To same, March 17. Telegram.



- From same, March 18. Telegram.  
 To same, March 19. Telegram.  
 To same, March 19. Telegram.  
 To Colombian minister, March 19.  
 From same, March 22. No. 59.  
 To Colombian minister, March 22. No. 82.  
 From American legation at Bogota, March 23.  
 From Colombian legation, March 24. No. 62.  
 From American legation at Bogota, March 26. Telegram.  
 From same, March 27. Telegram.  
 From same, March 29. No. 247. Edited.  
 To same, April 6.  
 To same, April 19. No. 87.  
 To same, May 4. No. 89.  
 From same, May 10. Telegram.  
 From same, May 12. Telegram.  
 From same, May 13. No. 262. Edited.  
 From same, May 27. No. 268.  
 To same, June 11. Telegram.  
 From same, June 17. No. 508.  
 From American legation at Bogota, September 29. Telegram.  
 From same, October 1. No. 12.  
 To same, October 4. Telegram.  
 From same, October 7. No. 14.  
 From same, October 13. Telegram.  
 To same, October 23. Telegram.  
 To same, October 28. No. 15.  
 From same, October 29. No. 20.  
 To same, November 4. No. 17.

*1910.*

- From same, January 5. Telegram.  
 From same, February 18. No. 53.  
 To same, March 24. Telegram.  
 From same, May 13. No. 81.

PAPERS SUBMITTED RELATING TO THE TRIPARTITE  
TREATIES.

*Minister Russell to Secretary Hay.*

[Extracts.]

AMERICAN LEGATION,  
*Bogotá, December 20, 1904.*

SIR: I have the honor to report that up to the present my relations, official and otherwise, with the Colombian Government have been quite cordial. The feeling against our Government in official circles growing out of the Panama incident is gradually disappearing, due I think, to the hope that some negotiations can be effected with the United States Government by which Colombia in accepting the "fait accompli" will appear to her people and the world as not having lost any of her national dignity.

I have had several long talks with the minister of foreign affairs, and he has intimated that it would probably be the best thing for his country to recognize the Republic of Panama and accept the situation, provided that Colombia could, by means of commercial treaties and conventions with the United States and Panama, obtain some of the advantages that she had expected from the construction of the canal on her territory.

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The Government has informed me that it is its intention to send a minister to Washington very soon. I am convinced that the only thing necessary to bring about cordial relations with this country and restore American prestige would be some sort of a treaty arrangement with the United States and Panama by which Colombia could obtain in this usual and ordinary way some of the advantages she has lost by a policy the consequences of which she did not realize until too late, and which national pride, influenced considerably by an anti-American political minority, prevents her from disavowing too openly at present.

I am sir, with great respect,  
Your obedient servant,

WILLIAM W. RUSSELL.

*The Acting Secretary of State to Minister Russell.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, January 9, 1905.*

The Government of Panama having been thoroughly established and recognized by the civilized nations of the world, it is not now regarded as competent to submit the question of its independence to a plebescite.

The President will be pleased if Colombia will celebrate with Panama a treaty of friendship, commerce, and navigation; also if Colombia were to arrange to settle all questions not disposed of in said treaty with Panama by means of arbitration.

LOOMIS.

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*Minister Russell to Secretary Hay.*

No. 17.]

AMERICAN LEGATION,  
*Bogota, January 13, 1905.*

SIR: Referring to your cipher telegram of the 9th instant, which is confirmed in a separate dispatch, I have the honor to state that I have just had a long conference with the President, during which I showed him a copy of your cable. I asked Gen. Reyes to kindly tell me exactly what he would like me to say to my Government, and his reply was as follows:

You can say, Mr. Russell, that I have urged with some persistency this question of a plebiscite to decide the question as to Panama's independence, because his excellency the Secretary of State suggested it to me in a memorandum. We all know in Colombia that Panama will ratify her action of November 3, 1903; but, as a mere matter of form and a salve to the national honor, a decision by plebiscite will pave the way to a definite and final understanding between all the nations concerned. It can make not a particle of difference to the United States, but to Colombians and to me especially in the present state of public feeling it will be the most important step in the policy of reconciliation and good feeling which I am earnestly endeavoring to pursue.

The President requested me to inform you that in February he is going to call a convention to ratify all his decrees for the relief of the country which Congress failed to pass, reform the constitution in regard to the Vice Presidency, and to ratify this proposed arrangement in regard to Panama. The President also requested me to say to you that the congressmen arrested some time ago were all prominent members of the opposition to the Hay-Herran treaty.

I am, sir, with great respect,  
Your obedient servant,

WILLIAM W. RUSSELL.

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*Minister Russell to Secretary Hay.*

[Telegram.]

Strictly confidential.]

AMERICAN LEGATION,  
*Bogota, May 8, 1905.*

Government of the United States of Colombia is sending a confidential agent to confer with the President of the Republic of Panama, and this agent will reach Panama about the 26th. Same agent is coming to Washington afterwards to communicate with Colombian minister there. Government of United States of Colombia has requested me to ask that the American minister to Panama be informed of this, and that he be requested to use his good offices to aid the agent of Colombia in effecting arrangement with the Republic of Panama.

RUSSELL.

*Minister Barrett to Secretary Root.*

No. 66.]

AMERICAN LEGATION,  
*Bogota, April 7, 1906.*

SIR: Referring to my No. 64 of April 2, 1906, I have the honor to report further developments as follows:<sup>1</sup>

As a result of the conference I held with the President, in which we discussed in a full, frank, and friendly way the relations of Colombia and the United States, and after he had seen the report in the American papers that Colombia was displeased with your reply to Minister Mendoza's note<sup>2</sup> and might therefore break off relations with the United States, he decided to telegraph explicit instructions to Minister Mendoza to the effect that he should in no way appear disturbed over your answer to his note, but that, on the other hand, he should continue to discuss matters with you in a friendly way, in the hope of promoting an amicable understanding between the two countries. The President further said that he desired Dr. Mendoza to make the same efforts in Washington that I am making in Bogota to develop the best of relations.

In view of the importance of this action of the President and of the possibility that erroneous reports might be published in the States, I deemed it best to include references to this in my telegram confirmed in an unnumbered dispatch of this same date.

I have the honor, etc.,

JOHN BARRETT.

*Minister Barrett to Secretary Root.*

Confidential.]

AMERICAN LEGATION,  
*Bogota, May 23, 1906.*

SIR: I have the honor to submit to you a confidential report of an informal discussion enjoyed between President Reyes and myself which has a *most important* bearing on the relations of the United States and Colombia and indirectly on the coming Pan American conference.

As you are aware from previous dispatches of mine, it has been my well-defined policy here not to urge in any way the recognition of Panama by Colombia or to appear insistent on reaching any understanding with the United States as to the questions which Colombia holds are outstanding and unsettled. On the other hand I have endeavored to employ officially and personally every legitimate and dignified means to soften the bitter feeling aroused against the United States and President Roosevelt by the Panama incident and to develop a friendlier attitude toward our Government and President. If a just conclusion can be drawn from the treatment of myself as American minister by the Colombian Government, people, and press, it would seem as if my efforts were reciprocated and appreciated, and good results in consequence were being accomplished.

Such feeling, however, has not crystallized into a tangible specific diplomatic step in the desired direction until to-day, Wednesday,

<sup>1</sup> Not printed. Merely incloses newspaper clipping.

<sup>2</sup> Printed. S. Doc. No. 542, 60th Cong., 2d sess.

May 23, when the President invited me to spend the day with him informally at Madrid, his country residence. I am writing this dispatch immediately after my return on the evening train to Bogota, when all that was said is fresh in my mind.

Soon after my arrival at his house, the President invited me into his private office with Dr. Climaco Calderon, his minister of foreign affairs, and remarked in effect as follows:

Mr. Minister, I am talking with you now not so much as President Reyes but as your old friend Reyes of the second Pan American conference. I desire to speak frankly with you as one in whom I have complete confidence and whom I believe to be a sincere friend of mine and Colombia, while a loyal minister of the United States. Then, too, you know that, despite the Panama affair, I have always been a supporter and admirer of the United States and President Roosevelt, and that, for instance, at the second Pan American conference in Mexico, I invariably acted in harmony with you and your colleagues from the United States. Now—

He continued—

I want to read to you a confidential memorandum that has been submitted to me by one of our prominent and able citizens in regard to the relations of the United States, Colombia, and Panama, and to learn what you think of it. In the main it expresses my views as far as proposed policy is concerned with such modifications as are self-evidently necessary.

He then read the memorandum, a translation of which made by his orders, I attach hereto in the exact language of the form handed me, and I would earnestly recommend that you read it at this point before proceeding to consider what I have hereinafter written.

When the President had concluded the reading of the memorandum, he made the following observations:

It is true, as the memorandum says, that a movement has been started in Cauca, Antioquia, and the Atlantic Provinces, in harmony with some agencies and influences in Panama, to form a new republic including Panama, and to make Panama City the capital.

The failure of Mr. Mendoza to accomplish anything for the benefit of Colombia has given strength to the movement, and the story has been circulated that the United States will not only quietly aid such a plan, but gladly recognize the new republic.

This report has even gone to Chile, Argentina, and Brazil and secured sufficient official credence there to cause our minister to these countries, Gen. Uribe-Urbe, to telegraph me concerning it and inform me that some of the delegates of these countries to the Rio conference might refer to it as evidence that the United States was secretly preparing to repeat the Panama incident and add to its hold on South America. I now wish to wire him not only that the United States is not abetting such a movement, but has given me assurance of an eventual settlement of our differences—and so frustrate the enemies of the United States.

I am speaking frankly, as you know, when I tell you that strong influence has been brought to bear on me from other countries of South America to oppose the United States at the Pan-American conference and even not to send delegates, but I have refused, as you are well aware, to listen to such suggestions, believing in the high purpose of President Roosevelt and Secretary Root and the justice of the United States in its final attitude toward Colombia.

I am reliably informed that there are men at work in Panama beyond my reach to assist a revolution in Cauca and Cartagena, looking to union with Panama, and I wish you would kindly ask Mr. Root to instruct Minister and Governor Magoon to watch any schemes or schemers of this kind and use his influence against it. Such a movement can not succeed without a long and bloody war, for, if necessary, I should take the field and command myself, while, as it is, I know that I am in control of the situation and can prevent any outbreak if the United States does not intervene against me.

I shall be grateful if you will cable your Government an outline of my suggestions, together with a request that its representative in Panama watch the situation there in reference to Cauca, etc., and then confirm your message with a full report of our meeting and conversation.

I then took up the conversation for a few minutes, and said in effect the following:

Without committing my Government in any way, I thank you for your frankness in reading and discussing this memorandum. I will forward it in a confidential dispatch, as you desire, to Secretary Root, and await his instructions. Referring to the comments you have just made, I would say first, that I will, of course, treat its suggestions as confidential and ask my Government to so treat it. As to the withdrawal of Mr. Mendoza, it would seem better to me to postpone such action for the present or until any negotiations might be actually begun, for fear that his recall might be misinterpreted as Colombian displeasure with the United States or as a break off of relations just before the Pan-American conference, when signs of good will were desirable on all sides.

As to the formation of a new republic, I need hardly assure you that the United States has not lent and will not lend the least shadow of assistance to any arrangement of the kind described by you, and, if it is asserted that the United States is secretly favoring its consummation, such allegation is the pure fabrication of its enemies. I am aware of the anti-American influences brought to bear on you in connection with the Pan American conference, and I have also informed my Government that you not only were not moved by them, but that Colombia's delegates at Rio would not embarrass the United States by any discussion of the Panama question.

I shall telegraph my Government the substance of your suggestions as expressed in this memorandum and the recommendation that Minister Magoon keep an eye on any revolutionary or new republic movement in Panama.

In regard to the transfer of negotiations from Washington to Bogota, suggested in the memorandum, I must state that, while I appreciate deeply the compliment to myself I can not personally advise or request my Government to approve of such a step. It might seem better in its opinion to conduct any actual negotiations in Washington where my Government is always in close touch with Panama and where the approval of the Senate is required to any treaty, but, as you do not insist on negotiations being conducted here, that is a point that can be easily arranged later on.

At this point I called attention to the fact that, as you would be leaving the United States early in July for the Rio conference and a visit to South America and not be returning before September or October, my Government, if disposed to act on these new suggestions of Colombia, could not take up their careful consideration before fall. Gen. Reyes replied that he understood that situation and would not expect anything explicit to be accomplished until after your return, but he did hope, for reasons stated above and in the memorandum, that the United States Government would give him some direct assurance of willingness to undertake negotiations along these general lines before the Pan American conference meets. I simply answered that I would confirm my telegram with this extended and detailed report which should reach Washington in the latter part of June, and it might be possible to receive some definite word, although I could not promise it, before your departure.

President Reyes then enlarged upon the hope that you and the President would think favorably of his proposals. He said: (a) That you could not realize how strong still was the feeling, amounting almost to intense hatred, among the people of Colombia against the United States on account of its standing by Panama in the latter's separation; (b) that only by his constant watchfulness and

personal good will to the United States for three years, followed now by my friendly attitude, had outbreaks against Americans and American property been prevented; (c) that this feeling had been recently revived by those agitators, politicians, and priests, who insisted on making capital out of your reply to Minister Mendoza's notes; (d) that in Antioquia, Cauca, and the Atlantic Provinces, it had developed in another form into a movement, as already described, for a new republic, until credence was given the report of the secret assistance of the United States, not only in the other parts of Colombia, but in other nations of South America; (e) that Colombia, if peace could be preserved, was about to enter upon a period of great material and commercial development that would be of the highest value and importance to the export and financial interests of the United States; (f) that European trade and money interests recognized the situation and were doing all in their power to get a firm hold on the commercial and material opportunities of Colombia; and (g) that, finally, in a practical desire to obtain results and inaugurate a new era in the foreign relations of Colombia, he now gave up all hope of arbitration or indemnity being conceded by the United States—so dear to the expectations of the Colombian people—and proposed the negotiation of new treaties on a basis that the United States, in view of all that Colombia had suffered and lost, must admit was fair and equitable.

Therefore he hoped that you and the President would most carefully consider his intimations and thus open the way to the complete restoration of cordial relations between the United States and Colombia, to the recognition of Panama by Colombia, and to the establishment of permanent accord between the latter nations by means of a treaty of friendship and commerce.

In order to have a perfectly clear understanding in general terms of what he proposed, I then asked the President to summarize them, apart from the memorandum, which he did, as follows:

1. Colombia desires to negotiate a new treaty of friendship and commerce with the United States (to supersede the treaty of 1846), in which, in view of Colombia's former sovereignty and vital interests at stake, the United States shall grant to Colombia the same general privileges in the canal and Canal Zone as provided by the Hay-Herran treaty as they affect trade, commercial intercourse, shipping, or practically the same as now granted to Panama in these respects.

2. Colombia will recognize Panama as an independent Republic within the limits of the old department of Panama, (which is now conceded to be the present extent of Panama), and negotiate with Panama a treaty of friendship and commerce, provided Panama will assume a part of Colombia's foreign debt, contracted before the separation of Panama, in proportion not only to population, but to resources and wealth.

3. The United States will use its good offices and its peculiar relation of responsibility to Panama to intervene with that Government and make sure that Panama will treat with Colombia in good faith and do its share and part in arranging a basis of settlement of the foreign-debt question.

4. Prior to the negotiation of the Colombia-Panama treaty, Colombia will arrange privately with the United States, and the latter with Panama, that Panama shall send a confidential representative to Bogota to consider and sign a protocol, before being officially received as minister plenipotentiary, covering the questions to be settled in a formal treaty that will be negotiated immediately after the protocol is signed.

5. The United States Government will give, if possible, an assurance before the Pan American conference of its willingness to undertake negotiations

along these lines in order to prevent any expression of feeling there against the United States, and to thwart any plans for the formation of an interoceanic republic, which would include Panama and the Colombian territory of Cauca, Antioquia, and the Atlantic provinces, thus doing Colombia a great service and strengthening the position of the United States not only in Colombia, but in all South America.

6. The actual negotiations will await the return to Washington of Secretary Root from his trip to South America, and be conducted in the late fall or early part of next year, when the Congresses of both the United States and Colombia will be in session and can consider and ratify the treaties. Although conditions favor Bogota, it is not material whether the actual negotiations take place in Bogota or Washington, but, if in Washington, Colombia will send Enrique Cortes, former minister of foreign affairs, and who went to Washington in June, 1905, as a special representative of President Reyes, to act as its plenipotentiary, Mr. Mendoza being in the meantime granted leave of absence or transferred.

7. The whole question is to be treated as confidential (not even made known to Mr. Mendoza), except as Colombia may telegraph her delegates at Rio Janeiro about the time the Pan American conference assembles, to the effect that preliminary negotiations are begun which will lead to a satisfactory adjustment of all questions at issue over Panama between Colombia and the United States.

In regard to receiving some word from you before the Pan American conference, the President emphasized, in response to my intimation that this suggestion might be misunderstood, that it was in no sense whatever a threat to the effect that Colombia's delegates might in some way bring up the Panama or new republic questions at the conference or quietly approve of its being done by others in the event no favorable answer came from Washington; on the other hand, the delegates of Colombia desired the assurance so as to be able to definitely frustrate any attempt of the kind among other delegates and to remove all cause of suspicion and intrigue based on false reports or jealousy of the United States. The President added that he showed his frankness and fair dealing with me and the United States by informing me that efforts had been made and were being made to have him sanction or assist a movement against the United States in the conference.

In conclusion I would state that my conference with President Reyes and Dr. Calderon extended over several hours. It was characterized with the greatest frankness and friendliness of discussion. Both the President and minister of foreign affairs seemed deeply interested in the subject and most anxious that you and President Roosevelt should appreciate and reciprocate their sincerity of purpose. They were good enough to say that my attitude and policy as minister here had paved the way to their determination to seek a settlement on a new basis of the Panama question and to lay their complete plans in confidence before me for submission to you and President Roosevelt.

In view of its confidential and highly important character, I am marking the dispatch "Confidential" and giving it no number. There is not time to prepare and confirm the telegram I shall send on this subject before the mail closes.

I have the honor to be, sir,

Your obedient servant,

JOHN BARRETT.



[Verbatim copy of translation made in Colombian foreign office and handed to Minister Barrett.]

*Memorandum.*

BOGOTA, May 23, 1906.

Opinions of a Colombian citizen who loves his country more than anyone else, who wishes for its prosperity and greatness, who recognizes the cessation of Panama as an accomplished fact, who is a friend of the United States, who wishes that the extraordinary civilization reached to by that country may spread itself all over South America by practicing the "American Ideals" of its President, Mr. Roosevelt, that the questions pending between the United States, Colombia, and Panama be arranged in a dignified and honorable manner, and that this last country constitutes itself to the good of its inhabitants and to avoid the scandal and new shedding of blood on Colombian territory on account of the Panama question.

I. It is well known that the negotiations of the Legation of Colombia in Washington, that Messrs. Diego Mendoza and Enrique Cortes initiated, under favorable circumstances, for the settlement of the Panama question, have failed because Mr. Cortes, whose highmindedness, friendly feeling towards the United States, and thorough knowledge of the English language, would have obtained good success in this negotiation, had to separate himself from the Legation; and Mr. Mendoza failed because he determined to insist on obtaining the declaration from the United States that that country had carried out the revolution in Panama. The failure of his mission can be considered as his last offense to the American Government.

II. It is also known that, owing to Minister Mendoza Perez' attitude and to his failure, certain Colombian and Panama citizens have proposed the formation with Panama, the Atlantic coast of Colombia, and the Departments of Antioquia and Cauca, of the Interoceanic Republic with the City of Panama as a probable capital, and that the United States should second this project.

Although at first sight the realization of such a project seems easy, it is not so, for the following reasons:

(a) The popular feeling of hatred of the entire population of Colombia against the United States and Panama, in consequence of the cessation of the last, is so intense that, in order to calm such a feeling, it has been necessary to use all the prestige and energy of President Reyes, and to sustain during three years a campaign of frankness and patriotism to avoid the outbreak of such feelings against the American citizens living in the country; and such an attitude on the part of the President was one of the main causes of the attempt on his life made on the tenth of February. This feeling is so much alive, even at the present day, that, if they intended to carry out the project of the Interoceanic Republic, the popular mass would raise up at once, headed and encouraged by the Catholic clergy that would see its religion menaced by the Protestant creed, and a war would follow, worse in character than the Civil War of three years duration, which was followed by the cessation of Panama and the ruin of Colombia. The consequence of such a war would be the

definite establishment of anarchy throughout Colombia; and the United States would bear before the world and before history the entire responsibility of having caused the anarchic revolution.

(*b*) Among the measures taken by the Government in the rebuilding of the Nation, one of the principal ones is the construction of railways and two of the main lines are in the hands of American citizens; viz the line from Buenaventura on the Pacific coast to the interior of Colombia, probably to Bogota; and those represented by Mr. Ford: the Cartagena Railway Company and the Magdalena Steamship Navigation Company, both worked with Boston capital. A movement of cessation on the mentioned basis would be a call of attack of the people against the mentioned grantees and their works which the Government would be incapable of avoiding.

III. In the delicate and dangerous position created by the war of three years duration, followed by the cessation of Panama and the ruin of Colombia, which ruin would render easier the outbreak of a social and anarchic revolution that only the energetic will of President Reyes and his moral and military prestige have been able to hold back,—in this position rendered worse with the project of the Interoceanic Republic,—it seems wise that before seconding such a project that would undoubtedly cause the entire loss of the Colombian Nation as well as the loss of the different Departments that intend to form a nation, it would be patriotic and humane to act as follows:

(*a*) To bring to Bogota the negotiations pending in Washington in relation to the question of Panama, Colombia, and the United States.

(*b*) To profit of the presence in Bogota of the American Minister, the Hon. John Barrett, a high minded gentleman and a personal and old friend of President Reyes, who thoroughly knows the interests aspirations, and necessities of Spanish American countries, and who also is a friend of the President of Panama and a genuine representative of the high ideals of progress and civilization of the people and the Government of the United States, to profit of his presence in Bogota to confer with the Government of Colombia and to end in a generous, just, and high minded manner the questions pending between the United States and Colombia and Panama, which settlement could be carried out in the shape of a Treaty among the three countries on the basis hereafter mentioned, or perhaps better in two separate Treaties, one between the United States and Colombia and the other between Colombia and Panama. The first one could be made on the following basis:

*1st.* Colombia undertakes to recognize the independence of Panama and to celebrate treaties of peace, commerce, and friendship with Panama and consequently to declare null and void the Treaty of 1846 between Colombia and the United States.

*2nd.* Colombia will celebrate a Treaty of friendship, commerce, etc., etc., with the United States under the most ample and convenient terms to both countries.

*3rd.* The United States, in consideration that the Zone through which the Canal is being constructed belonged to Colombia, and that Colombia has important towns on both coasts, which towns are called, on account of their situation, to help in the construction and

conservation of the Canal, grants to Colombia the following privileges (Those of the Treaty Herran-Hay and the entrance to the Canal Zone of Colombian products under the same conditions as those coming from Panama.)

Basis on which can be celebrated a Treaty with Panama.

The United States and Colombia would arrange in a private manner that the Panama Government should send a Plenipotentiary Minister to Bogota. General Santiago de la Guardia, the present Minister of Foreign Affairs in Panama would be a desirable candidate, with whom, and before being officially received, a representative of the Colombian Government would sign a protocol or treaty of the questions that would be considered once the Panama Minister was received; which questions could be as follows:

(a) The acknowledgment of the independence of Panama within the limits of the old Department of Panama, before its cessation from Colombia.

(b) That Panama should acknowledge and pay to Colombia a part of the National Debt in proportion to her resources and wealth.

(c) The other conditions customary in such treaties.

IV. As can be clearly seen, the form and essential part of the project to put an end to the vexatious situation existing between the United States, Colombia, and Panama since the cessation of the last, takes into consideration the interests of the three countries, those of the cause of civilization of justice, and the good name of the United States, which is today a matter of discussion and comment in an unfavorable manner among South American and Central American countries. At the same time the talents and exceptional conditions of Minister Barrett and the good will of both the Presidents of Panama and Colombia could be profited as it is well to remember that General Reyes is universally liked in Panama, because he always defended the interests of that part of Colombia and in the National Assembly which met in 1885 he had to contend against Senor Caro, the representative for Panama, in order to make of that State a Department, and not a Territory as it was then pretended. It is certain that if General Reyes had been President when the Herran-Hay Treaty was signed, the Treaty would have been approved and the loss of the Isthmus avoided.

V. These opinions, dictated by the love we profess to our country, by the interest of civilization, and also by the good name of the United States which history and world would hold responsible for the misfortunes that the project of the formation of the Interoceanic Republic would cause if carried out, will be sent to the President of Colombia, to the American Minister, the Honorable John Barrett, and to other persons whom we may think interested in the questions herein related.

VI. It is urgent that, before the meeting of the Pan-American Conference in Brazil the Governments of the United States and Colombia or their Ministers arrive at an understanding in reference to the mentioned basis in order to prevent the enemies of the United States and of the success of the said Conference from carrying out their design of making believe that the United States are fomenting or patronizing a revolution in Colombia in order to obtain the projected Republic, as it happened in Panama. In reference to the

Treaties being celebrated in Bogota it is not a matter of importance; they can be celebrated in Washington next Autumn; but it is convenient that the Colombian Delegates in Brazil should have instructions from their Government to deny the malicious charges that it is known will be made against the American Government in relation to the Panama question, and the patronizing of a new revolution in Colombia.

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[Telegram.]

*Mr. Barrett to the Secretary of State.*

BOGOTA, June 12, 1906.

Minister of Colombia at Washington has telegraphed to the President of Colombia as follows:

In order to remove wrong impression, am glad to inform you that a group in Congress has begun action favorable to arbitration, which does not antagonize the President of the United States and has not to do with politics. Will advise you of the result. A new course it will be fatal.

Such information in view of your note of February 10<sup>1</sup> to the minister of Colombia and recent telegrams is a great surprise for the President, but he fears minister of Colombia makes such report to stop his recall, which the President has ordered. He requests that I ascertain and let him know at once is there any foundation for the statement of minister of Colombia.

BARRETT.

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*Minister Barrett to Secretary Root.*

AMERICAN LEGATION,  
Bogota, June 13, 1906.

DEAR MR. SECRETARY: In view of the probability of Mr. Root's departure from Washington, I beg to inclose a copy of a personal note which I mailed to him at New York, care of the United States dispatch agent, in the hope of catching him before he sailed. The inclosures referred to accompany my No. 103 of this date (excepting the one about Buenos Aires). I hope that you will find time to read not only this inclosed private note to Mr. Root but the official dispatch mentioned. You may also think it best to submit them to the President, in view of the importance of the proposed negotiations of Colombia with the United States and Panama for new treaties. Great interest is being manifested here, caused by rumors that naturally get started, and if the negotiations are successfully consummated next fall a splendid new era will be inaugurated in the relations of the United States, not only with Colombia, but, by natural effect, with all Latin America.

Yours, very respectfully,

JOHN BARRETT.

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<sup>1</sup> Printed in S. Doc. 542, 60th Cong., 2d sess.

AMERICAN LEGATION,  
*Bogota, June 13, 1906.*

DEAR MR. SECRETARY: As this mail will probably reach New York just as you are sailing for Rio Janerio, and, as I assume, you are desirous of knowing the latest developments in the proposed new negotiations between Colombia and the United States, I beg to inclose a copy of my last dispatch to the department, forwarded in the pouch by this same mail. I inclose also a few notes on Buenos Aires, which you may be interested in reading when you have spare moments on shipboard.

It would gratify you to see with your own eyes the tangible interest which Colombians of all classes are manifesting in the eventual restoration of a complete entente cordiale with the United States. The only embarrassing part of it is that they give me altogether more credit than I deserve and wish to show me honors and attentions that I want to avoid. Although I have invariably been treated with a courtesy that has gradually grown more marked as the people have endeavored to reciprocate my attitude and policy of friendliness, I was not prepared for the effusive feeling that now is expressed on all sides.

Although I have said nothing publicly myself, President Reyes has begun a careful propaganda in the press to prepare the people for new negotiations and to develop a friendly sentiment to the United States, as well as the realization of the impossibility of arbitration and indemnity, so treasured in the mind of the average Colombian. He knows that he has a hard task because there still remains a strong undercurrent of resentment among certain classes of people, but from their attitude toward me I am convinced that the higher classes intend to support him. I consider the unsought assurance of aid in my labors which have been given me by the powerful Archbishop Bernardo, of Bogota, and the papal nuncio, Monsenor Ragonesi, as having far-reaching significance. I say "unsought," for, while I have not asked or suggested their cooperation, I have, on the other hand, recognized their mighty influence and cultivated, since my arrival here, a strong confidential friendship with them which is now bearing fruit.

When we remember four things, Mr. Secretary, it would seem as if we ought to treat Colombia as liberally as possible:

1. It will take generations, otherwise, to remove a deep-seated feeling against the United States throughout the length and breadth of the land which can now be almost immediately and effectually uprooted by giving Colombia special concessions of shipping and trade in the canal and Canal Zone.

2. Colombia is undoubtedly the richest country in latent possibilities and, in proportion to area, of all Latin America, and, unless the United States negotiates a favorable treaty, the benefit of the future development and commerce is sure to go largely to European countries, which are already plainly preparing to make the most of their opportunities.

3. We must always take into consideration the possibilities of war with some powerful European or Asiatic country, in which case it would be of transcendental importance to prevent such splendid

harbors as Cartagena, on the Caribbean, and Buenaventura, on the Pacific, together with the respective strategic and supply-producing coast lines of Colombia, being used by or favorable to our enemies.

4. Despite the fact that Colombia is to blame for not ratifying the Hay-Herran treaty, a large part of Colombia, particularly the rich provinces of Cauca on the Atlantic, Bolivar on the Pacific, and Antioquia between, were actually and strongly in its favor but were overruled by the interior and mountain Provinces. Against their own will the populations of these sections were made to accept injurious conditions to them. If the United States now restores in a measure by concessions of trade, shipping, and transit what they have lost, it will win their everlasting gratitude and devotion which, in turn, means everything for our commerce in peace and their assistance in war.

The President has spoken to me several times about your stopping at Cartagena part of a day at least en route from Panama to New York, and has asked my opinion about the wisdom of inviting you. It is probable that I will soon telegraph you on this subject. It will have an excellent effect on Colombia if you accept.

As nothing more will be done toward actual negotiations until November or after your return, and as President Reyes has practically decided to make an extended visit to the interior States about August 1, it is probable that I may ask for leave of absence to come home in August, returning in November, or remaining in Washington to assist you in the negotiations, as you may think best.

I would not take up your time with such a long letter were it not for the importance of these proposed negotiations and the serious handicap of distance and time in communication.

Very respectfully, yours,

JOHN BARRETT.

Hon. ELIHU ROOT, *Etc.*, *New York.*

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*Minister Barrett to Secretary Root.*

AMERICAN LEGATION,

*Bogota, June 13, 1906.*

No. 103.]

SIR: I have the honor to report still further important developments in the matter of the proposed negotiation of new treaties of peace, friendship, and commerce between Colombia on the one hand and the United States and Panama, respectively, on the other.

I. President Reyes is taking so much interest in the subject that he frequently confers both with me and his cabinet ministers and other prominent Colombians with reference to awakening a sentiment in Colombia favorable to negotiations and to the surrender of the hope of arbitration and indemnity, so dear to the average Colombian which he now realizes the United States can not allow for good and sufficient reasons, carefully stated in your note of February 10, 1906,<sup>1</sup> to Minister Mendoza and confirmed in my various discussions with him. In view of the necessity of preparing the people for what is to come, President Reyes has commenced writing some memoranda

for the use of editors and political essayists. He has just handed me a translated copy of the first of these, and I inclose a verbatim reproduction of it as delivered. I beg to recommend that you read it carefully, as it will give you a good idea of some of the thoughts in his mind.

II. A most significant development is the newly announced fact, not generally appreciated heretofore, that the large, prosperous, and powerful Provinces of Cauca on the Pacific, Bolivar on the Atlantic, and Antioquia between them were unanimously favorable to a ratification of the Hay-Herran treaty, and their influences should have prevailed, but, in the political excitement of the moment, the sway of Bogota and the mountain Provinces far from the sea carried the day. Now these coast States are coming forward and demanding that all Colombia agree to the negotiation of treaties with Panama and the United States which will help to build up their languishing commerce. As evidence of this feeling, I respectfully call your particular attention to the inclosed translation of an interview which appeared yesterday, June 12, 1906, in the *Correo Nacional*, of Bogota, the principal Government organ of Colombia, with Dr. Ignacio Palau, one of the ablest men in the Republic and editor of the *Correo del Cauca*, the chief newspaper of the powerful State of Cauca. His closing words, containing almost a distinct threat, have created a sensation here and are being discussed on every street corner. My opinion, however, is that Bogota realizes the claims of the coast and will not stand out against treaties that are reasonable in their provisions.

III. President Reyes has fully determined to send a new minister to Washington to replace Dr. Mendoza Perez. He has already cabled the latter to return to Bogota, but the minister seems indisposed to leave. He has telegraphed President Reyes a statement about probable arbitration, which the President can not believe to be true, in view of your note of February 10, 1906, to Dr. Mendoza, and as you have said nothing of any such movement in the recent telegrams exchanged. At his request I cabled you yesterday about this matter and my message is confirmed in an unnumbered dispatch of this same date. A reply will probably come to-day, after the mail is closed, or to-morrow. The President has several times told me that he has never approved of the arguments advanced and methods employed by Dr. Mendoza at Washington, but, as the minister has had confidence in the ultimate success of his own procedure, the President has allowed him to remain until now. It is probable that either Mr. Enrique Cortes, who came to Washington as a special representative of President Reyes in June, 1905, and was introduced by me to President Roosevelt, or some other eminent Colombian who speaks English, will succeed him, and be ready to negotiate with you in November.

IV. Desiring, in the light of progress made toward an entente cordiale with the United States, to have Colombia creditably represented at the Pan-American Conference and to be sure of this delegation working in accord with that of the United States, the President has appointed Jorge Holguin, a distinguished Colombian statesman and polished gentleman now in Paris, as chairman of the Colombian delegation, and instructed him to proceed to New York and meet Dr. Valencia, coming via Panama, for conference with you.

Mr. Holguin is one of the richest and most influential men of the Republic, and has resided some time in Europe as President Reyes's chief financial agent. It is possible that he may not be able to accept, or, if he does accept, to go via New York, because of the short notice of his appointment and necessary preparations; but it is to be hoped that his decision will be favorable.

V. It is gratifying to note the interest that is being manifested, through assurances of aid and cooperation, to me of powerful influences which can assist greatly in promoting friendly relations between the United States and Colombia and in preparing the people to accept new treaties with Panama and the United States. Among others, I refer particularly to the church and clergy, which, I am told, worked against the Hay-Herran treaty. Both the Archbishop of Bogota and the papal nuncio have emphatically expressed to me their desire to help me in any way possible—and their say is even more mighty with the people at large than that of President Reyes. Although I have not sought such cooperation, I have, since my first arrival here, made it a point to maintain excellent relations with the church dignitaries and show them the good intentions of the United States. Political leaders of different parties who fought the Hay-Herran treaty and who for a long time would not come near the United States legation, now call frequently upon me and admit their desire to see a confirmation in a new treaty of the growing new entente cordiale between the United States and Colombia.

VI. While, therefore, the outlook for the eventual success of negotiations is good, it must be remembered that the still remaining underlying resentment among certain classes of people against the United States and the machinations of diverse political interests may place obstacles in the way which it will require careful management and patience to remove. I have done everything possible during the past eight months to overcome such difficulties and to bring about a new state of feeling toward the United States. The first direct and preparatory official steps have now been taken for new treaties with Panama and the United States. The next will be at Washington in November. In the meantime, as little more can be done here until then, and as President Reyes expects soon to be absent from the capital on an extended trip to the coast and interior Provinces, I may ask your permission to go home on leave of absence.

I have the honor to be, sir,  
Your obedient servant,

JOHN BARRETT.

[Literal and verbatim copy of an impersonal memorandum handed to Minister Barrett by President Reyes, June 12, 1906.]

JUNE 10, 1906.

#### THE PANAMA AND UNITED STATES QUESTION.

A. It is high time to define this most important question which involves not only the commercial interests of our litoral on the coasts of the two oceans, but those of the whole interior of the Republic and especially those of the Departments of Cauca and Marino on account of their obliged transit through the Isthmus to Europe and the United States. The Departments of the Atlantic coasts also



have great commercial interests in Panama, as it is a well known fact that, during the time that the French Company was working on the Canal, they were the principal purveyors of the workingmen of the Canal and derived many thousands of dollars from this trade each month.

B. It is well to remember the fact that when the Herran-Hay Treaty was about to be discussed, the Town Councils of Cali, Palmira, etc., etc., and a great many distinguished citizens, asked the Colombian Government, through Congress, to approve the said Treaty and to save thereby the commercial interests of those regions; but the political passion of the sectarians leading Congress at the time reached to such an extreme that they withheld those petitions from the public knowledge.

C. Public feeling at the time the question was dealt with had reached to a high degree of madness in the Capital and nobody can be held especially responsible as that feeling was almost general. Perhaps no more than three gentlemen were free from the contagion and had the civil courage to maintain firmly that the Treaty was good and convenient, that it favored Colombia more than it did the United States, and that they ought to approve it.

D. After the great misfortune of the dismemberment of the national territory and the irretrievable loss of Panama, light was made in the matter, the wave of madness had passed away, and, if the Treaty were to be considered again, there would not be many who would hold the same opinion, and ask the refusal of the treaty. The unanimous opinion of the inhabitants of the Departments of the two coasts is that a great error was committed in refusing the Treaty, and that, once we have lost such an important part of our territory, it is needful and convenient to settle now these questions with the United States and Panama, in a suitable and honorable manner to the Republic of Colombia, without either accepting or demanding any pecuniary indemnification which would stain the national honor, but recovering, for the benefit of our commerce and shipping, the advantages we would have derived from the Herran-Hay Treaty, which are mutually convenient for the three countries, if it is considered that Colombia is the country having more population and extensive lands on the two oceans near the Canal.

E. We hope Mr. Mendoza Perez, our Minister in Washington, has wisely interpreted this feeling and this national desire, and has well looked after the material interests of Colombia, and those, even more sacred, of its future navigation when the Canal becomes the obliged route of the human powers, and important towns have sprung on the Colombian coasts on the two seas. It cannot be denied that the Herran-Hay Treaty was disapproved through a patriotic feeling: the desire of avoiding the loss of the sovereignty on the Canal Zone, but now that it is irretrievably lost to us with the approval of the whole world, that we cannot get it back, and that the country wants the Canal because it will benefit Colombia more than it will any other nation, it is evidently necessary that Colombia should arrange,—without compromising its dignity, more valuable even than its own existence, and without either demanding or receiving pecuniary indemnification,—with the United States and Panama in such a manner as to enjoy the benefits of the Panama Canal, to which benefits Colombia is entitled.

F. It must be taken into consideration that, soon after the Herran-Hay treaty was refused, many of the principal citizens of Cali and other towns held a meeting with the object in view of asking the government to settle this question, consulting both the dignity of the nation and the interests of the Department of Cauca. The inhabitants of the Departments of the Atlantic and Pacific coasts are placed in identical position and it must be considered that it is not just for Bogota and the inland provinces to deny them their rights and drive them to despair which might bring great evils.

G. We have entertained the hope that our Minister in Washington would have negotiated a treaty with the United States, on the mentioned manner; but summer has arrived and it is well known that by this time they close up official business in Washington and do not begin them again until November, and as yet we have not heard of our Minister having negotiated such a treaty. We have been informed that he has been cabled to come home to hold a conference on the subject and we suppose he is under way.

H. We deem it convenient that, during the time we have from now to November next, the Press throughout the whole Nation should write on this subject, and, if it does not agree with us, give the reasons they have to think otherwise, and let them advise the means of attending to the interests of the Departments of the coasts and avoiding the lengthening of such an abnormal situation which every day becomes more and more painful and unfavorable to the general interests of Colombia.

I. We would be glad to see the Press of the Departments as well as the foreign press writing on this subject.

J. It is a well known fact that all the Spanish American Republics have invited the United States Secretary of State, Mr. Root, to visit their capitals or at least their principal ports on his return from the Brazilian Conference and that he has expressed his warm desire of establishing a policy of justice and mutual respect between the United States and these Republics. It would be reasonable and convenient that Colombia should also invite him so that he might be able to appreciate the importance of our Departments of the coasts and see for himself the convenience to the United States of the progress and development of Colombia, which with its five millions of inhabitants could be an important factor in the future development and conservation of the Panama Canal.

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NOTE.—A series of leading articles can be written on the above subject developing them in different form and words as this memorandum will be sent to several persons with the same object.

NOTE.—With reference to the interest that the United States may have in finishing in an honorable manner for Colombia the questions pending with Panama there are besides the above reasons the following ones:

(a) Bearing in mind the increasing development of the great Republic of the North and the possible future conflicts with Asia and Europe and even with South American countries, the situation of Colombia with her extensive lands on both coasts and her good harbors, such as Buenaventura and Cartagena, with the abundance

of rich coal mines, she will be of great importance to the United States, and this country ought to favor and forward the development of the great wealth of Colombia and make of her a firm and constant friend.

(b) From a commercial point of view the United States would find in Colombia a wide field to invest capital and give employment to her citizens; in the Magdalena valley for instance, rubber plantations can be established as rich as those on the borders of the Amazon river, and as to mineral wealth, it is as abundant on the bed of the river Porce, in Antioquia, in the Province of Marmato, etc., etc., as in the rich mines of the Transvaal, and it only wants railways to bring the necessary machinery to work the mines. Colombia can furnish to the United States all the tropical products she may want.

(c) It is evident that the interests of the United States, Panama, and Colombia are closely connected and that the concessions that Colombia could obtain on the lines of the Herran-Hay Treaty would be more than compensated to the United States and Panama having in this country a firm ally and uniting their strength to the common welfare of the three countries.

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[Translation of an important interview in the *Correo Nacional*, one of the principal newspapers of Colombia and the leading Government organ, with Dr. Ignacio Palau, one of the most prominent and influential men of the Republic and the editor and proprietor of the *Correo del Cauca*.]

After discussing the conditions of material and agricultural development in the Cauca, one of the richest provinces of Colombia and which borders on the Pacific Ocean and consequently has intimate relations with Panama, Dr. Ignacio Palau was asked by the reporter the following question:

What is the opinion in Cauca on the Panama question?

To this Dr. Palau replied as follows:

The bad economic condition in Cauca will be improved by a dignified and satisfactory arrangement of the Panama question, which neither can or ought to be held in indefinite suspension.

Many and grave are the injuries caused to the commerce of Cauca by the delay of this arrangement, not only for the obstacles which the passage of the Isthmus presents in our relations with the United States and Europe, but also for the market itself of Panama, which is important for the products of Cauca. For this reason the municipalities of Cali and Palmira, as well as thousands of citizens, at the time petitioned the Colombian Congress to approve the Herran-Hay treaty, and, later on, a large number of the principal inhabitants of Cali held the opinion that the country should arrive at an agreement by which it could obtain all the commercial advantages possible, such as facilities of transit and trade, giving up entirely the idea of pecuniary indemnity on account of such being undignified for Colombia, in view of what had previously occurred.

The same identical advantages which would come to the Departments of Cauca and Narino by an arrangement of the Panama question would apply also to the departments of the Atlantic coast.

In Cauca, and I think also along the Atlantic coast, it was anxiously hoped that the mission of Messrs. Mendoza Perez and Cortes, whom our Government sent to Washington, would conclude, as above described, this question, which is one of life and death for us. It is known that Mr. Cortes retired from the mission and that it has remained entirely in charge of Mr. Mendoza Perez. As is well known, from now on closes all official negotiations in Washington, and that nothing definite will be done there until the month of November, in which month there will begin the consideration of these affairs in that capital.

If here in Bogota great importance is not given to settling the question of Panama, it does not follow that the same opinion prevails in our population of the coast of both seas, because for them it is an affair of life and death, and it is not prudent to exasperate the people of that section.

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*Secretary Root to Minister Barrett.*

[Telegram.]

DEPARTMENT OF STATE,

*Washington, June 14, 1906.*

There is no movement whatever in Congress on the subject of arbitration, and no change of position taken in my note of February 10. Mendoza may have been talking with some malcontent in Congress.

Root.

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*Colombian Chargé to Secretary Root.*

[Translation.]

LEGATION OF COLOMBIA,

*Washington, D. C., July 2, 1906.*

SIR: Referring to the interview which I had the honor to have with you this morning, and in compliance with an order by cable from my Government, I hereby send you a copy of the cable to which I referred, thus fulfilling the wishes expressed by you.

The cable is as follows:

BOGOTA, *June 30, 1906.*

COLOMBIAN LEGATION, *Washington:*

Notify the Department of State that a new treaty concerning the Panama matters has been begun here with Minister Barrett, on a basis of mutual respect and honor, the treaty to be completed next fall. Cortés has been appointed minister to continue negotiations.

VASQUEZ COBO.

With sentiments of highest consideration and regard, I am, Mr. Secretary,

Your obedient servant.

EDUARDO PEREZ TRIANA,  
*Chargé d'Affaires ad interim.*

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*Secretary Root to Minister Barrett.*

No. 27.]

DEPARTMENT OF STATE,

*Washington, July 2, 1906.*

SIR: I have to acknowledge the receipt of your confidential dispatch of May 23 last, concerning the plan for the settlement of all difficulties between the United States and Colombia with respect to Panama, which President Reyes submitted to you during the audience which you had with him on the date above mentioned.

The arrangement under which you are to meet me at Guayaquil and proceed with me to Cartagena renders it unnecessary to add, in

the meantime, anything on this subject to what is contained in the telegraphic messages which have already passed between us further than this:

It is evident that the negotiations will involve a very thorough knowledge of the debt of Colombia, its origin and history, and the relations of Panama to each class of debts. The preparation of this material should be begun immediately and prosecuted diligently.

I am, sir, etc.,

ELIHU ROOT.

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[Telegram—Paraphrase.]

AMERICAN LEGATION,  
Bogota, July 14, 1906.

Reports action taken on that day by National Chamber of Commerce, which had assembled at Bogota, and which represented all parts of Colombia in unanimously passing a resolution introduced by the delegates of the six Pacific and Atlantic Provinces and approved by the Colombian Government favoring negotiations with the United States and Panama as begun by President Reyes and Minister Barrett. Telegram adds that Colombian minister for foreign affairs has announced that Colombia waives demand for money indemnity or arbitration.

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The annexed paper was received by Minister Barrett from Mr. Vasquez Cobo, the minister of foreign affairs of Colombia, whose signature it bears, and was handed to me at Panama September 20, 1906. It was produced by me at an interview between Mr. Barrett, Mr. Vasquez Cobo, and myself, at Cartagena, Colombia, on the 24th of September, 1906, and was read, paragraph by paragraph, and made the subject of discussion between us as being the basis for a treaty proposed by Colombia.

ELIHU ROOT.

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*Confidential memorandum.*

In the first place, a treaty similar to the treaty of 1846 will be celebrated with the United States—a treaty of peace, amity, commerce, and navigation.

Once the treaty with the United States has been celebrated, a treaty will be celebrated with Panama, and to this end Panama will send a confidential agent to Bogota to negotiate such a treaty.

BASIS FOR A TREATY WITH THE UNITED STATES.

1. The Government of Colombia will have at all times the right to convey through the canal its ships, troops, and materials for war, even in the case of an international war between Colombia and another country, without paying any duty to the United States.

While the interoceanic canal is in construction Colombia will have the right to transport on the railway between Ancon and Cristobal, or any other railway substituting that one, her troops, ammunitions,

and materials for war at all times, even in the case of an international war between Colombia and any other country, under the same conditions that this service is rendered to the United States.

The national employees transmitting through the Isthmus will be entitled to a free passage in the railway.

2. Colombian products, such as provisions, cattle, etc., will enter free of any duty (except that paid by U. S. products<sup>1</sup>) to the Canal Zone, where they can be sold, paying only the same duties paid by articles brought from the United States.

3. Correspondence and parcel mails will have a free passage through the Canal Zone and through the post offices of Ançon and Cristobal, paying only such duties as those paid by the United States mails.

4. Colombian products passing through the Isthmus railway from and to Colombian ports will pay a small duty, inferior or at most equal to the duty that Colombia used to pay before to the railway for the same service.

Sea salt exclusively produced in Colombia will pass through the railway free of charge whenever the Government of Colombia sends it, duly certified, from the Atlantic coasts to any Colombian port on the Pacific coast. Colombia will only pay shipment.

5. There will be a differential tariff favorable to Colombia, similar to that existing with Cuba, for Colombian molasses and sugar entering into the United States.

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The United States will interpose its good offices in the arrangement between Colombia and Panama, Panama having to pay in a direct manner to Colombia its corresponding share of the foreign debt and the rights that Colombia claims for the sale made by Panama to the United States of the interoceanic railway and other rights that Colombia has in the zone and materials of the canal. There will be a free commerce between Colombia and Panama for national products.

A. VÁSQUEZ COBO.

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(MEMORANDUM.—This paper was handed to me by Mr. Enrico Cortes, minister of Colombia, on Thursday, November 8, 1906.)

With reference to that part of the paper relating to the Panama debt, etc., I said to Mr. Cortes that Mr. Vasquez Cobo was mistaken in supposing that in the interview with him I had expressed any opinion whatever as to the application of the theory of the Argentine jurist, Carlos Calvo, to the case under consideration, or as to the amount of \$5,000,000 being the proper share for Panama to pay. I had already said that for the discussion of those questions a more specific statement of the claims of Colombia would be necessary, and I carefully refrained from either assent or dissent, or expressing any opinion, either as to the principle to be applied, or as to the amount to be considered, for the reason that I was not sufficiently informed upon the facts to form such an opinion.

November 8, 1906.

E. R.  
[Elihu Root.]

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<sup>1</sup> Inserted in pencil.

[Confidential.]

[Copy of Gen. Vasquez Cobo's statement to Mr. Cortes.]

Statement of general terms agreed upon confidentially at Cartagena on September 24, 1906, between Mr. Minister Root and Gen. Vasquez Cobo, acting as Colombian minister of foreign affairs, for a treaty between Colombia and the United States.

Says the memorandum:

In the first place a treaty similar to the treaty of 1846 will be celebrated with the United States. A treaty of peace, amity, commerce, and navigation.

Once the treaty with the United States has been celebrated, a treaty will be celebrated with Panama, and to this end Panama will send a confidential agent to Bogota to negotiate such treaty.

While the negotiations for these treaties are in course in Washington, where they will take place, Panama shall send a confidential agent to Bogota, provided the Government of Colombia signifies to Panama their acquiescence to receive him in the above-mentioned capacity. It is understood, however, that the said confidential agent shall not negotiate independently of the respective ministers who are to carry on this business in Washington.

The opportunity or convenience of sending the above-mentioned agent to Bogota is left to the decision of the Colombian minister in Washington.

Says the confidential memorandum:

First. The Government of Colombia will have at all times the right to convey through the canal its ships, troops, and materials for war, even in the case of an international war between Colombia and another country, without paying any duty to the United States.

While the interoceanic canal is in construction, Colombia will have the right to transport on the railway between Ancon and Cristobal, or on any other railway substituting that one, her troops, ammunitions, are materials for war, at all times, even in the case of an international war between Colombia and any other country, under the same conditions that this service is rendered to the United States.

The national employees transiting through the Isthmus will be entitled to a free passage in the railway.

Mr. Root thinks that the above clause No. 1 may be inserted in the treaty, but it should be necessary to treat the point between the United States and England on account of the stipulations of the Hay-Pauncefote treaty between the two Nations. Mr. Root believes that England will agree to this clause being stipulated between Colombia and United States.

Mr. Root will also see Mr. Taft, War Minister, on the matter, but thinks there is no reason to raise obstacles.

After writing the above, it was translated and read to Mr. Root, who agrees to its wording. In consequence, the above is to be considered as Mr. Root's genuine opinion.

Says the memorandum:

Second. Colombian products, such as provisions, cattle, etc., will enter, free of any duty, to the Canal Zone, where they can be sold, paying only the same duties paid by articles brought from the United States.

This clause was altered as below. Mr. Root mentions the intervention of the American commissariat, who is charged to supply provisions for the laborers in the canal. It was agreed as follows:

Second. Colombian products, such as provisions, cattle, etc., will enter free of any special duty to the Canal Zone, with the exception of the duties paid by similar American products in equal conditions.

The Colombian laborers employed in the zone, who may desire that their own families supply them with provisions for their personal use, shall declare them before the commissariat in order to obtain a previous permit of entry, and will enter free of any duty, provided it should be a bona fide operation, to the discretion of the commissariat.

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The above clause refers to provisions that may be furnished by their families to laborers who are natives of the Colombian coasts. This clause is intended to give them opportunity for saving money. The bona fide clause is intended to prevent fraud.

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Says the memorandum:

Third. Mails will have a free passage through the Canal Zone and through the post office of Ancon and Cristobal, paying only such duties as those paid by the United States mails.

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In accordance with Mr. Root, this clause remains subject to the same proviso and remarks as the No. 1.

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Says the memorandum:

Fourth. Colombian products, passing through the Isthmus Railway from and to Colombian ports, will pay a small duty, inferior, or at most equal to, the duty that Colombia used to pay before to the railway for the same service.

Sea salt, exclusively produced in Colombia, will pass through the railway free of charge whenever the Government of Colombia sends it, duly certified, from the Atlantic coasts to any Colombian port on the Pacific coast. Colombia will only pay shipment.

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Mr. Root believes this clause may be accepted, but for the same reasons it remains subject to the same proviso and remarks as clause No. 1.

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Says the memorandum:

Fifth. There will be a differential tariff favorable to Colombia similar to that existing with Cuba, for Colombian molasses and sugar, entering into the United States.

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Mr. Root thinks it is impossible to agree to any differential tariff. It will meet with great opposition in the United States and will be rejected by the Senate. Mr. Root fears the whole treaty might be rejected on account of this clause.

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Says the memorandum:

The United States will interpose its good offices in the arrangement between Colombia and Panama—Panama having to pay in a direct manner to Colombia



its corresponding share of the foreign debt and the rights that Colombia claims for the sale made by Panama to the United States of the interoceanic railway—and other rights that Colombia has in the zone and materials of the canal. There will be a free commerce between Colombia and Panama for national products.

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On the above clause of the memorandum, Gen. Vasquez Cobo writes as follows:

About the treaty with Panama it was agreed that the United States will interpose its good offices for the arrangement between Colombia and Panama. The treaty with Panama will be celebrated in Washington. The United States will exercise its good offices for a special customs tariff between Colombia and Panama without implying, however, any imposition from the United States on Panama.

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#### PANAMA DEBT.

Respecting the payment to be made to Colombia by Panama as her share in the foreign debt of Colombia and for the value of the Panama Railroad that Colombia claims as her own, everything will be settled in Washington.

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I (V. Cobo) spoke to Mr. Root of Colombia's labors to benefit the Isthmus, the considerable amount of expenses incurred to keep up a respectable army in Panama; the victory obtained by Colombia in succeeding to have the Panama route selected for the canal, a victory of which Panama has become the sole beneficiary; her efforts in the intricate boundary question with Costa Rica finally audited in favor of Colombia, all to the benefit of Panama in the end. In this action it must be understood that the extensive region conceded to Colombia was recognized, not on account of local boundaries with the State of Panama, but on the lines of the general boundaries of the Virreinato de Nueva Granada.

Mr. Root said that the Panamenos mention payment of the debt on the basis of population. I objected, founded on the theory of the Argentine jurist, Carlos Calvo, which Mr. Root considered acceptable and appropriate to this particular case. He (Mr. Root) mentioned the amount of the Colombian debt, and when I mentioned \$5,000,000 as a proper share for Panama, he did not appear to consider it exaggerated.

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I heard in Cartagena that Colombian laborers on the zone are paid lower wages than other nationalities. He seemed surprised and said it should be determined that Colombian laborers should be paid on the same basis as other nationalities, all circumstances being equal.

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#### THE CHERRY BUSINESS.

I spoke to Mr. Root before Mr. Barrett on this matter. Neither of the two seemed to remember details. I explained the whole thing,

adding that the railway was being worked now by an American company, Mason & Co.

Mr. Root said he would instruct Mr. Barrett to treat the point with the creditors, and that he would endeavor to bring them to accept payment in foreign bonds (*valis de extranjeros*), as proposed by the Government.

I gather that Mr. Root is very favorably disposed toward us, as may be perceived by the speech he delivered in Cartagena.

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*Confidential memorandum for the consideration of Mr. Root and Mr. Buchanan on the subject of pending arrangements with Panama and the United States.*

LEGACIÓN DE COLOMBIA,  
Washington, January 3, 1907.

The most important items between Panama and Colombia have been the subject of my previous exposé de motif, which I had the honor to send you some time ago. There are other points connected also with the secession of Panama and the incidents connected with it previous and posterior to it. These incidents require a rearrangement of our relations with the United States, on the basis of certain stipulations, which have been presented to Mr. Root by the minister of foreign affairs in Cartagena. The whole train of stipulations between the three entities interested are so closely interdependent that I have dwelt on the idea of celebrating a tripartite treaty, embodying those stipulations referring to the three contracting parties which bear on the secession of Panama. I venture to suggest this idea for your consideration, as I believe it will have great weight on the final approval of the treaty by Panama and Colombia, the United States being a party to it.

Following, I beg to mention the points that should be included in the tripartite treaty, referring to Panama and Colombia. I leave out for further consideration all matters relating to commerce, navigation, etc., which may be the subject of long discussion. I believe that the urgent point for us all is to bring about an arrangement on the vital points, the recognition of the independence of Panama, and our position toward the United States.

Should this idea of a tripartite treaty be accepted, I would present a memorandum on this subject, stating the stipulations that, in my opinion, should be included in it, referring to our relations with the United States. Among these I will mention the matter relating to the islands of San Luis and San Andreas de Providencia, which I have reason to believe might be favorably considered by the United States.

#### POINTS TO BE INCLUDED IN THE ARRANGEMENT WITH PANAMA.

##### A. Boundaries between Colombia and Panama.

We take it that there is no other authority to follow in this matter than the Colombian law of June 9, 1855, which fixed the line of boundaries between the State of Cauca and the State of Panama,

which is also included in the official edition of the Geography of T. C. de Mosquera, published in London, 1866, as follows:

From the Atlantic, a line from Cape Tiburon  $8^{\circ} 41'$  north latitude,  $3^{\circ} 8'$  west longitude from Bogota to the head of the Rio de la Miel, and following the Cordillera by the hill of Gandi to Sierra de Chugargun and Sierra de Mali, going down by the hill of Nique to the heights of Aspave and thence to the Pacific, between Cocalito and La Ardita;  $7^{\circ} 12'$  north latitude,  $3^{\circ} 37'$  west longitude from Bogota.

This line we are ready to accept.

B. We are perfectly willing and anxious to enter into an arrangement by which the citizens of both countries should enjoy civil and political rights in each of them as the natives. Likewise we are ready to enter into an arrangement facilitating the declaration of nationality of the citizens of the two countries residing in the other. There will be no difficulty on this matter, which we consider advantageous for the close union of the two countries.

C. We believe that a stipulation should be mentioned in the treaty by which Panama declares, in accordance with her action before the French tribunals, that she does not claim any rights to the property of 50,000 new Panama Canal shares granted to Colombia by the company in payment of the extension granted to it for the time to finish the canal.

As I have mentioned above, all the matters relating to commerce, navigation, postal extradition, etc., which require a good many details, will be a matter of arrangement between Colombia and Panama, once the tripartite treaty, as above mentioned, is duly signed.

*Colombian Minister to Mr. Buchanan.*

LEGATION OF COLOMBIA,  
*Washington, D. C., March 4, 1907.*

MY DEAR MR. BUCHANAN: I beg to inclose two memorandums relating, the one to our question with Panama, and the other to our agreement with the United States. They embody the totality of the points at issue and may be considered as our final decision especially in regard to the amount to be paid by Panama.

I beg of you to consider them carefully, giving particular attention to my argument in Clause VIII of the Panama memorandum, by which I emphasize the position assumed—that is to say, that I refrain from dilating on each of the four points, throwing on the general consideration of justice and fair dealing whatever may be wanting in strength in each particular point.

Mr. Root mentioned that he should like to have a concrete statement of the whole of our demands; my memorandums contain it, and I hope they will receive his own and the President's due consideration.

As far as I can make out your opinion is favorable to my point of view as expressed in the said memorandums. I entertain the hope therefore that they will form the basis of the action to be taken by the American Government toward Panama, and that the matter will arrive at a speedy termination.

If Mr. Root and yourself still consider advisable the intervention of Mr. Cromwell, I expect that the matter will be taken up in earnest

on his arrival from Europe. I see by the newspapers that Panama will send Mr. Arango as envoy extraordinary and minister plenipotentiary, with full power to act in accordance with Mr. Obaldia on the matter. The newspapers mention under date of the 2d instant from Panama, that Mr. Arango will start next month. As his presence here might avoid the necessity of Mr. Cromwell's journey to Panama, I venture to suggest that a cable should be sent to Panama urging the departure of Mr. Arango as soon as possible, thereby gaining time.

This is an important matter as the Colombian National Assembly will meet in April next, and it will be very desirable that the treaty should reach Bogota before the assembly adjourns.

Hoping that you will give your very kind consideration to this matter, and with renewed assurance of my highest esteem, I remain, sir,

Your obedient servant,

ENRIQUE CORTES.

HON. WILLIAM I. BUCHANAN,  
*Washington.*

[Inclosure 1.]

*Memorandum relating to a treaty between Colombia and the United States.*

## I.

Between Colombia and the United States there are two subjects for the celebration of a treaty. The first of them is the scope covered by the treaty of December, 1846, which must be abrogated and replaced by a similar one comprising only that part of it which does not refer to matters connected with the Isthmus of Panama and the guaranty of integrity of our nationality. The second subject refers to the stipulations which have been under examination and exchange of ideas between the two countries, as mentioned in the Cartagena memorandum (a copy of which is in the hands of Mr. Root), and all other points as derived from the separation of Panama.

In case the celebration of a tripartite treaty is considered feasible, as I believe it should, the second subject might properly be inserted in the treaty with Panama as developed in my memorandum on the Panama treaty of even date. If the tripartite treaty is abandoned, the whole matter might be embodied in a single instrument. I believe, however, that it will be rather awkward to properly fit in a general treaty with the United States many of the clauses pertaining to the second subject, especially if there are any respecting guaranty or assumption of payment by and through the United States of a part of the sum we claim from Panama. In a tripartite treaty, the intervention of the United States would appear as a natural development of the double character that they would assume in the instrument; on the one side as protectors of Panama, on the other, as sincere friends of Colombia.

Assuming that we may carry on the idea of a tripartite treaty, I beg to state the stipulations which would appear in it referring to the United States and Colombia.

I would refrain from argument, as the matter seems to have been accepted on principle by the United States, it remaining still in doubt the consent of Great Britain to some of its clauses, a matter which Mr. Root thinks will offer no difficulty.

## II.

First. The Government of Colombia will have at all times the right to convey through the canal its ships, troops, and materials for war, even in the case of an international war between Colombia and another country, without paying any duty to the United States.

While the interoceanic canal is in construction, Colombia will have the right to transport on the railway between Ancon and Cristobal, or any other railway substituting that one, her troops, ammunitions, and materials for war, at all times, even in the case of an international war between Colombia and any other country, under the same conditions that this service is rendered to the United States.

The Colombian national employees transmitting through the Isthmus will be entitled to a free passage in the railway.

The above stipulations will be suspended in case of, and during a state of, war between the Republic of Colombia and either of the other two high contracting parties, the United States and the Republic of Panama.

## III.

Second. National Colombian provisions and other national products such as mentioned in paragraph No. XIII of my memorandum of even date respecting the Panama treaty, will enter free of any special duty to the Canal Zone, with the exception of the duties paid by similar American products in equal conditions.

The Colombian laborers employed in the zone, who may desire that their own families supply them with provisions for their own personal use, shall declare them before the commissariat in order to obtain a previous permit of entry, and will enter free of any duty, provided it should be a bona fide operation to the discretion of the commissariat.

## IV.

Third. All mail matter and post parcels will have a free passage through the Panama Railway and Canal Zone, and through the post office of Ancon and Cristobal, paying only such duties as those paid by the United States' mails.

## V.

Fourth. Colombian products and goods of any kind passing through the Panama Railway, or any other connecting the two oceans within the Canal Zone, and destined to or coming from any Colombian port, will pay the same freight as was charged to Colombian goods in the same position by the Panama Railway up to the 2d of November, 1903. When the said products and goods from and to the same destination are transported through the Panama Interoceanic Canal, the charges for said transportation will be only the actual cost of transportation from one ocean to another deducting from the general

tariff whatever amount that may represent in it, interest on the capital, profit, or contingent depreciation, or losses in that transporting vehicles. When the canal should be open to the commerce a special agreement on the subject fixing the actual rates to be charged as above, will be concluded by a commission of two persons appointed one by each Government. On Colombian produced salt, sent per account of the Government from any Colombian port on the Atlantic to any Colombian port on the Pacific Ocean, the above charges shall be diminished 50 per cent.

## VI.

Fifth. The Government of the United States shall instruct the Canal Zone commissioners, or the respective authorities on the Canal Zone, to avoid all unfavorable discrimination on salaries paid to Colombian laborers or employees in the canal work, in such a way that in equal circumstances, Colombian laborers and employees earn the same salaries as are earned by those belonging to other nationalities.

WASHINGTON, D. C., *March 4, 1907.*

[Inclosure 2.]

LEGACION DE COLOMBIA,  
*Washington.*

## I.

Both the President of the United States and his worthy Secretary of State, in recent documents, have emphasized the necessity of justice and fair dealing in international relations, just as it is necessary in individual relations.

In our differences with Panama, there are weighty considerations of abstract and overspreading justice which cover and invigorate the whole ground of our claims. These considerations may be summarized as follows:

(a) That the secession of Panama was not the result of misgovernment or tyranny exercised on the Panamenos by Colombia.

(b) That it was not obtained like the independence of Cuba, of the American or the Spanish-American colonies, after years of struggle and sacrifices.

(c) That there does not appear any bona fide and trustworthy instrument or concerted action of long standing from the majority of the people of the Isthmus in favor of secession.

(d) That the movement was suddenly prompted, after the rejection of the Hay-Herran treaty by Colombia, by the action of the garrison of Panama, then in the pay of the Colombian Government, reinforced by a few influential persons in the Isthmus and by the expected protection of the United States.

(e) That the Colombian Government was prevented by the action of the agents of the United States from attacking the rebel forces.

(f) That there has never appeared in the Isthmus any show of opinion of any importance in favor of secession. So much so that even now there is a respectable mass of opinion favorable to the reinstatement of the old condition of things.

(g) That the real motive for the secession was the expected benefit to be derived by the seizure of the canal and railway works, and that therefore there is no consideration of intrinsic justice which may justify, under a moral point of view, the forfeiture by the Colombian Government of its prosperity on the Isthmus or any prospective rights of property acquired by the Colombian Government by previous instruments of long standing.

(h) That the efforts made successfully in Washington for the adoption of the Panama route for the canal, and the whole train of negotiations for the delimitation of boundaries with Costa Rica, have resulted in the exclusive benefit of Panama.

The above is mentioned as facts to bear on the points at issue and to show that they are unique in the history of the dismemberment of nationalities.

## II.

Our differences with Panama are of two kinds, the one regarding future commercial and friendly relations, the other regarding actual claims on our part of a financial kind, which must be treated as a previous question to our recognition of their independence. The former will be a matter of future negotiations. The latter is to be settled at once, if we may come to terms.

## III.

Our financial claims come under four heads:—

1. The external debt.
2. The interior debt.
3. Claim for seizure and sale of the canal works and the Panama Railway.
4. Claim for expenses in the arbitration for boundaries with Costa Rica.

## IV.

### EXTERNAL DEBT.

The external debt of Colombia, contracted at the time of the war of independence, with the object of reimbursing the expenses incurred therein and the carrying on of the independent Government of the original nationality of Colombia, was divided among three nationalities, in the year 1834, in the proportion of 50 per cent to New Granada, 21½ per cent to Ecuador, and 28½ per cent to Venezuela, or in approximate proportion to the population of each nation.

Panama has manifested that she is willing to accept payment of a share of the external debt on the above proportion. With this point of view Colombia entirely disagrees, considering it at variance with equity and justice, for the following reasons:

It is pertinent to remark that the division of the foreign debt of the old Republic of Colombia, as finally agreed upon, was far from being accepted in an easy and speedy manner. In 1833, New Granada invited Venezuela to send an agent to Bogota for the purpose. The Venezuelan representative, D. Santos Michelena, proposed the proportion of population; the New Granada minister of

foreign affairs proposed to take as basis the wealth of each nation; Gen. Santander suggested the division in nine parts, allowing four to New Granada, three to Venezuela, and two to Ecuador; Señor Joaquín Mosquera proposed a combination of the wealth and population of each section. To all these proposals the Venezuelan envoy opposed a steadfast refusal, threatening his withdrawal from the conference, which was understood by eminent persons, among them the President, Gen. Santander, to mean a probable rupture with Venezuela. Under this pressure the conference accepted the division of the debt in the proportion of the respective population. The resistance to this arrangement was so strong in New Granada that its congress refused to ratify the treaty after stormy debates in the sessions of 1835.

In 1836 New Granada invited again her neighbors to meet and settle the point. To this invitation Venezuela gave a peremptory refusal, stating that she would not consider any other agreement than the one accepted originally in Bogota.

In 1837, on the accession of Dr. José I. de Márquez to the presidency, he recommended the approval of the Pombo-Mechelena convention, which was finally accepted after protracted debates and influenced by the prospect of a rupture with Venezuela.

According to the eminent publicist, Carlos Calvo, "When a nation is divided in two without settling by special provisions the division of the obligations accepted by each party, these obligations should be divided between the two in equal moities." According to this doctrine a fair division on principle would be accepting each a half share in the charges.

It is of no use to invoke precedents as an argument. In the present instance the precedent quoted was adopted under peculiar circumstances after four years of consideration and angry debates and under the prospect of international complications.

The position between Colombia and Panama is an entirely different one. Panama is to get all the advantages, Colombia all the disadvantages. In 1834 the partners separated under a common agreement impelled by mutual advantages, after a joint struggle for independence in which the sacrifices and dangers had been borne in common. It was then pointed out as an argument for the division of the debt as agreed that New Granada was highly favored by the possession within her territory of the Isthmus of Panama, considered since then as destined to a brilliant future. Furthermore, the difference of population not being so considerable as between Panama and Colombia, it made the inequality in the respective share of the charges accepted less glaring than in the present instance. While the proposition of division then was as 1 to 2, it becomes now about one-tenth to Panama and nine-tenths to Colombia, supposing, for the sake of argument, that the whole population of the Republic is 4,000,000, divided, 400,000 to Panama and 3,600,000 to the rest of Colombia.

And what difference in the amount of advantages to one party and of loss to the other. Whilst Panama obtains \$10,000,000 in cash, a subsidy of \$250,000 a year, an interoceanic canal through her territory, and the protection of the most powerful nation in the world, Colombia sees its territory torn to pieces, its resources, its properties,



wrung from her, and its importance in the committee of nations materially diminished and injured.

Panama invokes the smallness of her territory and the scarcity of her population when it is a question of bearing charges, but ignores all these circumstances when it is a question of securing wealth and advantages.

There is a higher law than the law of precedent. Such a law is the law of justice and equity. To this law I appeal: and, for the furtherance of it, invoke the sense of fairness of our former brothers and the sense of equity and justice of the United States.

It has been stated that Panama did not share in the advantages accruing to the rest of Colombia by the expenditure of the foreign loan. This assertion is not well grounded. The independence of the several provinces of the Isthmus was brought about by the struggles and campaigns which secured the independence of Colombia, to which great nationality the isthmian provinces annexed themselves in 1821, seeking the protection and defense of the nation that had already secured her independence and started on a new career.

By the agreement with the English and Dutch bondholders and Colombia, signed in London on the 20th of April, 1905, Colombia has assumed the responsibility for the payment of the whole external debt and its interests, fixing the amount on the 30th of June, 1905, to—

Principal-----	£2, 700, 000
Interest to July 1, 1905-----	351, 000
	<hr/>
	3, 051, 000

Interest  $2\frac{1}{2}$  per cent per annum up to January 1, 1906, and 3 per cent per annum the following coupons, payable 1st of January and 1st of July.

## V.

### INTERIOR DEBT.

During the time that Panama formed a part of Colombia especial advantages were secured for her: Commerce was free; no import duties were charged; \$25,000 annually out of the payment of the Panama Railway were delivered to the State; Columbia defraying all expenses on the Isthmus for salaries of upper functionaries, judiciary, military expenses, finance department, normal schools, etc. The ordinary disbursements amounted to \$13,500 per month, or \$163,000 annually. In case of war in the Isthmus, as was often the case, all expenses therefor were supported by the National Government.

Panama, as well as the other parts of the country, and often with special advantages, shared in our life, bearing the common burdens and advantages. When the financial necessities and interior disturbances obliged us to issue paper money, which became highly depreciated, Panama was not compelled to accept the forcible circulation of paper money, thereby inflicting considerable loss in placing gold on the Isthmus to attend to the administration expenses. Panama for a long time figured as an unimportant part of the whole nation, being considerably inferior to the rest of the Republic in

population, commerce, industry, and tax-burdened region. It was the respectability of the nation as a whole which gave importance to the Isthmus, and it was on that account that negotiations were carried on with the central Government for the important works which have become the temptation for the secession of the Isthmus—the Panama Railway and the interoceanic canal.

It seems therefore perfectly natural and just that Panama, having shared as she did in the advantages accruing from her connection with the rest of the Republic, share now a part of the obligations incurred by the whole nation in the work of maintaining and bettering the condition of the whole community.

The above shows our reasons for demanding that Panama assume a part of the internal debt of the country.

According to data received lately from Bogota, the internal debt is composed now of the following items:

Consolidated debt, nominal.....	\$2, 280, 000
Floating debt.....	1, 718, 000
Interior debt.....	1, 500, 000
Foreign bonds, foreign claims for war damages, other credits for last war.....	2, 000, 000
	<hr/>
Nominal.....	7, 498, 000
The amount of paper money in circulation has been recognized to represent in gold.....	10, 000, 000
	<hr/>
	17, 498, 000

We claim that Panama ought to accept her share in this indebtedness as she is inclined to do in the foreign debt.

## VI.

### SEIZURE AND SALE OF THE PANAMA RAILWAY AND CANAL WORK.

On the 17th of April, 1850, the first contract for the building of the Panama Railway was signed in Bogota, privilege 49, after 20 years' option for the Government to buy for five millions. On the expiration of the privilege the Government to become owner the (concessionary) company to pay the Government 3 per cent on profits.

Contract reformed August 15, 1867. The company to pay the Government \$250,000 annually, of which \$25,000 were passed over to Panama. Stipulated that freight on Colombian goods should pay half freight for 20 years and two-thirds thereafter. Railway to become property of the Government on the expiration of the privilege, which was extended to 99 years computed from the 30th of January, 1875. The contract for privilege expires 1974.

### CANAL.

First contract made March 20, 1878. Colombia to share in an increasing rate from 5 to 8 per cent on the gross earnings of the canal, one-fifth to Panama. Guarantee that annual amount of same would not be less than \$250,000 annually.

Freedom of transport through the canal. Colombian ships, troops, and ammunitions of war. Reformed to May, 1878. the company to

pay \$10,000 monthly to Panama for payment of a garrison on the works. Fourth of April, 1893, all movable goods to revert to the Government in case of forfeiture. Other stipulations of the canal contract are well known to the American Government.

The above summary of stipulations embody contracts which secured for the benefit of the Colombian Government certain property of periodical payments and eventually to the ownership of certain portions of real estate on the Isthmus of Panama. The railway company obliged itself to pay certain amounts to the Government, provided it should be allowed to build a railroad through undisputed territory belonging to the Government of Colombia. This party complied with its obligations, and the railroad was built and worked, protected by the Government for several years. Likewise the Government obliged itself to allow the canal company to build a waterway in exchange for which the company undertook certain obligations. Panama was not the sole owner of the rights acquired by the Government of Colombia. She was a copartner in the ninth part of all rights and duties.

Suddenly without any state of war, without any quarrel or dispute, and only as a sequence to its severance from the mother country, Panama seizes the whole of the common property, sells it to the United States, and forcibly prevents Colombia from deriving any benefit from what was her own acquired by a good title, acquired lawfully, and never disputed. What justification can there be for this violent transfer of property, the sole one being apparently that the United States covers the seizure with her power and influence?

If we had passed through a war in which the railway should have been an engine of war, and we had been vanquished, it might be alleged that the chances of war legitimized the seizure of its elements, as it does with fortifications or war ships. Suppose a pater familias would acquire a property for the good of all the family, would one of the sons be justified in running away with the family chest or family jewels solely because they were at the reach of his hands?

We claim that the Government of Panama owes us a compensation for the illegal seizure of the railway and the canal works and for having entered into contracts and negotiations for property which did not belong to them.

## VII.

### COSTA RICA BOUNDARY DISPUTE.

The Government of Colombia, through long-winded negotiations and expense, brought to a successful issue the decision of this dispute, obtaining a highly favorable sentence from the arbitrator selected, the French President.

The arguments used in the suit were not in any way arguments derived from the authorities bearing on local boundaries with the Province of Veraguas, but were founded on documents, being on the general delimitation of the Nuevo Reino de Granada by Spanish cédulas and documents.

By the secession of Panama, she will become the exclusive beneficiary of actions carried on and invigorated by the Republic of Colombia.

The expenses on all these negotiations comes up to about \$100,000 gold.

## VIII.

So far my argument and point of view in reference to our position toward Panama on the financial question. The sequel to this exposition should be the naming of the amounts that the Government of Colombia considers fair and just to be paid by Panama as a moderate share in the general charges of the nation, and settlement of all claims between the two parties. This amount will be mentioned farther on. Before coming to it I beg your dispassionate and careful consideration to the two following remarks:

First. On naming the amount, I have duly considered the substance of our private interviews with Mr. Buchanan and Mr. Obaldia, the resources of Panama, the circumstances of certain unsettled claims from Panama toward Colombia, and a sincere desire to further on and strengthening the ties of friendship and fraternal intercourse which are shared alike by the inhabitants of both countries.

Second. I believe that a discussion on each of the four points mentioned in Clause III of the above statement will lead us to interminable and embarrassing debate. I therefore formulate my demands leaving every one of the four sections for what it may be worth, as a part of the whole. I present this whole as a joint momentum to be permeated in its wholeness by the force derived from the considerations marked on Clause I of my statement under the letters A to H offered as an exposition of "weighty considerations of abstract and overspreading justice which cover and invigorate the whole ground of our claims."

If I may be allowed to employ a simile, I would compare the ground I have taken as representing a wheel, the spokes of which should be the four points mentioned in Clause III, each one contributing its own force whichever it may be, the totality of them to be held in position by the "abstract and overspreading justice" which is to act as a binding element just as a tire does to a wheel.

## IX.

The Government of Colombia demands from Panama the payment of three millions of dollars gold, cash, under the guaranty of the United States and under the stipulations and formalities which should be agreed upon hereafter. This payment to be in settlement of all claims mentioned in this memorandum, said payment canceling all claims whatever that may appear subsequently or that may be unsettled yet, including any claims that may be put forward on account of damages by wars or state of war carried on in the territory of Panama from the year 1899 to the 3d of November, 1903.

Panama to declare her recognition of the property of Colombia in 50,000 shares of the new canal company, issued by said company in favor of the Government of Colombia, the certificates of which are lying in the hands of the new canal company.

## X.

A stipulation should be agreed upon to the effect that all citizens of either of the two countries, residing in the other, should enjoy

equal political and civil rights as the natives, being however exempted from military service in the alien country. A prudential term should be fixed for the citizens of one country residing in the other at the time of the secession of Panama, to declare which of the two nationalities they choose to select.

## XI.

According to the concordate concluded between Colombia and the Holy See, the former is to disburse \$100,000 annually to be devoted to the maintenance of Catholic seminaries, hospitals, and other beneficent works, and any buildings or other real estate formerly belonging to the Church and seized by the nation which had not been appropriated for any official purpose, should revert to the religious community to which it formerly belonged. I suggest that Panama should maintain her proportional obligation under the above, and that consequently she would continue to devote to that purpose the quota that was apportioned to the diocese of Panama by the convention of October 2, 1888. to wit: \$13,000 annually, and that the stipulation above mentioned, relating to real estate, should be complied with.

The justice and statesmanlike policy of this action do not require, in my opinion, further comment and I have no doubt that it will be readily accepted by Panama.

## XII.

As there may possibly appear in either of the two countries movements tending to the annexation to the other of a part of their respective territories I propose, as a safeguard to both and as a means to avoid future causes of differences between them, that a stipulation similar to the one concluded between Colombia and Ecuador at the time of their separation in 1832, should be agreed upon.

Said stipulation runs as follows:

The States of New Granada and Ecuador, animated as they are by the best wishes to maintain forever the most complete harmony of neighborhood and good understanding, solemnly engage themselves to respect their respective boundaries as agreed. In consequence thereof New Granada shall never admit to form part of her nationality any group or groups of population which, separating themselves forcibly from Ecuador, seek annexation to New Granada; nor shall Ecuador admit any group or groups of population that, separating themselves forcibly from New Granada, seek annexation to the State of Ecuador.

## XIII.

As a means of stimulating and strengthening the commerce between the two countries it is agreed that all natural products belonging to the three natural kingdoms, vegetable, mineral, and animal, the origin of which proceeds from either of the two contracting parties, shall not be submitted, on their importation into the other, to any duty whatever, such as customhouse duties, commercial tax, or any other collected at the time of and on account of their importation into the country. It is understood that such freedom of importation is to be applied to all natural products as above, provided

they had not been submitted to any manufacturing process subsequent to their usual preparation for the market. Mention is especially made of the following: Coffee, maize, rice, potatoes, wheat, barley, and all cereals, all kinds of fibers, tobacco in leaves, woods for building, furniture or dyeing, salt, platinum, gold, copper, iron, coals, live animals or in carcasses, etc.

The above exemption from duty on importation does not exonerate the articles mentioned from the payment of duties, national, departmental, or municipal, imposed on similar articles of home production in the respective country.

The above exemption from import duties does not apply to fat cattle of the bovine genus (*ganado vacuno*). By fat cattle is meant a live animal weighing above 400 kilos, the importation of which will be subject to the general regulations as to duty in the respective country.

#### XIV.

It should be stipulated that goods in transit through the territory of Panama other than the Canal Zone or Panama Railway shall not be subject to payment of any transit duty.

#### XV.

There shall be inserted in the treaty embodying the stipulations referred to in the present memorandum a special clause of amity and friendship between the two countries and recognition by the Republic of Colombia of the independence of the Republic of Panama, mentioning the boundaries between the two countries, as per the Colombian law of June 9, 1855, which fixed the line of boundaries between the State of Cauca and the State of Panama, which is also included in the official edition of the geography of T. C. Mosquera, published in London, 1866, as follows:

From the Atlantic, a line from Cape Tiburon 8° 41' north latitude, 3° S' west longitude, from Bogota to the head of the Rio de la Miel, and following the Cordillera by the hill of Gandi to the Sierra de Chugargum and Sierra de Mali, going down by the hill of Nique to the heights of Aspave and thence to the Pacific, between Cocalito and La Ardita: 7° 12' north latitude, 3° 37' west longitude from Bogota.

#### XVI.

A stipulation should be inserted in this treaty to the effect that as soon as it is ratified by the two nations in the usual form and ratifications exchanged negotiations should be opened for a treaty or treaties on navigation, commerce, consular convention, postal and telegraphic conventions, parcels post, artistic, literary, and scientific property, extradition of criminals, etc., etc., etc. Meanwhile it is agreed that the citizens of each country shall enjoy in the other full legal protection in their persons and property; that both countries will solicit from the United States the good offices of their diplomatic and consular representatives in favor of their respective citizens of one country residing in the other; that the forwarding and transportation of mail matter and post parcels, in transit or originated in either country and destined to the other, shall be speedily attended to and cared for as if there existed a postal convention between the two countries.

WASHINGTON, D. C., *March 4, 1907.*

[Memorandum found with foregoing, but not stipulating as to which articles it refers.]

Once the canal open to commerce and its tariffs established, an agreement will be entered into by which a certain return of the canal transit duties paid by the carrying vessel will be made to the owner of goods landed at Colombian ports. Said return will be made on a fair calculation and deduction of that part of duties which does not affect the actual transit expenses.

Articles 15 and 17 of the Hay-Herran treaty to be maintained extending the exemption of duties on war vessels to vessels carrying the Colombian flag.

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LEGACIÓN DE COLOMBIA,  
*Washington, D. C., Privado, March 7, 1907.*

DEAR MR. BUCHANAN: I perceive that on page 17 of my Panama memorandum, Paragraph IX, the idea expressed in it might be construed in a contrary way to the idea I intended to convey.

I do modify said clause, which should read as follows after the word "hereafter":

This payment to be in settlement of all claims mentioned in this memorandum, it being understood that Colombia does not assume any responsibility in the settlement of any claims not presented against her up to the 3d of November, 1903, on account of damages by wars or state of war carried on in the territory of Panama from the year 1899 to the 3d of November, 1903.

I remain, dear Mr. Buchanan,  
Yours, very sincerely,

ENRIQUE CORTES.

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*Secretary Root to Minister of Colombia.*

APRIL 24, 1907.

MY DEAR MR. CORTES: I am sending you a copy of a letter and inclosure which I propose to send immediately to Mr. Obaldia, unless you see some objection.

Faithfully yours,

ELIHU ROOT.

Inclosures as above.

[Inclosure.]

*Secretary Root to the Minister of Panama.*

No. 53.]

APRIL 24, 1907.

SIR: As the Government of Panama is already aware, the Government of Colombia in June last suggested to the United States that the United States should use its good offices to bring about an arrangement between Colombia and Panama whereby the independence of Panama, which the United States had guaranteed, should be recognized by Colombia, and whereby such adjustments should be effected between Colombia and Panama as would naturally accompany a peaceable partition under which the economic and political relations of the people about to be separated and their respective

shares of the public obligations of the country about to be divided, are determined by agreement. The views of Colombia as to what such an agreement should provide included stipulations for equal political and civil rights; for reciprocal tariff concessions; for an obligation to respect the established boundary between the two countries similar to that adopted by Colombia and Ecuador at the time of their separation in 1832; and for a contribution by Panama toward the payment of the Colombian debt, taking into consideration certain claims of Colombia to continued property interests on the Isthmus, and taking into consideration, also, internal as well as external debts, and suggesting a sum very much in excess of that which Panama had advised the creditors of her willingness to pay immediately after the revolution in November, 1903. Colombia also proposed, as part of the same transaction, that there should be a new treaty of friendship and commerce between Colombia and the United States, which should include the grant to Colombia of certain privileges in connection with the use of the canal across the Isthmus similar to those stipulated for in the seventeenth article of the old unratified Hay-Herran treaty of January, 1903. The United States readily agreed to this proposal of Colombia, so far as the United States and Colombia were concerned. We did not, however, wish to assume the duty of presenting any proposals of Colombia to Panama without first being satisfied ourselves that they were reasonable and that it would be for the best interest of Panama to accept them. The whole subject of the relations which ought to be established between Colombia and Panama has accordingly been made the subject of extended informal discussion, including a great number of interviews, between Mr. Buchanan, Mr. Cortes, the minister of Colombia, and your good self, and between me and all the other gentlemen named; as well as between Mr. Barrett, the former minister of the United States to Colombia, and Mr. Vasquez Cobo, the Colombian Minister for Foreign Affairs, and between Mr. Vasquez Cobo and myself. During these discussions the Government of the United States became satisfied that the sum of \$6,000,000, which Colombia wished us to ask Panama to pay was, for various reasons, too large, being to some extent based upon property claims which we deemed inadmissible, and to some extent upon considerations relating to the internal debt, which did not include certain offsets on the part of Panama; and that in view of the importance of the cattle-raising industry in Panama the proposal of Colombia that all cattle should be placed upon the free list would not lead to an equitable result. Our informal representations upon these points have led to a modification of the Colombian position, so that Colombia is now willing to assent to an arrangement under which the sum of \$3,000,000, or one-half of the sum originally proposed, shall be taken as the full amount to be paid by Panama; and the proposed reciprocal exemptions of cattle from import duty shall be limited to lean cattle and shall not apply to cattle weighing above 400 kilos. The external debt of Colombia is stated at 3,051,000 pounds sterling, to which is to be added interest from July 1, 1905, to January 1, 1906, at  $2\frac{1}{2}$  per cent per annum, and interest since the last-mentioned date at  $\frac{3}{4}$  per cent per annum. The internal debt is stated at \$17,498,000. It appears to this Government that the proposals of Colombia as thus modified, are reasonable, and that it is clearly for the interest of Panama to



accept them as a part of an arrangement which shall include the recognition by Colombia of the independence of Panama and the establishment of the relations of the two countries, which must always be so closely associated, upon an enduring basis of peace and mutual benefit. This Government therefore feels it to be due to the warm and peculiar friendship which exists between Panama and the United States, as well as to the ancient friendship which the United States has entertained for the Republic of Colombia and wishes to perpetuate, that the United States shall use its good offices in presenting these proposals to the Government of Panama, and expressing, as it now does, an earnest hope that they may receive favorable consideration.

I accordingly transmit herewith a literal copy of the last paper received from the Minister of Colombia stating these proposals in their present form, omitting, however, certain matters of argument which were relevant only to the previous discussion that it would not now be useful to reproduce.

Accept, Mr. Minister, the renewed assurance of my highest consideration.

ELIHU ROOT.

Inclosure as above.

### I.

[Inclosure.]

The Government of Colombia demands from Panama the payment of three millions of dollars gold, cash, under the guaranty of the United States and under the stipulations and formalities which should be agreed upon hereafter. This payment to be in settlement of all claims mentioned in this memorandum, it being understood that Colombia does not assume any responsibility in the settlement of any claims not presented against her up to the 3d of November, 1903.

Panama to declare her recognition of the property of Colombia in 50,000 shares of the New Canal Co., issued by said company in favor of the Government of Colombia, the certificates of which are lying now in the hands of the New Canal Co.

### II.

A stipulation should be agreed upon to the effect that all citizens of either of the two countries, residing in the other, should enjoy equal political and civil rights as the natives, being, however, exempted from military service in the alien country. A prudential term should be fixed for the citizens of one country residing in the other at the time of the secession of Panama to declare which of the two nationalities they choose to select.

### III.

According to the concordat concluded between Colombia and the Holy See, the former is to disburse \$100,000 annually to be devoted to the maintenance of Catholic seminaries, hospitals, and other beneficent works, and any buildings or other real estate formerly belonging to the church and seized by the nation, which had not

been appropriated for any political purpose, should revert to the religious community to which it formerly belonged. I suggest that Panama should maintain her proportional obligation under the above, and that consequently she would continue to devote to that purpose the quota that was apportioned to the diocese of Panama by the convention of October 2, 1888, to wit, \$13,000 annually, and that the stipulation above mentioned, relating to real estate, should be complied with.

The justice and statesmanlike policy of this action do not require, in my opinion, further comment, and I have no doubt that it will be readily accepted by Panama.

#### IV.

As there may possibly appear in either of the two countries movements tending to the annexation to the other of a part of their respective territories, I propose as a safeguard to both, and as a means to avoid future causes of differences between them, that a stipulation similar to the one concluded between Colombia and Ecuador at the time of their separation in 1832 should be agreed upon.

Said stipulation runs as follows:

The States of New Granada and Ecuador, animated as they are by the best wishes to maintain forever the most complete harmony of neighborhood and good understanding, solemnly engage themselves to respect their respective boundaries as agreed. In consequence thereof, New Granada shall never admit to form part of her nationality any group or groups of population which, separating themselves forcibly from Ecuador, seek annexation to New Granada; nor shall Ecuador admit any group or groups of population that, separating themselves forcibly from New Granada, seek annexation to the State of Ecuador.

#### V.

As a means of stimulating and strengthening the commerce between the two countries it is agreed that all natural products belonging to the three natural kingdoms, vegetable, mineral, and animal, the origin of which proceeds from either of the two contracting parties, shall not be submitted, on their importation into the other, to any duty whatever such as customhouse duties, commercial tax, or any other collected at the time of and on account of their importation into the country. It is understood that such freedom of importation is to be applied to all natural products as above, provided they have not been submitted to any manufacturing process subsequent to their usual preparation for the market. Mention is especially made of the following: Coffee, maize, rice, potatoes, wheat, barley and all cereals, all kinds of fibers, tobacco in leaves, woods for building, furniture, or dyeing, salt, platinum, gold, copper, iron, coals, live animals or in carcasses, etc.

The above exemption from duty on importation does not exonerate the articles mentioned from the payment of duties, national, departmental, or municipal, imposed on similar articles of home production in the respective country.

The above exemption from import duties does not apply to fat cattle of the bovine genus (*ganado vacuno*). By fat cattle is meant a live animal weighing above 400 kilos, the importation of which will be subject to the general regulations as to duty in the respective country.

## VI.

It should be stipulated that goods in transit through the territory of Panama other than the Canal Zone or Panama Railway, shall not be subject to payment of any transit duty.

## VII.

There shall be inserted in the treaty, embodying the stipulations referred to in the present memorandum, a special clause of amity and friendship between the two countries and a recognition by the Republic of Colombia of the independence of the Republic of Panama, mentioning the boundaries between the two countries, as per the Colombian law of June 9, 1855, which fixed the line of boundaries between the State of Cauca and the State of Panama; which is also included in the official edition of the geography of T. C. Mosquera, published in London in 1866, as follows:

From the Atlantic, a line from Cape Tiburon  $8^{\circ} 41'$  north latitude,  $3^{\circ} 8'$  west longitude from Bogota to the head of the Rio de la Miel, and following the Cordillera by the hill of Gaudi to the Sierra de Chugargun and Sierra de Mall, going down by the hill of Nique to the heights of Aspave and thence to the Pacific, between Cocalito and La Arditá,  $7^{\circ} 12'$  north latitude,  $3^{\circ} 37'$  west longitude from Bogota.

## VIII.

A stipulation should be inserted in this treaty to the effect that as soon as it is ratified by the two nations in the usual form and ratifications exchanged, negotiations should be opened for a treaty or treaties on navigation, commerce, consular conventions, postal and telegraphic conventions, parcel post, artistic, literary, and scientific property, extradition of criminals, etc. Meanwhile it is agreed that the citizens of each country shall enjoy in the other full legal protection in their persons and property, that both countries will solicit from the United States the good offices of their diplomatic and consular representatives in favor of their respective citizens of one country residing in the other, that the forwarding and transportation of mail matter and post parcels, in transit or originated in either country and destined to the other, shall be speedily attended to and cared for as if there existed a postal convention between the two countries.

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*Minister of Colombia to Secretary Root.*

[Private.]

LEGATION OF COLOMBIA,  
*Washington, D. C., April 25, 1907.*

MY DEAR SIR: I have the honor to acknowledge receipt of your communication dated yesterday, which reached my hands at 6 o'clock p. m., accompanying the draft of a letter you purpose sending immediately to Mr. Obaldia, unless I see some objection.

In answer I have great pleasure to express my satisfaction at the course you consider acceptable for the United States to follow in the matter of the relations between my country, the United States, and Panama. Your proposed letter to Mr. Obaldia is a fair and unbiased exposition of the question at issue, doing honor to the Government of the United States. I have nothing to reflect upon it, as a few personal remarks of slight importance might be considered later

on. I accept it with a sense of sincere appreciation and with the desire that its forwarding should not be delayed. I return herein the drafts you accompanied to your note, and remain, dear Mr. Root,  
Sincerely, yours,

ENRIQUE CORTES.

*Telegram of the Colombian Minister to his Government.*

[Shown to Department of State but original not on file.]

[Substance.]

MAY 10, 1907.

States his private opinion that the only mode of obtaining rapid conclusion and assuring ratification of treaty by Panama will be to eliminate commercial clauses, putting them over for another treaty; to sign tripartite treaty with guaranty of the United States of payment of money and recognizing the canal shares as Colombian property; boundary limits to be fixed as by the law of 1855. Adds he hopes to obtain \$3,000,000, which was the ultimatum according to his instructions.

[Confidential.]

WAR DEPARTMENT,  
*Washington, August 17, 1907.*

MY DEAR MR. WILSON: I herewith send you the originals of the protocols signed by the United States and Colombia and by Colombia and Panama. I have sent copies of them to Mr. Root and to the President. The originals were in quadruplicate.

Very sincerely, yours,

WM. H. TAFT.

HON. HUNTINGTON WILSON,  
*Third Assistant Secretary of State.*

Inclosure.

PROTOCOL FOR A TREATY BETWEEN COLOMBIA AND PANAMA.

The undersigned, to-wit, Enrique Cortes, envoy extraordinary and minister plenipotentiary of the Republic of Colombia in the United States, and José Agustin Arango, envoy extraordinary and minister plenipotentiary of the Republic of Panama in the United States; the two entities they represent being equally animated by the desire to remove the obstacles to the good understanding of the two entities, to adjust their pecuniary and other relations to each other and to mutually secure the benefits of amity and accord, have determined to sign this present protocol by which it is agreed that a treaty shall be prepared and in due course signed, embodying in substance the following provisions and such others as the parties may then mutually agree upon; and that the preparation of the same shall for the mutual convenience of the parties begin at the latest from the month of December next, and to be carried on so as to finish early in the year 1908:

I. In and as a part of said treaty the Republic of Colombia to recognize the independence of Panama and to acknowledge it as a sovereign and independent State.

II. There shall be mutual and inviolable peace and friendship between the respective Governments and peoples.

III. The Republic of Panama will assign and pay over to the Republic of Colombia and its assigns and nominees the first ten installments of \$250,000 each, gold, becoming due to Panama from the United States on the 26th days of February in the years 1908 to 1917, inclusive, under Article XIV of the treaty between the United States and Panama exchanged February 26, 1904, and under and pursuant to the amendment thereof to be embodied in a treaty of even date between said Nations, whereby said Article XVI is to be amended by substituting therein the words "four years" for the words "nine years," so that the first annual payment therein provided for shall begin four years from the exchange of said treaty instead of nine years from that date, in such manner that the said installments shall be paid by the United States of America directly to Colombia, its assigns and nominees for account of Panama, beginning as from the 26th of February, 1908. In consideration of the payments and releases by Panama, Colombia recognizes and agrees that Panama has no liability upon and no obligation to the holders of its external and internal debt, nor to Colombia by reason of any such indebtedness. Colombia recognizes and agrees that it is itself solely obligated for such external and internal debt; assumes the obligation solely to pay and discharge the same; and agrees to indemnify and hold harmless the Republic of Panama from any liability and expense in respect of such external and internal indebtedness.

IV. Each Republic releases and discharges the other from all pecuniary claims, indebtedness of every character, including the external and internal debt of Colombia, the one upon the other on the 3d day of November, 1903, it being understood that such mutual release relates to the national concerns only and not individual rights or claims of the citizens of either Republic.

V. The Republic of Panama recognizes it has no title or property in the 50,000 shares of capital stock of the New Panama Canal Co. standing on the books of that company in the name of Colombia, and Panama confirms the renunciation of all claims and titles thereto heretofore made by it in legal proceedings pending in the courts of France.

VI. The Republic of Colombia and the Republic of Panama reciprocally agree that the citizens of either of the two Republics residing in the other shall enjoy the same civil rights from time to time accorded by them, respectively, to citizens of any other nation, it being understood, however, that the citizens of either of the two Republics residing in the other shall be exempt from military service imposed upon the citizens of such Republic.

VII. The Republic of Panama shall never admit to form part of her nationality, any group or groups of population which, separating themselves forcibly from the Republic of Colombia, seek annexation to the Republic of Panama; nor shall the Republic of Colombia admit any group or groups of population which, separating themselves forcibly from the Republic of Panama, seek annexation to the Republic of Colombia.

VIII. As soon as a treaty between the parties hereto and the contemporaneous treaties of even date between the United States of America and the Republic of Panama and between the United States of America and the Republic of Colombia shall be ratified and

exchanged, negotiations shall be entered upon between Panama and Colombia for the conclusion of an additional treaty covering questions of commerce, postal, telegraph, copyright, consular relations, extradition of criminals, and the like.

IX. It is expressly understood and agreed that the treaty when made between the parties hereto shall not become operative, nor its provisions obligatory upon either party until and unless treaties between the Republic of Colombia and the United States of America and between the United States of America and the Republic of Panama are both duly concluded and are exchanged, after ratification, simultaneously with the exchange, after ratification of the treaty between the parties hereto.

X. This protocol shall be treated as of a confidential character as between the parties and their people, and therefore the particulars thereof shall be withheld from publicity.

Done at the city of Washington the 17th day of August, 1907, in quadruplicate.

ENRIQUE CORTES.  
J. A. ARANGO.

The foregoing protocol has been examined by the United States, which hereby approves the same.

Dated at Washington, August 17, 1907.

WM. H. TAFT,  
*Secretary of War.*

(In behalf of the United States by direction of the President.)

PROTOCOL FOR A TREATY BETWEEN UNITED STATES AND PANAMA, AT  
WASHINGTON, AUGUST 17, 1907.

The United States of America and the Republic of Panama, mutually desirous to facilitate the construction, maintenance, and operation of the interoceanic canal across the Isthmus of Panama, and to promote a good understanding between the nations most closely and directly concerned in this highway of the world's commerce and thereby to further its construction and protection; and it having also been found desirable in the practical working of the treaty exchanged between the United States and the Republic of Panama on the 26th day of February, 1904, to amend and supplement the same in certain respects, and through their representatives, José Augustin Arango, envoy extraordinary and minister plenipotentiary of the Republic of Panama in the United States, and William H. Taft, Secretary of War of the United States, acting for the United States; and both thereunder duly authorized, have determined to sign this protocol, by which it is agreed that a treaty shall be prepared and in due course signed, embodying in substance the following provisions and such others as the parties may then mutually agree upon, subject to the provisions of Article II; and that the preparation of the same shall, for the mutual convenience of the parties, begin in the month of December next.

1. It is mutually agreed between the said parties that Article XIV of the treaty exchanged between them on the 26th day of February, 1904, be, and the same is hereby, amended by substituting therein the words "four years" for the words "nine years," and accordingly the United States agrees to make the annual payments therein pro-

vided for beginning four years from the exchange of said treaty instead of nine years from that date.

The United States consents and agrees that Panama may assign and transfer in advance to Colombia and to its assigns or nominees the first 10 annual installments of \$250,000 each, so falling due under said treaty, as thus amended, on the 26th day of February, 1908, to the 26th day of February, 1917, both inclusive, and its right and title thereto, and upon the direction and acquittance therefor of the Republic of Panama will pay said 10 installments as they, respectively, fall due directly to Colombia for account of Panama.

II. As a consideration for the entering into of this agreement, it is hereby agreed between the United States and Panama that the so-called *modus vivendi* embodied in the reciprocal Executive orders of December 3, 6, 16, 28, 1904, and January 5, 1905, made by the Secretary of War, with the approval of the President, on the one part, and on the other by the President of Panama, on the 6th day of December, 1904, and which have proven so satisfactory in operation, shall be made the basis for a modification and definition of the rights of the parties under the treaty between the United States and Panama exchanged February 26, 1904, in so far as the contracting parties shall agree in a formal treaty, it being understood that unless agreement is reached upon the provisions of this article, neither this protocol nor the protocol between Colombia and Panama of the same date shall be binding.

It is, however, stipulated and agreed that Panama may increase its *ad valorem* import duties from 10 per cent (as in said orders provided) up to 20 per cent, and that provision to this effect shall be embodied in the treaty.

III. The United States and Panama reciprocally agree that citizens of either of the two Republics residing in the other shall enjoy the same civil rights accorded to the citizens of the Republic within which they reside, it being understood that citizens of either of the two Republics thus residing in the other shall be exempt from military service imposed upon the citizens of such Republics.

And the United States further agrees that the Republic of Panama and the citizens thereof shall, upon their request, have and be accorded equal privileges, rights, and advantages in respect to the construction, operation, and use of the canal, railroad, telegraph, and other facilities of the United States within the Canal Zone and in respect of all other subjects relating thereto, operating within or affecting the Canal Zone or property and persons therein, as may at any time be granted by the United States in accord with said treaty, directly or indirectly, to any other nation or the citizens thereof, it being the intention of the parties that the Republic of Panama shall be with respect thereto placed at least on equal footing with the most favored nation and the citizens thereof.

IV. It is expressly understood and agreed that the treaty, when made between the parties hereto, shall not become operative nor its provisions obligatory upon either party until and unless treaties between the Republic of Colombia and the Republic of Panama and between the Republic of Colombia and the United States are both duly concluded and are exchanged, after ratification, simultaneously with the exchange, after ratification, of a treaty between the parties hereto.

Done at the city of Washington the 17th day of August, 1907, in quadruplicate.

WM. H. TAFT,  
*Secretary of War*  
 (By direction of the President).  
 J. A. ARANGO.

*Colombian Minister to Secretary Root.*

AUGUST 18, 1907.

DEAR SIR: I have had the honor of an interview with your excellency on the 16th instant at the Hotel Gotham, in New York, in reference to the treaty I am in the course of negotiating with Panama for the recognition of her independence by Colombia.

The attitude lately assumed by Mr. Cromwell, representing Panama, on the matter of boundaries has been a great surprise. A line of boundaries is suggested, perfectly unwarranted by any title or document whatever and which we could not, under any circumstances accept.

This matter of boundaries was carefully studied by Mr. Buchanan, who came to a conclusion favorable to Colombia's line of demarcation, thus informing the Department of State. Your excellency himself has studied the point and become convinced that our line of limits with Panama was the one fixed by the law of New Granada of June 9, 1855. To this effect I have received from you on sundry occasions complete and unmistakable assurances.

Said line of limits is the same that appears in the official edition of the war office map of the Republic of Panama, to wit:

From Cape Tiburon to the headwaters of the Rio de la Miel and following the mountain chain by the ridge of Gandi to the Sierra de Chugargun and that of Mali going down by the ridges of Nique to the heights of Aspave and from there to the Pacific between Cocalito and Ardita.

The matter was referred to in our interview, you being good enough to suggest that it would be a wise course, in view of the latest developments in negotiating with Panama, to leave out entirely all reference to the boundaries with Colombia. My answer was that I was willing to follow your advice, but that in order to prevent possible differences with Panama I ought to have a letter from you stating the views of the United States and which were the boundaries with Colombia that they have recognized and acted upon. Your excellency's answer was in the sense that the United States will have no difficulty in recognizing, by a letter to me, the fact referred to and that you consider as our limits with Panama those fixed by the law of June 9, 1855.

On this assurance of yours I came to Washington yesterday to meet Mr. Secretary Taft, on his last day in this town, and we did come to an agreement with himself and the representatives of Panama, embodying the general lines of a treaty to be signed about the end of the year simultaneously with other treaties with the United States and Colombia and Panama.

Acting as agreed with you, I hereby come to respectfully request a statement of the views of the United States respecting the line of boundaries between Colombia and Panama, so as to define the extent of territory covered by the protectorate of the United States according to article 1 of the treaty with Panama.



Mr. Gozman, the secretary of the legation, is ready to proceed to Bogota, taking with him the protocol agreed to yesterday, in order to explain the whole history to the Government. I would, therefore, esteem it a favor if you would give an early answer on receipt of this. I am also about leaving for Europe on important business.

I have the honor to remain, with high regards,

Your excellency's obedient and humble servant.

ENRIQUE CORTES.

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*Secretary Root to the Colombian Minister.*

WHITE PLAINS, N. Y., August 26, 1907.

HON. ENRIQUE CORTES,

*Minister of Colombia, Waldorf Astoria, New York.*

MY DEAR MR. CORTES:

I have the honor to acknowledge the receipt of your letter of August 18, 1907, in which you state the substance of an interview between us at the Hotel Gotham, in New York, on the 16th instant: "The description of the boundary line of Panama as described in the law of New Granada of June 9, 1855," and request a statement of the views of the United States regarding the boundary between Colombia and Panama in accordance with the oral statement made by me at our interview.

Your account of what occurred at the interview agrees entirely with my recollection, and I now confirm what I then said to you orally that the view of the United States is that the boundary between Colombia and Panama is that described in the above-mentioned law of New Granada of June 9, 1855. This is the view originally reached by Mr. Buchanan and concurred in by me, and a careful examination of the various papers which have been adduced during the recent negotiations has not seemed to me to furnish any just ground for a change of this view, which you may regard as the matured and definite position of the Government of the United States.

I am, my dear Mr. Cortes, with kindest regards, always,

Sincerely, yours,

ELIHU ROOT.

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*Colombian Minister to Secretary Root.*

[Translation.]

LEGATION OF COLOMBIA,  
Washington, D. C., December 5, 1907.

MR. SECRETARY: I have the honor to advise your excellency of the return to this city of Senor P. Guzman, first secretary of the legation, who, as I informed your excellency at the time, went to Bogota to deliver to my Government the protocol signed in August last by me and by Senor Jose Agustin Arango, concerning the preliminary bases for the conclusion of a treaty between Colombia and Panama, an agreement to which your excellency's intervention has been of so great importance.

Senor Guzman has brought me my Government's instructions concerning the views set forth in the protocol and the final conclusion of the treaty.

The Government of Colombia finds the general bases we have arrived at satisfactory, and upon examination of the protocol and of the note your excellency addressed to this legation from White Plains under date of August 26 last, which defines the position and views of the American Government touching the boundary between Colombia and Panama. his excellency, the President of Colombia, was pleased to record in the minutes of the council of ministers which examined those documents the satisfaction with which the Government of Colombia views the highly honorable and cordial manner in which the Secretary of State of the United States, the Hon. Elihu Root, acted toward Colombia in the course of those negotiations, a declaration it affords me special pleasure to bring to your excellency's knowledge.

My Government offers various general remarks, some about the elucidation of certain points which seem ambiguous in the protocol, and must be clearly defined in the treaty, others, of a different nature, which I had the honor to discuss with the Secretary at our last interview.

I shall defer the thorough examination of every one of those remarks until your excellency submits the draft of treaty, in accordance with our private agreement, and I firmly cherish the hope that, considering the friendly dispositions which animate the Government and people of Colombia and my own sentiments as well as the special complaisance with which your excellency has received this matter, we shall achieve results that will bring to both countries mutual satisfaction and honor.

With sentiments of the highest consideration, I have the honor to be your excellency's

Very obedient and humble servant,

ENRIQUE CORTES.

*Secretary Root to Colombian Minister.*

No. 45.]

DEPARTMENT OF STATE,  
*Washington, December 17, 1907.*

SIR: I have the honor to acknowledge the receipt of your note of the 5th instant in which you advise the department that the secretary of your legation, Señor Guzman, has returned from Colombia with the instructions of your Government regarding the proposed treaty between Colombia and Panama.

I have the honor, in this connection, to inclose a copy in Spanish of the draft of this treaty, submitted to the department by the chargé d'affaires ad interim of Panama.

Accept, sir, the renewed assurance of my highest consideration.

ELIHU ROOT.

Inclosure:

Inclosure in personal note of Panaman chargé, December 10, 1907.

[Translation.]

DRAFT OF A TREATY WITH THE REPUBLIC OF COLOMBIA.

The Republic of Panama and the Republic of Colombia, which constituted a single nation up to November 3, 1903, and which have

since then separated for reasons of expediency, being desirous of putting an end to the irregular character of their relations, of winding up the affairs which originated during their common political existence in the past, and of establishing general rules to govern their future relations, have conferred their full powers for this desirable purpose, to wit: The Republic of Colombia on Mr. Enrique Cortes, its envoy extraordinary and minister plenipotentiary at Washington, and the Republic of Panama on Mr. José Agustin Arango, its envoy extraordinary and minister plenipotentiary in the same city, in which took place the negotiations regarding the friendly and mutually acceptable mediation of the Government of the United States of America; who, after exchanging their respective full powers and finding them in good and due form, have agreed on the following articles:

ARTICLE I. The Republic of Colombia respects the desire of the people of Panama to form an independent Nation, and therefore recognizes the sovereignty and independence of the Republic of Panama since 6 o'clock in the afternoon of November 3, 1903.

ART. II. There shall be perfect and perpetual peace and sincere and inviolable friendship between the Republic of Panama and the Republic of Colombia, and they shall maintain that respect and mutual consideration for each other which is necessary for the preservation of such peace and friendship.

ART. III. The Republic of Panama cedes and transfers to the Republic of Colombia, or to whoever represents the rights of the latter in due and lawful form, the first 10 annual payments of \$250,000 gold coin each which it is to receive from the United States of America on the 26th day of February of each of the years from 1908 to 1917, both inclusive, in accordance with Article XIV of the treaty between the Republic of Panama and the United States of America, the ratifications of which were exchanged on February 26, 1904, and with the modification of said article which is agreed upon between them in another treaty signed on this same date, which modification consists in substituting the words "four years" for the words "nine years," so that the first annual payment is to be made four years after February 26, 1904 (the date of the exchange of ratifications of the aforementioned treaty), and the 10 annual payments are to be paid directly to Colombia by the United States of America.

ART. IV. In consideration of the cession of these payments and of the tacit and express pecuniary renunciations which the Republic of Panama makes in favor of the Republic of Colombia, the latter recognizes and agrees to declare, and does hereby declare, that the Republic of Panama is under no obligation or responsibility toward the bondholders of the external or internal debts of the Republic of Colombia or toward those who may have claims against the Republic of Colombia, whatever be the nature of such claims, or toward Colombia herself by reason of such debts or claims, since Colombia recognizes and agrees that she is alone responsible for these claims and external and internal debts, assumes the obligation to pay them herself, and pledges herself to guarantee the Republic of Panama against any responsibility or cost on account of the said claims and external and internal debts.

ART. V. Each of the contracting Republics discharges and liberates the other from any pecuniary claim or obligations of what-

soever nature, including the internal and external debt of Colombia, which one may have had against the other on November 3, 1903, it being understood that this mutual discharge comprises only the national debts and claims of either against the other and that there are expressly excepted therefrom the bills or claims of the citizens or corporations of either of the parties against the treasury of the other, which bills or claims remain in full force and validity and shall be attended to duly and promptly.

ART. VI. The Republic of Panama renounces and abandons any right which it may have now or in the future to the 50,000 shares in the new Panama Canal Co. which appear in Colombia's name on the books of said company at Paris, and it hereby confirms the relinquishment of its claim thereto which it made in the suit pending before the courts of France.

ART. VII. The citizens of either of the two contracting Republics residing within the territory of the other shall enjoy the same civil rights as may be granted from time to time by the laws of the country to the citizens of any other nation; they shall not be subject to any greater obligations than these latter, and shall be exempt from all military service.

ART. VIII. Both contracting Republics agree that neither of them shall permit any portion of the territory of the other which may be separated from it by force to form part of their national territory.

ART. IX. As soon as this treaty and those which have been signed at the same time as it between the Republic of Colombia and the United States of America and between the Republic of Panama and the United States of America have been ratified and the ratifications thereof exchanged, the Republics of Panama and Colombia shall enter negotiations for the conclusion of commercial, postal, telegraphic, copyright, consular, extradition, and other conventions which may be considered necessary for the regular maintenance of the good relations between the two countries.

ART. X. This treaty shall not be binding on either of the contracting parties, nor shall it have any validity, until and unless the treaties signed on this same date between the Republic of Panama and the United States of America and between the Republic of Colombia and the United States of America are both duly ratified and their ratifications exchanged simultaneously with the exchange of the ratifications of this treaty.

In witness whereof, we, the plenipotentiaries of each contracting Republic, have signed it and sealed it with our special seals in the city of Washington, on the \_\_\_\_\_ day of the month of \_\_\_\_\_ of the year one thousand nine hundred \_\_\_\_\_.

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*Colombian Minister to Secretary of State.*

[Translation.]

No. 277.]

LEGATION OF COLOMBIA,  
Washington, D. C., December 20, 1907.

MR. SECRETARY OF STATE: Conforming to the course which I am instructed by my Government to pursue in everything that pertains to the pending negotiations for the recognition of the independence

of Panama by Colombia, viz, to do nothing without the knowledge and consent of the Government of the United States, I beg to acquaint your excellency with the incidents that recently took place therein. Señor Arosemena, secretary of the legation of Panama, has handed me a draft of a treaty prepared as it appears in Panama and evolved out of the terms of the protocol signed on August 17 last by Señor Arango and myself. A copy of the draft has also been given to the Department of State, according to your excellency's note of the 17th instant to this legation. I immediately informed orally Señor Amador, as well as your excellency, that it would be necessary to add, in the final text of the treaty, certain explanations which would determine the scope of some of the stipulations of the protocol, without altering its fundamental bases.

As I informed your excellency, the Government of Bogota upon gaining knowledge of the letter your excellency was pleased to address to me from White Plains on August 26 last, which sets down the position of the Government of the United States in regard to the boundary between Colombia and Panama recognized by it, thought itself warranted in putting its authority into effect in Jurado and the adjoining territory.

It is true that the territory was in dispute between the former States of Cauca and Panama, and was at one time administered by authorities under the department of Panama, prior to the secession contemplated by the latter department, but the Government of Colombia had decided the question by recognizing that territory as belonging to the State of Cauca, which, in those parts, is now the territory of Choco, by means of the line described in the law of June 9, 1855, which is the line recognized by the United States. The authority exercised by the department of Panama, which prior to the secession was unimportant on account of the elimination of the system of Federal States and the adoption of the system of departments with scant local autonomy, resumed importance from the moment it involved an entity which claimed independent existence.

Yet, while it had an abundance of right, the Government of Colombia was perplexed as to the attitude it should assume, lest it might come into conflict with the United States. It therefore confined itself to appointing authorities in Jurado, which, as I am informed, have, with periods of intermission, exercised jurisdiction alternately with the authorities of Panama, but it has refrained from sending troops for the military occupation of the disputed territory. Once in possession of the State Department's note, however, the situation assumed a different aspect. And so, on hearing that Panamanian forces had been landed at Jurado, it made preparations to occupy that town, but issued orders to avoid any conflict. The incident gave occasion for an exchange of views between the Government of the United States, the American minister at Bogota, the Government of Colombia, and this legation. I am under instructions to request the withdrawal of the aforesaid forces, if they were there, and of the Panamanian authorities, and have so informed your excellency. But in view of the declarations of Panama, communicated to me by your excellency, to the effect that the occupation does not bear such features of gravity as had been believed, and that it

might be wiser to avoid incidents which might arouse public opinion in both countries at the very time when an effort was made to resume relations, I deemed it advisable to suggest to my Government the expediency of postponing the sending of forces to Jurado. In the meanwhile I gladly availed myself of an invitation I received from Señor Amador to an amicable conference in New York. Poor health prevented my going in person, but the secretary of the legation, Señor Guzman, and its counselor, Señor Pasos, went over. The last-named gentleman is an old personal friend of Señor Amador. The estimable secretary now in charge of the legation, Señor Arosemena, was present at the interviews, and it affords me pleasure to acknowledge the spirit of deference and friendship toward Colombia evinced by the two gentlemen at the conference.

From the outset, Señor Amador did not oppose the insertion in the treaty of certain explanatory clauses we might discuss. The first, which I mentioned to your excellency, is one by which it is made clear that, while Colombia recognizes the right of citizens of Panama to present private claims to the Colombian Government on account of incidents anterior to the recognition of independence, it is understood that the said claims shall be presented and received in accordance with the laws and administrative regulations in force in Colombia so that the citizens of Panama shall not be placed in a more favorable situation than the citizens of Colombia. Señor Amador and Señor Arosemena declared their readiness to accept this or a like explanatory addition to the protocol and found it fair and reasonable.

The Jurado matter was taken up next. Señor Amador had no knowledge of your excellency's letter of the 26th of August, which was then made known to him and of which a copy was subsequently given him with the consent of your department.

Messrs. Guzman and Pasos have a strong impression that Messrs. Amador and Arosemena consider that letter to be practically decisive in respect of the boundary between Panama and Colombia.

After the letter had been made known to him, Señor Amador was told that the Government of Colombia would desire to have steps taken toward the withdrawal of the armed force and of the authorities from Jurado, as the Government wished to have its authority respected there now that the situation had been defined by the said letter.

Señor Amador opposed no difficulty to the evacuation, but added that he could not issue orders from here; that he would sail for Panama on the 19th instant, and offered to give immediately upon his arrival precedence to this matter, which he hoped to be able to bring to a satisfactory solution.

Messrs. Guzman and Pasos represented to Messrs. Amador and Arosemena that the Government of Colombia believed, although the clauses of the protocol did not contain anything concerning the demarcation of the boundary line, it would be mutually advantageous to lay down the said demarcation for the following reasons:

First. Because when the Colombian legation agreed, at your excellency's suggestion, not to mention the boundary question in the protocol it did so on account of Panama having advanced claims on this point to which it was absolutely impossible for the Colombian legation to assent, and, having received the State Department's letter

of the 26th of August, I thought that it practically settled any conflict that might hereafter arise on this point with Panama. But the Jurado incident has brought proof that in this the legation was mistaken, since other and similar possible conflicts may arise to-morrow, just as this one does to-day, and in the course of time, when the requirements and aims of commerce and industry in the Atrato region grow more exacting and acute, the possibility and danger of such conflicts and questions will grow larger, bringing out in full force the historical fact that an undefined boundary line is the most fruitful source of discord between bordering nations.

Second. Because the existence of the letter of August 26 makes it completely and absolutely impossible to carry out any attempt on the part of Panama to obtain Colombia's acceptance of any arrangement that would culminate in having the boundary defined as claimed by Panama. Hence the step which wisdom, foresight, and a spirit of fraternal harmony dictate seems to be that by which this vexatious question will be settled at once. And this can only be done by Panama accepting the boundary line recognized by the Government of the United States.

To the foregoing and other similar remarks Senor Amador, while he did not give his explicit assent, opposed no positive denial; he confined himself to saying that he would discuss the point with his friends at Panama. Senor Arosemena declared that, in view of the situation created by the letter of August 26, if the American Government declared it its wish to have the said demarcation of the boundary accepted, Panama could have no choice but to acquiesce, and added that Mr. Buchanan had made some intimation in that sense.

The foregoing relates as briefly as possible the general points considered at the New York interview by Messrs. Guzman and Pasos, Amador and Arosemena. They have been stated orally by me to your excellency, and are now repeated in writing in order to put the ideas in a more permanent form and to enable your excellency to take them into consideration when the time comes to fix the concrete terms of the treaty.

In this respect I am now engaged in the preparation of a draft of the treaty which I shall send in due time to the Department of State and which will set forth the amended and explanatory clauses, which in the opinion of Colombia ought to be inserted therein. In conclusion, I have to represent to your excellency that the Government of Colombia attaches great importance to the demarcation of the boundary line, believing that its omission would arouse considerable excitement in the public opinion of the country, owing to the impression that, by leaving the point unsettled, fresh supply would be added to a source of possible and probable conflicts which would impede the establishment of that complete and fraternal harmony sincerely desired by us and prevent its strengthening and cementing, which, after what has taken place, demand an elevated spirit of conciliation and prudence.

I beg your excellency to be pleased to accept the assurances of my highest and most distinguished consideration.

ENRIQUE CORTES.

*Colombian Minister to Secretary Root.*

LEGATION OF COLOMBIA,  
Washington, D. C., December 28, 1907.

SIR: I beg to refer to your honored communication of the 17th instant, No. 1502/60, to which you were good enough to accompany a copy of a draft treaty between Colombia and Panama submitted to the department by the chargé d'affaires ad interim of Panama.

As I had the honor to mention in my communication to you dated the 20th December, said draft required, in my opinion, certain alterations, the purport of which I detailed in my said communication.

In accordance with my letter above mentioned, I have the honor to submit a copy both in English and Spanish which I propose in lieu of the text submitted by Mr. Arosemena. My project adheres more closely to the words of the protocol and embodies certain explanations and additions. Regarding the latter, I beg to inclose an explanatory memorandum for your consideration, it being an extract of my train of argument in my above-mentioned letter.

I beg of you to give fair consideration to the subject, and have the honor to present the assurances of my high consideration.

ENRIQUE CORTES.

[Memorandum in explanation of the Columbian Legation draft of a treaty between Colombia and Panama as compared with the protocol of 17th August, 1907.]

THE INTRODUCTION OF THE PROTOCOL.

My draft conforms to the terms of the introduction.

Articles I and II of my draft conform to the terms of the protocol.

Article III conforms to my draft up to the words "to pay and discharge the same." Thenceforward my draft is worded thus:

and it agrees to indemnify and hold harmless the Republic of Panama, if occasion arises, from any liability toward the holders of such external and internal indebtedness.

instead of—

and agrees to indemnify and hold harmless the Republic of Panama from any liability and expense in respect of such external and internal indebtedness.

My changes are of small importance, conforming to the previous words and suppressing the word "expense," which by its vagueness might give rise to posterior misunderstandings.

Furthermore, my draft explains the meaning of external debt, which, in Colombia, officially and commercially only refers to the foreign debt toward the foreign bondholders' committee, of London, there being no other indebtedness known under that name.

Article IV of the protocol: My draft adds the following proviso:

It is understood that such individual claims and rights as may have had their origin in occurrences anterior to the 3d of November, 1903, shall be adjusted in accordance with the legislation of the Republic to which they may be presented and by the tribunals or authorities of the same, so that in no case the claimants may enjoy greater privileges and advantages than the citizens of the Republic against which the claim is made.

The reason for this addition has been explained both to his excellency Mr. Root and to Señores Amador and Arosemena, who con-



sider the explanation therein established as reasonable and just. In fact, I consider it indispensable.

Articles V, VI, and VII of the protocol, no change.

Article VIII of the protocol is suppressed, as its existence in the treaty seems irrelevant in so far as its purport remains binding on both parties as a part of the protocol for a future period. However, if it is not considered out of place in the treaty we are willing to accept it.

Article IX of the protocol, no change.

#### NEW ARTICLES OF MY DRAFT.

Article X, providing for submittal to ratification by the respective Governments. No difficulty should arise on this.

Article VIII: This article refers to the acceptance by Panama of our line of boundaries. Although no provision on this head appears in the protocol I consider that its insertion in the treaty is advisable for the mutual benefit of the parties concerned, and this for the reasons submitted by myself to Mr. Root, and by Messrs. Guzman and Pasos to Messrs. Amador and Arosemena in the New York conference. Briefly they are summarized thus:

First. The general convenience to avoid future complications and misunderstandings, it being a well-known fact in history that uncertainty in the demarcation of boundaries between adjoining nations is the most fruitful source of trouble in their relations.

Second. Because the danger of friction in the present instance has become apparent by the recently developed incident of the occupation of Jurado, which has produced considerable excitement in both countries, showing at measurable distance the possibility and danger of friction and even rupture.

Third. Because the respective positions in the matter of boundaries of the two countries, which at one period of the negotiations appeared impossible to conciliate, has been, in my opinion, completely simplified by the declaration of the United States embodied in the letter of Mr. Secretary Root to Mr. Cortes, of the 26th of August last, recognizing as boundaries between Colombia and Panama the same as upheld by Colombia. This declaration, throwing as it does the weight of the United States opinion on the side of Colombia, should be decisive as far as argument is concerned. Besides, it practically solves the problem as far as Colombia is concerned, since, for obvious reasons, the United States could not become a party, in its character of protector of Panama, by reason of any dispute as to boundaries.

It will therefore materially assist in cementing future friendship, not only between Colombia and Panama themselves, but likewise between these two nations and the United States, as it will forever dispose of a knotty situation and one which, as far as Colombia is concerned, is considered by all the Colombian Nation as of paramount importance.

ENRIQUE CORTES.

WASHINGTON, *December 28, 1907.*

[Treaty—English text.]

The Republic of Colombia and the Republic of Panama, being equally animated by the desire to remove the obstacles to a good

understanding between them, to adjust their pecuniary and other relations, and to mutually receive the benefits of amity and accord, have determined to conclude a treaty for the attainment of those objects, and have appointed their respective plenipotentiaries:

The President of Colombia, Senor Don Enrique Cortes, Envoy Extraordinary and Minister Plenipotentiary of Colombia in Washington; and

The President of the Republic of Panama, Senor Don Jose Agustin Arango, Envoy Extraordinary and Minister Plenipotentiary of Panama in Washington;

Who, after having exhibited their respective full powers, and having found the same to be in good and due form, have agreed upon the following articles:

#### ARTICLE I.

The Republic of Colombia recognizes the independence of the Republic of Panama and acknowledges it as a sovereign and independent state.

#### ARTICLE II.

There shall be mutual and inviolable peace and friendship between the Government of Colombia and its citizens on the one part, and the Government of Panama and its citizens on the other part.

#### ARTICLE III.

The Republic of Panama agrees to assign and transfer to the Republic of Colombia and its assigns and nominees, the first ten annual installments of two hundred and fifty thousand dollars each in gold coin becoming due to Panama from the United States of America on the 26th day of February in the year 1908 and annually thereafter on the 26th of February up to the year 1917 inclusive, under Article XIV of the treaty between the United States of America and the Republic of Panama exchanged February 26, 1904, and under and pursuant to the amendment of said article embodied in a treaty of even date herewith made and entered into between the United States and Panama whereby said Article XIV is amended by substituting the words *four years* for the words "nine years," so that the first annual payment therein provided for shall begin four years instead of nine years, from the exchange of said treaty of February 26, 1904, in such manner that the said ten annual installments shall be paid for account of Panama by the United States of America directly to Colombia, its assigns and nominees, beginning on the 26th day of February, 1908.

In consideration of the payments and releases by Panama, Colombia recognizes and agrees that Panama has no liability upon and no obligation to the holders of the external and internal debt of Colombia, nor to Colombia by reason of any such indebtedness. Colombia recognizes and agrees that it is itself solely obligated for such external and internal debt; it assumes the obligation solely to pay and discharge the same; and it agrees to indemnify and hold harmless the Republic of Panama, if occasion arises, from any liability towards the holders of such external and internal indebtedness. It is under-

stood that the external debt herein referred to is that which was recognized and set forth in the agreement signed in London April 20th, 1905, between the Government of Colombia and the Council of Foreign Bondholders, by the terms of which it was agreed that the Government of Colombia assumed the exclusive responsibility for the payment of principal and interest of the said external debt.

#### ARTICLE IV.

Each of the contracting Republics releases and declares the other free from all pecuniary claims and indebtedness of every character, including the external and internal debt of Colombia, the one upon the other, existing on the third day of November, 1903; it being understood that such mutual release relates to national claims and indebtedness only and not to individual rights and claims of the citizens of either republic. It is understood that such individual claims and rights as may have had their origin in occurrence anterior to the third of November, 1903, shall be adjusted in accordance with the legislation of the republic to which they may be presented and by the tribunals or authorities of the same, so that in no case the claimants may enjoy greater privileges and advantages than the citizens of the Republic against which the claim is made.

#### ARTICLE V.

The Republic of Panama recognizes it has no title or property in the fifty thousand shares of capital stock of the New Panama Canal Company standing on the books of that Company in Paris in the name of Colombia; and Panama confirms the renunciation of all claims and title thereto heretofore made by it in legal proceedings pending in the courts of France.

#### ARTICLE VI.

The citizens of either of the two contracting Republics residing in the other shall enjoy the same civil rights from time to time as are accorded by the laws of the country of their residence, respectively, to citizens of any other nation, it being understood, however, that the citizens of the two republics residing in the other, shall be exempt from military service imposed upon the citizens of such republics.

#### ARTICLE VII.

Both of the contracting Republics agree that neither of them shall admit to form a part of its nationality any portion of the territory of the other which may separate from it by force.

#### ARTICLE VIII.

It is hereby agreed and declared by the contracting parties that the dividing line between the Republic of Colombia and the Republic of Panama shall be that fixed as the boundary between the States of Panama and Cauca by the law of New Granada of June 9, 1855, in its article 7 as follows: "Por el Este desde el Cabo Tiburon hasta la

cabecera del rio de la Miel y siguiendo la cordillera por el cerro de Gandi a la sierra de Chugaigun y la de Mali a bajar por los cerros de Nigue a los altos de Aspave y de alli al Pacifico entre Cocalito y la Ardita."

#### ARTICLE IX.

It is expressly understood and agreed that the present treaty shall not become operative nor its provisions obligatory upon either party hereto until and unless treaties between the Republic of Colombia and the United States of America and between the United States of America and the Republic of Panama of even date herewith are both duly concluded and their ratifications are exchanged simultaneously with the exchange after ratification of the present treaty.

#### ARTICLE X.

The present treaty shall be submitted for ratification by the respective Governments and the ratifications shall be exchanged at Washington at the earliest date possible.

*Colombian Minister to Secretary Root.*

No. 293.]

LEGATION OF COLOMBIA,  
*Washington, January 26, 1908.*

DEAR SIR: In reference to my communications of the 20th and 28th of December ultimo and my memorandum of same date accompanying a draft treaty with Panama, I have the honor to inform your excellency that I have received to-day a letter from the minister of foreign affairs dated Bogota, 31st December, the pertinent part of which I beg to inclose in separate copy, both in Spanish and English.

In my letter to you above quoted I have mentioned the extreme importance that my Government gives to the line of demarcation of boundaries with Panama, in accordance with the New Granada law of 9th June, 1855. The letter from the minister of foreign affairs herein referred to is, as you will perceive, so explicit and conclusive in the matter as to preclude my entertaining any stipulation in the treaty referring to boundaries other than the recognition of our line.

Allow me to express my hope that, joining efforts, we may come to a definite and satisfactory agreement with Panama on this all-important question.

The situation is such that unless our line is accepted no alternative would be left to me but to suspend the negotiations. This lame conclusion would be a source of great mortification to me personally, and would be compelled to adopt it with the deepest regret. I could not help it, however, in view of my instructions, feeling convinced, moreover, that a treaty without the acceptance of our line would have no chance of its ratification by the legislative body in Colombia.

I have the honor to present to your excellency the expression of my high consideration.

(Signed) ENRIQUE CORTES.

The Hon. ELIHU ROOT.

*Secretary of State, State Department.*

[Copy of paragraphs from a letter of the minister of foreign affairs dated Bogota, the 31st December, 1907.]

JANUARY 26, 1908.

The Government of Colombia is in an absolute impossibility to accept any negotiation with Panama which is not based on the total recognition of the boundaries of the department of Panama, as fixed by the law of June, 1855, of which you have a copy. Any other line or any alteration whatever on the one fixed by said law, no matter how slight it may be, would be rejected almost unanimously by the public opinion in Colombia, and the Government believes that there is neither justice nor convenience in deviating from our right and would prefer not to enter into any treaty with Panama, rather than doing it with a line of boundaries differing from the one above stated.

I call your attention to a letter I wrote to the *El Correo Nacional* newspaper of this city, dated 25th November last, which I suppose you have seen, as it was reproduced by almost all the Colombian newspapers, in which, after expressing the line of conduct of the Government on these important matters, I added, "Such are the ideas which rule the conduct of the Government in the negotiations initiated by Dr. Mendoza Perez, and in accordance therewith would not on any consideration agree to the slightest alteration on the line fixed by the law of 9th June, 1855."

The above contains a solemn promise made by the undersigned to the Republic, in accordance with his excellency the president, and the government has the firm will not to deviate from it. You will be good enough to inform Mr. Root of the above at the nearest opportunity you have.

If you obtain the acceptance of the line stated, without alteration, this being the only case in which, as I have mentioned, the celebration of a treaty with Panama is made possible, you may accept definitely the payment of two and a half millions dollars in the terms agreed. The Government of Colombia gives to the monetary question a greatly inferior importance compared to the question of boundaries.

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*Secretary Root to Colombian minister.*

No. 48.]

JANUARY 28, 1908.

SIR: I have the honor to acknowledge the receipt of your note of the 26th instant, in which you refer to your notes of December 20 and 28 last and to your memorandum submitting a draft treaty between Colombia and Panama, and invite my attention to an extract from instructions, dated December 31 last, from the Colombian minister of foreign affairs to you, under which instructions you are advised that a treaty with Panama can stipulate no other boundaries than those established by the New Granada law of June 9, 1855.

I have the honor to say in reply that it seems unnecessary to enter upon any further consideration of the views of the United States regarding the boundary line between Colombia and Panama further than those contained in my letter to you of August 26 last.

The subject matter of your note will be communicated to Mr. Arango immediately after his arrival here.

Accept, Mr. Minister, the renewed assurance of my highest consideration.

(Signed) ELIHU ROOT.

Señor Don ENRIQUE CORTES,  
*Minister of Colombia.*

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*Secretary Root to Minister Cortes.*

DEPARTMENT OF STATE,  
*Washington, February 18, 1908.*

SIR: On Monday last I had an interview with Mr. Arango and Mr. Arosemena, and Mr. Arango advised me that he is instructed by the Government of Panama to refuse assent to the proposed new Article VIII of the draft treaty communicated with your letter of December 28 last, stipulating that the boundary between Colombia and Panama shall be that described in the act of June 9, 1855.

Mr. Arango says, however, that if the treaty were made in accordance with the protocol he would take the responsibility of agreeing to submit the question to arbitration.

Accept, sir, the renewed assurance of my highest consideration.

ELIHU ROOT.

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*Minister of Colombia to Secretary Root.*

[Translation.]

No. 293.]

LEGATION OF COLOMBIA,  
*Washington, D. C., February 19, 1908.*

MR. SECRETARY: I have the honor to acknowledge the receipt of your excellency's obliging communication, dated yesterday, by which you are pleased to advise me that at an interview had with you the day before, Señor Arango declared to you that he had instructions from his Government not to accept the article I had proposed, under No. VIII, in my draft of a treaty with Panama, which relates to the acceptance by Panama of the boundary line established by the law of June 9, 1855, of New Granada. Your excellency adds that Señor Arango mentioned in this respect that if a treaty were made in accordance with the protocol, Señor Arango on his own responsibility promised to agree to an arbitration for the settlement of the boundary line.

I thank your excellency for that communication, which I consider important, and I should have hastened to have the honor to exchange views with the Secretary touching its contents had I not found myself disabled for the present by an attack of the grippe, which confined me to my room. But until I may have the opportunity and honor to call on your excellency, I venture to make one or two remarks which I believe pertinent.

From the knowledge your department possesses of the instructions I have received from my Government and by which I must abide as long as they stand, the intimation of Señor Arango is tantamount to an indefinite suspension of the negotiations, since I am inhibited

from affixing my signature to any treaty in which there be no recognition of the said boundary by Panama.

I permit myself to call to your excellency's mind that since the beginning of these negotiations—that is, since your excellency's conferences with the Colombian minister of foreign relations at Cartagena—the initial point of the negotiations has been the friendly mediation of the United States for the purpose of bringing about a convention between Colombia and Panama which would guarantee permanent friendly relations for the future and the recognition of Panama's independence. The highest importance was attached to this intervention by my Government in the belief that, without it, the position of Colombia became for obvious reasons a difficult one. The American intervention and mediation made it Colombia's duty to assume an extremely conciliatory and friendly attitude. This, I believe, is the path I followed; and, as your excellency will recall, Colombia in the course of my labors has endeavored most studiously to ward off any incident, allusion, or demand which might impart to the discussion the slightest feature of irritation or even lack of cordiality. Colombia went on narrowing and curtailing her claims in a consistent effort not to transgress the limits of the most scrupulous "compromise," and ever careful not to ask of the United States anything but a friendly attitude. We were nearing this goal when two important incidents sprang forth—your department's letter of August 26 and the excitement created by the occupation of Jurado. The first as it appears to me settled the boundary question as far as the United States is concerned, and should, ipso facto, settle it as far as Panama may be concerned. But the second again put the question in an acute phase and made it necessary for Colombia not to leave open a door which might in the future prove to be a source of controversy and danger.

Our demand that this question be settled is one of imperative importance. The dangers above alluded to are all the more obvious to me as Panama maintains her claims in spite of the declaration of the United States, under date of August 26, based upon a careful examination of the point which would seem to have been thereby determined.

Until I have the honor to call on your excellency, I permit myself to call your attention to the contents of this letter, which I hope will be favorably received.

I have the honor to be, Mr. Secretary, with the highest and most distinguished consideration,

Your obedient and very humble servant,

ENRIQUE CORTES.

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*Mr. Taft to Mr. Root.*

WAR DEPARTMENT,  
*Washington, March 11, 1908.*

MY DEAR MR. ROOT: I am in receipt of a letter from Mr. Cromwell, a copy of which I send for your files.

Sincerely, yours,

WM. H. TAFT.

## UNITED STATES-PANAMA-COLOMBIA TREATIES.

49 AND 51 WALL STREET,  
New York, March 10, 1908.

HON. WILLIAM H. TAFT,  
*Secretary of War, Washington, D. C.*

MY DEAR MR. SECRETARY: Referring to the protocol between the Republic of Colombia and the Republic of Panama, exchanged at Washington on the 17th of August last between the ministers of the Governments mentioned, and approved by you in behalf of the United States, under the direction of the President, I beg leave to advise you that since that date the New Panama Canal Co. and the Republic of Colombia have reached a satisfactory adjustment of the claims and interests of the Republic of Colombia in the 50,000 shares of the capital stock of the New Panama Canal Co. standing on the books of that company in the name of the Republic of Colombia, and also that the litigation instituted by the department of fisc of the Government of France respecting registration and stamp duties has been adjusted.

Under this arrangement there has been paid to the Government of France 7,000,000 francs, in satisfaction of its said claims, and the canal company has paid to the Government of Colombia direct about 4,000,000 francs, the balance upon the cash distribution appurtenant to said 50,000 shares.

This subject, therefore, has been adjusted to the satisfaction of all parties; the Republic of Colombia has received from the canal company the sum of about \$800,000 gold, and therefore there is no occasion to embody Article V in the treaty consummating the protocol referred to.

I always assured the President, Secretary Root, and you that we would aid Colombia in getting the proceeds of these shares (part of the forty million payment), and you will see that the assurance is fulfilled. It should facilitate the pending treaty.

As you may wish to keep Secretary Root's files complete, I inclose a duplicate hereof for the purpose.

Respectfully, yours,

WM. NELSON CROMWELL, *Counsel.*

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*Colombian Minister to Secretary Root.*

No. 295.]

LEGATION OF COLOMBIA,  
*Washington, D. C., March 12, 1908.*

SIR: In the matter of the treaties in course between the United States and Colombia and Colombia and Panama, I am becoming rather anxious, as the time is growing short and it will require a good deal of attention and time. I have therefore the honor to request your excellency to be good enough to inform me if you have been able to come to an understanding with Panama about the matter of boundaries as mentioned in my previous communications to you.

I am ready to meet the Panama representatives and discuss the matter with them at any moment, but consider it necessary to know exactly what is their final standing on the matter, as the result of the



change of ideas you have mentioned to me has been in course for some time.

I beg likewise to remind your excellency that it would be most important to have your letter of disclaimer from the part of the United States in the matter of a deposit made by the new canal company at the London & County Banking Co., London, within the nearest time, as the company will be extinguished on the 1st of April next.

Thanking your excellency beforehand, I have the honor to remain,

Your obedient, humble servant,

(Signed)

ENRIQUE CORTES.

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*Secretary Root to Minister of Colombia.*

No. 53.]

DEPARTMENT OF STATE,

*March 17, 1908.*

SIR: Referring to the latter part of your note of the 12th instant, I have the honor to inclose a letter, of to-day's date, to the London & County Bank, of London, England, in which I state that this Government claims no interest in the sum of 750,000 francs, and interest thereon, deposited with it in 1878 or thereabouts by Lucien N. B. Wyse, under Article II of his concession from Colombia.

Accept, sir, the renewed assurance of my highest consideration.

ELIHU ROOT.

Inclosure as above.

DEPARTMENT OF STATE,

*Washington, March 17, 1908.*

LONDON & COUNTY BANKING CO. (LTD.),

*Lombard Street, London, England.*

GENTLEMEN: I beg to state, with reference to the sum of 750,000 francs deposited with you in the year 1878 or thereabout, under article second of the concession granted by the United States of Colombia to Lucien N. B. Wyse for the opening and operation of a canal across the Isthmus of Panama, that the United States claims no interest in that sum nor the interest thereon.

Very truly, yours,

ELIHU ROOT.

*Secretary of State.*

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*Minister of Colombia to Secretary Root.*

LEGATION OF COLOMBIA,

*Washington, D. C., March 31, 1908.*

SIR: AS I have had the honor to inform you verbally, the Colombian Government, in view of the refusal of the representatives of Panama to agree to our line of limits, is quite ready to proceed on the basis of no mention being made of the boundaries in the treaty at all.

As your excellency is aware, when the Colombian Government desired so earnestly to have the line of limits of the laws of June, 1855, accepted by Panama, even when no mention was made of the matter

in protocol, the reason was twofold—on the one hand, that such line was accepted by the American Government; on the other hand, that we could not avoid to occupy Jurado, and that in so doing it we might bring on a collision or friction with Panama which might affect the fate of the treaty.

As far as I gather, such is the position now, but I am not perfectly clear about the attitude of Panama and must trouble your excellency, in prosecution of the rôle assumed by the American Government, to discuss the matter with the Panama representatives.

No mention was made in the protocol of boundaries, be it on any ideal line or on the statu quo; we are ready to carry on the provisions of the protocol. Are the Panama representatives ready to proceed in accordance? If so, we might at once arrange to carry on the necessary meetings together to give shape to the instrument.

But I must express the feeling of my Government that if Panama refuses to sign the treaty under the reason that we intend to occupy Jurado, that is a proceeding at variance with the lines of the protocol and which, in my opinion, is not justified.

In the hopes of hearing from your excellency on this important point, I am happy to renew the assurance of my highest consideration.

ENRIQUE CORTES.

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*Acting Secretary Bacon to Colombian Minister.*

Serial No. 54.]

DEPARTMENT OF STATE,  
*April 9, 1908.*

SIR: I have the honor to acknowledge the receipt of your note of the 31st ultimo, in which you advise the department that "the Colombian Government, in view of the refusal of the representatives of Panama to agree to our line of limits, is quite ready to proceed on the basis of no mention being made of the boundaries in the treaty at all."

I have the honor to say in reply that your note will receive consideration.

Accept, sir, the renewed assurance of my highest consideration.

ROBERT BACON,  
*Acting Secretary.*

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*American Chargé to Secretary Root.*

No. 174.]

AMERICAN LEGATION,  
*Bogota, October 6, 1908.*

SIR: I have the honor to report, for the information of the department, that in an interview with Dr. Urrutia at the ministry for foreign affairs this afternoon he informed me that the Colombian Government had been gratified to learn, through its own sources, that the new administration of Panama was disposed to meet the Government of Colombia on the ground already outlined as that approved by the United States in the negotiations now pending at Washington for the conclusion of a treaty between the two countries. In Mr. Dawson's final interview with the President, at which both

Dr. Urrutia and myself were present, Gen. Reyes expressed great anxiety that an amicable conclusion to the negotiations between Colombia and Panama be reached as soon as possible. To-day Dr. Urrutia reiterated this desire, adding that it was hoped that the negotiations could be ended by the end of November.

I have the honor to be, sir,

Your obedient servant,

(Signed) PAXTON HIBBEN;  
*Chargé d'Affaires ad Interim.*

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*Secretary Root to Minister Cortes.*

DECEMBER 29, 1908.

MY DEAR MR. CORTES: Mr. Cromwell and myself passed the greater part of yesterday in examining carefully, section by section, the protocol of the Colombia-Panama treaty, the draft for a treaty based upon that protocol submitted by the legation at Panama and transmitted by me to you with my letter of December 17, 1907, and your counterdraft for the same treaty which you were good enough to send to me with your letter of December 28, 1907.

Upon very careful consideration of all the points, we worked out a draft which you will find in the main to agree with yours and which conforms to the protocol, and which we both agree in recommending to Colombia and Panama.

You will observe that this draft, besides reproducing the provisions of the protocol, also lays down the boundary line between Colombia and Panama, using the same words used by your draft down to the Heights of Espave, and thence provides that the location of the line shall depend upon the determination of an arbitral tribunal, which shall pass upon the nationality of the district of Jurado. This I understand to be in accordance with the informal arrangement to which both the Government of Panama and the Government of Colombia have expressed to me their intention to agree.

You will note that the arbitral procedure provided for follows The Hague Convention of 1907, which the representatives of both countries signed. You will observe, also, that we have included in the draft the provision regarding which you have several times spoken to me, under which individual claims against either country are to be determined in accordance with the legislation of the Republic against which they are presented.

Of course, any approval of this instrument by any one of us is dependent upon the satisfactory formulation of the other cognate instruments to which Mr. Cromwell and myself propose to immediately address ourselves.

May I ask for an early expression of your views as to whether the inclosed draft is satisfactory to the Republic of Colombia?

With kind regards, I am,

Very sincerely, yours,

ELIHU ROOT.

Inclosure: Draft as above.

*Between Republic of Colombia and Republic of Panama.*—The Republic of Colombia and the Republic of Panama, equally animated

by the desire to remove all obstacles to their good understanding, to adjust their pecuniary and other relations to each other, and to mutually secure the benefits of amity and accord, have determined to conclude a convention for these purposes, and therefore have appointed as their respective plenipotentiaries; that is to say:

The President of the Republic of Colombia, Enrique Cortes, envoy extraordinary and minister plenipotentiary of the Republic of Colombia, and

The President of the Republic of Panama, Carlos Constantino Arosemena, envoy extraordinary and minister plenipotentiary of the Republic of Panama; who, after having communicated to each other their respective full powers found in good and due form, have agreed upon and concluded the following articles:

#### ARTICLE I.

*Recognition of independence.*—The Republic of Colombia recognizes the independence of the Republic of Panama and acknowledges it to be a free, sovereign, and independent nation as of the 3d day of November, 1903.

#### ARTICLE II.

*Declarations of amity.*—There shall be a mutual and inviolable peace and friendship between the Government of Colombia and its citizens on the one part and the Government of the Republic of Panama and its citizens on the other part, without exception of persons or places under their respective dominion.

#### ARTICLE III.

*Pecuniary relations; transfer of certain installments; indemnification of Panama against external and internal indebtedness.*—The Republic of Panama assigns and transfers to the Republic of Colombia and its assigns and nominees, in lawful and due form, the 10 first annual installments of \$250,000 gold coin each becoming due to it, the Republic of Panama, from the United States of America on the 26th day of February in the years 1908 to 1917, both inclusive, under and pursuant to the provisions of Article XIV of the treaty between the United States of America and the Republic of Panama exchanged February 26, 1904, and under and pursuant to the amendment thereof, embodied in a treaty of even date between said nations, whereby said Article XIV is amended by substituting the words "four years" for the words "nine years," so that the first annual payment of which that article treats shall begin four years from the exchange of said treaty of February 26, 1904, instead of nine years from said date, in such manner that the said installments shall be paid by the United States of America directly to the Republic of Colombia or its assigns and nominees for account of the Republic of Panama, in lawful and due form, beginning the 26th day of February, 1908. Such installments as may have matured when the ratifications of this treaty shall be exchanged pursuant to its terms shall be payable on the thirtieth day after the date of such exchange.

In consideration of the payments and releases which the Republic of Panama makes to the Republic of Colombia, the latter recognizes

and agrees that the Republic of Panama has no liability upon and no obligations to the holders of the external and internal debt of Colombia nor to the Republic of Colombia by reason of any such indebtedness of claims. Colombia recognizes and agrees that it is itself solely obligated for such external and internal debt; assumes the obligation to pay and discharge the same by itself alone; and agrees to indemnify and hold harmless the Republic of Panama, should occasion arise, from any liability and expense in respect of such external and internal indebtedness.

## ARTICLE IV.

*Mutual exoneration.*—Each of the contracting Republics releases and discharges the other from all pecuniary claims and obligations of any nature whatever, including the external and internal debt of Colombia, which either had against the other on the 3d day of November, 1903, it being understood that this reciprocal exoneration relates only to the national debts and claims of one against the other, and that it does not relate to individual rights and claims of the citizens of either Republic. It is understood that such individual rights and claims which originated in incidents occurring previous to the 3d day of November, 1903, shall be decided in accordance with the legislation of the Republic against which they are presented and by the tribunals or authorities of the same, so that in no case shall the claimant enjoy greater privileges or advantages than the citizens of the Republic against which the demand is made.

## ARTICLE V.

*Confirmation by Panama of its abandonment of any claim to.*—The Republic of Panama recognizes that it has no title or ownership of any sort to the 50,000 shares of the capital stock of the New Panama Canal Co., standing in the name of the Republic of Colombia on the books of said company at Paris, and the Republic of Panama confirms the abandonment of all right and title, which, with respect to said shares, it made in the courts of justice of France.

## ARTICLE VI.

*Rights of citizens.*—The citizens of each Republic residing in the territory of the other shall enjoy the same civil rights which from time to time are accorded by the laws of the country of residence to the citizens of the most favored nation. It being understood, however, that the citizens of either of the two Republics residing in the other shall be exempt from military services imposed upon the citizens of such Republic.

Citizens of Panama who shall prefer to remain in the territory of the Republic of Colombia may either retain the title and rights of citizens of Panama or acquire those of citizens of Colombia, and, reciprocally, citizens of Colombia who shall prefer to remain in the territory of the Republic of Panama may either retain the title and rights of citizens of Colombia or acquire those of citizens of Panama. But they shall be under the obligation to make their election before

the proper authorities within one year from the date of the exchange of ratifications of this treaty; and those who remain in the said territory after the expiration of that year without having declared their election shall be considered as having elected to become citizens of the country where they reside.

The natives of the country of either of the two contracting Republics who have heretofore or shall hereafter become citizens by naturalization in the other Republic shall not be punished, molested, or discriminated against by the Government of the country of which they were natives, or by the citizens thereof, by reason of their acts of adhesion to the country whose citizenship they have adopted.

#### ARTICLE VII.

*Neither nation shall annex territory of the other.*—Both Republics agree, each for itself, that neither of them shall admit to form any part of its nationality any part of the territory of the other which separates from it by force.

#### ARTICLE VIII.

*Negotiations to be conducted for treaty of commerce, etc.*—As soon as this treaty and the contemporaneous treaty of even date between the United States of America and the Republic of Panama and between the United States of America and the Republic of Colombia shall be ratified and exchanged, negotiations shall be entered upon between the Republics of Panama and Colombia for the conclusion of additional treaty or treaties, covering questions of commerce, postal, telegraph, copyright, consular relations, extradition of criminals, and the like.

#### ARTICLE IX.

It is agreed between the high contracting parties, and is declared, that the dividing line between the Republic of Colombia and the Republic of Panama shall be as follows, to-wit:

From Cape Tiburon, on the Atlantic, to the headwaters of the Rio de la Miel, and following the range by the Cerro de Gandi to the Sierra de Chugargum and that of Mali, going down by the Cerros of Nique to the heights of Espave, and from there to the Pacific at such point and by such line as shall be determined by the tribunal of arbitration hereinafter provided, and the determination of said line shall conform to the decision of the tribunal of arbitration in respect of the title and limits of the district or corregimiento of Jurado, as next provided.

As to the district or corregimiento of Jurado, the boundaries and attribution of which to either the Republic of Colombia or the Republic of Panama will be fixed by the determination of the line aforesaid by said tribunal of arbitration, the title thereto and the precise limits thereof and the right to the sovereignty thereof as between the high contracting parties shall be conclusively determined by arbitration in the following manner:

SECTION 1. A tribunal of arbitration shall be created to investigate and determine all questions of fact and law concerning the rights of the high contracting parties to all the territory in the above-mentioned region of Jurado. The tribunal shall consist of three mem-

bers; the Republic of Colombia shall nominate one member, the Republic of Panama shall nominate one member, both of whom shall be nominated within three months after the exchange of ratifications of this treaty, and the two members of the tribunal thus nominated shall jointly nominate a third member, or, in the event of their failure to agree within three months next after the appointment of the last of them and on request of the President of either of the high contracting parties, the third member of the tribunal shall be appointed by the President of the Republic of Peru.

The tribunal shall hold its sessions at such place as the tribunal shall determine.

The case on behalf of each party, with the papers and documents, shall be communicated to the other party within three months after the appointment of the third member of the tribunal.

The counter cases shall be similarly communicated, with the papers and documents, within three months after communication of the cases, respectively.

And within two months after communication of the counter case the other party may communicate its reply.

The proceedings of the tribunal shall be governed by the provisions, so far as applicable, of the convention for the pacific settlement of international disputes signed at The Hague by the representatives of both the parties hereto on the 18th day of October, 1907.

The tribunal shall take into consideration all relevant laws and treaties and all facts proved of occupancy, possession, and political or administrative control in respect of the territory in dispute.

#### ARTICLE X.

*This treaty conditional upon exchange of treaties of even date between United States and Colombia and United States and Panama.*—This treaty shall not be binding upon either of the high contracting parties nor have any force until and unless the treaty signed on this same date between the Republic of Panama and the United States of America and between the Republic of Colombia and the United States of America are both duly ratified and ratification thereof exchanged simultaneously with the exchange of the ratification of this treaty.

#### ARTICLE XI.

*Ratification and exchange.*—The present treaty shall be submitted for ratification to the respective Governments, and ratifications hereof exchanged at Washington as soon as possible.

In faith whereof we, the respective plenipotentiaries, have signed the present treaty in triplicate, in the English and Spanish languages, and have hereunto affixed our respective seals.

Done at the city of Washington the —— day of ———, in the year of our Lord 1908.

*Secretary Root to Colombian Minister.*

DEPARTMENT OF STATE,  
December 30, 1908.

MY DEAR MR. CORTES: I send you herewith, for your consideration, a draft for the treaty between the United States and Colombia, which

I think accords with the views which I have already expressed. May I ask your early consideration thereof?

I am expecting to conclude with Mr. Cromwell this afternoon the draft treaty between the United States and Panama, which we will unite in recommending. In that case the next step will be the expression of your views upon the two treaties, the drafts of which you now have before you. I have been urging upon the representative of Panama, with all the earnestness possible, the very great importance of not losing a day in bringing this matter to a conclusion, so that I may be able to present the group of treaties to the Senate of the United States during the short period of my remaining service in the State Department.

With kind regards,

Very sincerely, yours,

ELIHU ROOT.

The United States of America and the Republic of Colombia being equally animated by the desire to remove all obstacles to a good understanding between them and to facilitate the settlement of the questions heretofore pending between Colombia and Panama by adjusting at the same time the relations of Colombia to the canal which the United States is now constructing across the Isthmus of Panama, have resolved to conclude a treaty and to that end have appointed as their plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States;

The President of the Republic of Colombia, Señor Don Enrique Cortes, envoy extraordinary and minister plenipotentiary at Washington;

Who, after communicating to each other their respective full powers, which were found to be in due and proper form, have agreed upon the following articles:

#### ARTICLE I.

There shall be mutual and inviolable peace and sincere friendship between the Governments and peoples of the two high contracting parties without exception of persons or places under their respective dominion.

#### ARTICLE II.

The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war, and ships of war of the Republic of Colombia without paying any duty to the United States; even in the case of an international war between Colombia and another country.

While the said interoceanic canal is in course of construction, the troops and materials for war of the Republic of Colombia, even in the case of an international war between Colombia and any other country, shall be transported on the railway between Ancon and Christobal, or on any other railway substituted therefor, upon the same conditions on which similar service is rendered to the United States.



The officers, agents and employees of the Government of Colombia shall, during the same period, be entitled to free passage upon the said railway across the Isthmus of Panama upon due notification to the railway officials and the production of evidence of their official character.

The foregoing provisions of this article shall not, however, apply in case of war between Colombia and Panama.

#### ARTICLE III.

The products of the soil and industry of the Republic of Colombia, such as provisions, cattle, etc., shall be admitted to entry in the Canal Zone free of any special duty, with the exception of the duties paid on similar products of the United States of America under similar conditions.

Colombian laborers employed in the Canal Zone during the construction of the canal, who may desire that their own families supply them with provisions for their personal use, shall be entitled to have such provisions admitted to the Canal Zone for delivery to them free of any duty, provided that declaration thereof shall first have been made before the commissary officers of the Isthmian Canal Commission, in order to obtain the previous permit for such entry, and subject to such reasonable regulations as shall be prescribed by the commission for insuring the bona fides of the transaction.

#### ARTICLE IV.

Colombian mails shall have free passage through the Canal Zone and through the post offices of Ancon and Christobal in the Canal Zone, paying only such duties or charges as are paid by the mails of the United States.

During the construction of the canal, Colombian products passing over the Isthmian railway from and to Colombian ports shall be transported at the lowest rates which are charged for similar products of the United States passing over said railway to and from the ports of the United States; and sea salt, exclusively produced in Colombia, passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, shall be transported over said railway free of any charge except the actual cost of handling and transportation.

#### ARTICLE V.

The United States recognizes and accepts notice of the assignment by Panama to Colombia of the right to receive from the United States payment of \$250,000 in gold in each year from the year 1909 to the year 1918, inclusive, upon the recognition of the independence of Panama by Colombia and the release of Panama from obligation for the payment of any part of the external and internal debt of Colombia in manner and form as contained in the treaty between Colombia and Panama bearing even date herewith.

#### ARTICLE VI.

The Republic of Colombia grants to the United States the use of all the ports of the Republic open to commerce as places of refuge

for any vessels employed in the canal enterprise and for all vessels in distress passing or bound to pass through the canal and seeking shelter or anchorage in said ports. Such vessels shall be exempt from anchorage or tonnage dues on the part of Colombia. And the Republic of Colombia renounces in favor of the United States of America all rights, interests, reversionary rights and titles, together with all claims whatever in connection with any concession heretofore granted by it, or in connection with any contract made and entered into at any time between it and any corporation, company, or person connected with or relating to the construction, maintenance, and operation of a canal or railway across the Isthmus of Panama, or in connection with such canal or railway; and all claims whatsoever that have or can be asserted against the United States of America arising out of or in connection with the construction, maintenance, and operation of an interoceanic canal across the Isthmus of Panama by the United States of America.

#### ARTICLE VII.

As soon as practicable after the exchange of ratifications of this treaty and the contemporaneous treaties of even date herewith between the United States of America and the Republic of Panama, and the Republic of Colombia and the Republic of Panama, the United States of America and the Republic of Colombia will enter into negotiations for the revision of the treaty of peace, amity, navigation, and commerce between the United States of America and the Republic of New Grenada, concluded on the 12th day of December, 1846, with a view to making the provisions therein contained conform to existing conditions.

#### ARTICLE VIII.

This treaty, duly signed by the high contracting parties, shall be ratified by each according to its respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

But it is understood that such ratifications are not to be exchanged, or the provisions of this treaty made obligatory upon either party until and unless the aforesaid treaties between the United States of America and the Republic of Colombia, and between the United States of America and the Republic of Panama, bearing even date herewith, have been duly concluded, and the ratifications of such treaties are duly exchanged simultaneously with the exchange of ratifications of this treaty.

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*Colombian Minister to Secretary Root.*

No. 495.]

LEGATION OF COLOMBIA,  
*Washington, D. C., December 31, 1908.*

DEAR SIR: I have the honor to acknowledge receipt of your letter, dated the 29th instant, which reached my hands yesterday morning, covering copy of the terms agreed between you and Mr. Cromwell for a treaty between Colombia and Panama.

I thank you, very much, for your action in the matter, and the attention given to my remarks and desires.

I find the draft acceptable on the whole, a few points of small importance, however, require, in my opinion, to be altered in a manner which I consider acceptable for mutual benefit. I inclose a sheet covering the said points which I commend to your kind consideration.

I beg to remain, sir,

Sincerely, yours,

ENRIQUE CORTES.

(Received from Mr. Cortes, January 2, 1909.)

LEGACIÓN DE COLOMBIA,  
*Washington, D. C., December 31, 1908.*

The Colombian minister respectfully offers the following suggestions in reference to the draft treaty between Colombia and Panama, which the honorable Secretary of State inclosed in his letter of the 29th instant:

ARTICLE I.

Accepted, suppressing the words "as to the 3d day of November, 1903," which do not appear in the protocol, substituting them by the words, "as to the 26th February, 1904," date in which the treaty between the United States and Panama, guaranteeing its independence, was proclaimed by the President of the United States.

The reasons are obvious. They pertain to certain consideration for Colombia's feeling, and to a historical event which built the foundations for the independence of Panama.

ARTICLE II.

Accepted.

ARTICLE III.

Accepted, suppressing the words "and expenses," in the penultimate line of the article. My reason is that the obligation of absolute release incidentally may include expenses, while these words by themselves may give rise by its vagueness to confusion and petty complications.

ARTICLE IV.

Accepted.

ARTICLE V.

Accepted.

ARTICLE VI.

Accepted, but between the first and second paragraphs to insert a new one, as follows:

Citizens of Panama who shall prefer to remain in the territory of the Republic of Colombia may either retain the title and rights of citizens of Panama or acquire those of citizens of Colombia; and, reciprocally, citizens of Colombia who shall prefer to remain in the territory of the Republic of Panama may either retain the title and rights of citizens of Colombia or acquire those of citizens of Panama. But they shall be under the obligation to make their election before the proper authorities within one year from the date of the exchange

of ratification of this treaty; and those who remain in the said territories after the expiration of that year, without having declared their election, shall be considered as having elected to become citizens of the country where they reside.

This stipulation, although not contemplated in the protocol, is for the obvious mutual benefit of the contracting parties.

In the second original paragraph, beginning with the words "The natives," I find in the sixth line thereof the words "or by the citizens thereof," which, in my opinion, impose on the parties a rather difficult obligation to fulfill. A Government may assume the obligation to punish the guilty parties to a crime, but could not guarantee that the commission of a crime shall not be attempted.

#### ARTICLE VIII.

Accepted.

#### ARTICLE IX.

The article requires an explanation.

Whenever in my various interviews with Mr. Root the question of Jurado was mentioned or discussed, no mention was ever made of Corregimiento, district or province, which might comprise a wider region than the village (Oaserio-aldea) and, naturally, its surrounding commons. When the said village was occupied by Colombian authorities in the early part of 1907 the same limitation characterized our conversations, so that when the appeal to arbitration was suggested I readily gave my acquiescence, with the proviso, never omitted when the subject was treated, that said arbitration should refer exclusively to the possession of Jurado by itself. Mr. Root, in my opinion, was fully aware that such was my idea, since I find in the report of the minister of foreign affairs of Panama for 1908 a quotation from a letter of Mr. Root to the said minister refusing to exercise against Colombia the guaranty of independence of Panama when Jurado was occupied. I quote the following passage (I translate from the Spanish):

In special reference to the small territory included under the denomination of Jurado, this Government is inclined to believe that the true boundaries between Panama and Colombia are those described in the law of New Granada of 9 June, 1855.

This being so, the rights of Jurado seem to depend on the position of the village (pueblo) and its jurisdiction accordance to the line of 1855.

In view of the letter of Señor Arango, dated 13 April, 1908, to wit: That the rights of Panama over the village of Jurado and its jurisdictional boundaries rest on facts and considerations which are not comprised in the dispute between Colombia and Panama about the general line of boundaries \* \* \* however, this Government is convinced, by the verbal communications exchanged on the subject, that the Government of Colombia would be desirous to go to an arbitration relating to its title over Jurado, provided that the general line of limits between the two countries, except in reference to Jurado, be accepted as described in the law of 1855.

My mind has been all the time to submit to arbitration the point about the possession of Jurado by itself, meaning the village of that name.

No mention was ever made of Corregimiento district or any other political division.

In view of the above considerations, and moreover that as far as I know the Corregimiento of Jurado is a rather vague designation, with uncertain limits and difficult to find on any map that has come to my cognizance, I venture to suggest the following:

(A) That all mention in Article IX of district of Corregimiento de Jurado be omitted, as neither being elements that have ever been taken into account in our view and discussions about the arbitration of Jurado.

Leaving out these words, Article IX should be worded as follows:

It is agreed between the high contracting parties and is declared that the dividing line between the Republic of Colombia and the Republic of Panama shall be as follows, to wit:

From Cape Tiburon on the Atlantic to the head waters of the Rio de la Miel, and following the range by the Cerro de Gandia to the Sierra de Chugargun and that of Mali, going down by the Cerros of Nique to the heights of Espave, and from there to the Pacific at such point and by such line as shall be determined by the tribunal of arbitration hereinafter provided, and the determination of said line shall conform to the decision of the tribunal of arbitration as next provided.

As to the territory submitted to arbitration, the boundaries and attribution of which to either the Republic of Colombia or the Republic of Panama will be fixed by the determination of the line aforesaid by said tribunal of arbitration, the title thereto and the precise limits thereof, and the right to the sovereignty thereof as between the high contracting parties shall be conclusively determined by arbitration in the following manner: The rest of the article as appears in the original.

What would be the result?

The result would be that the labor of the tribunal of arbitration would have as its broad task to define the line between the Altos de Espave and the Pacific, but without excluding a great deal of latitude, facilitating the labor and opening the way for a friendly understanding, in which, while not binding them to find out and discriminate the boundaries of the Corregimiento, a hard task in those deserts, does not exclude the taking into consideration all points which may enlighten their minds, as provided in the last paragraph of this article, in these words:

The tribunal shall take into consideration all relevant laws and treaties and all facts proved of occupancy, possession, or political or administrative control in respect of the territory in dispute.

I must mention that I have instructions to accept in case of a similar eventuality the Government of Chile or Brazil or their representatives in this country to designate the umpire and venture to suggest that it be so altered.

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[Copy of letter sent from Secretary's house.]

DEPARTMENT OF STATE,  
Washington, January 1, 1909.

DEAR MR. CORTEZ: I find on reading over the project for the United States-Colombia treaty which I sent you recently that the first clause of Article III ought to be qualified to prevent a possible inference that the United States means to grant more than it may itself possess, and for that purpose I propose the addition at the end of the clause, after the words "similar conditions," the words "so far as the United States of America has any right or authority to fix the conditions of such importations."

I think also that there would be danger of a misunderstanding from the use of the word "free," which might be troublesome to all parties and injurious to Colombians who might not know that United States products pay duties under all ordinary circumstances and are not free. To prevent this I think we should substitute the words "subject only to such duty as would be payable" on similar products of the United States, etc., in place of the words "free of any special duty with the exception of the duties paid" on similar products of the United States, etc. This conforms much more closely to the original memorandum of Mr. Vasquez Cobo, and obviates a danger of misunderstanding which would be unfortunate for us all.

With kind regards, I am, as ever,

Faithfully, yours,

ELIHU ROOT.

I inclose a draft of the clause as I propose to amend it.

E. R.

(Draft not on files.)

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*Private letter Colombian minister to Mr. Root.*

JANUARY 10, 1909.

(Not on files.)

Had for its object to "acknowledge and testify in the most emphatic manner possible" that Mr. Root's action in the matter of the treaties has been marked by the "highest degree of kindness, consideration, fairness, spirit of justice, and enlightened foresight as to the future relations of your country and ours."

We Colombians—

Says Minister Cortes—

fully appreciate your merits and desire for you still a long career of prosperity and success, for the benefit, not only of your great country, but for that of the whole mankind as the pioneer of an epoch-making foreign policy of the United States.

Minister Cortes refers to the signatures to the three treaties the night before, and says:

Many difficulties, delicate points, and intricate problems have been overcome and decided in honorable and fair conclusions.

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Message from the Secretary of State to the President, submitting tripartite treaties for the Senate. (Printed Ex. N, 60th Cong., 2d sess.)

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[Telegram from President of Colombia to Colombian legation, Jan. 12, 1909, handed to Secretary of State at Washington, Jan. 13, for his information.—Translation.]

Am extremely pleased news conclusion treaties. These will be submitted to national assembly. I trust it will approve them and likewise the American Senate and Panama Assembly. I have confidence in the Government of President Roosevelt and Mr. Root.

REYES.

*The American Chargé to Secretary Root.*

AMERICAN LEGATION,

*Bogota, January 13, 1909.*

No. 223.]

SIR: Referring to this legation's Dispatch No. 185, of October 28,<sup>1</sup> last, I have the honor to inclose herewith, a cutting from *El Nuevo Tiempo*, of this morning, containing the telegrams received here in regard to the signing of the treaties between the United States, this country, and Panama, together with translation thereof.

Considerable favorable comment is made in the cutting in question on the character of the treaties as shown by the telegrams received, and, in my interview with the minister for foreign affairs yesterday, he assured me of the satisfaction of this Government with the conclusions reached. The article from *El Nuevo Tiempo* was inspired by the Government and carefully corrected by Dr. Urrutia himself. It may be taken, therefore, to express official sentiment on the treaties.

The minister for foreign affairs showed me a telegram yesterday from Mr. Cortes, stating that Mr. Dawson would leave Washington shortly to bring the treaty just made to this capital. Dr. Urrutia asked me, in this connection, the probable date of Mr. Dawson's departure. I replied that I had not been advised by the Department of State that Mr. Dawson was to leave Washington at any early date.

I have the honor to be, sir,  
Your obedient servant,

PAXTON HIBBEN,  
*Chargé d'Affaires ad interim.*

[Inclosure 2 in No. 223.—Translation.]

[*El Nuevo Tiempo*, January 13, 1909.]

*Treaty between the United States and Panama.*

Effecting better conditions than the investigations of ex-Minister Mendoza Perez—The honor of Colombia saved—Colombia will have the right in perpetuity to the use of the canal—Colombia conceded \$2,500,000 gold as Panama's participation in our foreign debt—The present treaty surpasses that of the Herrán-Hay—Future of Colombia with reference to the Panama Canal—The emerald mines of Muzo saved, thereby assuring the resources for the conversion of paper money and the attainment of stronger capital in gold, changing the economic situation of the country—Colombia's foreign credit strengthened and bettered—Drop in foreign exchange—Bogota, with its emerald mines of Muzo and salt mines of Zipaquira, the richest part of Colombia.

<sup>1</sup> Not printed; not important.

During the ordinary night session of the council of ministers of the 11th instant, the minister for foreign affairs advised the council of the following cablegram:

WASHINGTON, *January 9, 1909.*

PRESIDENT, *Foreign Minister, Bogota:*

Treaties United States and Panama signed, bettering former conditions. Colombia conceded free use, in perpetuity, of canal and \$2,500,000 gold, participation Panama our foreign debt.

CORTES.

From London and from Washington we have received the following cablegrams:

LONDON, *January 11, 1909.*

NUEVO TIEMPO, *Bogota:*

Press published to-day treaties Colombia, United States, and Panama, by which Colombia is conceded perpetual use, free, of canal, and \$2,500,000 gold, participation Panama foreign debt. Press considers treaties satisfactory Colombia, saving its honor and assuring its material interests. Colombia credit strengthened and bettered. Colombia debit bonds rising in price. Railway and other Colombian enterprises will be bettered with treaties and contract emeralds Muzo with company handling diamonds South Africa. Among interested are Rothschild.

CORRESPONDENT.

WASHINGTON, *January 10, 1909.*

NUEVO TIEMPO, *Bogota:*

Press in relating treaties United States, Colombia, Panama, considers triumph and satisfaction given to Colombia. Is also opinion Latin-American diplomats resident in Washington.

CORRESPONDENT.

By the former of these cables it will be seen that the Government has finally obtained its just dues, the fruit of nearly five years of persevering and patient labor to save the honor of the country and to secure our great interests in relation with the Panama Canal.

The treaty in question must be considered more advantageous to Colombia than the Herrán-Hay treaty, as the latter submitted us to constant humiliations from the domination of a powerful foreign country over our territory—humiliations daily suffered by the Panamanians—obliging us to organize the police of the canal and to guarantee the preservation of order of the same, without the means to fulfill this obligation.

As recognized by the foreign press, the honor of Colombia is saved, and, consulting our immediate material interests, the most important that we have in relation with the Panama Canal, is the right of free use, in perpetuity, of the same, enabling thereby our merchant marine and war vessels to cross, which will result, perhaps, in far better results to Colombia than to the United States or any other country on the globe, because our immense and rich shores on both oceans shall be united and shall come to be in the future an emporium of riches to which all the Colombians of the country will rush in search of work.

Buenaventura, with its railway to the rich valley of the Cauca and the exploitation of the coal mines through which this line traverses, and Cartagena, with its beautiful and safe bay, will be in time two of the most important ports of the South American Continent, and at no distant date Japanese vessels will proceed to the same to exchange products of the advanced industries of the Land of the Rising Sun with our natural and agricultural products to the mutual benefit of the two countries.



It is to be hoped that these treaties will be approved by the legislative bodies of the respective countries.

In the same night session of the council of ministers of the 11th instant, the subsecretary of treasury in charge of the office of treasury and finance reported that he had received notice by cable that in London there had been signed a contract with a reputable company whose members intend to exploit and sell South African diamonds. According to this contract they will exploit the Muzo mines, the emeralds therefrom to be sold for account of the Government of Colombia and under its supervision; and the company binds itself during 20 years to account for an annual minimum sale of \$1,250,000, gold, at higher prices than those at which these precious stones have lately been sold.

We consider that the triumph gained by the country, and which we announce in the cables before mentioned, if they are perhaps not of so much importance and transcendancy as harmony between all Colombians and the solid preservation of peace, as the fruits of justice, they must be placed after these, as abundant material resources once placed in the hands of the Government for continuing the promotion of the construction and betterment of railways, cart roads, etc., gold capital will be able to come into the country in sufficient quantities to fill the most urgent needs for money, to the end that the money interest be lowered at least 10 per cent per annum, with which many industries, which to-day do not exist, on account of the scarcity of money, may be established. The Government as well as the banks must occupy themselves largely in providing a circulating medium, in order to avoid any sharp drop in foreign exchange, because it is clear that the country having but a third or fourth part of the coin that is indispensable, and always increasing its scarcity by the growing necessity of meeting the expenses of railroads, mining enterprises, etc., the day may arrive when foreign exchange will drop 10, 20, or 30, as in previous times, when no account was taken of the immense resources just pointed out, exchange used to rise.

With the fixed revenue assured by the contract relating to the Muzo mines, which is a minimum of \$1,250,000, gold, annually, which can easily be doubled, the Government should be able to obtain a small loan, guaranteed by said revenues, of ten to fifteen millions of pesos, which amount should be destined exclusively to the conversion of the paper money to gold or to gold bank notes, and in this manner change in a few days the painful economic situation of the country to one of abundance and welfare. It is to be hoped that the Government will follow this course, taking advantage of the foreign credit of the country, and so foster the growing confidence which we have in the preservation of peace.

The contract signed in London relating to the emerald mines of Muzo proves that the richest part of Colombia is Bogota, or, better said, the interior of the country, as the sole riches mentioned represent a fine annual revenue of some millions of pesos, and if the Muzo mines aggregate the large and inexhaustible banks of salt of Zipaquira and Boyaca, the conclusion is reached that no other sections of the country are more effective and rich than these which benefit the whole nation.

Outside of being the capital of the Republic, there is another title possessed by Bogota. It is true that, in times past, it was very diffi-

cult to reach by the bad means of communication; but to-day, with the completion of the Girardot Railroad, the cart road of the north, having a length of more than 50 leagues, and which will be duly inaugurated on the 20th of July next as an automobile transportation enterprise, according to the contract already signed; the construction of the Las Papas road; the betterment, already under way, of all railways; within a few years this difficulty will have disappeared.

We are informed that in the session of the council of ministers, already referred to, all pending questions were settled, and it was resolved that in the future there shall be but one, in place of two, night sessions weekly. We understand that in a number of these sessions—as, for instance, in those of the 24th and 31st of December—the council worked until the following day. We extend our most hearty felicitations to the council of ministers, which, properly speaking, is the Government of the country, who, applying themselves strictly to the constitution and to the laws, have, by their constant and fecund labors, already formed a school for all public employees in all the branches of the administration.

These are the fruits of the national concordance, of order, of peace, and of justice.

Let us continue our labors.

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*Minister Squiers to Secretary Root.*

[Telegram.]

AMERICAN LEGATION.

*Panama* (undated).

(Received January 30, 10.22 p. m.)

Recent treaty between Colombia and Panama ratified by National Assembly this afternoon without amendment or discussion.

SQUIERS.

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*Minister of Panama to Secretary Root.*

[Telegram.]

HAVANA (undated).

(Received January 31, 1909, 4.50 p. m.)

Secretary Arango cables me that both treaties have been ratified by Panama.

AROSEMENA.

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*Acting Secretary of State to Minister Dawson.*

[Telegram.]

DEPARTMENT OF STATE.

*Washington, February 9, 1909.*

Department officially advised that Panaman National Assembly has ratified without amendment treaties between United States and Panama and Panama and Colombia. Use your best endeavors to urge Colombia to take similar action regarding her treaties with the United States and with Panama.

BACON.

*The American Chargé to Mr. Root.*

No. 232.]

AMERICAN LEGATION,  
*Bogota, February 12, 1909.*

SIR: In reference to the department's cipher telegram of the 9th instant advising the legation that the Government of Panama had ratified the treaties between that country, the United States, and Colombia, I have the honor to inclose herewith a cutting from *El Nuevo Tiempo*, of this morning, together with translation thereof, announcing the convocation of the National Assembly for the 22d instant to consider the acceptance of the treaties in question. As will be seen from this article, as well as from those transmitted in this legation's Nos. 223 and 227,<sup>1</sup> of January 13 and 18, respectively, the treaties are received with favor by both the official and semiofficial organs of the Government, and no doubt is expressed as to their ultimate acceptance by the National Assembly. I have just seen the minister for foreign affairs, who questioned me closely in regard to the acceptance of the treaties by the Senate of the United States, and he assured me that it was the hope and belief of Gen. Reyes that there would not be the slightest difficulty in regard to the ratification of the treaties here.

I have the honor to be, sir,  
Your obedient servant,

PAXTON HIBBEN,  
*Chargé d'Affaires ad interim.*

[Inclosure 2 in No. 232.—Translation.]

[*El Nuevo Tiempo*, February 12, 1909.]

*Treaties of Colombia with Panama and the United States.*

Favorable stipulations toward Colombia—Convocation of the National Assembly—To reunite February 22—To discuss the treaties . and the budget of revenues and expenses.

As our readers are already aware, from the reproduction made yesterday of an article from the Panaman periodical. *La Estrella*, of some of the bases of the treaties which our minister in Washington signed with the representatives of Panama and of the United States—

In addition to the stipulations mentioned by *La Estrella*, we understand, on good authority, that in the treaties in question there appear the following conditions, which are more favorable to Colombia than those contained in the Herrán-Hay treaty:

The isthmian railroad will carry members of the Colombian Army, army provisions, mails, etc., under the same conditions as stipulated by Panama with the United States;

The salt from the national salt mines on the Atlantic will be transported free, with no other encumbrance than the wastes of loading and unloading. This concession is of great importance, as on account of the same the ocean salt of our country will be used in place

<sup>1</sup> Not included; not important.

of foreign salt. In this manner the hundreds of thousands of pesos, gold, going out of the country to pay for foreign salt consumed in the departments of the Pacific will be stopped;

Colombia is conceded the right to enter the Canal Zone with such of her products, as provisions, fatted cattle, etc., for consumption, under the same conditions as the products of the United States. This concession promises for our agricultural industries and the welfare of our shores on both oceans—especially for the farmers of the Atlantic coast—a benefit worth thousands of pesos, gold, annually in the exportation of fatted cattle only, which exportation, as we all know, has ended with great detriment, owing to the fact that the markets of Cuba and of the Isthmus imposed a duty of 15 pesos, gold, on each head of fatted cattle;

Further, the treaty concedes to us the free passage of the canal—free of all taxes for the navy of our country, whether in case of interior or exterior wars;

Upon guaranty of the United States, Panama will pay to Colombia \$2,500,000, corresponding to its participation in the foreign debt; and

The boundaries will be the same as those determined by the law of the 9th of June, 1855.

All these concessions are of such importance and magnitude that we have to recognize that the American Government has made an effort to give us satisfaction for the injustices committed against Colombia, and of which the diplomatic mission—of which the actual President of Colombia was chief—claimed, in the well-known note of grievance which to-day is placed in the right before the eyes of the civilized world.

In our yesterday's edition we gave space to a letter addressed to the Herald by the well-known American professor, Hamilton Rice, in which he recognized the unjust manner in which Colombia was treated, and with grand altruistic spirit advised his country that they give satisfaction enforcing the principles of equity, a satisfaction which must correspond to the greatness of the American people.

The council of ministers, in its session of yesterday, convoked the National Assembly to extraordinary sessions, which will reunite on the 22d instant to consider, in addition to the budget of revenues and expenses of the present year, the treaties in question. We understand that they have already been approved by the Assembly of Panama, and judging by cable advices, they will also be approved by the American Senate, which at present is discussing them.

Our minister in Washington was not mistaken when he reported to our minister for foreign affairs the generosity of these treaties, a fact which has been recognized by the sort of plebiscite which has begun in this country regarding this important question. By telegrams, which we have published in this periodical from several parts of the Republic, it will be seen that public opinion is unanimous in approbation.

*Minister Dawson to Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
BOGOTA (undated)  
(Received Feb. 14, 1909.)

Arrived. National Assembly summoned for February 22; prospects ratification favorable.

DAWSON.

*Minister Dawson to Secretary of State.*

[Telegram.]

AMERICAN LEGATION, BOGOTA  
(Received Feb. 17, 1909).

After an informal conference with 21 members of the National Assembly already present, out of 48, yesterday, the President of Colombia and the Colombian minister for foreign affairs quite confident of the unanimous ratification so soon as the assembly meets. The treaties are satisfactory in every detail. Inform the minister of Colombia.

DAWSON.

*Minister Dawson to Secretary of State.*

No. 235.]

AMERICAN LEGATION,  
Bogota, February 17, 1909.

SIR: As I had the honor of reporting to the department by my telegram of the 13th instant, I arrived in Bogota on that day, carrying the treaties between Colombia and the United States and Panama. They were at once delivered, but owing to the slight illness of the minister for foreign affairs and the intervention of Sunday I was not able to resume my official relations with this Government until the 15th. I inclose herewith a note to that effect addressed to the minister for foreign affairs and a copy and translation of his reply received to-day.

From Cartagena, Gamarra, and Ambalema I telegraphed President Reyes or the minister for foreign affairs. At Cartegena, Barranquilla, Gamarra, Honda, Mariquita, Ambalema, and Girardot, as well as on the steamboats and at Bogota, I conversed with a large number of Colombians of different shades of political opinion, and was able to detect no criticism of the terms of the treaties or indication of an intention to oppose their ratification by the National Assembly. Among some enemies of President Reyes it is said that he ought to call a new election for a congress composed of two houses, and submit the treaties to it, but there seems to be no likelihood of any concerted action in this direction. Prior to my arrival at Cartagena, President Reyes considered the advisability of such action, and

consulted many prominent citizens about it. While I was on the river he announced that since public opinion was overwhelmingly in favor of the treaties and their prompt ratification, he had determined to summon the National Assembly for the 22d instant. (See Mr. Hibben's Nos. 232 and 233 of the 12th and 13th instant.)

Yesterday (February 16) I had a long interview with President Reyes. He had read the text of the treaties and made no criticism of any of their details, referring with much satisfaction to their very exact correspondence with his instructions given in 1905 and 1906 through Dr. Climaco Calderon, then minister for foreign affairs. He had no doubt that the National Assembly would ratify them by an overwhelming or even a unanimous vote, and this by the end of next week. He and the minister for foreign affairs had an informal conference with 21 of the 48 members of which the assembly is composed. (See my telegram of to-day.) Their votes were assured. Members were arriving rapidly, and he would see about 20 more in a day or two. Telegrams were pouring in daily from all parts of Colombia expressing satisfaction with the treaties.

President Reyes manifested great anxiety about ratification by the United States Senate. He showed me a telegram, dated February 14, from Minister Cortés, in which the latter stated that it was probable the Senate would amend the treaty between Panama and the United States. Reyes fears that this may delay the Senate's ratification of the Colombian-United States treaty, and suspects that the Government of Panama will intrigue to this end. He had already answered Cortés's telegram saying something to this effect.

I told him that the latest instructions from my Government (see your telegram of February 9) indicated that the department was strongly of the opinion that Colombia's interests would be furthered by her immediately ratifying, and that I had no news of any disposition on the part of the Senate to amend the Colombian treaty or delay its ratification.

I have the honor to be, sir,  
Your obedient servant,

T. C. DAWSON.

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[Inclosure 1 in No. 235.]

F. O. No. 42.]

FEBRUARY 15, 1909.

Mr. MINISTER. I have the honor to announce to your excellency that, having returned after my congé, I have again assumed the discharge of my duties at this post.

I take advantage of this occasion to express my thanks for your excellency's kindness to Mr. Paxton Hibben, who has been chargé d'affaires since September 20 last, during my absence, and to express the hope that the admirable relations existing between your excellency's Government and my own and this legation will continue.

I improve this opportunity to renew to your excellency the assurances of my highest consideration.

To His Excellency Dr. FRANCISCO JOSÉ URRUTIA,  
*Minister for Foreign Affairs.*

[Inclosure 3 in No. 235.]

MINISTRY FOR FOREIGN AFFAIRS,  
*Bogota, February 16, 1909.*

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's courteous communication of yesterday's date.

By the same I note that your excellency, having returned to this city from which you have been absent on leave, has again resumed the exercise of the functions corresponding to your character as diplomatic representative of the United States to Colombia.

I highly appreciate the friendly manifestations you have had the kindness to extend to me, which inspire me with the assurance that not only will the bonds which so happily unite the Republic of Colombia with the United States become closer, but that the official relations with your honorable legation will, in the future, be as frank and cordial as those up to the present time, which I have had the pleasure of cultivating with the chargé d'affaires ad interim, Mr. Hibben.

I beg that your excellency accept the reiterated assurances of my most distinguished consideration.

FRANCISCO JOSÉ URRUTIA.

To His Excellency T. C. DAWSON,  
*Envoy Extraordinary and Minister  
 Plenipotentiary of the United States.*

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*Minister Dawson to Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota, February 23, 1909.*

The treaties passed reading to-day. The proceedings public. The treaties now are before a special committee. No unfavorable developments so far.

DAWSON.

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*Acting Secretary Bacon to Minister Dawson.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, February 26, 1909.*

On 24th instant Senate approved treaty with Colombia without change and treaty with Panama with understanding no questions shall be submitted to arbitration affecting vital interests of United States in construction, operation, maintenance, sanitation, and protection of canal.

BACON.

*Minister Dawson to Secretary Root.*

No. 241.]

AMERICAN LEGATION,  
*Bogota, February 26, 1909.*SECRETARY OF STATE,  
*Washington, D. C.*

SIR: I have the honor to inclose herewith a copy of the exposition of the minister for foreign affairs accompanying the recent Panama and United States treaties, together with a translation thereof. The translation I was not able to complete in time to go with my No. 240, of February 24 last.<sup>1</sup>

A full translation is sent of this very long document, not only because of its intrinsic importance, but because between its lines is shown better than I have ever seen it the real state of opinion in Colombia in regard to the United States and the secession of Panama. I also desire to call especial attention to pages 9 and 10 thereof, containing words appreciative of Mr. Root.

I have the honor to be, sir,

Your obedient servant.

T. C. DAWSON.

[Inclosure 2 in No. 241.—Translation.]

*Presidential message.**Honorable Members of the National Constituent and Legislative Assembly:*

The minister for foreign affairs will submit to your consideration the treaties signed at Washington on January 9 last by our minister, Enrique Cortés, and the plenipotentiaries of the United States and Panama, Elihu Root and Carlos Constantino Arosemena. Rightly viewed, this important and delicate negotiation was begun in Washington by the diplomatic note addressed on December 23, 1903, to John Hay, Secretary of State, by the mission which I had the honor of presiding over, and whose members were Jorge Holguín, Pedro Nel Ospina, and Lucas Caballero.

By the celebration of these treaties our legation in Washington has carried into effect the instructions given it by the Government through the various ministers who have had charge of the portfolio of foreign relations during the present administration, and it is just to recognize the patriotism and intelligence with which our present minister to the United States, Enrique Cortés, has conducted the negotiations and brought them to a happy termination.

I cherish the hope that when the Colombian people become familiar with their contents they will give a decisive verdict in their favor, since in making them the executive has taken into account not only the interests and needs of the people but also their commands.

In fact, the junta of commissioners of commerce, agriculture, and industry of the Departments, which met in Bogota in the month of July, 1906, to deal with economic subjects, at that time of great importance, and whose members belonged to all political parties, and

<sup>1</sup> Not printed; unimportant.



who, further, were favorably known on account of the high political and social position they occupy in our society, unanimously approved at their session of July 12, 1906, the following proposition:

The undersigned, commissioners of commerce, agriculture, and industry of the Departments of Narino, Cauca, Antioquia, Bolivar, Atlantico, and Magdalena, which are the coast Departments, some bordering on the Pacific and some on the Atlantic, respectfully represent to the executive the necessity of defining quickly and in a manner honorable and advantageous for Colombia the questions pending with the United States and with Panama, and ask that this proposition, which has been agreed upon with the minister for foreign affairs, be considered by the junta.

CALEDONIO PINERES.  
LUCIANO HERRERA.  
OSCAR A. NOGUERA.  
RICARDO RESTREPO C.  
LEONARDO TASCÓN.

The very respectable organs of the press received this proposition with applause, and public opinion, once in possession of the knowledge necessary for forming a judgment on such a grave matter, did not delay in making its preponderant influence felt in a like sense, as appears by the multitude of documents which were printed and which may reasonably be considered as the result of a full plebiscite.

The executive, which considers our relations with foreign nations related in a certain manner to our interior policy, conscious of its duties and responsibilities, and at the same time acting as the interpreter of the national will and looking out for the moral and material interests of the country which have been confided to it, has, during the last five years, uninterruptedly worked with the greatest zeal to obtain an honorable and advantageous arrangement of this delicate question, and entertains the belief of having done so by the treaties which are submitted to your enlightened consideration, and which should be, on your part, approved without any amendment.

R. REYES.

BOGOTÁ, *February 22, 1909.*

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*Exposition presented by the minister for foreign affairs to the honorable National Constituent and Legislative Assembly concerning the treaties celebrated by the Republic of Colombia with the United States and Panama.*

*Mr. President of the Assembly, honorable Deputies:*

I have the honor to submit to your consideration the following international agreements:

A treaty between the Republic of Colombia and the United States of America, signed in the city of Washington on the 9th of January of the current year, by Enrique Cortés, envoy extraordinary and minister plenipotentiary of Colombia at that capital, and Elihu Root, Secretary of State of the United States.

A treaty between the Republics of Colombia and Panama, signed in the city of Washington on the 9th of January of the current year, by Enrique Cortés, envoy extraordinary and minister plenipotentiary of Colombia to the United States, and Carlos Constantino Arosemena, envoy extraordinary and minister plenipotentiary of Panama to said Nation.

These agreements constitute the result of the long and difficult negotiations begun and carried on by the Government of the present President of the Republic, who, ever since he has occupied the chief magistracy, has been convinced of the necessity of regulating the relations of fact which have arisen as a logical consequence of the sad events which happened in Panama on the 3d of November, 1903, and of normalizing our situation and our rights as affected by the approaching opening of the Panama Canal. In order to arrive at the result now achieved, it has been necessary that the chief of state and those of us who have been his collaborators in the different epochs and phases of the negotiations, should, rather than complain over the cruel mutilation of our territory, that wounded our patriotism and caused national grief, pay attention to the imperious and not-to-be-neglected necessities of the future, and, accepting as irremediable facts that are so, should firmly confront the responsibility of putting an end to the terrible litigation which has stained and blackened so many pages of our contemporaneous history. Fully conscious of this responsibility before the country and before history, the Government presents to you to-day the agreements mentioned, with the desire that you give them your high sanction if you find them advantageous to our national interests, as the Government believes them to be.

In order to better aid your serene judgment, and before entering upon the analysis of the texts of the treaties, I am going to permit myself to call your attention succinctly to the history of the negotiations which have brought about the celebration of these treaties. These negotiations constitute antecedents of great importance in the matter, and have been so long and laborious that they make manifest that there has been no haste in this important negotiation, but that, on the contrary, they have been carried on with the calm serenity and prudence required by the magnitude of the question. As chief magistrate, Gen. Reyes has done nothing more than to carry on his labors to revindicate our rights, initiated immediately after the separation, when he went to Washington as chief of the special diplomatic mission, whose members were Jorge Holguín, Pedro Nel Ospina, and Lucas Caballero. The memorial of complaints of December 23, 1903, which so genuinely condensed the complaints of Colombian patriotism, was the point of departure for the process which has gone on ever since.

On February 28, 1905, Dr. Mendoza was named envoy extraordinary and minister plenipotentiary of Colombia to the Government of the United States, with the object of procuring the arrangement of the matters pending between Colombia and the United States and between Colombia and Panama. The instructions given to Dr. Mendoza by the then minister for foreign affairs, Dr. Clímaco Calderón, show the opinions of the Government as to the necessity of putting a dignified end to that situation, so disagreeable and prejudicial to our interests, which had been created by the separation of Panama.

Dr. Calderón, like the President, and like those of us who have been his successors in the department of foreign relations, well understood that the problem we had before us would only be complicated by indefinitely adjourning its solution, and that such a delay would be the origin, in the passage of time, of other problems equally

complicated. I take the liberty of copying here certain of the paragraphs of the instructions given by Dr. Calderón to Dr. Diego Mendoza, since they state perfectly and simply the intentions of the Government in relation to the transcendently important duty confided to the new Colombian envoy. Dr. Calderón said as follows:

In the discharge of his functions, Dr. Mendoza will begin by persuading the Government of the United States that the present Government of Colombia is fully conscious of the responsibility of its great duties; that all parties are making efforts to maintain peace; that Colombia has entered upon the path of good sense; and that obligations which may be contracted will be faithfully executed.

In the opinion of the Government of Colombia, the independence of Panama is an accomplished fact; and if any doubts remain on this point, they would be dissipated by recalling that the first treaty celebrated between Panama and the United States contains an express guaranty of the independence of the new Republic. As a consequence of our recognition of Panama, the minister is authorized to make a postal convention, a consular convention, a general treaty of commerce, and one of extradition. The rules to be followed by the minister in adjusting the above-mentioned international agreements are not given in minute detail, because besides the general principles applicable to such matters, and which the minister is familiar with, he should look to the particular circumstances of each case and bear in mind that Colombia does not ask for exorbitant concessions, but only for what will tend to mutual progress and good friendship between two nations of common origin and harmonious interests; for what will redound to the benefit of both and the well being of their citizens.

And further on, in the same instruction, Dr. Calderón adds:

Present general sentiment in Colombia tends toward the reestablishment of relations between the two entities. There are some who desire that Colombia should maintain a condition of hostility and rancor in respect to Panama. Such spirits will protest against anything that may be done. Nevertheless, having in view the great future interests of the country, the Government does not hesitate to follow a different policy from that advised by such citizens. They are doubtless zealous patriots, but they refuse to see the reality of accomplished facts. Therefore, the Government of Colombia assumes before contemporaries and posterity the responsibility of the policy which it now, after a thorough, serene, and impartial examination, orders to be followed. It is confident that the minister, freeing himself from prejudices and preoccupations of badly understood patriotism, will have the civil courage to assume in his turn the responsibilities of such a policy, and that he will not hesitate to attach his name to the transcendental acts we have spoken of, being sure that he will be acting as a good citizen and patriot. In its turn the Government is confident that the good sentiment of the country will prevail and leaves to the passage of time its historical justification.

The three years transpired since Dr. Calderón wrote these instructions have not lessened, but, on the contrary, accentuated and perfectly confirmed the logical force of his opinions. The Republic of Panama, recognized by the majority of the nations of the world from the beginning of its existence, has been able to continue its independent life under the same protection that sheltered its birth and its introduction into international society. The abnormality of our relations of public and private international law with an entity bordering upon us and profoundly linked to our own causes us continual difficulties. A very numerous group of our compatriots, formed by Colombians who have preferred to retain their original nationality in the territory of the new Republic and those who have gone to said territory since the 3d of November, 1903, live there without defined rights, seeing that, in the condition of our relations with the territory which, theoretically, we have continued to consider our own, notwithstanding its independence, in fact, from our sovereignty,

legal normality, or even the application of the principles of international private law, have not been possible. Such compatriots have not been able to perform any civil act intended to take effect in the rest of the territory of Colombia without exposing themselves to an unavoidable refusal on the part of our national authorities to recognize such an act. In Panama the passage of correspondence addressed to Colombia has suffered difficulties highly prejudicial to our commerce. Recriminations for what had taken place continued opening an abyss which ought not to exist between two neighboring peoples still united by indestructible bonds, even though such bonds had ceased to be those of a common nationality. Resolutely and even at the cost of the sacrifice of our self-love it was necessary to throw across this abyss a bridge that will facilitate our march to the conquests of the future. There in that very territory where the Colombian spirit can not help continuing to live with the life of an indelible past, although now no longer under our national flag, there is being accomplished one of the greatest events which the history of humanity registers, an event certain to revolutionize the political and commercial world, and we, at the very borders of this stream of universal civilization, can not remain impassive, inactive, silent, absorbed in our rancors, hoping for the promised day of vengeance which does not come—which will never come. Out of the excess of evil we should snatch a good, even if in doing it we are forced to restrain the expression of sentiments which, although they may be generous, nevertheless must be recast in the mold of present necessities and advantages.

Unhappily the mission intrusted to Dr. Mendoza did not obtain the desired results. He was received by the President of the United States on May 30, 1905, and continued in charge of his post until July, 1906.

The luminous exposition of December 23, 1903, which the man who is to-day president of the Republic addressed as a memorial of complaints to the Secretary of State in his capacity as special envoy, was confirmed in the various notes that Dr. Mendoza addressed to the American Government in defense of our injured rights. By these notes were added new pages to those which from the first moment when the said event was known proved eloquently not only the soundness and the moral value of our rights, but also the practical impossibility of making them effective. However, the negotiations began by Dr. Mendoza made no progress, and my predecessor in this department thought it advisable to recall him to this capital, with the object of consulting in regard to the form of proceeding to be followed in the future. Thereupon there happened those incidents with Dr. Mendoza that the people are already familiar with and which I do not think it necessary again to refer to here. My predecessor, Gen. Vásquez Cobo, has already recited them in the report he had the honor of presenting to you in your 1907 session.

On September 24, 1906, the Secretary of State of the United States, Elihu Root, came to Cartagena on a final visit, the last one of his journey through South America. He was received at that port by the minister for foreign affairs, Gen. Vásquez Cobo, in virtue of the especial commission of the President of the Republic.

Mr. Root, who had just finished visiting the South American capitals, amid an uninterrupted ovation during which he did not

neglect to show himself the determined defender of the great principles of international law, upon which the well-being of nations depends, was received by our minister for foreign affairs as a "herald of peace, of justice, and concord." On his part, Mr. Root manifested his—

sincere desire that all questions pending between the Republic of Colombia and the United States of America be peacefully arranged in conformity with a spirit of friendship, of mutual esteem, and in accord with the honor of the two countries.

Gen. Vázquez Cobo received from the President precise instructions to present to the Secretary of State the bases upon which the desired agreement could be reached. Upon these bases have proceeded the negotiations that have so seriously preoccupied this Government during the two years and some months elapsed since the visit of Secretary Root. They, with slight modifications, are to-day to be found in the treaties I submit to your consideration. Secretary Root has loyally fulfilled the promises made to Gen. Vázquez Cobo in Cartagena, and in the course of the negotiations of these treaties has once more proven his spirit of nobility and justice and his feelings of warm Americanism.

Since the Cartagena conference the negotiations in Washington have been in charge of Enrique Cortés, plenipotentiary named to replace Dr. Diego Mendoza. Mr. Cortés, who before his nomination as Colombian plenipotentiary in Washington had been accredited during the ministry of Dr. Clímaco Calderón as confidential agent to the Government of the United States with the duty of cooperating with Dr. Mendoza's labors, has in the performance of his delicate mission shown high diplomatic qualities, and I take pleasure in recognizing them on this solemn occasion as a tribute to his complicated labors—labors as patriotic as intelligent—and crowned by a result which, for fear of prejudicing a cause that affects me so much, I would not dare to characterize as happy had not that adjective already been agreed upon by the impartial and unanimous evidence of the American diplomats in Washington. In reaching this result the plenipotentiaries of the United States in Bogota, John Barrett and Thomas C. Dawson, have aided efficiently, and in the performance of their mission these gentlemen have shown themselves to be sincere and decided friends of Colombia.

When the negotiations had been renewed by our plenipotentiaries, Dr. Cortés, though he found a determined cooperation on the part of the Secretary of State, encountered an opposition that arose from elements interested in the prolongation of the indefinite status of matters, and that you will easily understand without the necessity of my specifying. Nevertheless, our legation succeeded in reaching an agreement which was embodied in a tripartite protocol, signed in Washington on August 17, 1907, by the plenipotentiaries of Colombia and Panama and Mr. Taft, Secretary of War of the United States, representing the Government of the latter Republic. In this protocol, whose text I furnish herewith, were embodied the substantial bases for the celebration of a treaty to be made immediately thereafter. When the text of this protocol was received the President and the minister for foreign affairs, Gen. Vázquez Cobo, gave it careful study, and the result of this examination was the sending of supplementary instructions to our minister in Washington calling atten-

tion to certain points that needed explanation, amplification, or modification.

After these instructions had been received, and when the work of embodying the clauses of the August, 1907, protocol in treaties was already under way, there arose the discussion over the proper boundary to be fixed between the Republics of Colombia and Panama. The Colombian Government, knowing the validity of its titles, taught by the experience of what our boundary disputes had signified in the course of our national existence, and wisely looking forward to what the future might bring, would not agree for a single moment to sign any treaty which did not recognize the boundary that, according to our laws, had divided the Departments of Cauca and Panama. The discussion between the representatives of Colombia and Panama on this point assumed a character that caused a fear that the negotiations might fall through, and the Colombian Government believed it its duty to occupy the Territory of Jurado, as you were informed in your former session. An expedition under the command of distinguished officers of our army traversed the virgin forests of the Choco with an intrepidity only to be compared with that of the early Spanish conquerors, and without encountering any resistance placed on those borders of the Pacific known as the Territory of Jurado the sacred emblem of our fatherland. Our authorities have since continued exercising peaceful jurisdiction there.

When I take up the clause of the treaty between Colombia and Panama in reference to the boundary I will call your attention in a more special and detailed manner to this very important matter. At present I will follow the history of the negotiations.

The recovery of Jurado by our forces and the establishment there of our officials provoked a formal demand for intervention by the United States from the Panamanian Government. This demand was based upon the stipulations of the treaty of November 18, 1903, between those two Republics. After a careful examination of our evidences of title and a special report of Mr. Taft, Secretary of War, the Government of the United States was of the opinion that the case did not justify a compliance with the demand of the new Republic. In spite of this refusal, the negotiations entered upon a period of complete paralysis that only ended several months later, when a new administration in Panama replaced the one presided over by Dr. Amador Guerrero.

Though negotiations were recommended, they progressed very slowly, and the moment came when the President made up his mind to declare his decision to withdraw the Washington legation if the disagreeable litigation which for more than five years had embarrassed the Colombian Government and people should not immediately end. Happily, at last an agreement was reached upon the stipulations contained in the treaties I now submit to you and which were signed by our plenipotentiary in Washington in accordance with the instructions given him.

Such is the synopsis of the history of the negotiations in Washington which followed the presentation of the memorial of complaints of December 23, 1903. They had been inspired by the very author of that memorial, the present President of the Republic, who has indefatigably sought satisfaction for the national honor. In this

patriotic desire he was seconded by the ministers, my distinguished predecessors, Dr. Clímaco Calderón and Gen. Vázquez Cobo.

I will now go on to treat of the texts of the treaties:

TREATY WITH THE UNITED STATES OF AMERICA.

The Colombian and American negotiators in Washington had discussed the terms of a general treaty of friendship, commerce, and navigation to replace the treaty of 1846 between the Republics of the United States and Colombia. In such a treaty it was understood that there should be incorporated advantages conceded to Colombia in relation with the Panama Canal. Afterwards it was found preferable to adjourn the consideration of a general treaty of friendship and to proceed simply to agree upon the special treaty now submitted to you, which was the one most imperiously demanded by our interests, and which we may consider as relatively a compensation for our injured rights.

There was another powerful consideration for preferring not to embody in a general treaty of friendship the clauses relating to our advantages in the canal. An ordinary treaty of friendship, commerce, and navigation implies the usual clause for denunciation either by fixing a limit of time or by establishing a period within which it may be denounced. Such a provision has been embodied in the project that the Secretary of State, Mr. Root, presented to our plenipotentiary in Washington. If, therefore, we had embodied in such a treaty the clauses relative to the canal, we would have accepted a limit of time for the enjoyment of the privileges conceded to us, and this would be equivalent to notably reducing the value of the concession we are seeking. The advantages conceded to us are now perpetual in their character. Nor would this inconvenience have been avoided by giving certain of the clauses of a general treaty the character of perpetuity, seeing that, although this method of procedure is not unknown in certain treaties, it is always the origin of dangerous distinctions to enact in a treaty what part shall be limited in time and what shall not be subject to denunciation, especially when a treaty itself shall have been denounced or the time fixed should have elapsed.

Article 2 is as follows:

In consideration of the provisions and stipulations heretofore cited, the following has been agreed upon:

The Republic of Colombia shall have liberty at all times to transport through the ship canal the United States is constructing through the Isthmus of Panama, troops, military materials, and war ships of the Republic of Colombia without paying any duty to the United States, even in the case of an international war between Colombia and any other country.

During the construction of said interoceanic canal, the troops and military materials of the Republic of Colombia, even in case of an international war between Colombia and any other country, shall be transported by the railroad between Ancon and Cristobal, or by any other railroad which may take its place, on the same conditions as like services are rendered to the United States.

The officials, agents, and employees of the Government of Colombia shall have the right of being transported gratuitously by the said railroad through the Isthmus of Panama, notice having been given to the employees of the railroad and their official character proven.

The foregoing dispositions of this article shall nevertheless not be applicable in case of war between Colombia and Panama.

This article was intended to give to the advantages in our favor that are embodied in the treaty a character of reciprocal compensation, although by themselves they perhaps do not have such a nature. Besides, the desire on the part of the Government at Washington that the treaties should have such a character was very natural on account of many reasons which will not escape your enlightened penetration. Even if it be thought that the renunciation on our part embodied in article 6 does not equal the advantages given by the other articles, such advantages could not be called gratuitous and would not place the Government at Washington in the position of being obliged to concede like advantages should they be solicited by other nations under the favored-nation clause.

The liberty of transporting our troops, war ships, and ammunition, through the Panama Canal, which thereafter is given us by the said article 2, is of the greatest importance and we can truly say that it signifies for our future a precious concession. It would be such for any nation, but for Colombia, who has coasts on both sides of the canal, such a concession signifies in effect the reestablishing of the continuity of these coasts and the adjacent seas, a continuity which the segregation of Panama put us in the position of being obliged to obtain. The liberty of trade now obtained was the ideal which our negotiators in Washington had pursued energetically ever since the lamented Dr. Carlos Martínez Silva reached that capital with Colombia's first propositions. As you may see by the reading of those propositions, there was always included in them a clause concerning canal traffic, analogous to the one embodied in the article of the treaty which I am treating. Article 17 of the treaty of January 22, 1903, the Herran-Hay treaty, also embodied a like stipulation. That article said:

The Government of Colombia shall have the right of transporting its ships, troops, and ammunitions of war through the canal at all times without paying any duty. This exception extends to the service railroad as to the transporting of persons in the service of the Republic of Colombia or the Department of Panama, and of the police charged with the preservation of public order outside of said zone as well as of their baggage, arms, and provisions.

The stipulation of the present treaty is broader and better secures our rights, since it expressly provides that the liberty of traffic exists even in the case of an international war between Colombia and any other country. The stipulation contained in the second and third clauses of article 2 of the present treaty in relation to our rights concerning traffic and transportation over the railroad between Ancon and Cristobal during the construction of the interoceanic canal is also broader than the analogous provision in the Herran-Hay treaty.

The liberty of transit for our Navy, even in the case of international war, places us in an advantageous situation in respect to all the nations of the world, although by the concession itself and also by the circumstances already noted of our having coasts and important posts on both sides of the canal, this privilege will become more valuable in the lapse of time, and the day will come in which the generations that succeed us will esteem it in all its value for the benefit they will derive from it.

Further the restrictions embodied in the last clause of article 2 in the case of a war between Colombia and Panama is perfectly justifiable in view of the stipulations of the treaty between Panama



and the United States, which imposes on the latter Republic, among other duties, that of guarding the integrity of the former.

Article 3 implies a concession of great importance for our economic and commercial interests, especially for those of the Departments on the Atlantic and the Pacific Oceans. What is stipulated in said article can be of the greatest advantage for our cattle industry, especially during times when the difficulties placed in the way of the exportation of cattle to Cuba and other circumstances have produced a real oversupply in some of the Colombian markets.

According to very recent data there are 50,000 consumers in the Canal Zone to whom the zone commissariat sold last year articles of primary necessity to the value of \$3,793,593 gold. The largest articles of this consumption are meat, flour, tobacco, potatoes, and others which we produce under conditions that permit the export of most of them to the Isthmus. Therefore a rich market is opened to us by the treaty with the United States, and it is opened to us under the most favorable conditions, seeing that our products are exempt from the payment of duties just as are products coming from the United States. Not even the Republic of Panama has conditions as favorable as Colombia in the matter of the introduction of her products into the Canal Zone, and in any case a privilege which would mean for Panamanian producers and merchants only a competition, and would be the origin of daily quarrels, is, for Colombian producers and merchants, simply an advantage which places them in exceptional conditions.

The stipulation relative to provisions for Colombian laborers not only favors our numerous compatriots who work on the canal, but is also a means of encouraging the export of products which we produce in great abundance on our coasts.

Article 4 of the treaties with the United States contains two stipulations not less important than the former ones—the one in relation to the transportation of our mail sacks and the one in reference to the transportation of our products, especially Colombian sea salt.

An account of the difficulties which we have encountered in regard to the passage of correspondence coming to Colombia by the Isthmus would be very long. Such difficulties were only slightly ameliorated by the creation of an agency in Panama charged with the duty of watching over our interests. The gratuitous transportation of our mail sacks through the offices at Ancon and Cristobal and the equality of treatment with the mail sacks of the United States, which is conceded for them, will noticeably better the previous unfortunate conditions.

In respect to sea salt, the advantages in its transport ceded by the treaty—advantages which have been sought energetically from the commencement of the present negotiations—will put the Government in the position of continuing, as at present, furnishing the Colombian Departments on the Pacific with the sea salt produced by our Departments on the Atlantic. Seeing that the Government was able to carry out its designs, even paying the high freight rate on the Panama Railroad, as happened last year with large shipments, it is evident the advantages now conceded will make it easy for the Government to finally effect the dislodgment of all non-Colombian salt from Colombian markets. For the economic future of the Republic, so intimately connected with the favorable trade balance we hope to

obtain, the avoidance of the payment we now make to Peru of half a million dollars annually for our consumption of her salt will be of great value, and we can do this without endangering our purpose of enabling consumers to buy this article at a really low price.

The recognition of the transfer of 10 annual payments of \$250,000 each, made in our favor by the Republic of Panama, obliges the United States to deliver these installments directly to the Government of Colombia. In the course of the negotiations we obtained the elimination from this article of any expression which might give it a character of compensation for the recognition of the new Republic, a compensation which certainly was not proper, and which we could not accept under any form.

Article 6 embodies the concessions and recognitions on our part which appear as a compensation for the concessions hereinbefore mentioned. In reality the right of refuge for ships in distress is one recognized by international law, and does not constitute a concession on our part, seeing that the restriction is imposed that such a permission shall, in case of war, be subject to the laws of neutrality. The concession we made by article 15 of the Herrán-Hay treaty was much broader, since it did not contain any restriction in case of war, notwithstanding the commission which reported on said treaty in 1903 did not make any objection to the said article.

The renunciation we made at the end of article 6 amounts to a renunciation of the right which the Republic of Colombia formerly had under the concessions given Luciano Bonaparte Wyse, the Universal Panama Canal Co., the Panama Railroad Co., and the New Panama Canal Co.; that is to say, the same renunciation which is referred to in article 12 of the Herrán-Hay treaty.

Although it may have been logical when we were negotiating in Washington before 1903 to discuss serenely what value these concessions had for us before accepting the compensation offered, at the present juncture and in view of accomplished and universally accepted fact there is nothing for us to do but to bow before the absolute power of the inevitable, leaving, however, evident to the world that the laws granting these conventions, their generosity and breadth, constitute a most eloquent proof that Colombia never opposed any obstacle to the civilizing stream that was trying to open the splendid throat of the Isthmus for the universal benefit; and of how, from the beginning of our republican life until the day when the immortal De Lesseps trod our beaches and was welcomed by the enthusiastic acclamations of the Colombian people, being received as the precursor of a new era of civilization, our governors and legislators never ceased a single day to occupy themselves in the prompt realization of the cherished conception, and that later, when the great Frenchman was dead and his gigantic scheme was dying, they preoccupied themselves in like manner. Colombia aided him by granting new and almost gratuitous extensions of time for the finishing of his work, and a support that the world had already denied him: 1835, 1838, 1851, 1852, 1858, 1866, 1868, 1870, 1876, 1878—there has hardly been a year in the history of new Colombia that does not register an act, a law, an effort, to show how intense were national preoccupation and desires in favor of the civilizing work, to whose realization an effort was made at a mournful time to make us appear as opposed—as if to add ridicule to injustice.

These brief reminiscences may appear out of place in this document were it not that the solemnity of the present moment requires them as a justification of the memory of those many illustrious Colombians who, with patriotic zeal and altruistic purposes, took part in the various negotiations relative to the Panama Canal and railroad.

Article 7 refers to the approaching revision of the 1846 treaty, seeing that, as I have previously indicated to you, it was not possible or deemed advantageous to include the clauses of the present treaty among those of a general treaty of friendship. In the new treaty stipulations should be included securing the putting into effect the principles of arbitration. Following its instructions from the Government, our legation has worked to secure its immediate signing. The Republic proves its determination undeviatingly to continue the honorable traditions of our foreign office, which come down from the glorious epoch of Bolívar and the Great Colombia.

Article 8 of the treaty establishes the interdependence of the three treaties—ours with the United States, ours with Panama, and the one of the latter Republic with the United States. If one of the three treaties fail, all three fail.

Further, this interdependence was inevitable. On one side, the United States recognized the transfer to us of certain sums it owes to Panama: it was, therefore, necessary that this transfer be perfected by the acceptance of the creditor and debtor nations. Further, the existing treaty between the United States and Panama provides that the annual payments of \$250,000 should begin to be paid February 26, 1912, while, according to the treaty agreed upon with Colombia, these installments will begin on February 26, 1908, the date when the transfer begins to run in our favor. It is, therefore, necessary that the treaty altering such conditions and which further implies an increase of four years of payments (that is to say, a million dollars) be approved by Panama and the United States in order to be effective.

An intimate connection is very natural between treaties intended as a solution as far as possible of difficulties which arose and were developed inextricably and as a consequence of the same facts.

#### TREATY WITH PANAMA.

The principal articles of this treaty are those which provide for the recognition of the new Republic by Colombia, the sum to be paid us for the exemption of Panama from responsibilities as to the payment of our foreign and domestic debts, that which fixes the boundaries between the two Republics, and that which determines the conditions under which Colombians and Panamans, born in the territory of either of the two Republics before November 3, 1903, and who on that date resided within the territory of the other, may choose their nationality. The article relative to the recognition of the Republic of Panama requires no reasonings or commentaries. So far as we are concerned it does not even permit them. I would fear that the weakness of my words might not do justice to the immensity of the sorrow and misfortune of our fatherland. If I should say anything to-day about this article, it would be only to express the wish that the people who formed with ourselves during 82 years

a single national entity should now be honored and respected, and to express my hope that the beautiful star which has been separated from the Colombian constellation may shine with an inextinguishable light in the heaven of American democracy.

By article 12 of the treaty the Republic of Panama cedes us 10 annual payments, of \$250,000 each, in exchange for the recognition made by Colombia that said Republic shall have no obligation or responsibility to the holders of the foreign and domestic debt of the Republic of Colombia, or to the Republic of Colombia on account of the debts and reclamations originating said debts. Colombia assumes all responsibility for such debts and assumes the obligation of holding Panama harmless on account of them.

I will not enter upon arithmetical calculations to try to elucidate whether the proportion adopted was or was not a just one, whether taking population as the basis of the division as was done when the debt of old Colombia was distributed by the Pombo-Michelena convention of December 23, 1884, or whether taking other elements as a basis for calculation. For us the amount agreed upon has a secondary interest in comparison with the moral result obtained—that is to say, the obtaining of a recognition of the obligation to contribute to the payment of debts which, as was natural, also rested upon the separated territory—debts which Colombia had recognized as a whole and was regularly paying in accordance with her agreements and existing laws.

By article 4 of the treaty, the two Republics reciprocally declare themselves free of all pecuniary responsibility or obligation of whatever nature; but this exemption does not touch the rights and individual actions of citizens of either of the two Republics, providing that such reclamations can be considered valid in accordance with the laws now in force and those in force on November 3, 1903. This provision of exemption guarantees both Republics against ill-founded claims.

By article 5 of the treaty, Panama's abandonment of every right and title to the 50,000 shares in the New Panama Canal Co. is confirmed. You already know the issue of the laborious litigation concerning these shares—a litigation intrusted from the beginning to the indefatigable as well as intelligent, enlightened, and patriotic efforts of Gen. Jorge Holguín who, to-day present in the body of the legislative assembly, can give you, should it be necessary, an account of the tremendous efforts that he and his coadjutors, Gen. Marceliano Vargas and Dr. Juan E. Manrique, made in order to reach the final result which safeguarded our honor and our interests.

Article 6 settles, in accordance with international principles and practices, one of the problems which naturally resulted from the separation of the inhabitants of such territory, when it constituted itself into a new nationality. The right of choice of nationality which article 6 establishes in favor of those individuals born before November 3, 1903, within the territory that to-day belongs to the Republic of Panama, and who on the said date were residing within the territory that to-day belongs to the Republic of Colombia, and vice versa, in favor of the individuals born within the territory of Colombia who were in like manner residing in Panama, constitutes an exception to the ordinary rule of choice of nationality established by international law and which our constitution likewise recognizes.

a rule that does not require residence. In order to determine the right to the choice the treaty permits, only two elements are taken into consideration; first, birth; and second, residence on the date when the separation took place. So, therefore, a native Panamanian, who on the said date was residing within our present territory, may now choose Colombian nationality and this whether or not he has continued to be domiciled in Colombia. But a native Panamanian who did not have such a residence can not choose Colombian nationality unless in accordance with our constitution; that is to say, by adopting said nationality by applying for letters of naturalization. This provision of the treaty, providing for the collective naturalization of Panamanians and Colombians, establishes nothing extraordinary, seeing that we know of like regulations having been adopted when the differences were settled which arose on account of the cession of the Territory of Louisiana, the annexation of Texas and Hawaii, when the treaties of Florida and Frankfort were celebrated, when the treaties between Spain and the United States were settled after the war of 1898, and in many other cases which it would be too long to enumerate.

Article 9 determines the frontier between the two Republics. This question of boundary was one to which the Government gave the greatest attention, as I have already indicated, on account of its intrinsic importance. At all hazards, the Government desired to determine the boundary, and that such determination should be made in accordance with what Colombia insisted should be considered as the norm of demarcation; that is to say, the Colombian law of June 9, 1855, which fixes the following limits between the Departments of Cauca and Panama:

From Cape Tiburon to the headwaters of the River Miel, and following the Cordillera by the Cerro de Gandi to the Sierra de Chugargun, then the Sierra de Mali, following down the Cerros de Nigue to the Heights of Aspave, and from there to the Pacific between Cocalito and La Ardita.

The Panaman Legation based its claims on the decree by the President of New Granada, Thomas C. D. Mosquera (of August 7, 1847). This decree provisionally fixed the boundaries of the territory of Darien as follows: On the east, the River Atrato from its mouth to its confluence with the Napipi; on the south, the latter river throughout its course, and a straight line from its source to the Bay of Cupica and the Pacific Ocean.

In contending for the boundaries according to the decree of Gen. Mosquera, the Panaman Legation in Washington in reality did nothing more than revive the old lawsuit between the State of Cauca and Panama, a lawsuit which the Supreme Federal Court decided against the latter on January 12, 1864.

The only point upon which we could permit discussion was on the determination of whether this or that portion of territory was or was not included within the line thus fixed, such line having been accepted in principle. This is what has been done with the region that extends from the Heights of Aspave to the Pacific Ocean; that is to say, the region of Jurado. Although the line provided by the law of 1855 must end between Cocalito and La Ardita on the Pacific Ocean, said law does not fix the exact point of such termination. Such a circumstance, added to various others which made it conven-

ient for our interests to accept arbitration in the manner provided for by the treaty, decided the Government to agree on the terms of article 9. This article leaves our territorial rights perfectly assured over the splendid region drained by the Atrato and its tributaries, a region which is undoubtedly one of the most valuable of the territory of Colombia. Further, the constitution of the tribunal of arbitration, immediately after the ratification of the treaty and the brief periods fixed for the reaching of the decision, still further guarantees us, if it is necessary, that no disagreeable questions will remain to be resolved in the future between the two Republics.

Article 7 of the treaty, which provides that neither of the two Republics shall admit to form part of its nationality any part of the territory of the other which may be separated by force, embodies a prohibition which it would be very desirable to be adopted as a principle of American international law.

You will permit me, in conclusion, and as a supplement to the succinct analysis which I have just made of the two treaties, to say something to you in regard to their negotiation as a whole.

There have been those who believe that the question originating in the session of Panama is to be carefully kept alive by us as a heritage hereafter to be converted into an inexhaustive mine of various benefits for Colombia. It was said that we ought to leave to time and its evolutions and its possibilities the arrangement of the break of November 3, 1903. The Government, on the contrary, believed that the protection of the great interests of the Republic which the Constitution had intrusted to it required it to seek a prompt solution of the important problems whose gravity would not diminish by delaying their solution. Isolation is perhaps possible between two widely separated countries, but it is not admissible for two neighboring peoples, between whom exists in fact a daily interchange which in our own interests ought to be normalized. Communion between the peoples of the world is to-day so intimate on account of the bonds which the development of civilization has created that it is not now possible, as it was formerly, to adjourn indefinitely the arrangement of situations arising from facts. International history during the last decades shows this clearly to us, and it would be in vain for us to undertake to be blind to the lessons of history and to refuse to recognize its philosophy by opposing to the universal acquiescence of the nations of the world a stubborn negative which would injure our own interests. The first thing to do is, without any delay, to trace between the fragment of territory which has been segregated from our fatherland and the territory that remains to us the line which will indicate the boundary that can not be crossed without once again attacking our sovereignty. In view of the kind of territorial guaranty that the Republic of the United States has given Panama, no Colombian can disguise from himself the advisability of knowing immediately just how far this guarantee extends.

The feeling in favor of our rights which at first seemed to appear among some North American thinkers and which was the origin of a pleasant hope did not increase at all. The dignified though warm appeal made by the Chief Magistrate of Colombia, the enlightened Marroquín, in his telegram of November 3, 1903, to the President of the Senate in Washington, when he said: "In behalf of justice,

Colombia appeals to the dignity and honor of the American Senate and people," remains to this day without any echo, and the verdict of the American people has rather confirmed than condemned the international policy of their Government.

Why, therefore, adjourn the matter if adjournment up to now has in no way bettered our painful situation?

When the Herran-Hay treaty was presented in 1903 in the Colombian Senate, the hall of the legislature resounded with the eloquent voice of Colombian patriotism that saw in this treaty a manifest attack on our Constitution and on the most important attributes of our sovereignty. There have been few times in the course of our national life when parliamentary debates have been inspired by such a sacred fire, and very few times when what was loyally believed to be the defense of national interests honor was defended in our tribune with greater heat.

History will tell whether the Senators of 1903 were or were not mistaken, but it will always show that their purposes were high and their patriotism pure. *Frangi, non flecti*, was their motto. We who as governors or legislators are to-day about to put an end to this vitally important litigation, perhaps would have also placed our austere negative on the pan of the balance in view of the problem and the circumstances of that time, even though we may have feared that the shock of such a negative with the great interests that were already interested in our Isthmus, might have destroyed our sovereignty there. Let us render this tribute of justice to the Senate of 1903 and hope that posterity will likewise do so.

It will be for that same posterity, it will be for time with what we call its surprises and which really are nothing except the logical consequences of historical fact, to say whether the shock that then broke the territory of the nation, and—something far worse—that broke the profoundest and most delicate national Colombian feelings, was nothing more than the first of the shocks which perhaps will take place between nations, between continents, between civilizations, even there amidst those same seas to whose borders Bolívar once summoned the nations to unite themselves around the fecund standard of law and peace. February 5, 1900, the date of the Hay-Pauncefote treaty, which replaced the Clayton-Bulwer treaty, and the 3d of November, 1903, the date of the secession of Panama, are perhaps nothing more than the initial dates of a new and vitally important chapter in the history of humanity.

Following out its marvelous purposes, Providence reaches its serene solution of the most arduous problems of nations as well as individuals; from evil it derives good, as it extracts as from the germs of to-day's dissolution the life of to-morrow. The profound emotion that convulsed the Colombian people, Government, and Congress in 1903, has become less and less before the unscalable wall of accomplished and accepted facts; the problem has been resolved by the joint action of inevitable causes; the painful alternative which the Senate of 1903 had before it, already does not exist for you, and I do not believe I am mistaken in saying that the very Senators of 1903, were they to-day in your chairs, would give their approval to the treaties I am submitting to you. Such approval has, with complete realization of his responsibility, been given by the author

of the memorial of complaints, who is to-day President of the Republic. Feeling upon himself all the weight of duty in these solemn moments, he may recall the words of Thiers when the latter, finding it necessary to temper by the serene calm of the negotiator the indignant speech of the orator protesting against the dismemberment of France, exclaimed: "I would have believed that Providence might have spared me the performance of such a painful duty."

Honorable deputies, the Executive trusts the serenity of your high opinion, and through me presents you the accompanying drafts of laws ratifying the treaties.

FRANCISCO JOSE URRUTIA.

BOGOTA, *February 22, 1909.*

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*Minister Dawson to Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota, March 1, 1909.*

Colombian minister at Washington has already telegraphed ratification by the Senate of the United States. Opposition developing. The enemies (?) of the President attacking the assembly, demanding elected congress and the amendment Jurado (?) clause. Ratification is certain unless Reyes weakens. Final vote, it is hoped, by Friday.

DAWSON.

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*Minister Dawson to Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota, March 10, 1909.*

March 10. 6 p. m. Student demonstrations against the treaties yesterday. The President of Colombia has issued a decree to-day confiding maintenance order to minister of war.

Motion to postpone consideration of the treaties has been defeated, 40 to 6.

DAWSON.

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*Minister Dawson to Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota, March 14, 1909.*

March 14. 12 noon. José Holguin assumed presidency 13th. Anti-Reyes street riots all day and all night. Holguin postponed indefinitely consideration of the treaties. Reyes reassumed presidency morning of 14th; Vasquez Cobo, minister of war. State of siege declared in Bogota. Nicholas Perdomo commanding troops. Artillery in plaza. Rumors disturbances in the Provinces. Civil war possible. At the present moment city quiet.

DAWSON.



*Secretary Knox to American Minister at Bogota.*

[Telegram.]

DEPARTMENT OF STATE,

Washington, March 15, 1909.

Continue to report by telegraph. It would be deplorable if this outbreak should disturb the ratification of the treaties.

KNOX.

*Colombian Minister to Secretary Knox.*

No. 52.]

LEGATION OF COLOMBIA,

Washington, March 16, 1909.

SIR: Referring to the ratification by Colombia of the treaties concluded with the United States of America and Panama, I beg to inform your excellency as follows:

On the 8th instant I had a cable from Bogota stating that the treaties should be presented immediately to the National Assembly, with a very elaborate report from the committee demanding their immediate ratification without modification. The cable added that the Government expected the treaties should be approved by the unanimous vote of the Assembly. I did not hear anything else until the evening of the 14th instant, when I received a cable stating that the Government had decided, in view of numerous manifestations of public opinion in the country, to suspend the consideration of the treaties by the National Assembly and submit them to a new-elected Congress, that should be called for immediately. The cable adds that the Government expected by this process to obtain a more solemn approval of the whole nation. There was a strong opinion in favor of the treaties, and the Government were exercising their best endeavors, feeling confident that they should be approved. The Government desires to inform you of the contents of this cable.

On receiving this cable I felt very uneasy and became sure that something had taken place which had altered the course of the business as I had been previously advised.

I immediately cabled, demanding explanation, expressing my regret at the change advised, and urging for an immediate answer.

On the following day, yesterday, the secretary of the legation called on Mr. Wilson to inquire if you had any news.

Mr. Wilson was good enough to give us a copy of the cable you had received. It appeared evident that my surmise was correct, and that something serious had happened. So far I have received no further news which I am expecting instantly.

I beg, however, to call your attention to the fact, which is apparent by the contents of the cables mentioned, that the Government continues strenuously to bring about the final approval of the treaties, assuming energetic action on the matter in a loyal and straightforward manner.

I am expecting further developments; meanwhile my opinion is that although a little later than was anticipated the treaties will be approved without any modification whatever.

I have the honor to present to your excellency the assurance of my highest consideration.

ENRIQUE CORTES.

Hon. PHILANDER C. KNOX,  
*Secretary of State, State Department.*

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*Minister Dawson to Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota, March 16, 1909.*

March 16—5 p. m. City continues quiet. No confirmation Saturday's rumors provincial disturbances. The assembly meeting daily. Has not acted upon Holguin's attempted postponement treaties. President of Colombia just announced to the diplomatic corps that he has determined to remain as such and that the assembly would reject his resignation. The agitation against the treaties dying down. I am still hopeful ratification.

DAWSON.

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*Secretary Knox to Minister Dawson.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, March 17, 1909.*

Date. Your telegram of March 16, 5 p. m., received. You may informally express to President Reyes our cordial sympathy and our confidence that he will do all possible to bring about the approval of the treaties, and thus consummate the good relationship we so earnestly desire.

KNOX.

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*Minister Dawson to Secretary Knox.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota (undated)*  
(Received Mar. 18, 1909).

It is important, and perhaps decisive for ratification, that the Panama minister and the Colombian minister exchange notes defining limits of Jurado. Opposition is also laying stress on ambiguity sixth article of the treaty with the United States, caused by placing the comma after "Refugio" instead of "Comercio."

Minister for foreign affairs of Colombia requests me to ask authorization to hold myself in readiness to write a note saying that use conceded is understood to be only as that right of refuge recognized by international law, to be subject to the usages established by international law with regard to right of refuge, and not as involving any breach of Colombian sovereignty over her ports.

DAWSON.

*Secretary Knox to Minister Dawson.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, March 19, 1909.*

Date. Your undated telegram received 18th concerning punctuation and intent of article 6. Colombian minister has also brought the matter to my attention. The comma in the Spanish text is obviously misplaced. Equivalence to sense of the English text requires comma after *comercio* and none after *refugio*. The change can be initialed on the original by the Colombian minister and Mr. Root, and you can do the same with the Colombian minister for foreign affairs on his text.

You are authorized to write the Colombian minister in the sense you suggest concerning the use of Colombian ports for shelter in case of stress or need for vessels using or bound for the canal. We understand that all the first part of article 6 does is to recognize the long-standing doctrine of international law concerning the friendly shelter of vessels in stress or need plus a gracious waiver of anchorage or tonnage dues which Colombia could rightfully impose by virtue of her sovereignty over such ports.

KNOX.

[Memorandum.]

DEPARTMENT OF STATE,  
*March 19, 1909.*

Referring to Mr. Dawson's telegram.

The comma in the Spanish text of article 6 is obviously misplaced. To render the sense of the equivalent English text, the comma should be after "comercio" and there should be none after "refugio." This change is immaterial and can be made by Mr. Cortes and Mr. Root simply initialing it on the margin of the original signed treaty here.<sup>1</sup>

Article 6 merely grants the use of Colombian ports as places of refuge (shelter would have been a better word) in case of stress or need, for vessels passing through or bound to pass through the canal.

That such use is merely by favor and without prejudice to the sovereignty of Colombia is shown by the rest of the article which (1) subjects the granted favor to Colombia's duty to enforce neutrality in time of war; and (2) by granting the further favor of exemption from anchorage or tonnage dues, which, without such concession, Colombia would collect in virtue of her sovereignty.

I can see no possible objection to Mr. Dawson exchanging notes with the Colombian minister for foreign affairs in the sense of the concluding paragraph of his telegram. We understand that all the article does is to recognize the standing doctrine of international law concerning the friendly shelter of vessels in stress or need plus the

<sup>1</sup> Mr. Dawson and the minister can do the same at Bogota.

concession of exemption from anchorage or tonnage dues in such case.

(Note that the privilege is not in favor of American vessels as such, but favors all vessels, of whatever flag, using or bound to use the canal.)

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*Secretary Knox to Minister Dawson.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, March 19, 1909.*

Referring to your telegram received 18th and department's reply of to-day. We sincerely hope that any difficulty about defining the limits of Jurado will not interfere with the ratification of the treaty. There seems to be some difficulty here about the Panama minister being willing to exchange notes, although I have not yet had an opportunity to talk to him.

Knox.

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*Secretary Knox to Colombian minister.*

WASHINGTON, *March 19, 1909.*

SIR: In your recent conversations with me you have acquainted me with the telegraphic advices you have received from your Government concerning questions of punctuation and of interpretation which have arisen with respect to article 6 of the United States-Colombia treaty, signed January 9 last, and which questions it would appear advisable to dispose of in order to facilitate the consideration of that convention by the Congress of Colombia.

Minister Dawson has also cabled to me in the same sense.

Upon examination of article 6 I find that the comma in the Spanish text of article 6 is obviously misplaced. To render the sense of the equivalent English text the comma should be after "comercio" and there should be none after "refugio."

This change is immaterial and can be made by Mr. Root and yourself initialing it on the margin of the original signed treaty in this department. Minister Dawson and the Colombian minister for foreign affairs can do the same with the treaty in Bogota.

As to the second point, Minister Dawson writes that the minister for foreign affairs of Colombia requests that he be authorized to hold himself in readiness to write a note saying that the use conceded is understood to be only as that right of refuge recognized by international law to be subject to the usages established by international law with regard to right of refuge and not as involving any breach of Colombian sovereignty over her ports.

As this Government understands it, article 6 merely grants the use of Colombian ports as places of refuge (in the sense of shelter) in case of stress or need, for vessels passing through or bound to pass through the canal.

That such use is merely by favor and without prejudice to the sovereignty of Colombia is shown by the rest of the article which

(1) subjects the granted favor to Colombia's duty to enforce neutrality in time of war; and (2) grants the further favor of exemption from anchorage or tonnage dues, which, without such concession, Colombia would collect in virtue of her sovereignty.

There would seem to be no possible objection to Mr. Dawson exchanging notes with the Colombian minister for foreign affairs in the sense suggested in his telegram. We understand that all the article does is to recognize the standing doctrine of international law concerning the friendly shelter of vessels in stress or need, plus the concession of exemption from anchorage or tonnage dues in such case.

I am sending a telegram to Minister Dawson in the sense of this note, and I trust that this will remove the impediment which has arisen.

Be pleased to accept, sir, the renewed assurances of my distinguished consideration.

P. C. KNOX.

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*Secretary Knox to Colombian Minister.*

Serial No. 82.]

DEPARTMENT OF STATE,  
Washington, March 22, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 16th instant, in which you advise the department that on the 14th instant you received a telegram from your Government announcing that the consideration of the treaties concluded between the United States and Colombia and Colombia and Panama would be suspended and submitted to a newly elected Congress which would be called immediately.

You express your opinion that the treaties will be approved without modification although a little later than was anticipated.

I have the honor to say in reply that the department appreciates the cordial sentiments you express, and sincerely trusts that the situation in Colombia will not cause untoward delay in the ratification of the treaties, thus consummating the good relationship for which this Government has so earnestly labored and which it so eagerly desires.

Accept, sir, the renewed assurance of my highest consideration.

P. C. KNOX.

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*Colombian Minister to Secretary Knox.*

No. 59.]

LEGATION OF COLOMBIA,  
Washington, D. C., March 22, 1909.

SIR: I have the honor to acknowledge receipt of your communication dated on the 19th instant.

Your letter refers to our conversation regarding the contents of Mr. Dawson's cable to your excellency, transmitting the requirements of the Colombian minister of foreign affairs as to the meaning of Article VI of the treaty between Colombia and the United States signed on the 9th of January last. Said requirements are twofold. On the one part a matter of punctuation, suppressing the comma after the word "refugio" and putting it after the word "comercio."

On the other part, as to the meaning of the right of refuge granted to vessels passing through or bound to pass through the canal. The Colombian minister of foreign affairs desiring Mr. Dawson to hold himself in readiness to write a note to him saying that "the use conceded is understood to be only as that right of refuge recognized by international law to be subject to the usages established by international law with regard to right of refuge and not as involving any breach of Colombian sovereignty over her ports."

As to the first point, your excellency accepts the suggestion as to punctuation, mentioning that by such alteration the Spanish text becomes equivalent to the English text. Furthermore, you mention that by initialing the text by Mr. Root and myself here and by Mr. Dawson and the minister of foreign affairs in Bogota all formalities will be fulfilled. I beg, in consequence, to ask your kindly advising me when may I call on you for the purpose of initialing the treaty.

As to the second point, your excellency explains the concession granted, as understood by the American Government, to mean the use of Colombian ports as places of refuge (in the sense of shelter) in case of stress or need for vessels passing through or bound to pass through the canal, and your excellency further adds—

That such use is merely by favor and without prejudice to the sovereignty of Colombia is shown by the rest of the article, which (1) subjects the granted favor to Colombia's duty to enforce neutrality in time of war, and (2) grants the further favor of exemption from anchorage or tonnage dues, which, without such concession, Colombia would collect in virtue of her sovereignty.

Your excellency further adds that—

There would seem to be no possible objection to Mr. Dawson exchanging notes with the Colombian minister for foreign affairs in the sense suggested in his telegram. All the article does (you add) is to recognize the standing doctrine of international law concerning the friendly shelter of vessels in stress or need, plus the concession of exemption from anchorage or tonnage dues in such case.

Mention is made in your note of your sending a telegram to Minister Dawson in the sense of your note, trusting that it will remove the impediment that has arisen.

It affords me much pleasure, Mr. Secretary, to recognize and duly appreciate your readiness in disposing of the matter in question and the fair and clear manner in which you recognize the position, all which is entirely satisfactory and concurs with the views of my Government as to the complete maintenance of Colombia's sovereignty over her ports not being in any manner affected by the concession as to right of refuge granted in article 6 of the Colombia-United States treaty of 9th of January.

I beg to present to your excellency the expression of my highest consideration.

ENRIQUE CORTES.

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*Minister Dawson to Secretary Knox.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota, March 23, 1909.*

March 23, 1 p. m. Your telegram of March 19, 7 p. m. Colombian minister for foreign affairs says that he believes when the assembly

approves the treaty with Panama it will adopt a resolution declaring that "Region of Jurado" does not extend south of Jurado River. He says such a resolution would enormously facilitate Government's labors to secure approval. Desires your opinion.

DAWSON.

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*Colombian Minister to Secretary Knox.*

[Translation.]

No. 62.]

LEGATION OF COLOMBIA,  
*Washington, D. C., March 24, 1909.*

MR. SECRETARY: I have the honor to forward to your excellency a copy of the message sent by the President of the Republic of Colombia, Gen. Rafael Reyes, to the national assembly respecting the treaties concluded with the United States of America and the Republic of Panama, from which document your excellency will see the keen interest with which the President recommends the approval of the treaties to the assembly.

I avail myself of this other opportunity to renew to your excellency the expression of my highest consideration and to subscribe myself the Secretary's very humble obedient servant.

ENRIQUE CORTES.

[Translation.]

*Honorable members of the National Constituent and Legislative Assembly:*

The minister of foreign relations will lay before you the treaties signed at Washington on January 9 last by our minister, Senor Don Enrique Cortés and the plenipotentiaries of the United States and Panama, the Hon. Elihu Root and Senor Don Carlos Constantín Arosemena.

After all, this important and delicate negotiation began in Washington with the note addressed on the 23d of December, 1903,<sup>1</sup> to his excellency the Hon. John Hay, Secretary of State of the United States, by the mission over which I had the honor to preside and of which Gen. Don Jorge Holguín, Don Pedro Nel Ospina, and Don Lucas Cabellero were members.

In concluding these treaties our legation at Washington kept within the instruction sent it by the Government through the various ministers in charge of the department of foreign affairs under this administration, and justice demands recognition of the patriotism and intelligence with which our present minister to the United States, Senor Don Enrique Cortés, has conducted and carried to a successful issue those negotiations.

I cherish the hope that the Colombian people will, when it knows them, give them its decidedly favorable verdict, since the Government, in concluding them, has borne in mind not only its interests and conveniences but also its mandates.

Indeed, the board of commissioners of commerce, agriculture, and industry of the departments assembled at Bogota in July, 1906, for

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<sup>1</sup> Printed in S. Doc. 95, 58th Cong., 2d sess.

the treatment of economical questions alive at that time and of great importance, whose members belonged to every political party and are furthermore favorably known for their high political and social standing in our community, unanimously approved at its session of July 12, 1906, the following motion:

The undersigned commissioners of commerce, agriculture, and industry, of the departments of Narino, Cauca, Antioquia, Bolivar, Atlantico, and Magdalena, which are the departments of which some abut on the Pacific and others on the Atlantic Ocean, declare to the Government the necessity of promptly adjusting, in an honorable way acceptable to Colombia, the questions pending with the United States and Panama and asks that this motion, which has been drawn up in accord with the minister of foreign relations, be taken up by the board.

CELEDONIO PIÑERES.  
OSCAR A. NOGUERA.  
LUCIANO HERRERA.  
RICARDO RESTREPO, C.  
LEONARDO TASCÓN.

Very respectable organs of the press have welcomed this motion with applause, and public opinion, in possession of the knowledge needed to form judgment on so grave a subject, was not long in bringing its preponderating influence to bear in the same sense, as is evidenced by a multitude of documents circulated in printed form, which may reasonably be considered as the result of a great plebiscite.

The Government considering, in a way, that relations with foreign nations are part of domestic policy, conscious of its duties and responsibilities, and at the same time interpreting the national will and looking after the moral and material interests of the country in its charge, never ceased in the last five years to labor with the greatest zeal for an honorable and suitable settlement of so delicate a question, and believes it has succeeded in this with the treaties that are submitted to your enlightened examination and are approved by it without any restriction.

R. REYES.

BOGOTA, *February 22, 1909.*

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*Minister Dawson to Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota, March 26, 1909.*

March 26, 3 p. m. Referring to your telegram of March 19, 6 p. m. Notes exchanged and the comma inserted in the Spanish text. The assembly will continue about fortnight. Elective congress will assemble on the 20th July. Country is quiet.

DAWSON.

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*Minister Dawson to Secretary Knox.*

[Telegram.]

AMERICAN LEGATION,  
*Bogota, March 27, 1909.*

March 27, 6 p. m. Upon the recommendation of the President of Colombia, the assembly to-day referred the treaties to Congress in



July. This sudden change due to serious threats of civil war and violence against the members of the assembly by the treaty opponents in Bogota and Santander. Congressional elections will be held May 30. If the Government win and peace meantime unbroken Reyes hopes for approval by Congress.

DAWSON.

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*Minister Dawson to Secretary of State.*

[Edited.]

No. 247.]

AMERICAN LEGATION,

*Bogota, March 29, 1909.*

SIR: Referring to the subject of my No. 244, of March 8, 1909,<sup>1</sup> and of my telegrams of March 10, March 13, March 14, March 16, March 17, March 18, March 19, March 23, March 26, and March 27—the discussion of the ratification by Colombia of the treaties with the United States and with Panama, and the political disturbances incident thereto—I have the honor to report that on March 6 and 7 many clandestine meetings were held by those opposed to the Reyes government and to ratification, and plans matured for popular demonstrations to be made as soon as the expected majority report of the committee should be presented.

On March 7 I sought a personal interview with the President. His words were confident, but his manner indicated irresolution. He was plainly nervous.

On March 8 the majority report was presented and published, a copy of which is inclosed. It was written by Antonio José Restrepo. Of the 18 members of the committee 14 favored unconditional ratification, 3 ratification with amendments, and 1, Francisco de P. Matéus, ex-minister for foreign affairs and many times plenipotentiary for his country during the last quarter of a century, opposed the treaty en bloc. He read a minority report, a copy of which is inclosed. This minority report was not then published, but the purport of its inflammatory assertions that the treaties were deceitfully drawn so as to give the ports of Cartagena and Buenaventura to the United States, and that the boundary arbitration provision in regard to the Jurado region meant that the United States and Panama intended to grab all the territory through which a canal up the Atrato could reach the Pacific, spread like wildfire, and his bitter denunciation of the attitude of the United States when Panama declared her independence found a ready echo among the excitable and easily-prejudiced people of this capital.

That evening, March 8, the students of the different university schools, with the knowledge and encouragement of many of their professors, including Dr. Luís Felipe Calderón, nephew of the President and brother of Clímaco Calderón, who, as minister of foreign affairs in 1905 and 1906, began the negotiations looking toward these very treaties, made demonstrations throughout the city. On the morning of March 9 the streets were filled with excited crowds of people and bands of students and young men crying

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<sup>1</sup> Not printed; unimportant.

“Down with the treaties,” “Death to the traitors of Panama,” “Death to the United States,” “Viva Matéus,” “Death to Restrepo,” etc. They made demonstrations of approval at the house of Matéus and Nicolás Esguerra, and of disapproval at the house of Antonio José Restrepo.

At 2 o'clock in the afternoon, while I was writing in the legation office, about 40 students came to the legation door and, upon its being opened by the servant, they all crowded in. Hearing the noise I went into the reception room and sent them word that I would see them there. They came politely enough and three leaders, representatives respectively of the faculties of law, medicine, and arts, made speeches, the substance of which was that since liberty of the press did not exist in Colombia under Reyes's administration they had no other means of letting me know that they as well as all other honest Colombians were opposed to the treaties because Colombia's recognition of Panaman independence would dishonor and disgrace her, and because the assembly, which had them under consideration, was an unconstitutional body whose members had been appointed by the President and whose servile cooperation was assured by the granting of offices and favors. I briefly called their attention to the fact that it would be improper for me, as a foreign representative, to discuss with private individuals the merits of the treaties; that I could assure them that the Government and people of the United States were animated only by friendly sentiments toward the Colombian people and earnestly desired for them the blessings of prosperity and peace. Happily, the spirit of personal politeness and decorum, so characteristic of Colombians, prevented their saying anything insulting about the United States in my presence, and they retired without anything disagreeable happening. I took no measures to communicate the incident to the authorities, but shortly afterwards heavy detachments of police were placed in front of the legation and at the four corners of the block in which it is situated. About half past 6 in the evening a great crowd assembled at one of these corners, probably with the intention of making a new demonstration, but their leaders were arrested. Throughout the afternoon disorders continued in various parts of the city, and there were numerous arrests.

The excitement, disorders, and arrests continued on March 9, but so far as I could see then, or have since heard, no further attempts were made to demonstrate against this legation. The rioters, however, were with difficulty restrained from acts of violence against members of the assembly. In the afternoon there was an acrimonious debate in the assembly upon a motion to definitely postpone the consideration of the treaties. The minister for foreign affairs was kind enough to send me word that he thought it would be better for me not to be present since I might hear very disagreeable things about my country. Such things were, in fact, said, as I have been informed by members of the diplomatic corps who were present, who also assured me that nothing was said reflecting upon the official or personal conduct of Mr. Barrett or myself. For the most part the Government deputies sat silent except Antonio José Restrepo, who made the mistake of demanding that the galleries be cleared upon the first sign of disagreement with his remarks. This incident greatly excited public feeling against him.

In the afternoon the President offered the ministry of war to Fernández, the ruthless Conservative general who, when in charge in 1901 and 1902, executed so many Liberals. He declined, and Perdomo, another Conservative general, of much the same type and record, was named. Perdomo's appointment was received with a storm of indignation and was withdrawn. Reyes issued a decree entrusting the maintenance of order in the city directly to the minister of war, and the first popular impression was that he was going resolutely to suppress the disorders and pass the treaties. However, it has since transpired that a threatening telegram had just been received from the military chiefs in Santander (a copy is inclosed). Many members of the assembly and the cabinet were becoming frightened, and others thought they saw an opportunity to push Reyes out of the presidential chair and themselves get into control. Friends of Jorge Holguín almost openly advocated his elevation to the Presidency, and it is certain that he strongly advised the President to throw the treaties overboard.

The student demonstrations continued on March 11, and the lower classes also began to take part, and while arrests were numerous the prisoners were in all cases soon released and no really vigorous measures taken to restore order. On that day still another new cabinet was announced, Jorge Holguín being admitted to it and named Designado or successor to the Presidency. In the assembly the discussions of the treaties continued. The minister for foreign affairs, Dr. Urrutia, made a strong speech in their favor, a copy of which is inclosed, but the majority members of the assembly were evidently weakening. Just before the session closed a vote was forced on the first and second articles of the treaty with Panama, and they were approved by 43 to 3: Corral, Quijano Wallis, and Matéus.

On March 12 Gen. Vázquez Cobo was elected to the presidency of the assembly in place of Holguín, who assumed charge of the ministry of the treasury. Telegrams from officeholders all over the country continued to pour in asking that the treaties be ratified, but since it was well known that these telegrams were sent in response to Government solicitation they produced little effect. In the absence of freedom of the press or any other organ of public opinion, it was impossible to tell what the real opinion of the country was, and it was certain that the populace in the Provinces was even less informed than that in Bogota of the substance and real intent of the treaties. Rumors of disorders at various points were current, and by common consent the assembly dropped the consideration of the treaties and waited for Reyes to take decisive action.

On the morning of the 13th President Reyes made an attempt to reduce the students to a better frame of mind by inviting some of them to the palace, but instead of discussing the treaties the speakers for the students reproached the President for his financial policies, his establishment of monopolies, his suppression of the freedom of the press, and his refusal to give Colombia an elective congress. Living as he has done for the last four years, in an atmosphere of enforced adulation, not accustomed to hear criticisms or suggestions, the President took this in very bad part.

Shortly thereafter he hastily wrote his resignation and sent it to the assembly. The news astounded everyone, and it is impossible even yet to be sure what motives inspired him.

Holguín took oath as Acting President and named a new cabinet, in which Nicolás Esguerra, now the most prominent Liberal in the country, was included. Carlos Cuervo Márquez became minister of war. Holguín at once sent a message to the assembly advising it to refrain from further consideration of the treaties. Urrutia resigned as minister for foreign affairs. Esguerra and another recently appointed Liberal refused to accept. Holguín and Cuervo Márquez ordered the police not to interfere with popular demonstrations, and anarchy broke loose. The long-smoldering hatred of Reyes had free rein; crowds paraded the streets crying "Abajo el tirano," "Mueran los vendidos"; street-corner orators reviled Reyes as a grafter; the crowds stoned the offices of the *Correo Nacional* and *Nuevo Tiempo*, the Government subsidized newspapers, and even demonstrated against the apostolic delegate and the archbishop. A howling mob besieged the assembly hall all afternoon, and the members waited until dark and slipped out one by one. Restrepo was run off the streets and his house stoned. About 7 o'clock Dr. Urrutia called on me in a very excited condition to say that Holguín would in fact have the assembly take up the treaties again in a few days and that he himself had therefore continued to remain in office. About the same time Reyes telephoned me privately to come over to the palace at 8 o'clock for consultation. This fact is my principal reason for suspecting that his resignation had always a string to it. Half an hour afterwards came another message that my call would not be necessary. About 9 o'clock a mob wrecked Vázquez Cobo's house.

Mrs. Vázquez was badly frightened, and her husband rushed to the palace and to their faces furiously denounced Reyes, Holguín, and Cuervo Márquez as cowards and traitors to their friends. He threatened to go himself to the barracks and put himself in command of the troops. Reyes asked him if he would accept the ministry of war, and upon his answering in the affirmative, he assumed the presidency and dismissed Cuervo Márquez. In the meantime a large and excited public meeting of persons prominent socially and politically was being held at the jockey club where violent diatribes against Reyes were uttered. Olaya Herrera, who had been very active during the week, and who is believed to have been in communication with revolutionary plotters in Panama, Tumaco, and elsewhere, proposed the formation of a supreme junta with Esguerra at its head, but these proceedings were suddenly interrupted about midnight by the arrival of troops who arrested nearly everyone present and carried them off to prison. Until a late hour the police scoured the streets dispersing and arresting the groups of students and workmen, and several people were killed and injured.

Next morning, March 14, Bogota woke to find Reyes in the Presidency, a state of siege declared, machine guns placed commanding the central plaza, the police and troops armed with Mausers, and Vázquez Cobo, Fernández, and Perdomo, the three most dreaded generals in the country, in command. Olaya Herrera and his lieutenant, Escobar, were sentenced by court-martial to five years in the Cartagena dungeons; Clímaco Calderón was arrested. The malcontents were terrorized, and the city became as quiet as a graveyard.

Monday morning, March 15, I called on Vázquez Cobo. He told me the treaties would be pushed through at once if Panama would consent to define the Jurado region. In the afternoon he resigned

as minister of war to reassume the presidency of the assembly, and I had bright hopes of early action. But when I went to see the minister for foreign affairs, to my great disappointment I found that Reyes himself was not disposed to take advantage of the opportunity and assume the responsibility. Speaking officially, the minister said he regretted to have to admit that an unexpectedly strong popular opposition to the treaties had developed, complicated with much dissatisfaction at the fiscal policies of the Government, its centralizing tendencies, its interference with the liberty of the press, and its failure to provide an elective congress. The opponents of the Government had succeeded in arousing the latent popular sentiment of indignation that had never ceased to exist against the Panaman leaders who took part in the declaration of independence and against the United States for its alleged complicity with their acts. Opposition members of the assembly had succeeded in further exacerbating public sentiment by insisting that certain articles of the treaties were susceptible of a construction that would be ruinous to Colombia. They were laying special emphasis on Article VI of the treaty with the United States and the boundary arbitration provision of the treaty with Panama.

The department will get an idea of the general nature of these misrepresentations and charges from the following paragraphs of the minority report, written and signed by F. de P. Matéus, ex-minister for foreign affairs, and who has served as Colombia's plenipotentiary at many posts during the last 25 years:

By article 6 of the treaty Colombia concedes to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the canal enterprise and for all vessels in distress passing or bound to pass through the canal and seeking shelter or anchorage in said ports, being exempt from all payments for anchorage or tonnage dues.

Calvo defines "refuge": "The protection against an imminent peril, whether of a man being pursued or a ship menaced by a tempest." Refuge being a natural right, an act of humanity, in respect to ships in peril recognized by all nations, there is no reason to refer to it in the treaties. The real intention was to create a servitude of use in our ports in favor of the United States, calling it refuge in order to secure its easy approval. Nevertheless, the article makes a clear distinction between the use conceded to any ships employed in the canal enterprise, including warships and ships in distress which are really in need of refuge.

Calvo says in his Dictionary of International Law that "Use is the right of using, personally, something whose property belongs to another and to participate in its products. This right includes things movable as well as immovable." The deduction from this doctrine is that as long as the use of our ports is conceded to the United States the latter Nation may construct in them docks to shelter their ships and may establish coaling stations on their shores.

Whatever may be the reasons adduced to prove the innocence of this clause of the treaty, which I do not doubt was loyally and honorably accepted by the Colombian minister, I entertain the profound conviction that the concession of the use of our ports to the United States signifies the loss of the independence of Colombia. It is not long since that the foreign press discussed the intention of the Government of the United States to establish a naval station at Cartagena and another at Buenaventura, in view of ulterior events, as strategical points for the defense of the canal.

Recently an American squadron arrived at Colon, and it is not impossible, once the treaties are ratified, that that squadron will occupy Cartagena and a like measure be shortly adopted in respect to the port of Buenaventura on the Pacific.

The minister said that in the speeches in the assembly reference has also been made to the fact that in the Spanish text of article 6

a comma was placed after the word "refugio" instead of after the word "comercio."

The minister added that he and the rest of the Colombian executive understood perfectly well that the article did nothing more than clearly confirm an already existing practice and right under international law, except that it put Colombia under the obligation of not charging anchorage and tonnage dues. However, many members of the assembly and the public in general insisted upon some additional guarantee on the subject. During the past week he had been pressed to the wall in regard to this matter, and he would greatly appreciate anything I could do to help him out.

I answered that personally I had no doubt that his conception of the meaning of the article in question was correct, but could make no official statement without authority from the Department of State. I suggested that he telegraph Mr. Cortes, instructing him to secure an exchange of reassuring notes between the Secretary of State and himself. The minister said he would, of course, do that as a last resort if I refused to telegraph, but he urgently desired that such notes, if agreed upon, be signed here, so that they could be shown to the members of the Assembly. In this connection he spoke of the unfortunate fact, well known to me from my personal observation during the last month, that the profoundest distrust and most carping spirit prevails.

After careful reflection, I decided to comply with his request and told him to write me a note, which reached me the following day. I inclose a copy and translation thereof.

Therefore I telegraphed you, under date of March 17, that the opponents of the treaty were laying stress on the alleged ambiguity of article 6, and that the minister for foreign affairs requested that I be authorized to write a note saying that the use of her ports conceded by Colombia in said article was only that right of refuge which is recognized by international law, subject to the usages established by international law in regard to right of refuge, and not as involving any breach of Colombian sovereignty.

In regard to the provision of the Panama treaty for arbitration as to the "region of Jurado," the minority report had said:

The limits of this region not being determined, the arbiters can put them as far as Cupica Bay on the Pacific, which is the southern end of the Atrato Canal, and thus destroy this interoceanic route which, in the future, might be a source of profit to Colombia.

In making up the arbitral tribunal, the Republic is to name one arbiter and Panama another, and if these two can not agree on the third—and it is clear that such an agreement can never be reached—he will be named by the President of Cuba, or—what is the same thing—by the Government of the United States. Therefore the tribunal is useless, because Colombia will be defenseless and the region of Jurado ipso facto be given to Panama.

How widespread is this unjust and absurd notion can be judged from the inclosed copy of a letter from the American consular agent in Bucaramanga (Santander) to Consul General White.

The minister said on March 15th that Dr. Cortés had erred in not accepting the Panama representative's suggestion that the arbitration extend to the "Corregimiento de Jurado," as defined in Señor Sosa's pamphlet, viz, to Punta de Marzo, and insisting on inserting "región de Jurado." Though the intention had been to confine the arbitration to a smaller territory, probably only as far south as the

village or river of Jurado, the indefiniteness of the phrasing had given the treaty opponents an opportunity to alarm the public. He said Dr. Cortés was already in negotiations with Señor Arosemena, with good prospects of coming to an exchange of notes geographically defining the meaning of the term "región de Jurado," but that he would be grateful if I would inform you of the vital importance of the matter so far as this end was concerned. Accordingly, in my telegrams of March 17 (received by you the 18th) and of March 23, I did so. On March 27 the minister showed me a note received from the Colombian agent in Panama, saying that the Isthmian Government had determined to authorize Señor Arosemena to exchange notes with Dr. Cortés. No confirmation of this has yet come from Washington to Bogota.

From about the 12th it had seemed to me that the popular sentiment against the treaties was being swallowed up in the feeling against the Government and considerations of internal politics and personal ambition. Therefore I was especially anxious to remove the objections as to Article VI and the Jurado clause so as to soften the blow in case Reyes should make up his mind to act vigorously.

On March 16 I saw the minister for foreign affairs and showed him your telegram of March 15, in which you say that it would be deplorable if the outbreak should disturb the ratification of the treaties, and it was brought at once to President Reyes's personal attention. The same morning there was a *te deum* in the cathedral to offer thanks for the reestablishment of order. Telegrams were sent all over the country describing the disorders and arousing the church people to indignation on account of the alleged attacks on the archbishop. Three thousand recruits hurriedly gathered at Cundinamarca and Boyaca arrived this day. The diplomatic corps was invited to a presidential reception in connection with a great official demonstration organized to show the Government's strength, but before going met to discuss what attitude should be taken. Some of the members showed great reluctance at being used by President Reyes, protested that it was dangerous and unwise to be put in the attitude of appearing to lend official sanction to his actions, and some of them even went so far as to suggest that the corps as a body advise him either to adopt a more liberal popular policy or to resign, but wiser counsels prevailed, and we all went to the reception. The President told us that he had consented to remain in power, that the assembly would not accept his resignation, and asked us to telegraph our Governments that order had been reestablished. Thereupon I sent you my telegram, dated March 16, at 5 p. m., and also telegraphed to substantially the same effect to all our consuls in Colombia.

On March 17 the assembly formally declined to accept President Reyes's resignation, and in the afternoon I saw him and showed him your telegram of March 17 (6 p. m.). He again reassured me that the treaties would be pushed through just as soon as the country had quieted down a little more, thanked us for our kind efforts in regard to Article VI and the Jurado clause, and told me he would be grateful if we would intervene with the Panama Government toward preventing the exportation of arms intended for revolutionary purposes in Colombia and Venezuela from Panama.

The same day Antonio José Restrepo resigned from the assembly and the President issued a message congratulating the country on the reestablishment of peace. A copy is inclosed.

On March 19 the city seemed to have returned to its normal condition; Clímaco Calderón and most of the other prominent prisoners, except Olaya Herrera, had been released; the state of siege was raised and the guards withdrawn from around this legation.

On March 20 the President issued a message promising fiscal reforms and the immediate calling of elections for Congress. No move was made, however, by the assembly to take up the treaties and great anxiety continued to be felt in regard to the general political situation.

On March 22 a new cabinet was named, Holguín being changed to the ministry of war, and retained as designado, and the Liberals who had refused to accept being replaced.

On March 23 Dr. Urrutia and I completed our arrangements in regard to the exchange of notes about Article VI. I had received your telegraphic instruction of March 20 authorizing me to write the Colombian minister in the sense suggested, viz, that our understanding is that the first part of Article VI does nothing more than recognize the long-standing doctrine of international law concerning the friendly shelter of vessels in stress or need, plus a waiver of port dues, and accordingly sent him the note, of which I inclose a copy. The preparation of this note and the insertion of the initialed comma in the Spanish text was a little delayed because of the necessity of Dr. Urrutia's attendance at the assembly and because he at first thought there ought to be a comma in the English text. It was not until the afternoon of the 25th that we formally met and inserted the comma, although the memorandum or protocol (of which the original is inclosed with translation) setting forth our action was, at his request, dated the 23d.

On the 25th Dr. Urrutia told me that the President was about ready to push the treaties through the assembly, and that it would be done without warning or further debate. On the morning of the 26th the assembly members on whom the President could rely were called to the palace in groups of six or eight, and they signed a document agreeing to complete ratification on the Monday following, namely, March 29. The news of such action spread rapidly to the public, and the opponents at once began quietly, but determinedly, to organize. Their efforts were the more formidable because the trade-unions were very bitter over the killing by the police of some workmen during the riots, and the students cooperated in a body. That night and the next morning many members of the assembly received warning that they would surely be assassinated if they obeyed Reyes. From the confessionals the archbishop, who is in favor of the treaties and the Reyes Government, received proofs which satisfied him that Bogota would be in revolt within 24 hours. He weakened and wrote a letter to the President most earnestly advising him, in the interest of peace, to withdraw the treaties and call Congress immediately. Whether or not this letter decided the President I have no means of ascertaining certainly, but the fact is that on the morning of the 27th President Reyes announced that he had again changed his mind and that he would recommend that the assembly cease considering the treaties, and that he would call Congress for July 20. I spent the



day with my friends in the assembly and the Government endeavoring to prevent such action, but my efforts were fruitless. Inclosed you will find copies of the resolution in regard to the treaties adopted by the assembly.

Throughout the past month I have been in personal or indirect communication with the leaders of all parties. None of the leaders are, in their hearts, opposed to the treaties, but few of them are willing to take any responsibility toward actively helping to their adoption. Among the average politicians there exists, I am sorry to say, a considerable sentiment in favor of delay and of making as many objections as possible, believing that such tactics will result in obtaining material advantages for Colombia and for themselves.

I inclose a number of discussions by various prominent men which have appeared in the newspapers. They are mostly favorable to the treaties, but it must be remembered that in this country, so long accustomed to suppression of the liberty of the press, adverse opinions are more likely to be ventilated in conversation than in the columns of the newspapers. The three Colombians whose opinions would, perhaps, carry most weight with the reflecting public are Clímaco Calderón, Rafael Uribe Uribe, and Francisco de P. Borda. All three have so far refused to write anything for the press. The two former are, in fact, favorable and the last is adverse.

I can offer no prediction as to Congress's final action. If the treaties become the principal issue in the elections, the chances are against their ratification. If internal politics, decentralization, liberty of the press, and fiscal and administrative reforms preoccupy the unthinking and prejudiced public, the treaties may have a chance.

Congress meets July 20, but the treaties will not be taken up until well on in August. In the meantime it is better that this legation be left in charge of the secretary. The pressure upon me to become, as it were, a center of intrigue—to take part in the inner workings of Colombian party politics—has been strong and will become stronger as the parties line up for the elections. I am confident I would continue to be prudent, but I fear misapprehensions and misrepresentations as to my attitude.

Many of the inclosures herewith are not accompanied by translations. Their bulk is so great that there has not been time, with the force at our disposal, to make them. I think, however, they will repay a careful reading in the department when the question of our further attitude in regard to the treaties with Colombia is taken up.

I have the honor to be, sir, your obedient servant.

T. C. DAWSON.

Inclosures:<sup>1</sup>

1. Majority report.

1a. Editorial (Correo Nacional, Mar. 9).

2. Minority report ("X. Y. Z." Mar. 26).

2a. Debate in assembly (Anales de la Asamblea, No. 11).

2b. Debate in assembly (Correo Nacional, Mar. 11).

2c. Speech of Deputy Enrique Pérez (Nuevo Tiempo, 26th).

3. Telegram from Cucuta, March 10.

3a. Debate in assembly (Anales).

3b. Debate in assembly (Correo Nacional, Mar. 12).

<sup>1</sup> Inclosures not translated.

- 3c. Speech of Deputy Montaña (Nuevo Tiempo).
4. Speech of Dr. Urrutia (Anales).
- 4a. Telegram from Cali, March 3 (Correo Nacional).
- 4b. Speech of Deputy Corral (Anales, No. 12).
- 4c. Message of March 13 from President Reyes (Correo Nacional).
- 4d. Message of March 13 from Acting President Holguín (Correo Nacional).
- 4e. Account of riots (Concurso Nacional).
- 4f. Decrees Nos. 290 and 293 of March 14 (Correo Nacional).
5. Note from Dr. Urrutia to Mr. Dawson, March 15.
6. Translation thereof.
7. Copy of part of letter from Consular Agent Volkman (Bucaramanga) to Consul General White, February 28.
- 7a. Presidential circular telegrams of March 14 and 15 from President to military authorities, etc., in Provinces.
8. Presidential message to assembly of March 20.
9. Mr. Dawson's note to Dr. Urrutia, March 23.
10. Memorandum insertion of comma in Spanish text of treaty.
11. Translation thereof.
12. Report of special committee on treaties, March 27.
13. Article by "M. T.," Nuevo Tiempo.
14. Article by Carlos Vallarino y Miro, Nuevo Tiempo.
15. Article by Juan de J. Bernal, Nuevo Tiempo.
16. Article by Max Grillo, "Opinion acerca de los tratados," Nuevo Tiempo.
17. Letter from J. N. Valderrama, Nuevo Tiempo.
18. Letter from P. A. Herrón, Nuevo Tiempo.
19. Interview with Gen. Thomas Quintero, Nuevo Tiempo.

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*The Acting Secretary to Minister Dawson.*

No. 84.]

WASHINGTON, April 6, 1909.

SIR: I have to acknowledge the receipt of your No. 241, of February 26 last, in which you forward a copy of the message of the President of Colombia, transmitting to Congress the treaties between the United States and Colombia and between Colombia and Panama, together with the exposition of the treaties by the Colombian minister of foreign affairs.

Thanking you for the document, I desire that you may, in the course of informal conversation with the minister, express your personal gratification for the kindly sentiments toward the United States expressed in Mr. Urrutia's exposition.

I am, sir, your obedient servant,

HUNTINGTON WILSON,  
*Acting Secretary.*

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*Secretary Knox to Minister Dawson.*

[Confidential.]

Serial No. 87.]

DEPARTMENT OF STATE,  
*Washington, April 19, 1909.*

SIR: Referring to your telegrams of the 23d and 27th ultimo, already confirmed, I inclose for your confidential information copies

of the notes exchanged between the Colombian and Panaman ministers at this capital concerning an alleged declaration by the Panaman minister as to the meaning of the words "region de Jurado."

These copies were confidentially given to the department by the Colombian Legation.

It is unnecessary to reiterate the ardent hope of this Government that these treaties may be ratified at the earliest practicable moment.

For your own information I will add that the department does not at the present moment feel called upon to express any formal opinion as to the interpretation of the boundary situation between Colombia and Panama.

I am, sir, your obedient servant.

P. C. KNOX.

Inclosures:

From Colombian minister to Panaman minister, March 1, 1909.

From the Panaman minister to Colombian minister, March 6, 1909.

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LEGACION DE COLOMBIA,

*Washington, March 1, 1909.*

His excellency DON C. C. AROSEMENA,

*Envoy Extraordinary and Minister Plenipotentiary  
of the Republic of Panama.*

MY DEAR MRÁ MINISTER: It is necessary for me to write to Bogota preparing the road for the arbitration we have agreed upon, and it should be most gratifying to me if Y. E. would do me the favor to ratify in writing the words that you employed referring to this at the time we were finishing the discussion on the treaty. I refer to our having agreed to avoid any description of the territory subject of dispute, which might come to darken the deliberations of the tribunal, and having asked what Y. E. understood by the words "región de Jurado," you answered in these or similar words: "As minister of Panama, and a signatory to this treaty, I must state that in my opinion what is called 'región de Jurado' is bounded toward the east, to wit, toward Colombian territory, by the course of the River Jurado." And that in consequence we did agree to accept in the writing of the treaty the words "región de Jurado."

I beg Y. E. to excuse my troubling you and assuring Y. E. of my sincere thanks for a gratifying reply. I, etc..

ENRIQUE CORTES.

No. 3.]

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LEGACION DE PANAMA,

*Washington, March 6, 1909.*

MY DEAR MR. MINISTER AND ESTEEMED COLLEAGUE: I have the honor to acknowledge receipt of your excellency's kind note of the 1st instant, requesting the ratification of certain declarations which I made by word to your excellency before the signature of the treaties between our respective countries respecting my opinion as to what is mentioned in the treaty as the Jurado region. (La región de Jurado.)

Your excellency will remember that on giving my opinion as to what I considered was comprised within "la región de Jurado," I

pointed out to your excellency that I was ready to reiterate my words in case that if at the time of submitting the question to arbitration any dispute should arise between the arbitrators touching what is called in the treaty as "la región de Jurado." I am ready to fulfill this declaration when the circumstances require it; I truly regret not to do it at this moment, as I consider it premature since no question has yet been risen about the interpretation of the words "la región de Jurado."

The facts that the treaties between Colombia and Panama, the United States and Panama, and Colombia and the United States have not yet been ratified by all the countries, and that the ratifications have not been exchanged yet, has also influenced upon my mind not to accede to your excellency's wishes.

Accept, sir, etc.,

C. C. AROSEMENA.

His excellency Señor D. ENRIQUE CORTÉS, *Etc.*

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*Acting Secretary to Chargé Hibben.*

Serial No. 89.]

DEPARTMENT OF STATE,  
Washington, May 4, 1909.

PAXTON HIBBEN, Esq.,

*American Chargé d'Affaires ad interim, Bogota.*

SIR: I have to acknowledge the receipt of Mr. Dawson's No. 247, of March 29 last, reporting on the events growing out of the attempt made by the President of Colombia to obtain the approval of the Colombian Congress of the treaties concluded by the Republic of Colombia with the United States and Panama.

The department desires to express its commendation of Mr. Dawson for his admirable and illuminating report on the complicated situation of affairs in Bogota.

I am, sir, your obedient servant,

HUNTINGTON WILSON,  
*Acting Secretary.*

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*American Chargé to the Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
Bogota, May 10, 1909—10 p. m.

A manifest issued by the President of Colombia this evening referring to Holguin's action of March 13 (see telegram of the legation of the 14th March), postpones consideration of the treaties until ordinary session of Congress next February.

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*American Chargé to the Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
Bogota, May 12—10 a. m.

Referring to my telegram of May 10, 9 p. m., minister for foreign affairs called me to explain that "He believes that if the Govern-

ment submits the treaties to Congress of July there might be general disturbance. The treaties are being used as a political weapon against the Government. It hopes the situation will change for the ordinary Congress in February."

Dawson will fully explain what is meant by my, in strict confidence, saying that the Government of Colombia fears it can not secure the ratification either at present or in February, and has consequently sacrificed the treaties in the hope of saving itself in the coming elections.

HIBBEN.

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*The American Chargé to the Secretary of State.*

[Edited.]

No. 262.]

AMERICAN LEGATION.

*Bogota, May 13, 1909.*

SIR: I have the honor to refer to this legation's Nos. 259 and 261,<sup>1</sup> of April 28 and May 5, respectively, in regard to the political situation of this country, and to my cipher telegrams of the 10th and 12th instant, respectively, reporting the action of the Government of Gen. Reyes in withdrawing the United States-Panama-Colombia treaties from consideration by the special Congress called for July 20, for which the elections are to be held the 30th of this month. With reference particularly to my first telegram, I have the honor to report that the situation of the present administration is of the gravest. I inclose herewith copy of the manifesto of the President of the Republic, to which reference was made in the telegram in question, accompanied by a translation thereof. The initial inconsistency between the statements made in this document and those made me yesterday by Dr. Urrutia is characteristic of the course which Gen. Reyes has seen fit to adopt—a course of vacillation, which has led him to this final act of sacrificing the treaties in the hope of maintaining his position as personal head of the Government and virtual autocrat of his country.

It is necessary for a clear understanding of the present situation to return to the moment of the departure of Mr. Dawson. From that time scarcely a day has passed without the establishment of some new newspaper—organs, for the most part, of the opponents of the Government. Shortly after Mr. Dawson left a paper called "El Debate," the organ of the students who made their way into the legation on the 9th of March, and a strong Liberal journal, supporting Dr. Nicolas Eaguerra for President to supplant Gen. Reyes, began a cowardly attack upon Mr. Dawson, posting up throughout the city a placard purporting to be a certificate of a number of these students implying that Mr. Dawson had made a false statement in denying their report of his words to the students on the 9th of March. The journal was to-day suppressed as a result of a protest of the dean of the diplomatic corps. The attack on Mr. Dawson was an attack, through him, upon the treaties and upon the Government. The treaties have been, indeed, used as a political weapon against the Government. From day to day articles have appeared bitterly assail-

<sup>1</sup> Not printed: unimportant.

ing the United States, and even going so far as to advocate the severance of diplomatic relations.

I had no intimation of the purpose of the Government to withdraw the treaties and knew of the action only by having seen the manifesto posted at the street corners on the evening of the 10th instant. I had just talked with the minister of foreign affairs half an hour before, but he had told me nothing. The following day I waited word from him until 5 o'clock in the evening. When he finally sent word that he had something to communicate to me I was engaged with the Ecuadorean and Italian ministers, and considering it expedient then to wait until I could see the results of the manifesto on the antiadministration press in the morning, I availed myself of this excuse to reply that I would call at 9 the succeeding day. The opposition papers, however, contained little comment.

Dr. Urrutia wished to show me the telegram which was sent to the Colombian Legation at Washington after I left the ministry, with instructions to assure the department of this Government's continued support of the treaties. The minister had no reason to offer for not having informed this legation of the administration's contemplated action earlier. He stated, however, that the President had become convinced that the treaties could not pass the Congress in July, and had decided, in order to avoid having them rejected, to postpone their consideration until the meeting of the regular Congress in February, 1910. He had only the vaguest reasons to give for this belief. I asked him if he had any cause to believe that the treaties would more readily pass the Congress of 1910 than the present one, and he replied that he hoped so, but that it could not be certain. He added that the President feared civil war if the Government continued to support the treaties, and that he had been assured by Mr. Dawson that our Government did not desire to bring such a disaster upon the country. When I pointed out, however, that if it were as certain as he seemed to believe that the treaties could not pass the present Congress there would scarcely be occasion for civil war, he withdrew the term and substituted grave disorders at the elections. I then asked him what he wished me to give my Government as the reason for this official action in thus withdrawing the treaties from consideration, and took down his words in Spanish, as follows:

Creo que si el Gobierno somete los tratados al Congreso de Julio, puede haber conmoción general. Los tratados se toman como arma electoral contra el Gobierno. Este espera que la situación se cambiará para el Congreso ordinario de Febrero.

[Translation.]

I believe that if the Government were to submit the treaties to the July Congress there might be a general commotion. The treaties are being used as an electoral weapon against the Government. The latter hopes for a change in the situation before the regular session of the Congress in February.

This was a final form, much altered before it was reached. Of it I sent a translation in my cable of yesterday.

Dr. Urrutia went from this interview to the President. Yesterday afternoon I know, privately, that the President made every preparation to leave the country, Holguín remaining in the exercise of the executive functions. He, however, again changed his mind and decided to remain. Dr. Urrutia, who alone, I believe, has been of consistent good faith in his attempt to secure the ratification of the

treaties, has tendered his resignation, which at this hour has not been accepted, but I believe will be, he being made to appear as the scapegoat of the withdrawal of the treaties, in the eyes of our Government. I inclose herewith, accompanied by translation, a cutting from *La Plume Libre*,<sup>1</sup> of yesterday's date, attacking Dr. Urrutia personally for his efforts in behalf of the treaties.

I transmit at the same time, without translation, for lack of opportunity to make it, an article<sup>1</sup> by one of the students, who have always been so bitter against the treaties, which expresses much of the sentiment of those opponents of Reyes, into whose hands the treaties will fall should the Government be defeated at the coming elections, which now seems likely. The tone of the article shows how little hope there would be of ratification by the more radical liberals. I inclose a translation of a placard posted up yesterday throughout the city, and emanating from one of the liberal electoral organizations, advocating the representation in the approaching Congress of the "Department of Panama"<sup>1</sup> by one of the men who has worked faithfully for the reincorporation of Panama with Colombia.

I have the honor to be, sir, with great respect,

Your obedient servant,

PAXTON HIBBEN,  
*Chargé d'Affaires ad interim.*

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TREATIES.

The Government postpones the discussion of the treaties with the United States and with Panama until 1910.

MANIFEST.

The day drawing near on which the Colombian people will exercise their right of suffrage, in accordance with the constitution and laws of the Republic, I consider it opportune and appropriate to address my compatriots, as much to express my desire that this right be exercised in a way truly correct and republican, as to inform them of the purposes of the Government and of the actual situation of the country.

There have been received, notices by telegraph from all the departments, according to which the citizens have registered peacefully and with interest in the exercise of the ballot in the elections of the 30th of May, and have fulfilled the directions of the Government by inspiring confidence that these elections will take place in complete peace, that the popular vote will be respected and by avoiding all commotion and disturbances which might limit or harm this right.

These measures and the confidence which the public has and should have in the Government's keeping of its promise to make the ballot respected, have produced a general situation of complete calm and the certainty the same will reign on the day of the election.

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<sup>1</sup> Not printed.

The country is presenting an example of prudence, of patriotism, and of civilization, which inspires faith in its future and the conservation of peace. It is to be hoped, therefore, that the coming election will be the first to be held in this country in complete order, without imposition or chicanery, to elect representatives of the people and not representatives of political parties. For the sake of my self-respect and the respect I owe my compatriots and, above all, my country, it is my vehement desire that personal government be avoided.

In the address of the 1st of January and in the presidential messages directed to the National Assembly during its last session, I set forth the appropriateness and urgent necessity of calling a congress of popular election as soon as possible, which will meet the 20th of this July, thus fulfilling the purpose clearly stated to the governors in telegraphic circular of January 5 last, known throughout the country.

The Government has received, and is grateful for, the patriotic manifestations, made by distinguished citizens of the capitals and of important cities of the Departments, recognizing the honesty of its initiative in calling Congress and applauding this measure.

The urgency of the meeting of the Legislative Chambers proceeds principally from the necessity of attending to important economic and fiscal matters, both national and departmental, in view of the fact that these latter corporations must reorganize their administration, as provided in Law 7, of 1909, on administrative decentralization.

In respect of the treaties celebrated with the United States and with Panama, a considerable part of national opinion, strengthened by a certain number of reasons, has formulated arguments against some of the principal stipulations of the negotiation in question.

The Government, after long consideration and taking into account the opinion of experienced and capable persons, approved these treaties, considering them suited to the permanent interests of the country, given the existing condition of events; but as, in treating of the matter, the grave antecedent circumstances can not be forgotten, the Government considered, duly, as the designado in charge of the executive power put it in the message which he addressed to the National Assembly the 13th of March, last, that its resolution ought not to be hastened, but that it should wait the time necessary for the whole nation to study them and to form the judgment which, in its lofty opinion, they merit.

In this order of ideas it did not hesitate to propose to the honorable assembly that it put off its examination until the next session of Congress.

This proposition was approved by that lofty body with visible evidences of applause.

This belief, far from lessening, has grown on the Government over which I have the honor to preside to a point where it is conceived that more time should be given the nation to study these treaties with all the maturity that its importance requires, and that it should be in its regular sessions of 1910 that Congress should occupy itself with them.

The importance of the matters in which the legislative power shall be occupied imposes the necessity that the election of its



members should fall upon citizens free of prejudices and party interests, who will occupy themselves with those of the country in general, as well as with those in particular of the regions whence they have been elected, since the departmental and municipal needs to be properly organized.

Annual sessions of Congress, whose duty it is to decree the taxes and the expenditures and to pass the laws necessary for the good progress of the administration, will give surer solidness to a Government really representative and of popular choice.

Peace is solidly assured and the program of the present national administration, of which the President should be the chief and not a political party program, which endangered the life of the present head of the Government, is to-day upheld and sustained by the whole nation, and we should hope that for the nation's good it may continue in the future.

R. REYES.

BOGOTÁ, *May 10, 1909.*

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*The American Chargé to the Secretary of State.*

AMERICAN LEGATION,

*Bogotá, May 27, 1909.*

No. 268.]

SIR: I have the honor to acknowledge the receipt of the department's No. 87, confidential, of the 19th ultimo, inclosing, for the confidential information of the legation, copies of notes exchanged between the Colombian and Panaman ministers at Washington concerning an alleged declaration by the Panaman minister as to the meaning of the words "región de Jurado" in the Panama-Colombia treaty.

I may say in this connection that, as will be seen from the inclosures No. 2 in this legation's dispatches Nos. 261 and 264,<sup>1</sup> an entirely erroneous impression is abroad in this country in regard to the meaning of this phrase which has, more than any one element save the general hostility to the government of President Reyes, served to produce the present widespread opposition to the treaties and to inflame public feeling against the United States.

I have the honor to be, sir,

With great respect, your obedient servant,

PAXTON HIBBEN,  
*Chargé d'Affaires ad interim.*

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*Acting Secretary of State to Legation at Bogotá.*

[Telegram.]

DEPARTMENT OF STATE,

*Washington, June 11, 1909.*

Your dispatches May 13 to 19. The Government of the United States views with relative indifference the question of the ratification of our treaties by Colombia and Panama, whose interests are

<sup>1</sup> Not printed; unimportant.

apparently much more concerned. This Government has felt sanguine of their ratification only owing to the general desirability of settling the questions involved, and particularly as being beneficial to Colombia and Panama rather than to the United States. In view of the absurd distortion of this situation by public clamor the legation should make the above attitude well known and for the rest should maintain an impassive and dignified attitude.

WILSON.

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*Minister Squiers to Secretary Knox.*

No. 508.]

AMERICAN LEGATION,  
Panama, June 17, 1909.

SIR: Referring to department's cipher cable of June 12<sup>1</sup> last, stating department's views on the attitude of the Colombian and Panaman Governments toward ratification of the Colombian-Panama-United States treaty, I have the honor to say that I have read a translation of the cable to Mr. Lewis, minister for foreign affairs, who said that so far as his Government is concerned everything has been done, and the treaty now only lacks the approval of the Colombian Government. He further said that the Colombian Government, of the three contracting parties, has the most to lose through failure to ratify, and that it would be impossible to negotiate another treaty, in the event that this one fails of ratification, containing the same advantageous provisions.

I have the honor to be, sir,  
Your obedient servant,

C. T. SQUIERS.

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*Minister Northcott to Secretary of State.*

[Telegram.]

AMERICAN LEGATION,  
Bogota, September 29, 1909.

Minister for foreign affairs of Colombia stated verbally to-day and promised to write a note stating it is the desire of Colombia to abandon the present treaties, because it is quite sure that they would be rejected by the Congress, and, further, that it is the desire of Colombia to enter into negotiations for some other treaty with the United States.

Instruct me as to my reply to the official note.

Colombian minister for foreign affairs also stated verbally that he desired that the new treaty, if our Government be willing to make one, be negotiated here.

NORTHCOTT.

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*Minister Northcott to Secretary of State.*

No. 12.]

AMERICAN LEGATION,  
Bogota, October 1, 1909.

SIR: I have the honor to refer to my cipher telegram of the 29th ultimo and, in that connection, to report that about two weeks ago

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<sup>1</sup> Probably means telegram of June 11, ante.

while attending the weekly reception of Dr. Carlos Calderon, the minister for foreign affairs, in company with Mr. Paxton Hibben, the secretary of the legation, Dr. Calderon informed us that the Colombian Government had concluded that it would be useless to present the United States-Panama-Colombia treaties to the present session of Congress, as they would undoubtedly be rejected. Dr. Calderon then presented a written memorandum in Spanish, copy and translation of which is inclosed herewith, and asked me to agree to sign it as showing the existing condition of affairs between the two countries. I told Dr. Calderon that I would take the memorandum and consider it after a translation was made. On the following Wednesday, having been informed unofficially of the appointment of Dr. Francisco de Paul Borda's appointment as minister to the United States, Dr. Borda being the father-in-law of Dr. Calderon, in company with Secretary Hibben I called on Dr. Calderon and suggested to him that in view of Dr. Borda's appointment and near departure to Washington, it might be well to postpone consideration of the memorandum he had presented until Dr. Borda could talk matters over with you, to which Dr. Calderon replied that he would rather have the matter settled here before Dr. Borda's departure.

On Wednesday, September 29, again in company with Secretary Hibben, I called on Dr. Calderon and informed him that I did not feel justified in signing the memorandum in question, for the following reasons:

First, that no matter how strongly he and I might be convinced, from indications and observations, that the treaties would not be ratified by the Congress of Colombia, we could not, as representatives of our respective countries—and I, especially, as diplomatic representative of the United States, had not the right to—prejudge the action of the Congress and assume that it would reject treaties entered into and signed by duly authorized representatives of the respective countries, treaties already ratified by the Senate of the United States, and to the securing of the ratification of which the executive branch of the Government of Colombia is morally bound.

Second, that in the event that the Colombian Congress reject the treaties, I had not been instructed, nor was I informed, as to the wishes of my Government on the subject of entering into any further negotiations; that the present treaties were regarded by us as being of more benefit to Colombia than to us, and that under the circumstances I did not feel authorized to state that we were ready to enter into new negotiations, in the absence of express instructions from my Government.

I then told Dr. Calderon that I would gladly communicate the situation to the department by cable and request instructions.

After considering the matter for sometime, Dr. Calderón stated formally, that as representative of the Colombian Government he now gave me notice that his Government desired to cease all further consideration of the treaties because of the impossibility of securing their ratification by the Congress, and desired to enter into negotiations, here in Bogota, for the making of a new treaty with the United States, and requested that I notify my Government of his statement. I then asked Dr. Calderón if he would kindly write me a formal note containing his statements. This he said he would do at once.

Up to the time of the sending of this dispatch the note promised by Dr. Calderón has not been received by the legation.

On returning from the ministry for foreign affairs I sent my cable of the 29th ultimo.

I am of the opinion that the present Colombian Government does not desire, for political reasons, to urge the ratification of the treaties, and that if it did so desire it is not strong enough to secure such ratification.

The general feeling in the country is very bitter against the treaties and against us as a Nation, and at the present time the majority of the Senate now in session is undoubtedly against the treaties. This is, however, a country of startling and unexpected political changes and it is impossible to foretell what may happen.

It is hard to see how the present financial condition of Colombia could be worse than it is, and the financial considerations involved in the treaties may have a telling effect in their favor in the near future, though there is no indication of it at the present time.

I have the honor to be, sir,  
Your obedient servant,

ELLIOTT NORTHCOTT.

Inclosures: (1) Memorandum presented to the American minister by the minister for foreign affairs, September 15, 1909; (2) translation of the same.

[Inclosure in No. 12.—Translation.]

In Bogota, the —— day of ————, 1909, meeting at the ministry of foreign affairs (of the Republic of Colombia), the minister for foreign affairs, Dr. Carlos Calderón, and the Hon. Elliott Northcott, envoy extraordinary and minister plenipotentiary of the United States of America, the minister for foreign affairs said:

The tone of frank friendliness which has characterized all the acts of the minister of the United States brings to the Colombian mind the conviction that that Nation still maintains the ample spirit of equality which in times past has served as a base of relations between them.

In view of these sentiments, the honorable minister of the United States has manifested that, having celebrated in Washington, on the 9th day of January, 1909, a treaty to facilitate the direct settlement of the questions pending on the declaration of independence of the Colombian Department of Panama November 3, 1903, and to define the relative position of Colombia with respect to the canal which the United States is constructing across the Isthmus in virtue of a convention celebrated with the so-called Republic of Panama, and this treaty, having been postponed to consideration by the Congress of Colombia, the Government of the United States wishes to know what are the intentions of the Government of Colombia in reference to the consideration of this pact by the legislative body in actual session.

The minister for foreign affairs acceded to the desires of the minister of the United States, stating that the Government of Colombia, wishing to be agreeable to the United States, is ready to satisfy the desires of said Government in this respect.

But, as the minister of the United States may have observed, there is a popular opinion, of which the opinion of the legislative body is but an echo, that the treaty of Washington, of January 9, 1909, be not accepted, and for the same, if this treaty were at present placed before the legislative body, it would certainly be disapproved.

The minister of the United States stated that his Government in this particular matter has no other interest than that of Colombia, and that it has noted, as far as has been possible, the dominant opinion in the Republic in reference to this compact so many times mentioned, the which is motive enough that the Government of the United States should not insist that this treaty be considered by the Congress if, as has been affirmed, the desire of its Government consists in, above all, satisfying the desires and the rights of the Republic of Colombia, and not of insisting that it enter into negotiations which do not have the spontaneous approval of the nation.

The minister for foreign affairs observed that finding the two Governments at one in just purpose and animated by the firm intention of satisfying their reciprocal rights, the laying aside of the consideration of the treaty of January the 9th, 1909, brings as a consequence that the relations of all kinds which exist between this Republic and the United States and the regulation of all rights between them shall be governed by the treaty of Washington, December 12, 1846, whose validity neither of the contracting parties has placed in doubt, which, in his opinion, in the face of the necessity of defining the reciprocal situation of the two nations and their respective rights and obligations for acts which have been matter for complaint on the part of Colombia, there arises the necessity for an agreement as to the manner in which this is to be done by virtue of special negotiations which shall carry both the legal relations of the two countries to the status existing before the project of the treaty of 1909 and the protocols of Cartagena and Washington, which served as its base; and from this there arises the necessity of knowing, as a preliminary, whether the two parties who have such a treaty to celebrate are ready to open negotiations with the end to a settlement of the obligations which each should fulfill.

The honorable minister of the United States agreed heartily in the sentiments expressed by the minister for foreign affairs—that is, that the Government of the United States is found willing to open the negotiations which may be necessary to the satisfaction of the rights of Colombia and will receive and take into consideration the bases which may be submitted for such negotiations, to which the minister for foreign affairs replied, offering to present the honorable legation the bases of the convention, which, in his opinion, conform to the honor and highest rights and interests of Colombia and of the United States.

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*Acting Secretary Adee to Minister Northcott.*

[Telegram.]

DEPARTMENT OF STATE.  
Washington, October 4, 1909.

Confidential. Your September 29, 6 p. m.

In conversation you may say to the Colombian minister for foreign affairs that the treaties of the United States with Colombia and Panama were negotiated in connection with and in facilitation of the settlement between Colombia and Panama, which the United States

used its friendly offices to bring about. The three treaties so negotiated stand or fall together. No substitutionary treaty could be considered without harmonious agreement of all three parties. You may express your personal belief that no such agreement could be reached on terms as advantageous to all three as the treaties now pending, if, indeed, in the light of subsequent happenings, any tripartite agreement were likely.

ADEE.

*Minister Northcott to the Secretary of State.*

No. 14.]

AMERICAN LEGATION,  
*Bogota, October 7, 1909.*

SIR: I have the honor to report that on the 4th day of October the legation received from Dr. Carlos Calderón, minister for foreign affairs, the note referred to in this legation's No. 12, as being promised in a verbal interview with the minister. On Wednesday, October 6, in company with Secretary Hibben, I had another interview with Dr. Calderón, and in accordance with the department's cable of 12 noon, October 4, 1909, informed him "that the treaties of the United States with Colombia and Panama were negotiated in connection with and in facilitation of a settlement between Colombia and Panama which the United States used its friendly offices to bring about." That "the three treaties so negotiated stand or fall together." And that "no substitutionary treaties could be considered without harmonious agreement of all three parties." I also expressed the personal belief that no such agreement could be reached on terms as advantageous to all three as the treaties now pending, if in the light of subsequent happenings any tripartite agreement were likely.

Dr. Calderón replied that it had been his conception that an agreement between Panama and Colombia would follow upon the completion of the negotiations which he had proposed between Colombia and the United States, but that in a day or two he would write the legation a note expressing the Colombian Government's views as to the treaty with Panama and would then like an answer in writing to his note.

I have the honor to be, sir,  
Your obedient servant,

ELLIOTT NORTHCOTT.

[Inclosure in No. 14.]

REPUBLIC OF COLOMBIA,  
MINISTRY FOR FOREIGN AFFAIRS,  
*Bogota, October 2, 1909.*

MR. MINISTER: In the various conferences which I have had the honor to hold with your excellency in reference to the treaty, signed by the Secretary of State of the United States, the Hon. Elihu Root, and the Colombian plenipotentiary, Sr. Cortes, on the 9th of January, I have thought it opportune to advise your excellency that the consensus of public opinion in this country is notoriously adverse to that compact.

In the judgment of the Colombian Government, if this were placed before the legislature it would be disapproved without vacillation.

The Colombian Government, desirous of considering in the most friendly way in its power the questions originating from the proclamation of independence made by the Colombian Department of Panama, November 3, 1903, has delayed until now the presenting of this treaty, to which I have referred, to the Congress for its consideration, and desires that your excellency inform it whether the Government of the United States, in view of existing circumstances, would be pleased to have the Government of Colombia abandon the submission of this treaty to the Congress for its consideration. In case that the Government of the United States, persisting in the desire manifested by your excellency, of taking under consideration, in questions relating to the interests of Colombia, the desire of this nation, expressed by its constitutional organs, prefer that the Government of Colombia abandon the submission of the treaty to legislative approval, this ministry will be found ready to enter into new negotiations with your excellency in relation to those questions to which we have alluded if the Government of the United States is similarly disposed.

I gladly avail myself of this opportunity to reiterate to your excellency the assurance of my most distinguished considerations.

(Signed) CARLOS CALDERON.

HON. ELLIOTT NORTHCOTT,

*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America.*

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*Minister Northcott to the Secretary of State.*

[Telegram.]

AMERICAN LEGATION,

*Bogota, October 13, 1909.*

Your cipher telegram, October 4, 12 noon. A note has been received from the minister for foreign affairs of Colombia stating that, in the conception of the Government of Colombia, the abandonment Root-Cortes treaty will virtually eliminate the treaty with Panama, and that, in the event of this abandonment, Colombian Government will present the legation with a statement of the bases upon which it would be willing to enter into negotiations with the United States if a favorable reply should be made to the note of Colombian minister for foreign affairs, contents of which in my telegram of September 29, 6 p. m.

Colombian minister for foreign affairs to-day verbally stated that Colombian Government has no intention to enter into negotiations with Panama until after the treaty with the United States is completed, if then, and that whether or not Colombian Government would be willing to enter into negotiations with Panama will depend upon the character of the arrangement with the United States.

I replied verbally, according to my instructions your cipher telegram October 4, 12 noon. Colombian minister for foreign affairs,

however, is desirous of written reply to his note referred to in my telegram of September 29, 6 p. m.

I shall wait for instructions.

NORTHCOTT.

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*Acting Secretary Adee to Minister Northcott.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, October 23, 1909.

Your October 13, 5 p. m.

The treaty between United States and Colombia was negotiated in order to facilitate the negotiation between Colombia and Panama, and to that end the United States graciously conferred favors upon Colombia in regard to the use of the canal and gave Colombia other advantages as equivalents for the agreement between Colombia and Panama besides aiding Panama to carry out the engagements of the Colombia-Panama treaty. The statement of the Colombian minister for foreign affairs that the abandonment of the Root-Cortes treaty will virtually eliminate the treaty with Panama means in effect that the consideration upon which the favors of the Root-Cortes treaty were predicated is to be treated as nonexistent, thus eliminating the initial reason for a new treaty between United States and Colombia. It would be impossible for the United States to impose, by independent convention with Colombia, any conditions constraining the free hand of Colombia and Panama in settling their questions by mutual agreement. Whether the United States would be in a position to make any treaty with Colombia would depend on ascertainment of the terms on which Colombia and Panama may agree, and then the United States could only consider such arrangement with Colombia as might facilitate the Colombian-Panama agreement. In short, the whole tripartite accord would have to be done over again, with little or no prospect of reaching conclusions as favorable to all three parties as those which Colombia proposes to set aside. In the light of subsequent events it is more than doubtful if even similarly favorable concessions by us to Colombia and Panama could gain the approval of the United States Senate. For these reasons the Government of the United States must decline to acquiesce in wiping out the tripartite treaty and can not enter upon a separate negotiation with Colombia alone.

ADEE, *Acting.*

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*Acting Secretary Wilson to Minister Northcott.*

No. 15.]

DEPARTMENT OF STATE,  
Washington, October 28, 1909.

SIR: The department has received your No. 12 of the 1st instant inclosing copy and translation of a memorandum which the Colombian minister for foreign affairs requested you to sign with him, proposing that as it would be impossible to obtain the consent of the Colombian Congress to the ratification of the United States-Panama-Colombia treaties, those treaties be dropped and negotiations be opened at Bogota.



The department commends your action in declining to sign the memorandum-protocol.

I am, sir, your obedient servant,

HUNTINGTON WILSON,  
*Acting Secretary of State.*

*Minister Northcott to Secretary of State.*

No. 20.]

AMERICAN LEGATION.

*Bogota, October 29, 1909.*

SIR: I have the honor to report that in accord with the instructions contained in the department's cable of October 23, 1909, on Wednesday last, October 27, 1909, accompanied by Secretary Hibben, I delivered to Dr. Carlos Calderon, Colombian minister for foreign affairs, an answer in writing to his notes suggesting the abandonment of the tripartite treaties and the opening of negotiations for a new treaty with the United States. A copy of my note is inclosed herewith.

At the interview which took place on the delivery of the note, immediately after receiving and reading it, Dr. Calderon stated verbally, that the present Colombian Government could not enter into negotiations of any kind with Panama, as it (the Government of Colombia as at present constituted), regarded the United States as being solely responsible for the separation of Panama. To which statement we replied that that view was not conceded by the United States in the slightest degree.

At a dinner given by the President at the palace last night, which we attended, Secretary Hibben had personal and unofficial conversations with Dr. Borda, the newly appointed Colombian minister to the United States, and with Dr. Calderon. These conversations Mr. Hibben will report to you in person.

The feeling here is still very strong against the United States, and if submitted to the present Congress the treaties would, in all probability, be overwhelmingly rejected.

The present session of Congress here is expected to end within two weeks, and it is not now generally believed that the Colombian Government will submit the treaties to the present session.

I have the honor to be, sir,  
Your obedient servant,

ELLIOTT NORTHCOTT.

Inclosures: (1) Copy of note to Colombian foreign office, dated October 27, 1909.

[Inclosure in No. 20.]

F. O. No. 14.]

OCTOBER 26, 1909.

MR. MINISTER: In comment upon the memorandum with which your excellency presented me on the 22d of September in regard to a conversation which I had had the honor of holding with your excellency as to the abandonment of the tripartite treaties signed in Washington on January the 29th, last, by the plenipotentiaries of the Republics of Colombia and Panama and the United States of America, and in reply to your excellency's courteous note of the

2d instant, and of the subsequent personal note which your excellency was good enough to send me on the 9th instant, I have the honor to reply to the proposition for the negotiation of a new convention between Colombia and the United States, as a consequence of the abandonment, proposed by your excellency, of the present treaties, under instruction of my Government, as follows:

The treaty of January 9, between Colombia and the United States was negotiated in order to facilitate the negotiations between Colombia and Panama, and to that end the United States conferred favors upon Colombia in regard to the use of the canal and gave Colombia other advantages as equivalents for the agreement between Colombia and Panama, besides aiding Panama to carry out the engagements of the Colombia-Panama treaty.

Your excellency's statement in the personal note to which I have referred, that the abandonment of the Root-Cortes treaty will virtually eliminate the treaty with Panama, means, in effect, that the considerations upon which the favors of that treaty were predicated is to be treated as nonexistent, thus eliminating the initial reason for a new treaty between the United States and Colombia. It would be impossible for the United States to impose, by independent convention with Colombia, any conditions constraining the free hand of Colombia and Panama, in settling their questions of mutual agreement.

Whether the United States would be in any position to make any treaty with Colombia would depend upon the ascertainment of the terms on which Colombia and Panama may agree and the United States could only consider such an agreement with Colombia as might facilitate the Colombia-Panama agreement. In short, the whole tripartite agreement would have to be done over again with the probability of no prospect of reaching conclusions as favorable to all three parties as those which your excellency's Government proposes to set aside. Indeed, in light of subsequent events, it is more than doubtful if even similarly favorable concessions by the United States to Colombia could gain the approval of the United States Senate, as I have had the honor to point out to your excellency in conversation on several occasions.

For these reasons, the Government of the United States must decline to acquiesce in wiping out the tripartite treaty and can not enter upon a separate negotiation with Colombia alone.

I avail myself of the opportunity to renew to your excellency the assurance of my distinguished consideration

(Signed)

ELLIOTT NORTHCOTT.

Dr. CARLOS CALDERÓN,  
*Minister for Foreign Affairs.*

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*The Secretary of State to Minister Northcott.*

No. 17.]

DEPARTMENT OF STATE,  
*Washington, November 4, 1909.*

SIR: The department has received your No. 14 of the 7th ultimo, relative to the proposed treaty between the United States, Colombia,

and Panama, and in reply you are referred to the cabled instructions of October 4 and 23, as defining the department's attitude on the subject.

I am, sir, your obedient servant,

HUNTINGTON WILSON  
(For Mr. Knox).

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*Minister Northcott to the Secretary of State.*

[Telegram.]

BOGOTA, *January 5, 1910.*

(Received 6th.)

January 5, 5 p. m.<sup>1</sup>

Colombian minister for foreign affairs requested me verbally to ask my Government if United States and Panama would agree to submit question of separation of Panama from Colombia to vote of citizens of Panama. Terms of settlement of all questions according to the result of vote to be previously agreed upon by the three Governments. The interests of the United States in Canal Zone in no event to be affected.

Colombian Government claims it is impossible to secure ratification of Root-Cortez treaties without thereby causing [revolution?]. I believe this is true as public opinion now stands, and that the present proposition is made with the expectation of vote being for separation, but with the hope that a vote of Panama will so far satisfy Colombian people as to allow ratification of some satisfactory treaties.

NORTHCOTT.

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*Minister Northcott to the Secretary of State.*

No. 53.]

AMERICAN LEGATION,

*Bogota, February 18, 1910.*

SIR: On the 5th of January last I had the honor to send you the following code cable:<sup>2</sup>

Since then, on every occasion that I have seen him, Dr. Calderón, the Colombian minister for foreign affairs, has inquired anxiously of me as to what reply I have received. Not having received your instructions up to this time, I have so told him, but I should like very much, if it meets with your approval, to be cabled upon receipt of this, if no directions have as yet been sent, what reply to make.

I have the honor to be, sir,

Your obedient servant,

ELLIOTT NORTHCOTT.

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<sup>1</sup> MEMORANDUM ADDED IN THE DEPARTMENT OF STATE.—Referring to Mr. Northcott's communication of the Colombian request that the question of a separation of Panama from Colombia be submitted to a plebiscite vote, you will find in *Foreign Relations for 1903*, p. 333 et seq., that the several municipalities of Panama unanimously approved the ratification of the canal treaty by the Provisional Government of Panama.

The people of Panama also elected, afterwards, representatives to a congress of the Republic by almost unanimous votes.

These two acts were as completely a ratification of the separation from Colombia as the election of republican chambers in France in 1871 was a ratification of the downfall of Napoleon and the creation of a Republic.

<sup>2</sup> Printed ante.

*Acting Secretary Wilson to American Legation at Bogota.*

[Telegram.]

DEPARTMENT OF STATE,

*Washington, March 24, 1910.*

Answering your dispatch No. 53 and your January 5, 5 p. m., you are informed that the attitude of the department as outlined in its telegram of June 11, 1909, remains unchanged.

WILSON.

*Minister Northcott to the Secretary of State.*

No. 81.]

AMERICAN LEGATION,

*Bogota, May 13, 1910.*

SIR: I have the honor to report that on Wednesday last, May 11, while calling on the Colombian minister for foreign affairs, in company with Secretary Frazier, the minister handed me a note, dated December 20, 1909, dealing with the tripartite treaties. The minister stated at the time that he had held the note hoping that something would come of his suggestion as to a plebiscite, but that he now thought it best to deliver it.

Copy of note referred to and translation, together with my reply thereto, are inclosed, marked Nos. 1, 2, and 3.

I have the honor to be, sir,

Your obedient servant,

ELLIOTT NORTHCOTT.

[Inclosure 1 in No. 81—translation.]

FOREIGN OFFICE,

*Bogota, December 20, 1909.*

MR. MINISTER: Referring to the esteemed note which your excellency addressed to me on the 26th of October last regarding the views of the Government of the United States upon the treaties of January 9 last, it is my duty to allude to the friendly sentiments which have suggested to the Government of Colombia the idea of omitting the treaties of Washington rather than to ask of the Colombian Congress an approval which in all probability would be refused.

The Government of Colombia does not consider it an opportune moment to explain to your excellency the motives of the obligations incurred in the treaties in behalf of this Republic, but in view of the declarations made to the Cabinet in Washington from 1903 until last year, in relation to the events which in 1903 determined the independence of the Isthmus of Panama and of the solemn agreements binding the two Republics, they (the Government of Colombia) believe it necessary to state that the true purpose of these treaties is, in their opinion, to define the legal relations which have arisen between the three contracting parties as a result of the events above referred to; that is to say, the monetary advances to Colombia, stipulated in the treaties of the 9th of January, did not have and can not have the character of favors but of compensation or indemnity for acts which.

in their judgment, have inflicted prejudice and caused injury to their duly acquired rights.

Without reproducing at present the extensive and weighty arguments of various kinds, with which Colombia has supported her demands before the Government of the United States, I believe it nevertheless to be my duty to remind your excellency that the character which must be given to negotiations through which an agreement may be reached upon pending questions is not a matter of the first importance to the Government of Colombia so long as the honor and vital interests of the contracting parties are not compromised.

In the meantime I beg your excellency will accept the manifestations contained in this dispatch as an expression of the sincere desire which animates the Government of Colombia to facilitate an agreement which may satisfy every legitimate right and every consideration of honor involved in the differences existing between the two States.

(Signed) CARLOS CALDERÓN.

ELLIOTT NORTHCOTT, Esq.,  
*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America.*

[Copy to accompany dispatch No. 81.]

No. 41.]

MAY 12, 1910.

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of your excellency's esteemed note of December 20, 1909, which your excellency was good enough to hand to me personally yesterday. In reply I beg to say that I have noted your excellency's sentiments in regard to the treaties of Washington and that I will duly transmit them to my Government.

I avail myself of this opportunity to reiterate to your excellency the assurance of my most distinguished consideration.

(Signed) ELLIOTT NORTHCOTT.

DOCTOR CARLOS CALDERÓN,  
*Minister for Foreign Affairs, etc.*

PART IV-b.

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PAPERS SUBMITTED RELATING TO THE HAY-CONCHA  
NEGOTIATIONS.

LIST OF CORRESPONDENCE RELATING TO THE HAY-CONCHA NEGOTIATIONS IN 1902.

From Colombian legation, March 31, 1902. (Not included. Printed in H. Doc. 611, 57th Cong., 1st sess.)  
From same, March 31, 1902. (Not included. Printed in H. Doc. 611, 57th Cong., 1st sess.)  
To same, April 5, 1902.  
From same, April 8, 1902.  
To same, April 18, 1902.  
From same, April 18, 1902. (Not included. Printed in H. Doc. 611, 57th Cong., 1st sess.)  
To same, April 21, 1902. (Not included. Printed in H. Doc. 611, 57th Cong., 1st sess.)  
From same, April 23, 1902. (Not included. Printed in H. Doc. 611, 57th Cong., 1st sess.)  
To same, July 18, 1902.  
From same, July 19, 1902.  
To same, July 21, 1902.  
From same, September 22, 1902.  
From same, October 26, 1902.  
To same, October 28, 1902.  
From same, November 11, 1902.  
From same, November 11, 1902.  
To same, November 5, 1902.  
To same, November 18, 1902.  
From same, November 22, 1902.

No. 4.]

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DEPARTMENT OF STATE,  
*Washington, April 5, 1902.*

SEÑOR JOSÉ VICENTE CONCHA, *etc.*

SIR: I have the honor to acknowledge the receipt of your note of the 31st ultimo, expressing certain of the conditions under which Colombia is willing to grant to the United States the right to construct the Panama Canal.

I have the honor to say in reply that, as I have orally stated to you, this important matter is having earnest consideration.

Accept, *etc.*,

JOHN HAY.

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[Copy—Translation.]

LEGATION OF COLOMBIA,  
*Washington, D. C., April 8, 1902.*

MR. SECRETARY: By express orders of my Government I have the honor to address your excellency for the purpose of entering a statement and a protest in regard to the projected canal between the Atlantic and Pacific Oceans, over what has been styled the Nicaragua

route. in so far as the said project may affect the sovereign rights of Colombia in the event of its including, as is to be presumed, territory that the Republic of Colombia has always held to be her own; and I particularly address your excellency by reason of the present pendency in legislative houses of the United States of a bill authorizing your Government to acquire the necessary zone and to carry on the above-mentioned work in territory that may, in part, come within the foregoing description.

The Government that I represent, adhering to its traditional and constant position on this point, desires to reaffirm its rights, as it has done in the course of the last century, and to recite again the grounds upon which it rests this affirmation by giving a succinct statement of its titles and a history of the antecedents of the question.

Colombia Mosquitia, which lies in the Province of Veragua as far as Cape Gracia a Dios, always was, after the year 1509, integral part of the "Reino de Tierra firme" (Isthmus of Panama), then of the vice royalty of Santa Fe or New Granada, with occasional and transitory dependency on the captancies of Cuba and Guatemala, until the 20th of November, 1803, when a royal order, dated in San Lorenzo, finally restored part of the Mosquito Coast to the vice royalty. Evidence of this is found in the capitulations for the conquest and colonization of the Province of Veragua and in Laws IV and IX of the Indies.

Throughout the colonial administration, from 1803 and on, the Government of the vice royalty constantly exercised jurisdiction over that territory as proved, among other documents, by the blockade decreed by the general of the Army of Spain in 1815, when Cape Gracias a Dios is described as the extreme point of the coast of the "Nuevo Reyno."

In the first years of the independence the Government of New Granada exercised jurisdiction over the Mosquito Coast, as evidenced by its decrees of April 19 and November 22, 1822.

In 1823, by reason of the occupation of the mouths of the San Juan River and adjacent rivers of the San Andres Archipelago by a Chilean privateer, Colombia made representations in vindication of her rights to the Republic of Chile, which disavowed the acts of the privateer.

In 1824 the Vice President of New Granada issued a decree declaring "illegal any enterprise for the purpose of colonizing any point on the Mosquito Coast between Cape Gracias a Dios and the Chagres River."

In 1825 the legations of Colombia to England and to Central America protested against the concession, without the assent of Colombia, for the construction of a canal that should come in contact with the Colombian Mosquito Coast.

In 1826 the Congress of Colombia passed the law, No. 6a, of May 1, enacting provisions regarding Mosquito natives.

In 1833 the Government of New Granada issued and published a circular relative to commerce on the Darien and Mosquito Coasts.

In 1838, when the opening of an interoceanic canal by the way of the San Juan River and Lake Nicaragua was under consideration, under the auspices of Hille the King of the Netherlands, the executive power made the pertinent protest, and on the following

year the minister of foreign relations of New Granada, under date of January 7, addressed the Government of Central America by sending it an argumentative protest, in which he declared in the name of the Republic that "if the intent is to carry out the project of an interoceanic waterway through the mouths of the San Juan, the Government of New Granada will oppose it and avail itself of all the means afforded by international law."

In 1843 the legation of Colombia at London laid before the English Government a protest denouncing the acts of the war frigates *Tweed* and *Charybdis* on the Mosquito Coast as an infringement on the sovereign rights of New Granada over the said territory. This attitude was maintained by the New Granadian Government throughout the following years, during which the minister of Colombia at London repeatedly asserted before the Government of Great Britain the rights of New Granada on the Mosquito Coast.

In 1890 the territorial concession granted by the Republic of Nicaragua for the excavation of an interoceanic canal called forth the note of the ministry of foreign relations of Colombia to that of the said Republic, in which it is declared that Colombia holds perfect titles establishing her sovereign rights over the territory known as the "Mosquito Coast" up to Cape Gracias a Dios, and renewed the protest made on the other occasions above mentioned.

In May, 1894, the Colombian Government once more renewed its protests respecting the sovereignty and dominion of the Mosquito territory, and proposed to the Government of Nicaragua that a tribunal of arbitration be constituted to pass upon the dispute herein adverted to, but that Government did not see fit to assent to the proposition, and in so doing Colombia did not renounce her indisputable rights in any way.

The Government of Colombia, therefore, deems it necessary to put it once more on record, through me, that if any concession in ownership or usufruct be made in the Mosquito territory by a country other than Colombia it is to be understood as being granted on the condition that the rights of third parties, save those that she claims to be perfect, over that region shall not be prejudiced thereby.

I avail myself, etc.,

JOSÉ VICENTE CONCHA.

HON. JOHN HAY,

*Secretary of State of the United States.*

No. 6.]

DEPARTMENT OF STATE,

*Washington, April 18, 1902.*

SEÑOR DON JOSÉ VICENTE CONCHA, *Etc.*

SIR: I have the honor to acknowledge the receipt of your note of the 8th instant, making "protest in regard to the projected canal between the Atlantic and Pacific Oceans over what has been styled the Nicaragua route, in so far as the project may affect the sovereign rights of Colombia in the event of its including territory which she holds to be her own."

In limiting this answer to the acknowledgment of the receipt of your note, the Government of the United States reserves, and with-



out prejudice, its entire freedom to make such answer as it may find proper should the occasion arise for it to do so.

Accept, etc.,

JOHN HAY.

No. 8.]

DEPARTMENT OF STATE,

Washington, July 18, 1902.

SEÑOR DON JOSÉ VICENTE CONCHA, *Etc.*

SIR: I beg leave to refer to the proposal made to this Government by the Republic of Colombia, through your excellency, on March 31 and April 18, 1902 (with the accompanying expository letters), agreed to by me on April 21 last under the conditions therein stated, and confirmed by your further favor two days later; also to the law of the Congress of the United States upon this subject, approved June 28, 1902.

You are aware, I am quite sure, of the reasons for amendment of the proposed treaty; and without affecting the respective engagements referred to, and which shall continue in full force unless we otherwise agree, I submit and propose various amendments to the proposed treaty, which I have embodied in the complete draft herewith delivered.

I am also sure, my dear sir, that you fully appreciate the necessity for very prompt action.

Accept, etc.,

JOHN HAY.

[Translation.]

LEGATION OF COLOMBIA,

Washington, D. C., July 19, 1902.

SIR: I have the honor to acknowledge to your excellency the receipt of the note dated yesterday, which is accompanied by the modifications that the Government of your excellency proposes to the memorandum from this legation, dated April 18, of the present year.

In reply to the said communication, I have the honor to inform your excellency that I hastened to transmit to my Government the aforesaid modifications by telegraph and by means of a special dispatch bearer, to request special instructions regarding them, since they affect substantially the treaty that was proposed by the undersigned.

As soon as my Government transmits the instructions requested, I shall have the honor of giving to your excellency the formal reply in the matter.

I repeat to your excellency my expressions of high and distinguished consideration.

JOSÉ VICENTE CONCHA.

HON. JOHN HAY,

*Secretary of State of the United States of America,  
Department of State.*

DEPARTMENT OF STATE,

Washington, July 21, 1902.

SEÑOR DON JOSÉ VICENTE CONCHA, *etc.*

MY DEAR MR. MINISTER: I regret to say that the clerk in copying the canal treaty draft omitted, by clerical error in the typewritten

copy of the draft which Mr. Hay handed to you on the 18th instant, the first paragraph in Article XIII, page 16. This omitted paragraph reads as follows:

The United States shall have authority to protect and make secure the canal, as well as railways and other auxiliary works and dependencies, and to preserve order and discipline among the laborers and other persons who may congregate in that region, and to make and enforce such police and sanitary regulations as it may deem necessary to preserve order and public health thereon, and to protect navigation and commerce through and over said canal, railways, and other works and dependencies from interruption or damage.

I have had pages 16 and 17 of the draft recopied to include this omitted paragraph.

This insertion involves no addition or change in the original draft of the treaty, the paragraph having been in the early drafts and omitted from this one by inadvertence. As you will see, it is necessary to complete the article.

I have to request that you substitute the inclosed pages 16 and 17, which contain the omitted paragraph as above explained, for the pages 16 and 17 now attached to your draft. Except for the addition of this paragraph the pages 16 and 17 inclosed herewith for attachment to your draft are identical with the ones for which they are to be substituted.

I am, etc.,

DAVID J. HILL, *Acting Secretary.*

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[Translation.]

LEGATION OF COLOMBIA,  
*Washington, D. C., September 22, 1902.*

SIR: I have the honor of addressing your excellency with the object of informing you that there was received last night at this legation a cablegram from the governor of the Department of Panama in which he asks that rectifications of various reports published in this country about recent events in that Department concerning the naval forces of the United States and American corporations holding interests therein be laid before the Department of State over which you preside.

These rectifications may be summarized as follows:

(a) There has been no interruption whatsoever in the transit over the Panama Railroad. The governor of the department directed that trains be detained for a few minutes on entering the cities of Panama and Colon for a brief inspection and to prevent a repetition of an attack by rebel forces such as that which took place in the city of Colon last year, but there was no interruption in the transit of the railroad, caused by the Colombian authorities, neither for a day nor for an hour.

(b) The Government of Colombia has not omitted to guarantee, in an effective manner, the right of way or transit across the Isthmus of Panama, under the obligation placed upon it by section 1 of article 35 of the treaty concluded in 1846 between the Republic of New Granada and the United States of America, nor has anything happened to interfere with the said freedom of transit.

(c) There has been no conflict in Panama between individuals or soldiers of the Colombian forces with marines of the United States, and the former have not failed to obey the directions issued by the governor of the Department on the subject of free transit.

To these rectifications the governor adds that the American company of the Panama Railroad refuses to comply with the express obligation, placed upon it by the privilege contract of August 16, 1867 (art. 19), to convey troops of the Government, as such, that is to say, with their arms, by which, besides incurring the civil responsibilities appertaining thereto, the said company throws obstacles in the way of the effective discharge of Colombia's duty to maintain the free transit across the Isthmus, since in case of threatened attack its forces could not repel it without arms.

The events that are taking place at Panama have been reported to the ministry of foreign relations at Bogota, but no instructions have as yet reached this legation, and I confine myself to transcribing to your excellency the foregoing remarks without advancing any judgment whatever as to the facts and reserving for my Government the faculty of making at any time on the question such declarations as it may deem necessary or expedient.

Accept, excellency, the assurances of my most distinguished consideration.

JOSÉ VICENTE CONCHA.

HON. JOHN HAY,  
*Secretary of State of the United States,  
Department of State.*

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LEGATION OF COLOMBIA,  
*Washington, October 26, 1902.*

SIR: I have the honor to address your excellency for the purpose of informing you that on the 24th instant I received from my Government supplementary and full instructions to close the negotiations for the construction of the Panama Canal which have been progressing between Colombia and the United States, and that in said document are comprised all the points to which your excellency adverted as modifications of the memorandum presented by the legation to the Department of State on the 21st of April last.

The instructions to which I refer bear date of Bogota, September 9, 1902, before the action was taken in the Department of Panama by United States naval officers which implies, on the part of your excellency's Government, a new interpretation of the treaty in force between the two countries, an interpretation concerning which I am not now at liberty to express any opinion, for the reason that the minister for foreign relations at Bogota has undertaken to discuss it directly himself, as your excellency is aware; but which would essentially affect the convention now pending, since article 35 of that treaty is incorporated and developed therein.

In view of the foregoing, your excellency will recognize that it is just now impossible for me to act in pursuance of the instructions received, in consequence of which I have addressed my Government my cable, stating the circumstances, to the end that it may decide upon what it considers most proper.

My object in addressing your excellency on this occasion is mainly to place on record the good will and frankness of intentions of my Government in the pending negotiations, since, surmounting considerable difficulties arising from the disturbance of public order in the country, it has succeeded in sending to its representative instructions to conclude the treaty, which was soon to be submitted to the legislative body, and although an unforeseen delay in the progress of the affair now arises, my Government is in no wise responsible therefor.

Accept, your excellency, the assurances of my distinguished consideration.

JOSÉ VICENTE CONCHA.

JOHN HAY.

*Secretary of State of the United States.*

No. 9.]

DEPARTMENT OF STATE,  
*Washington, October 28, 1902.*

Señor DON JOSÉ VICENTE CONCHA, etc.

SIR: I have the honor to acknowledge receipt of your communication of the 26th of October, in which you inform me that on the 24th instant, you received from my Government supplementary and full instructions to close the negotiations for the construction of the Panama Canal. You further state that since these instructions were dated, action has been taken in the Department of Panama by United States naval officers, which, in your opinion, implies a new interpretation of the treaty now in force between the two countries.

Your excellency does not further particularize the facts referred to, nor the interpretation to which they have given rise, but you inform me that, in view of the foregoing, it is impossible for you now to act in pursuance of the instructions received by you without further consultation with your Government.

I do not recognize that there has been any action on the part of officers of the United States Navy in the Department of Panama to which your Government could justly take exception, and I can assure you that no new interpretation has been placed upon the treaty now in force between our respective countries.

I admit that it is not proper for me, nor have I any inclination, to make any observations upon your excellency's action in declining to carry out the instructions which you inform me you have received from your Government. I venture, however, to recall to your excellency the law passed at the last session of Congress, which makes it the duty of the President to ascertain whether a satisfactory treaty can be made with Colombia for the construction of a canal across the Isthmus, and, in case this is impossible, authorizes him to proceed to the construction of such a canal by another route.

The Congress will meet in the course of a few weeks and it will then be incumbent upon the President to report whether it is probable that he will be able to negotiate a satisfactory treaty with the Republic of Colombia. I need not point out to your excellency how grave a responsibility will be assumed by anyone who, by positive or negative action, may make it necessary for this Government to resort to the alternative mentioned.

I beg, sir, that you will accept, etc.

JOHN HAY.

LEGATION OF COLOMBIA,  
*Washington, November 11, 1902.*

MR. SECRETARY: In the audience which your excellency was pleased to grant me on the 4th instant, I had the honor to state, verbally, that my Government had communicated to me, by cable, the supplementary instructions referred to in my last note to your excellency, and I said that, according to those instructions, I must ask of the United States Government that, in the draft of a treaty for the construction of the Panama Canal, article 23 of the memorandum presented by the legation on the 18th of April last might be textually maintained, and that it might be connected with articles 3 and 17 of the same, a substantial portion of article 35 of the existing treaty of 1846-1848 between Colombia and the United States being thus authentically interpreted, said article having to be ratified and incorporated in the new convention.

In the aforesaid article 23, which your excellency expressly accepted with the rest of the memorandum in the note which you were pleased to address to the legation on the 21st of April last, it appears that, even though Colombia grants to the United States a certain extension of authority on the Isthmus in case the canal treaty shall become operative, she has not for that reason nor could she renounce certain special powers inherent in the exercise of the sovereignty of the Republic, among which powers a very prominent place is occupied by that of protecting her own territory, guaranteeing transit, and maintaining or reestablishing order and peace, conceding to the United States a determinate interposition only while Colombia herself shall be, owing to some unforeseen event, unable to perform those duties; but of course without ever abdicating the elementary right of transporting her public officers, troops, elements of war, etc., through her own territory without any limitation whatever, as is provided by article 17 of the same memorandum, and without her authorities being at any time deprived of the right of discharging their legal functions.

The fact that your excellency accepted, in the aforesaid official note, on the 21st of April, the articles now under discussion, clearly shows that the scope there given to the action of the United States is the correct understanding of the treaty of 1846, which understanding my Government considers it necessary to determine in a solemn manner, preserving and ratifying it for the future. The article proposed by your excellency as a substitute for the one aforesaid might cause Colombia to be, in a certain manner, incapacitated from exercising, without control, the power of maintaining order in her territory, or might give rise to contradictions or discussions which it is very desirable to avoid.

As the difference in question has reference to a highly important point of the treaty to be concluded, I had the honor to call your excellency's attention, as I now again do, to the necessity of a definite reply, beforehand, on this subject, with a view to expediting the examination of other secondary points. Your excellency was pleased to inform me that the modification of article 23, which was proposed in your note of July 18, was due to the initiative of certain Senators who had supported the project of the Panama Canal, and who thought that the new wording would more readily secure the

United States Senate's approval of the projected treaty; your excellency stated that you could not give a definite answer, as requested by me, without previously consulting the President of the United States, who was absent from the Capital, but that when you should have consulted that officer you would make a suitable reply.

I have desired to place my request to your excellency on record, in writing, in order that its terms may appear with greater clearness, and I hope that your excellency will be pleased to communicate the decision of your Government to me whensoever you may think proper to do so.

I reiterate to your excellency the assurances of my most distinguished consideration.

JOSÉ VICENTE CONCHA.

His Excellency JOHN HAY.

*Secretary of State of the United States.*

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[Translation.]

Personal.]

LEGATION OF COLOMBIA,  
*Washington, D. C., November 11, 1902.*

Mr. SECRETARY: In compliance with the wish your excellency was pleased to express in our conference of Friday last, I transmit to your excellency an unofficial memorandum embodying the desiderata that I shall formulate at the proper time in the matter of the canal.

In a separate and official note, I state in writing the request I already presented orally to your excellency in our conference of the 4th.

I cordially subscribe myself your excellency's obedient servant,  
JOSÉ VICENTE CONCHA.

To His Excellency Mr. JOHN HAY, *etc.*

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[Translation.]

[Confidential.]

Note of the general remarks that the minister of Colombia proposes to lay before the Department of State touching the amendments suggested by the department on the 18th of July to the memorandum of April 18, when the point presented in the official note of this day shall have been decided.

#### ARTICLE I.<sup>1</sup>

(a) It will be asked that the condition providing for the restitution to the Republic of all public lands granted to the canal and railroad companies not within the zone the use of which is conceded to the United States be retained in this article.

(b) This same article shall clearly state that the permission accorded by Colombia to the canal and railway companies to transfer

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<sup>1</sup> The articles are numbered according to the memorandum of April 18.

their rights to the United States shall be regulated by the previous special arrangement entered into by Colombia with the said companies, and for which they have been notified that they are to appoint an attorney at Bogota.

#### ARTICLE II.

The introduction of the phrase "in perpetuity," in this article could not be accepted without effecting a complete change of the nature of the usufruct contract to be signed, which would make it necessary to amend the Constitution of Colombia.

It shall be clearly stated in this article that the exclusive right of the United States to protect the canal is in relation to other countries and not to Colombia, according to the provision of Article XXIII.

#### ARTICLE III.

Same remark regarding perpetuity as is made in the foregoing article. The Government will ask that this article remain worded as it is in the original memorandum.

#### ARTICLE VII.

The right to navigate the Chagres and to use other waters and property of Colombia in the Department of Panama, as conceded to the United States, shall be qualified in the manner set forth in the original memorandum, but this shall not stand in the way of the concession being extended to the use of stones, sand, earth, etc.

#### ARTICLE VIII.

This article shall guarantee the rights acquired by third parties in regard to lighthouses at Colon and Panama. If it should become necessary to abolish the dues, the consequent indemnities shall be paid by the United States.

#### ARTICLE XXV.

The discussion of this article shall be reserved until after the remainder of the treaty shall have been agreed to; but, in the meanwhile, the Government of Colombia will claim that to an increase of the concessions stipulated in the memorandum of April 18 shall correspond an equitable increase of the indemnity paid for their use in the first 14 years, and that the sum paid for the same right in the years following the fourteenth shall not be less than that received for each one of the first 14 years.

#### ARTICLE XXVI.

The text of the original memorandum is to be maintained without prejudice to the insertion in another separate article of that which bears the same number among the amendments offered by the Department of State.

An additional article, specifying the mode of settlement of any doubts arising in regard to the interpretation of the treaty will likewise be necessary.

A few details relating to questions of form will be pointed out at the time of the final drafting of the treaty.

Washington, D. C., November 11, 1902.

JOSÉ VICENTE CONCHA.

Personal.]

DEPARTMENT OF STATE,  
*Washington, November 5, 1902.*

SEÑOR DON JOSÉ VICENTE CONCHA, etc.

DEAR MR. MINISTER: I have the pleasure to inform you that a telegram has been received from Rear Admiral Casey, reporting that Government reinforcements have reached Colon from Barranquilla, and that the Colombian troops are now being transported on the Panama Railway by separate special trains without any marine guard. He adds that no insurgents have been seen on the line of the railway for the past two days.

I am, my dear Señor Concha.

Very cordially, yours,

JOHN HAY.

No. 11.]

DEPARTMENT OF STATE,  
*Washington, November 18, 1902.*

SEÑOR DON JOSÉ VICENTE CONCHA, etc.

SIR: I had the honor to receive on the 11th instant your esteemed letter and memorandum embodying all the amendments proposed by your Government to the draft treaty which I had the pleasure of handing you four months ago.

It is so imperative to expedite a conclusion that I shall at once deal with each of the amendments now for the first time presented by your excellency.

Without considering at this time, questions relating to the treaty of 1846 (if any such questions really exist), I am sensible of the paramount fact that the new treaty will completely and satisfactorily establish all the relations of our two nations to this great undertaking.

The President has anxiously considered whether he could yield to the amendment which you consider so important to your country (the substitution of former Article XXIII for the later Article XXIII). Desirous of manifesting in an unmistakable manner the good will of this Nation to Colombia, the President authorizes me to say that if all the other provisions are agreed upon to the satisfaction of the United States, he will consent to the substitution of Article XXXIII of the former instrument for the like article of July 18, 1902, but otherwise acquiescence is not to be operative.

Therefore I hand you herewith a memorandum replying in detail to your several proposed amendments; and also a clean copy of the treaty prepared in conformity with such memorandum and this note.



I respectfully beg leave to suggest that your Government should not longer delay to signify which of the alternative forms of Article XXV it elects to embody in the treaty.

Accept, etc.,

JOHN HAY.

[Memorandum. In reply to the amendments proposed by the minister of Colombia on November 11, 1902, to the draft treaty of July 18, 1902.]

(The numbered articles relate to the draft of July 18, 1902.)

#### ARTICLE I.

(a) It has been ascertained by the United States that the canal and railroad companies own or are in possession of property within Panama or Colon or the ports and terminals thereof which are of large value and are a part of the railroad and canal systems. The amendment now proposed by Colombia might operate to transfer such property to Colombia instead of to the United States.

The United States in conceding to Colombia the enormous land grants covered by the canal concession considers that it has reached, if not exceeded, the bounds of liberality and can not in addition turn over the properties in Panama and Colon.

Moreover, the very large pecuniary expenditure which Colombia has insisted (Art. V) that the United States shall make in furnishing Panama and Colon with necessary aqueduct and drainage works will be warranted only by its ownership in said cities of the properties in question. No question of the sovereignty of Colombia is involved, for Article XIX expressly covers this very case.

(b) The United States considers this suggestion wholly inadmissible.

#### ARTICLE II.

Examination of the constitution of Colombia fails to disclose any prohibition against the alienation of national property. On the contrary, article 76 (Sec. IX) confers upon Congress the power to authorize the Government "to alienate national property."

Nevertheless, in deference to the wishes of the Colombian Government, and desiring an agreement at the earliest possible day, the United States will accept the words "for the term of 100 years, renewable at the sole and absolute option of the United States for periods of similar duration so long as the United States may desire," in place of the words "in perpetuity."

With the broad amendment conceded in respect of Article XXIII, no further change in this article is considered necessary or proper.

#### ARTICLE III.

In harmony with the concession made in respect to Article II, strike out the word "perpetual" and insert after the words "use and control" the words "for the term of 100 years, renewable at the sole and absolute option of the United States for periods of similar duration so long as the United States may desire."

The remaining proposed amendments would have the effect of limiting and hampering the United States in the construction and operation of the canal. It is not believed that Colombia has any purpose so inconsistent with the successful accomplishment of the undertaking. It has been found that the provisions of this article relating to the physical works are necessary for the complete and efficient consummation of the great design.

The United States, therefore, is not willing to make any other change in this article.

#### ARTICLE VII.

In so great and unique an engineering problem no one can foresee precisely in what manner the rivers, streams, etc., may have to be controlled, deflected, impounded, etc.; the form proposed by the United States simply makes certain that all necessary adjuncts comprehended within the plans for the canal may be properly executed. We are confident that Colombia does not wish to limit or prevent the proper construction of the canal. The proposal to substitute the former Article VII for the present Article VII is not agreed to.

#### ARTICLE VIII.

This fresh basis of pecuniary indemnity comes as a surprise to the United States, and it might well be urged that it be borne by Colombia, or at least in equal parts between the nations. However, animated by the same spirit which pervades every article of the treaty, the United States will permit these privileges to come under Article XIV. Therefore we add to Article VIII the following words:

Any concessions or privileges granted by Colombia for the operation of light-houses at Colon and Panama shall be subject to expropriation, indemnification, and payment in the same manner as is provided by Article XIV in respect to the property therein mentioned; but Colombia shall make no additional grant of any such privilege nor change the status of any existing concession.

#### ARTICLE XXV.

As no amendment is proposed to this article it is not necessary to enter into a discussion of this subject, but it is respectfully called to mind that the proposal by the United States of the payment of the lump sum of \$7,000,000 has no relation whatever to the subject of annuity for the first 14 years. It is self-evident that this could not be so, since Colombia has already collected annuity in advance for over 9 of these very 14 years through the issuance by the railroad company of its subsidy bonds. It is also manifest that during the period of construction and early operation (say, 14 years), as the property will not realize material revenue, no annual payment would be warranted.

#### ARTICLE XXVI.

If it is proposed to restore the forfeiture clause of Article XXVI of the treaty of April 18, 1902, the United States can not accede thereto.

By Article XXIV the United States contracts to construct and complete the canal, and it is respectfully submitted that the definite engagement of the United States is sufficient. Moreover, such a provision would be in conflict with the law of June 28, 1902.

ADDITIONAL ARTICLE.

Neither the forms of July 18 or April 18 endeavor to specify the mode of settlement of any doubts arising in regard to the interpretation of the treaty. We do not conceive of any questions which these two friendly nations, knit by 50 years of uninterrupted treaty ties, will not be able to adjust happily by such mode as may be suggested by the peculiarities of the case in the years to come. Any method which we might now attempt to define would probably prove unfitted to the future case and embarrassing to both parties.

DEPARTMENT OF STATE, *November 18, 1902.*

[Translation.]

COLOMBIAN LEGATION.

*Washington, D. C., November 22, 1902.*<sup>1</sup>

MR. SECRETARY: I have had the honor to receive a note, under date of the 18th instant, in which you are pleased to acknowledge the receipt of my official communication and memorandum with official note of the 11th ultimo. At the same time I have received the memorandum and project of a treaty which accompanied your aforesaid note.

Before responding to the substantial part of that communication, I permit myself to state to you that no delay in the negotiations is imputable to my Government. On the 18th of April I had the honor to present to the Department of State the memorandum containing the basis of the treaty. The Congress of the United States found it necessary to discuss for several months the law giving authority to the executive government, and it was not until the 18th of July that your excellency informed me of your draft of modifications. It was then indispensable that the Attorney General of the United States should examine the validity of the title of the canal company, for which reason several more months were needed, but on the same day that the Attorney General of the United States presented his report to the Government I had the honor to communicate to your excellency that the instructions to forward the negotiations were in my possession, and that I only awaited a supplemental order from my Government by telegraph to proceed therewith.

JOSÉ VICENTE CONCHA.

Hon. JOHN HAY,

*Secretary of State of the United States,*

*Washington, D. C.*

Any action on my part while the Attorney General was pursuing his investigation would have been irregular and barren of results, as is obvious.

<sup>1</sup> This was the last communication on this subject from Señor Concha before he left Washington.

I ought, moreover, to intimate that in the commentary memorandum, which I sent to your excellency separate from my official communication of the 11th, I did not formulate any propositions in the name of my Government, but in order to satisfy your personal desire I suggested in the memorandum the points which would be the subject of objection in case the main point were favorably resolved after preliminary discussion by me in accordance with the orders of my Government. It is thus seen that my memorandum was presented without the necessary arguments, inasmuch as it was not presented for immediate discussion. Moreover, in the last part of my memorandum it was expressly intimated that it did not contain all the objections which the Government of Colombia would make to the amendment proposed by the Government of the United States, and that when the time came for discussing the business as a whole the remaining objections would be presented.

As you are pleased to say, the wish to hasten the negotiations necessitates the simultaneous treatment of all the questions without separating from the rest the question relative to Article XXIII, which, on the contrary, is connected with the others in the note which I have the honor to acknowledge.

In order therefore to conform to the desires expressed by you and to show anew the purpose of Colombia to facilitate so far as might be in its power the termination of the negotiations, I accept the method adopted by you, although it is not the same as that which I had the honor to propose.

The condition of retaining in the proposed treaty the twenty-third article in the form in which it was drawn up in the memorandum of the 18th of April has been characterized in the written instructions which I have received from my Government as a peremptory one, and consequently it is not permissible to me to subordinate it to other conditions, so long as my principal shall not revoke or modify in some express manner the orders which it has given to me.

In this regard it may be proper to observe that the Government of Colombia has introduced no innovation in the matter, nor has asked anything which had not been previously accepted by the Government of the United States, as appears from the note which you did me the honor to address me on the 18th of April last, as well as in the later note of the 18th of July, in which you were pleased to say that the modifications proposed on this latter date do not affect the engagements contracted by the acceptance of the unofficial memorandum "which continues in all its force until some other agreement be reached." The assent of the President of the United States to the incorporation of the original Article XXIII in the treaty draft can not, perhaps, be exactly called a concession which puts Colombia in the position of making in equity other concessions requested by the United States.

Neither is it out of place to recall in this respect that in the conference, which I had the honor to hold with you on the 4th of the present month, you were pleased to state to me that the modification of the twenty-third article, which was proposed among the amendments of the 18th of July, had not arisen upon the sole initiative of the executive governments, since it was judged indispensable at the suggestion of several Members of the Senate of the United States,

who believed it to be opportune; but since then I had the honor to state to you that it was for Colombia a capital point, since, taken in connection with the provisions of Articles IV and XVII, its effect was to enunciate and affirm the rights of sovereignty of the Republic and questions of the guarantee and freedom of transit in conformity with the thirty-fifth article of the existing treaty of 1846-1848, which is textually incorporated in the convention about to be concluded. Whatever be the importance of this explanation, it suffices to show that, even although the cordial relations between Colombia and the United States at different times and for different motives have not been interrupted or embarrassed for more than 50 years of the existence of the treaty, doubts and controversies have arisen which, although they have terminated by being settled or forgotten, it would still be very desirable that they should not arise in the future when we aspire to draw still closer the existing relations between the two Republics upon the footing of perfect equality to which international law and their own traditions entitle them.

In a memorandum attached to this note I answer your excellency's memorandum to which I have referred at the beginning of this note, and I set forth the reasons upon which my Government rests for adhering to its original position in the substantial parts of the memorandum of the 18th of April of this year as the bases of the treaty.

I have, moreover, transmitted by cable to my Government a summary of your communication and memorandum, in order that it may definitely decide upon what it deems to be most appropriate.

I beg your excellency to accept the assurances of my highest and most distinguished consideration.

JOSÉ VICENTE CONCHA.

[Memorandum in reply to the memorandum of the 18th of November of his excellency the Secretary of State of the United States.]

#### A.

(a) The condition that there be returned to Colombia all the public lands granted to the railway and canal companies which may not be within the zone of the concession made to the United States, is in accordance with the original intent and text of the memorandum of the 18th of April. The undersigned is not unaware that those properties may have a considerable value, but it must be kept in view, on the one hand, that the Government of Colombia has not interfered and will not interfere in any form whatever in the stipulation of the price which the United States are to pay to the aforesaid companies for the concession of their rights; and, on the other hand, that all those properties of which those companies now have the usufruct are to be restored to the Republic at the expiration of their respective concessions. (Seventh condition of Article I of the contract for the construction of the canal of May 18, 1878; Article XVII of the contract for the railway of the 17th of April, 1850; and Article XXIII of the additional contract of July 5, 1867, concerning the same railway.) The time during which the companies are to have the usufruct of those properties being thus limited, it is clear that if they have any considerable value that value belongs to

Colombia, and there is no reason or motive for paying it over to the companies or for their owner to cede it gratuitously. Colombia has already exercised an act of exceptional liberty in extending, in favor of the canal company, the time limit for the construction of the work which has had the sole effect of allowing to the company the possibility of recovering a part of its capital which, without this extension of time, would have passed in several months to Colombia.

The undersigned does not insist or intimate that the United States shall intervene in the questions which have to be discussed between the Government of Colombia and the aforesaid companies, but he does indicate that there are such questions in order that the equity which moves the request of Colombia may be palpably seen. So that, if there be still wanting any proof of the liberality of Colombia in her grants of land, it would be sufficiently shown by the enlargement of the zone of the canal from 200 meters conceded to the company to 5,000 meters which is offered to the United States.

(*b*) The preceding reasons serve, in part, likewise to show the necessity which exists that the Government of Colombia should make a special contract with the companies which are about to cede their rights; but it should be said in addition that the sole fact of a treaty between Colombia and the United States can not have the judicial effect of determining or cancelling the bonds of right which exist between the Republic of Colombia and those companies—bonds springing from perfect contracts which can not be dissolved according to the principles of universal jurisprudence, because one of the parties may conclude a compact in regard to the same matter with a third party, which in this case would be the United States. So that, as the United States are under the necessity of making a contract for acquiring the rights of the said companies, and as such negotiation could not be included in the treaty which is to be concluded between the two countries, so also the dissolution of the obligations between Colombia and the two companies could not be effected by the treaty. Otherwise the result would be that Colombia would be stripping herself of all her rights in relation to these corporations or depriving herself of the means of making those rights effective, and would still leave in existence her obligations toward them. The mere fact of the payment of the privileged shares which Colombia possesses in the canal company would not be a guarantee for the relinquishment of a special contract, the more so as in the modification proposed by the Department of State to Article I of the April memorandum it is expressly said that the United States contracts no obligation in this regard (“no obligation under this provision is imposed upon or assumed by the United States”).

If the United States have to construct aqueducts in Panama and Colon, these being cities the increase of whose population and trade would be due exclusively to the canal, it is the United States who will derive great benefit from that fact by obtaining sanitary conditions favorable for their employees and operatives, who will sojourn there in great number. Even supposing that this stipulation did not exist in the treaty—and it is not essential—the United States would find themselves under the necessity of constructing these works.

However sincere and strong may be, therefore, the desire of the Government of Colombia to smooth away the difficulties of the negotiation, it could not, without causing irreparable injury to the interest

of the Colombian people, withdraw the conditions which have been set forth with respect to Article I.

B.

Seeing that the United States accept the suppression of the term "in perpetuity" in Articles II and III of the project of a treaty, it is not necessary to discuss this point, and it is merely proper to remark that in the constitution of Colombia "territory" is not synonymous with "national property" (*bienes nacionales*), as is shown by Article IV of that constitution; but the alienation of a part of the territory would require a change in the boundaries of the nation, and as such boundaries are fixed in Article III of the same fundamental charter, a change thereof would require the amendment of the constitution itself.

C.

Article III of the original memorandum was not objected to by the Government of the United States when it was presented, nor was it said, as it is now said, that it would "embarrass or limit the action of the United States in the construction of a canal," a point which certainly would not have escaped the notice of the Department of State at that time. No amendment has been formulated in this regard, as was said in the memorandum to which reply is made, and it is only asked that an article of the original project may be conserved intact.

Consequently Colombia is not disposed to make any change in Article III of the memorandum of the 18th of April.

The same is said with respect to Article VII. since the same reasons exist therefor.

D.

Although the part relative to lighthouses is stricken out, it should be stated that, when the memorandum of the 18th of April was published, a certain lighthouse concessionary in the department of Panama presented to the Government of Colombia a memorial (hereto annexed in copy) in reservation of his rights. Although there is an article of the treaty in which indemnification is tacitly comprised it has been sought to make the matter clear, and in that respect also no new matter is introduced. It is proper to note that by suppressing lighthouse dues in Panama, Colombia loses a relatively important revenue for its treasury and that it would not have been equitable if, in renouncing these resources for the future, it would also have to be burdened with the payment of the rights of the concessionaries.

E.

The memorandum to which reply is now made, in speaking of matters concerned with Article XXV of the treaty project, states that the offer of payment on the part of the United States of a total sum of \$7,000,000 "has no connection with the matter of an annual payment during the first 14 years."

The textual and clear terms of Article XXV of the memorandum of the 18th of April are sufficient to answer this remark. It is there

clearly stated, after much insistence, in order that it may appear that the seven millions which Colombia is to receive were an advance payment, an advance for the 14 first years of the use of the zone, and of the other concessions which the United States were to receive from the Government of Colombia. Before the termination of these 14 years an accord was to be reached conformably to the cited article, concerning the rate of the further annual payments, and to that end were mentioned the data upon which the estimates should rest beginning with the amount of the annual payment as calculated for the first period. But if, as to this, doubt should still exist it should be now stated with due precision that at the time the former minister of Colombia in Washington began the discussion of the preliminaries of the treaty with the members of the Isthmian Commission, it was stated clearly, expressly, and insistently that Colombia would ask an annual payment for the right to use the zone of the canal, as the proprietor thereof, and also the equitable price of the other concessions. In this regard, as in respect to the rest of the treaty draft, the conduct of Colombia has been absolutely frank from the beginning, and any other proceeding would have been destitute of reasonable motive.

The Government of the United States has thought it proper to modify the text of Article XXV of the memorandum which it accepted in its two notes of the 18th of April and 18th of July, and has proposed to Colombia an alternative between the payment of ten millions in cash and \$10,000 of annual rental, or an initial payment of \$7,000,000 and an annual discountable revenue of \$100,000. The undersigned minister has no written authority of his Government to accept either of the two aforesaid alternative terms.

/ If the indemnification which is to be given to Colombia for its vast concessions has to be reduced to either of the two terms of the alternative proposed by the United States, the result would be that Colombia, having first ceded the usufruct and afterwards the full ownership of the Panama Railway; having ceded to the United States a zone for the canal 25 times greater than that which the concessionary company now enjoys; having renounced the expectation that the constructed canal shall become in 99 years the property of the Republic; having abstained from asking 8 per cent of the revenues of the enterprise as stipulated in the contract with the company; having obligated herself to suppress in a considerable extent of territory all imposts and contributions which might help to meet the increasing expenses of the public service; having given the free use of all the navigable waters and many public lands of Panama—would in exchange receive only in the first period of 100 years a sum which, distributed among all those years, would not amount in any one year to the half even of the sum which the Republic and the Department of Panama to-day receive from the rental of the Panama Railway alone./

The United States have given on distinct occasions before the world, and in fact to other Governments, examples of high and noble equity. So that, giving a little consideration to the real proportions of the indemnity which is offered to Colombia, it can not fail to be seen that this offer is very wide of what such equity would require.



## F.

With respect to Article XXVI of the original memorandum, the undersigned has no authority to eliminate it from the text of the

## G.

No formal proposal has been made concerning the terms of an article in which shall be established the manner of settling the doubts or difficulties which may arise in the application of the treaty in case it be perfected, but, this being the last provision of the compact, its examination may be postponed.

Washington, D. C., November 22, 1902.

JOSÉ VICENTE CONCHA.

BOGOTÁ, August 27, 1902.

His Excellency the MINISTER OF FOREIGN RELATIONS.

*Present:*

I, Dionisio Jiménez, a Colombian citizen, a resident of the city of Cartagena and transiently in this capital, make to your excellency, with all due respect, the following statement:

1. That I am the holder of the privilege for the establishment and exploitation of the lighthouse on Isla Grande, situated on the Atlantic coast of the Department of Panama, 32 miles from the port of Colon, which lighthouse has been in use for more than seven years, during which time it has worked with absolute regularity.

2. That the aforesaid lighthouse now yields to the national treasury an income of not less than \$6,000 per annum, by reason of the share of the said treasury in that enterprise, which will become the exclusive property of the Government when the privilege expires.

3. That the privilege, which I acquired by purchase (made with the approval of the Government) from Don Aureliano Gonzalez Toledo, the original holder of the concession, gives me the right to collect from all vessels that pass by said lighthouse, whencesoever they may come and whithersoever they may be going, remuneration for the service that they receive from said lighthouse, without any exception save the war vessels of nations that are friendly to Colombia.

4. That in article 7 of the draft of a treaty with the Government of the United States of America for the construction of the Panama Canal, which draft was prepared by Don Carlos Martínez Silva when he was in charge of the legation of Colombia at Washington, there is offered to vessels about to pass through that canal, among many other and various concessions, exemption from the payment of light dues. This is done in so broad a manner that it might readily be believed that the exemption offered had reference to all lighthouses on the seacoast of the Republic, and not merely to that in the port of Colon, which is the only one to which that act of disinterestedness and generosity can refer.

5. That in the privilege granted to the Universal Panama Canal Co., which it is proposed to transfer to the American Government, the right was granted to that company—

to establish and collect for passage through the canal and the ports belonging to it lighthouse, anchorage, transit dues, etc.

But no exemption whatever was granted to vessels going to the canal for the services that they should receive in other ports or from coast lighthouses not belonging to the Panama Canal Co.

6. That as the point now under discussion was left obscure when the final contract was concluded between the Government of Colombia and that of the United States, erroneous interpretations might afterwards occur which might disturb the exercise of the rights that I have acquired in connection with the concession of the lighthouse on Isla Grande, said lighthouse being situated 32 miles from the port of Colon, or from the entrance via the Atlantic to the projected Panama Canal, in which enterprise more than \$50,000 have been invested, I have thought proper, without further delay, to address your excellency to the end that if that treaty should finally be collected [meaning concluded], you may be pleased to consider the rights which I represent as the holder of the concession to exploit the coast lighthouse on Isla Grande, and to protect them by giving it to be understood, with all clearness, that vessels about to pass through the canal are to be exempt from the light dues of the port of Colon, but that, in accordance with the established schedule, they must pay for the service which they receive from the lighthouse on Isla Grande, which is the point of orientation of all vessels passing along the coasts of the Isthmus of Panama.

7. That this explanation interests the Government more than it does the undersigned, who is simply the usufructuary for a limited time of one-half of the income yielded by that lighthouse, whereas the Government is not only the usufructuary of the other half, but when the privilege expires it will be the exclusive owner of the enterprise, and consequently of the entire income yielded by it.

8. That if, owing to any unforeseen circumstance, or to any circumstance over which your excellency has no control, the rights of the enterprise which I represent shall be annulled, I now enter a formal protest on account of the damage that may be caused, reserving the right to claim compensation therefor by due process of law if the case shall arise.

I earnestly beg your excellency to be pleased to order the receipt of this memorial to be acknowledged.

Mr. Minister.

DIONISIO JIMÉNEZ.

[Republic of Colombia. (L. S.) Ministry of Foreign Relations.]

MINISTRY OF FOREIGN RELATIONS,  
*Bogota, September 2, 1902.*

The foregoing is a copy, which is transmitted with a communication of this day's date, No. 7078, to the honorable legation of Colombia at Washington.

FRANCISCO RUIZ,  
*Assistant Secretary.*

A true copy.

J. V. CONCHA,  
*Minister of Colombia.*

## APPENDIX.

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### LIST OF PUBLIC DOCUMENTS.

1. Clayton-Bulwer treaty. Signed at Washington April 19, 1850. Proclaimed July 5, 1850.
2. Hay-Herran (Panama Canal) treaty. Signed at Washington on January 22, 1903. Approved by the United States Senate March 17, 1903. Never acted upon by the Colombian Congress. (57th Cong., 2d sess., S. Ex. K.)
3. First Hay-Pauncefote treaty. Signed February 5, 1900. Amended by the United States Senate and never ratified. (56th Cong., 1st sess., S. Doc. No. 160.)
4. Hay-Pauncefote treaty. Signed at Washington November 18, 1901. Proclaimed February 22, 1902.
5. Hay-Bunau Varilla Convention (Panama Canal treaty). Signed at Washington November 18, 1903. Proclaimed February 26, 1904.
6. Treaties with Panama and Colombia relating to the Panama Canal. Signed with Panama (Root-Arosemena) January 9, 1909. Signed with Colombia (Root-Cortes) January 9, 1909. Treaty between Panama and Colombia (Cortes-Arosemena). Signed January 9, 1909. Consented to by United States Senate and by Panaman Congress. Never acted upon by Colombian Congress. (60th Cong., 2d sess., confidential. Ex. N.)
7. President Taft's message. August 19, 1912. The Panama Canal. (62d Cong., 2d sess., H. Doc. 914.)
8. Panama Canal act. Approved August 24, 1912. (Public. No. 337, H. R. 21969.)
9. Memorandum to accompany canal act. Signed by President Taft August 24, 1912.
10. President's proclamation Panama Canal toll rates. November 13, 1912.
11. President's message giving correspondence relating to the revolution on the Isthmus of Panama, November 16, 1903.
12. Second message giving further correspondence on the same subject, November 27, 1903.
13. President's message giving correspondence between the United States and Colombia.
14. President's message giving correspondence showing relations between the United States, Colombia, and Panama, January 18, 1904.
15. Hay-Concha protocol and correspondence between the United States and Colombia.
16. President's message giving correspondence showing relations of the United States with Colombia and Panama, December 8, 1908.

## APPENDIX.

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### No. 1.

#### CLAYTON-BULWER TREATY.

CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN FOR FACILITATING AND PROTECTING THE CONSTRUCTION OF A SHIP CANAL BETWEEN THE ATLANTIC AND PACIFIC OCEANS, AND FOR OTHER PURPOSES.

[Signed at Washington April 19, 1850; ratification advised by the Senate May 22, 1850; ratified by the President May 23, 1850; ratified by Great Britain June 11, 1850; ratifications exchanged at Washington July 4, 1850; proclaimed July 5, 1850.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

#### A PROCLAMATION.

Whereas a Convention between the United States of America and Her Britannic Majesty, for facilitating and protecting the construction of a ship canal between the Atlantic and Pacific Oceans, and for other purposes, was concluded and signed at Washington, on the nineteenth day of April last, which Convention is, word for word, as follows:

#### CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND HER BRITANNIC MAJESTY.

The United States of America and Her Britannic Majesty, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a Convention their views and intentions with reference to any means of communication by Ship Canal, which may be constructed between the Atlantic and Pacific Oceans, by the way of the River San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean,—The President of the United States, has conferred full powers on John M. Clayton, Secretary of State of the United States; and Her Britannic Majesty on the Right Honourable Sir Henry Lytton Bulwer, a Member of Her Majesty's Most Honourable Privy Council, Knight Commander of the Most Honourable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles.

#### ARTICLE I.

The Governments of the United States and Great Britain hereby declare, that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said Ship Canal; agreeing, that neither will ever erect or maintain any fortifications

commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or People for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection or influence that either may possess with any State or Government through whose territory the said Canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said Canal, which shall not be offered on the same terms to the citizens or subjects of the other.

#### ARTICLE II.

Vessels of the United States or Great Britain, traversing the said Canal, shall, in case of war between the contracting parties, be exempted from blockade, detention or capture, by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said Canal, as may hereafter be found expedient to establish.

#### ARTICLE III.

In order to secure the construction of the said Canal, the contracting parties engage that, if any such Canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local Government or Governments, through whose territory the same may pass, then the persons employed in making the said Canal and their property used, or to be used, for that object, shall be protected, from the commencement of the said Canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure or any violence whatsoever.

#### ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise, with any State, States or Governments possessing, or claiming to possess, any jurisdiction or right over the territory which the said Canal shall traverse, or which shall be near the waters applicable thereto; in order to induce such States, or Governments, to facilitate the construction of the said Canal by every means in their power: and furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free Ports,—one at each end of the said Canal.

#### ARTICLE V.

The contracting parties further engage that, when the said Canal shall have been completed, they will protect it from interruption,

seizure or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said Canal may forever be open and free, and the capital invested therein, secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said Canal, and guaranteeing its neutrality and security when completed, always understand that, this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either Government, if both Governments, or either Government, should deem that the persons, or company, undertaking or managing the same, adopt or establish such regulations concerning the traffic thereupon, as are contrary to the spirit and intention of this Convention,—either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee, without first giving six months notice to the other.

#### ARTICLE VI.

The contracting parties in this Convention engage to invite every State with which both or either have friendly intercourse, to enter into stipulations with them similar to those which they have entered into with each other; to the end, that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the Canal herein contemplated. And the contracting parties likewise agree that, each shall enter into Treaty stipulations with such of the Central American States, as they may deem advisable, for the purpose of more effectually carrying out the great design of this Convention, namely,—that of constructing and maintaining the said Canal as a ship-communication between the two Oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they, also, agree that, the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such Treaty stipulations; and, should any differences arise as to right or property over the territory through which the said Canal shall pass—between the States or Governments of Central America,—and such differences should, in any way, impede or obstruct the execution of the said Canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said Canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

#### ARTICLE VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said Canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons, or company, as may first offer to commence the same with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this Convention; and if any persons, or company,

should already have, with any State through which the proposed Ship-Canal may pass, a contract for the construction of such a Canal as that specified in this Convention,—to the stipulations of which contract neither of the contracting parties in this Convention have any just cause to object,—and the said persons, or company, shall, moreover, have made preparations and expended time, money and trouble on the faith of such contract, it is hereby agreed, that such persons, or company, shall have a priority of claim over every other person, persons or company, to the protection of the Governments of the United States and Great Britain, and be allowed a year, from the date of the exchange of the ratifications of this Convention, for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood, that if, at the expiration of the aforesaid period, such persons, or company, be not able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons, or company, that shall be prepared to commence and proceed with the construction of the Canal in question.

#### ARTICLE VIII.

The Governments of the United States and Great Britain having not only desired in entering into this Convention, to accomplish a particular object, but, also, to establish a general principle, they hereby agree to extend their protection, by Treaty stipulations, to any other practicable communications, whether by Canal or railway, across the Isthmus which connects North and South America; and, especially, to the interoceanic communications,—should the same prove to be practicable, whether by Canal or rail-way,—which are now proposed to be established by the way of Tehuantepec, or Panama. In granting, however, their joint protection to any such Canals, or rail-ways, as are by this Article specified, it is always understood by the United States and Great Britain, that the parties constructing or owning the same, shall impose no other charges or conditions of traffic thereupon, than the aforesaid Governments shall approve of, as just and equitable; and, that the same Canals, or rail-ways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall, also, be open on like terms to the citizens and subjects of every other State which is willing to grant thereto, such protection as the United States and Great Britain engage to afford.

#### ARTICLE IX.

The ratifications of this Convention shall be exchanged at Washington, within six months from this day, or sooner, if possible.

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

Done, at Washington, the nineteenth day of April, Anno Domini, one thousand eight hundred and fifty.

JOHN M. CLAYTON. [L. S.]  
HENRY LYTTON BULWER. [L. S.]

And whereas the said Convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington on the fourth instant, by John M. Clayton, Secretary of State of the United States, and the Right Honorable Sir Henry Lytton Bulwer, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, on the part of their respective Governments:

Now, therefore, be it known that I, Zachary Taylor, President of the United States of America, have caused the said Convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this fifth day of July, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fifth.

[L. s.]

Z. TAYLOR.

By the President:

J. M. CLAYTON—

*Secretary of State.*



No. 2.

HAY-HERRAN TREATY.

[Senate Executive K. Fifty-seventh Congress, second session.]

PANAMA CANAL.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING A CONVENTION BETWEEN THE UNITED STATES AND THE REPUBLIC OF COLOMBIA FOR THE CONSTRUCTION OF A SHIP CANAL, AND SO FORTH, TO CONNECT THE WATERS OF THE ATLANTIC AND PACIFIC OCEANS, SIGNED JANUARY 22, 1903.<sup>1</sup>

January 23, 1903: Read; convention read the first time and referred to the Committee on Foreign Relations, and, together with the message, ordered to be printed in confidence for the use of the Senate. January 24, 1903: Injunction of secrecy removed.

*To the Senate:*

I transmit herewith, with a view to receiving the advice and consent of the Senate to its ratification, a convention between the United States and the Republic of Colombia for the construction of a ship canal, etc., to connect the waters of the Atlantic and Pacific Oceans, signed at Washington on January 22, 1903.

THEODORE ROOSEVELT.

WHITE HOUSE, *January 23, 1903.*

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The PRESIDENT:

The undersigned, Secretary of State, has the honor to lay before the President for his consideration a convention between the United States of America and the Republic of Colombia for the construction of a ship canal, etc., to connect the waters of the Atlantic and Pacific Oceans, signed by the respective plenipotentiaries of the two Governments on January 22, 1903.

JOHN HAY.

DEPARTMENT OF STATE,  
*Washington, January 23, 1903.*

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The United States of America and the Republic of Colombia, being desirous to assure the construction of a ship canal to connect the Atlantic and Pacific Oceans and the Congress of the United

<sup>1</sup> Full correspondence regarding Hay-Herran treaty of 1903 with Colombia is printed in President's message to Congress of December 18, 1903, and also in Foreign Relations, 1903, pp. 132 et seq.

States of America having passed an Act approved June 28, 1902, in furtherance of that object, a copy of which is hereunto annexed, the high contracting parties have resolved, for that purpose, to conclude a Convention and have accordingly appointed as their plenipotentiaries,

The President of the United States of America, John Hay, Secretary of State, and

The President of the Republic of Colombia, Thomas Herran, Chargé d'Affaires, thereunto specially empowered by said government,

who, after communicating to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

#### ARTICLE I.

The Government of Colombia authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties, and concessions, as well as the Panama Railroad and all the shares or part of the shares of that company; but the public lands situated outside of the zone hereinafter specified, now corresponding to the concessions of both said enterprises shall revert to the Republic of Colombia, except any property now owned by or in the possession of the said companies within Panama or Colon, or the ports and terminals thereof.

But it is understood that Colombia reserves all its rights to the special shares in the capital of the New Panama Canal Company to which reference is made in Article IV of the contract of December 10, 1890, which shares shall be paid their full nominal value at least; but as such right of Colombia exists solely in its character of stockholder in said Company, no obligation under this provision is imposed upon or assumed by the United States.

The Railroad Company (and the United States as owner of the enterprise) shall be free from the obligations imposed by the railroad concession, excepting as to the payment at maturity by the Railroad Company of the outstanding bonds issued by said Railroad Company.

#### ARTICLE II.

/ The United States shall have the exclusive right for the term of one hundred years, renewable at the sole and absolute option of the United States, for periods of similar duration so long as the United States may desire, to excavate, construct, maintain, operate, control, and protect the Maritime Canal with or without locks from the Atlantic to the Pacific Ocean, to and across the territory of Colombia, such canal to be of sufficient depth and capacity for vessels of the largest tonnage and greatest draft now engaged in commerce, and such as may be reasonably anticipated, and also the same rights for the construction, maintenance, operation, control, and protection of the Panama Railroad and of railway, telegraph and telephone lines, canals, dikes, dams and reservoirs, and such other auxiliary works as may be necessary and convenient for the construction, maintenance, protection and operation of the canal and railroads. /

## ARTICLE III.

To enable the United States to exercise the rights and privileges granted by this Treaty the Republic of Colombia grants to that Government the use and control for the term of one hundred years, renewable at the sole and absolute option of the United States, for periods of similar duration so long as the United States may desire, of a zone of territory along the route of the canal to be constructed five kilometers in width on either side thereof measured from its center line including therein the necessary auxiliary canals not exceeding in any case fifteen miles from the main canal and other works, together with ten fathoms of water in the Bay of Limon in extension of the canal, and at least three marine miles from mean low water mark from each terminus of the canal into the Caribbean Sea and the Pacific Ocean respectively. So far as necessary for the construction, maintenance and operation of the canal, the United States shall have the use and occupation of the group of small islands in the Bay of Panama named Perico, Naos, Culebra and Flamenco, but the same shall not be construed as being within the zone herein defined or governed by the special provisions applicable to the same.

This grant shall in no manner invalidate the titles or rights of private land holders in the said zone of territory, nor shall it interfere with the rights of way over the public roads of the Department; provided, however, that nothing herein contained shall operate to diminish, impair or restrict the rights elsewhere herein granted to the United States.

This grant shall not include the cities of Panama and Colon, except so far as lands and other property therein are now owned by or in possession of the said Canal Company or the said Railroad Company; but all the stipulations contained in Article 35 of the Treaty of 1846-48 between the contracting parties shall continue and apply in full force to the cities of Panama and Colon and to the accessory community lands and other property within the said zone, and the territory thereon shall be neutral territory, and the United States shall continue to guarantee the neutrality thereof and the sovereignty of Colombia thereover, in conformity with the above mentioned Article 35 of said Treaty.

In furtherance of this last provision there shall be created a Joint Commission by the Governments of Colombia and the United States that shall establish and enforce sanitary and police regulations.

## ARTICLE IV.

The rights and privileges granted to the United States by the terms of this convention shall not affect the sovereignty of the Republic of Colombia over the territory within whose boundaries such rights and privileges are to be exercised.

The United States freely acknowledges and recognizes this sovereignty and disavows any intention to impair it in any way whatever or to increase its territory at the expense of Colombia or of any of the sister republics in Central or South America, but on the contrary, it desires to strengthen the power of the republics on this continent, and to promote, develop and maintain their prosperity and independence.

## ARTICLE V.

The Republic of Colombia authorizes the United States to construct and maintain at each entrance and terminus of the proposed canal a port for vessels using the same, with suitable light houses and other aids to navigation, and the United States is authorized to use and occupy within the limits of the zone fixed by this convention, such parts of the coast line and of the lands and islands adjacent thereto as are necessary for this purpose, including the construction and maintenance of breakwaters, dikes, jetties, embankments, coaling stations, docks and others appropriate works, and the United States undertakes the construction and maintenance of such works and will bear all the expense thereof. The ports when established are declared free, and their demarcations shall be clearly and definitely defined.

To give effect to this Article, the United States will give special attention and care to the maintenance of works for drainage, sanitary and healthful purposes along the line of the canal, and its dependencies, in order to prevent the invasion of epidemics or of securing their prompt suppression should they appear. With this end in view the United States will organize hospitals along the line of the canal, and will suitably supply or cause to be supplied the towns of Panama and Colon with the necessary aqueducts and drainage works, in order to prevent their becoming centers of infection on account of their proximity to the canal.

The Government of Colombia will secure for the United States or its nominees the lands and rights that may be required in the towns of Panama and Colon to effect the improvements above referred to, and the Government of the United States or its nominees shall be authorized to impose and collect equitable water rates, during fifty years for the service rendered; but on the expiration of said term the use of the water shall be free for the inhabitants of Panama and Colon, except to the extent that may be necessary for the operation and maintenance of said water system, including reservoirs, aqueducts, hydrants, supply service, drainage and other works.

## ARTICLE VI.

The Republic of Colombia agrees that it will not cede or lease to any foreign Government any of its islands or harbors within or adjacent to the Bay of Panama, nor on the Atlantic Coast of Colombia, between the Atrato River and the western boundary of the Department of Panama, for the purpose of establishing fortifications, naval or coaling stations, military posts, docks or other works that might interfere with the construction, maintenance, operation, protection, safety, and free use of the canal and auxiliary works. In order to enable Colombia to comply with this stipulation, the Government of the United States agrees to give Colombia the material support that may be required in order to prevent the occupation of said islands and ports, guaranteeing there the sovereignty, independence and integrity of Colombia.

## ARTICLE VII.

The Republic of Colombia includes in the foregoing grant the right without obstacle, cost, or impediment, to such control, con-

sumption and general utilization in any manner found necessary by the United States to the exercise by it of the grants to, and rights conferred upon it by this Treaty, the waters of the Chagres River and other streams, lakes and lagoons, of all non-navigable waters, natural and artificial, and also to navigate all rivers, streams, lakes and other navigable water-ways, within the jurisdiction and under the domain of the Republic of Colombia, in the Department of Panama, within or without said zone, as may be necessary or desirable for the construction, maintenance and operation of the canal and its auxiliary canals and other works, and without tolls or charges of any kind; and to raise and lower the levels of the waters, and to deflect them, and to impound any such waters, and to overflow any lands necessary for the due exercise of such grants and rights to the United States; and to rectify, construct and improve the navigation of any such rivers, streams, lakes and lagoons at the sole cost of the United States; but any such water-ways so made by the United States may be used by citizens of Colombia free of tolls or other charges. And the United States shall have the right to use without cost, any water, stone, clay, earth or other minerals belonging to Colombia on the public domain that may be needed by it.

All damages caused to private land owners by inundation or by the deviation of water courses, or in other ways, arising out of the construction or operation of the canal, shall in each case be appraised and settled by a joint commission appointed by the Governments of the United States and Colombia, but the cost of the indemnities so agreed upon shall be borne solely by the United States.

#### ARTICLE VIII.

The Government of Colombia declares free for all time the ports at either entrance of the Canal, including Panama and Colon and the waters thereof in such manner that there shall not be collected by the Government of Colombia custom house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues, nor any other charges or taxes of any kind shall be levied or imposed by the Government of Colombia upon any vessel using or passing through the Canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance and operation of the main work or its auxiliaries, or upon the cargo, officers, crew, or passengers of any such vessels; it being the intent of this convention that all vessels and their cargoes, crews, and passengers, shall be permitted to use and pass through the Canal and the ports leading thereto, subject to no other demands or impositions than such tolls and charges as may be imposed by the United States for the use of the Canal and other works. It being understood that such tolls and charges shall be governed by the provisions of Article XVI.

The ports leading to the Canal, including Panama and Colon, also shall be free to the commerce of the world, and no duties or taxes shall be imposed, except upon merchandise destined to be introduced for the consumption of the rest of the Republic of Colombia, or the Department of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal.

Though the said ports shall be free and open to all, the Government of Colombia may establish in them such custom houses and

guards as Colombia may deem necessary to collect duties on importations destined to other portions of Colombia and to prevent contraband trade. The United States shall have the right to make use of the ports at the two extremities of the Canal including Panama and Colon as places of anchorage, in order to make repairs for loading, unloading, depositing, or transshipping cargoes either in transit or destined for the service of the Canal and other works.

Any concessions or privileges granted by Colombia for the operation of light houses at Colon and Panama shall be subject to expropriation, indemnification and payment in the same manner as is provided by Article XIV in respect to the property therein mentioned; but Colombia shall make no additional grant of any such privilege nor change the status of any existing concession.

#### ARTICLE IX.

There shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the canal, the vessels that may use it, tugs and other vessels employed in the service of the canal, the railways and auxiliary works, store houses, work shops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the canal or railroad or that may be necessary for the service of the canal or railroad and their dependencies, whether situated within the cities of Panama and Colon, or any other place authorized by the provisions of this convention.

Nor shall there be imposed contributions or charges of a personal character of whatever species upon officers, employees, laborers, and other individuals in the service of the canal and its dependencies.

#### ARTICLE X.

It is agreed that telegraph and telephone lines, when established for canal purposes, may also, under suitable regulations, be used for public and private business in connection with the systems of Colombia and the other American Republics and with the lines of cable companies authorized to enter the ports and territories of these Republics; but the official dispatches of the Government of Colombia and the authorities of the Department of Panama shall not pay for such service higher tolls than those required from the officials in the service of the United States.

#### ARTICLE XI.

The Government of Colombia shall permit the immigration and free access to the lands and workshops of the canal and its dependencies of all employees and workmen of whatever nationality under contract to work upon or seeking employment or in any wise connected with the said canal and its dependencies, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Colombia.

#### ARTICLE XII.

The United States may import at any time into the said zone, free of customs duties, imposts, taxes, or other charges, and without any

restriction, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance and operation of the canal and auxiliary works, also all provisions, medicines, clothing, supplies and other things necessary and convenient for the officers, employees, workmen and laborers in the service and employ of the United States and for their families. If any such articles are disposed of for use without the zone excepting Panama and Colon and within the territory of the Republic, they shall be subject to the same import or other duties as like articles under the laws of Colombia or the ordinances of the Department of Panama.

### ARTICLE XIII.

The United States shall have authority to protect and make secure the canal, as well as railways and other auxiliary works and dependencies, and to preserve order and discipline among the laborers and other persons who may congregate in that region, and to make and enforce such police and sanitary regulations as it may deem necessary to preserve order and public health thereon, and to protect navigation and commerce through and over said canal, railways and other works and dependencies from interruption or damage.

I. The Republic of Colombia may establish judicial tribunals within said zone, for the determination, according to its laws and judicial procedure, of certain controversies hereinafter mentioned.

Such judicial tribunal or tribunals so established by the Republic of Colombia shall have exclusive jurisdiction in said zone of all controversies between citizens of the Republic of Colombia, or between citizens of the Republic of Colombia and citizens of any foreign nation other than the United States.

II. Subject to the general sovereignty of Colombia over said zone, the United States may establish judicial tribunals thereon, which shall have jurisdiction of certain controversies hereinafter mentioned to be determined according to the laws and judicial procedure of the United States.

Such judicial tribunal or tribunals so established by the United States shall have exclusive jurisdiction in said zone of all controversies between citizens of the United States, and between citizens of the United States and citizens of any foreign nation other than the Republic of Colombia; and of all controversies in any wise growing out of or relating to the construction, maintenance or operation of the canal, railway and other properties and works.

III. The United States and Colombia engage jointly to establish and maintain upon said zone, judicial tribunals having civil, criminal and admiralty jurisdiction, and to be composed of jurists appointed by the Governments of the United States and Colombia in a manner hereafter to be agreed upon between said Governments, and which tribunals shall have jurisdiction of certain controversies hereinafter mentioned, and of all crimes, felonies and misdemeanors committed within said zone, and of all cases arising in admiralty, according to such laws and procedure as shall be hereafter agreed upon and declared by the two governments.

Such joint judicial tribunal shall have exclusive jurisdiction in said zone of all controversies between citizens of the United States and

citizens of Colombia, and between citizens of nations other than Colombia or the United States; and also of all crimes, felonies and misdemeanors committed within said zone, and of all questions of admiralty arising therein.

IV. The two Governments hereafter, and from time to time as occasion arises, shall agree upon and establish the laws and procedures which shall govern such joint judicial tribunal and which shall be applicable to the persons and cases over which such tribunal shall have jurisdiction, and also shall likewise create the requisite officers and employees of such court and establish their powers and duties: and further shall make adequate provision by like agreement for the pursuit, capture, imprisonment, detention and delivery within said zone of persons charged with the commitment of crimes, felonies or misdemeanors without said zone: and for the pursuit, capture, imprisonment, detention and delivery without said zone of persons charged with the commitment of crimes, felonies and misdemeanors within said zone.

#### ARTICLE XIV.

The works of the canal, the railways and their auxiliaries are declared of public utility, and in consequence all areas of land and water necessary for the construction, maintenance, and operation of the canal and other specified works may be expropriated in conformity with the laws of Colombia, except that the indemnity shall be conclusively determined without appeal, by a joint commission appointed by the Governments of Colombia and the United States.

The indemnities awarded by the Commission for such expropriation shall be borne by the United States, but the appraisal of said lands and the assessment of damages shall be based upon their value before the commencement of the work upon the canal.

#### ARTICLE XV.

The Republic of Colombia grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the canal enterprise, and for all vessels in distress having the right to pass through the canal and wishing to anchor in said ports. Such vessels shall be exempt from anchorage and tonnage dues on the part of Colombia.

#### ARTICLE XVI.

The canal, when constructed, and the entrance thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section I of Article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

#### ARTICLE XVII.

The Government of Colombia shall have the right to transport over the canal its vessels, troops, and munitions of war at all times without paying charges of any kind. This exemption is to be extended to the auxiliary railway for the transportation of persons in the service of



the Republic of Colombia or of the Department of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

#### ARTICLE XVIII.

The United States shall have full power and authority to establish and enforce regulations for the use of the canal, railways, and the entering ports and auxiliary works, and to fix rates of tolls and charges thereof, subject to the limitations stated in Article XVI.

#### ARTICLE XIX.

// The rights and privileges granted to the United States by this convention shall not affect the sovereignty of the Republic of Colombia over the real estate that may be acquired by the United States by reason of the transfer of the rights of the New Panama Canal Company and the Panama Railroad Company lying outside of the said canal zone. //

#### ARTICLE XX.

If by virtue of any existing treaty between the Republic of Colombia and any third power, there may be any privilege or concession relative to an interoceanic means of communication which especially favors such third power, and which in any of its terms may be incompatible with the terms of the present convention, the Republic of Colombia agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting its modification or annulment, the Republic of Colombia agrees to procure its modification or annulment in such form that there shall not exist any conflict with the stipulations of the present convention.

#### ARTICLE XXI.

The rights and privileges granted by the Republic of Colombia to the United States in the preceding Articles are understood to be free of all anterior concessions or privileges to other Governments, corporations, syndicates or individuals, and consequently, if there should arise any claims on account of the present concessions and privileges or otherwise, the claimants shall resort to the Government of Colombia and not to the United States for any indemnity or compromise which may be required.

#### ARTICLE XXII.

The Republic of Colombia renounces and grants to the United States the participation to which it might be entitled in the future earnings of the canal under Article XV of the concessionary contract with Lucien N. B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any

extension or modification thereof; and it likewise renounces, confirms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Colombia at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above mentioned party and companies, and all right, title and interest which it now has or may hereafter have, in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Colombia under any contracts of concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

The aforesaid rights and property shall be and are free and released from any present or reversionary interest in or claims of Colombia and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute, so far as concerns the Republic of Colombia, excepting always the rights of Colombia specifically secured under this treaty.

#### ARTICLE XXIII.

If it should become necessary at any time to employ armed forces for the safety or protection of the canal, or of the ships that make use of the same, or the railways and other works, the Republic of Colombia agrees to provide the forces necessary for such purpose, according to the circumstances of the case, but if the Government of Colombia cannot effectively comply with this obligation, then, with the consent of or at the request of Colombia, or of her Minister at Washington, or of the local authorities, civil or military, the United States shall employ such force as may be necessary for that sole purpose; and as soon as the necessity shall have ceased will withdraw the forces so employed. Under exceptional circumstances, however, on account of unforeseen or imminent danger to said canal, railways and other works, or to the lives and property of the persons employed upon the canal, railways, and other works, the Government of the United States is authorized to act in the interest of their protection, without the necessity of obtaining the consent beforehand of the Government of Colombia; and it shall give immediate advice of the measures adopted for the purpose stated; and as soon as sufficient Colombian forces shall arrive to attend to the indicated purpose, those of the United States shall retire.

#### ARTICLE XXIV.

The Government of the United States agrees to complete the construction of the preliminary works necessary, together with all the auxiliary works, in the shortest time possible; and within two years from the date of the exchange of ratification of this convention the main works of the canal proper shall be commenced, and it shall be opened to the traffic between the two oceans within twelve years after

such period of two years. In case, however, that any difficulties or obstacles should arise in the construction of the canal which are at present impossible to foresee, in consideration of the good faith with which the Government of the United States shall have proceeded, and the large amount of money expended so far on the works and the nature of the difficulties which may have arisen, the Government of Colombia will prolong the terms stipulated in this Article up to twelve years more for the completion of the work of the canal.

But in case the United States should, at any time, determine to make such canal practically a sea level canal, then such period shall be extended for ten years further.

#### ARTICLE XXV.

As the price or compensation for the right to use the zone granted in this convention by Colombia to the United States for the construction of a canal, together with the proprietary right over the Panama Railroad, and for the annuity of two hundred and fifty thousand dollars gold, which Colombia ceases to receive from the said railroad, as well as in compensation for other rights, privileges and exemptions granted to the United States, and in consideration of the increase in the administrative expenses of the Department of Panama consequent upon the construction of the said canal, the Government of the United States binds itself to pay Colombia the sum of ten million dollars in gold coin of the United States on the exchange of the ratification of this convention after its approval according to the laws of the respective countries, and also an annual payment during the life of this convention of two hundred and fifty thousand dollars in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition to all other benefits assured to Colombia under this convention.

But no delay nor difference of opinion under this Article shall affect nor interrupt the full operation and effect of this convention in all other respects:

#### ARTICLE XXVI.

No change either in the Government or in the laws and treaties of Colombia, shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries (that now exist or may hereafter exist) touching the subject matter of this convention.

If Colombia shall hereafter enter as a constituent into any other Government or into any union or confederation of States so as to merge her sovereignty or independence in such Government, union, or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

#### ARTICLE XXVII.

The joint commission referred to in Articles III, VII and XIV shall be established as follows:

The President of the United States shall nominate two persons and the President of Colombia shall nominate two persons and they

shall proceed to a decision; but in case of disagreement of the Commission (by reason of their being equally divided in conclusion) an umpire shall be appointed by the two Governments, who shall render the decision. In the event of death, absence or incapacity of any Commissioner or umpire, or of his omitting, declining or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated. All decisions by a majority of the Commission or by the umpire shall be final.

#### ARTICLE XXVIII.

This convention when signed by the contracting parties, shall be ratified according to the laws of the respective countries and shall be exchanged at Washington within a term of eight months from this date, or earlier if possible.

In faith whereof, the respective plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their respective seals.

Done at the City of Washington, the 22d day of January in the year of our Lord nineteen hundred and three.

(Signed)	JOHN HAY.	[SEAL.]
(Signed)	TOMÁS HERRÁN.	[SEAL.]

No. 3.

FIRST HAY-PAUNCEFOTE TREATY.

[Senate Document No. 160, Fifty-sixth Congress, first session.]

CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN  
TO FACILITATE THE CONSTRUCTION OF A SHIP CANAL, ETC.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING  
A CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN TO  
FACILITATE THE CONSTRUCTION OF A SHIP CANAL TO CONNECT THE  
ATLANTIC AND PACIFIC OCEANS AND TO REMOVE ANY OBJECTION WHICH  
MIGHT ARISE OUT OF THE CONVENTION COMMONLY CALLED THE CLAY-  
TON-BULWER TREATY.

[February 8, 1900: Ordered to be printed together with "Clayton-Bulwer treaty." December 17, 1900: Ordered reprinted with the committee amendment already adopted and with the proposed committee amendments in place. December 20, 1900: Ratified with amendments; and ordered reprinted, as amended, for the use of the Senate.]

*To the Senate:*

I transmit herewith, with a view to receive the advice and consent of the Senate to its ratification, a convention this day signed by the respective plenipotentiaries of the United States and Great Britain to facilitate the construction of a ship canal to connect the Atlantic and Pacific oceans, and to remove any objection which might arise out of the convention of April 19, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States.

WILLIAM MCKINLEY.

EXECUTIVE MANSION,

*Washington, D. C., February 5, 1900.*

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The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objection which may arise out of the Convention of April 19, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed as their Plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America,

And Her Majesty the Queen of Great Britain and Ireland, Empress of India, The Right Honble. Lord Pauncefote, G. C. B., G. C. M. G., Her Majesty's Ambassador Extraordinary and Plenipotentiary to the United States;

Who, having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following articles:

#### ARTICLE I.

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Convention, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

#### ARTICLE II.

The High Contracting Parties, desiring to preserve and maintain the "general principle" of neutralization established in Article VIII of the Clayton-Bulwer Convention, *which convention is hereby superseded*, adopt, as the basis of such neutralization, the following rules, substantially as embodied in the convention between Great Britain and certain other Powers, signed at Constantinople, October 29, 1888, for the Free Navigation of the Suez Maritime Canal, that is to say:

1. The canal shall be free and open, in time of war as in time of peace, to the vessels of commerce and of war of all nations, on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic, or otherwise.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay, in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war or warlike materials in the canal except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible despatch.

5. The provisions of this article shall apply to waters adjacent to the canal, within three marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

*It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered one, two, three, four, and five of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.*

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance and operation of the canal shall be deemed to be part thereof, for the purposes of this convention, and in time of war as in time of peace shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

7. No fortifications shall be erected commanding the canal or the waters adjacent. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

**[Article III stricken out.]**

**[ARTICLE III.]**

**[The High Contracting Parties will, immediately upon the exchange of the ratifications of this Convention, bring it to the notice of the other Powers and invite them to adhere to it.]**

#### ARTICLE IV.

The present Convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged at Washington or at London within six months from the date hereof, or earlier if possible.

In faith whereof, the respective Plenipotentiaries, have signed this Convention and thereunto affixed their seals.

Done in duplicate at Washington, the fifth day of February, in the year of Our Lord one thousand nine hundred.

JOHN HAY.  
PAUNCEFOTE.

No. 4.

**HAY-PAUNCEFOTE TREATY.**

**TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN TO FACILITATE  
THE CONSTRUCTION OF A SHIP CANAL.**

[Signed at Washington, November 18, 1901; ratification advised by the Senate, December 16, 1901; ratified by the President, December 26, 1901; ratified by Great Britain, January 20, 1902; ratifications exchanged at Washington, February 21, 1902; proclaimed, February 22, 1902.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas, a Convention between the United States of America and the United Kingdom of Great Britain and Ireland, to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, was concluded and signed by their respective plenipotentiaries at the city of Washington on the 18th day of November, 1901, the original of which Convention is word for word as follows:

The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed as their Plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America:

And His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, the Right Honourable Lord Pauncefote, G. C. B., G. C. M. G., His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States:

Who, having communicated to each other their full powers which were found to be in due and proper form, have agreed upon the following Articles:—



## ARTICLE I.

The High Contracting Parties agree that the present Treaty shall supersede the afore-mentioned Convention of the 19th April, 1850.

## ARTICLE II.

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or Corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

## ARTICLE III.

The United States adopts, as the basis of the neutralization of such ship canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the Regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same Rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this Article shall apply to waters adjacent to the canal, within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time, except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall

\* be deemed to be part thereof, for the purposes of this Treaty, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents, and from acts calculated to impair their usefulness as part of the canal.

#### ARTICLE IV.

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty.

#### ARTICLE V.

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within six months from the date hereof.

IN FAITH WHEREOF the respective Plenipotentiaries have signed this Treaty and thereunto affixed their seals.

DONE in duplicate at Washington, the 18th day of November, in the year of Our Lord one thousand nine hundred and one.

JOHN HAY [SEAL.]  
PAUNCEFOTE. [SEAL.]

AND WHEREAS the said Convention has been duly ratified on both parts, and the ratification of the two Governments were exchanged in the city of Washington on the twenty-first day of February, one thousand nine hundred and two.

NOW, THEREFORE, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington, this twenty-second day of February, in the year of Our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

[SEAL.]

By the President:

JOHN HAY

*Secretary of State.*

THEODORE ROOSEVELT

No. 5.

HAY-BUNAU VARILLA TREATY.

CONVENTION BETWEEN THE UNITED STATES AND THE REPUBLIC OF PANAMA FOR THE CONSTRUCTION OF A SHIP CANAL TO CONNECT THE WATERS OF THE ATLANTIC AND PACIFIC OCEANS.

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[Signed at Washington, November 18, 1903; ratification advised by the Senate, February 23, 1904; ratified by the President, February 25, 1904; ratified by Panama, December 2, 1903; ratifications exchanged at Washington, February 26, 1904; proclaimed, February 26, 1904.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America and the Republic of Panama to insure the construction of a ship canal across the Isthmus of Panama to connect the Atlantic and Pacific Oceans, was concluded and signed by their respective Plenipotentiaries at Washington, on the eighteenth day of November, one thousand nine hundred and three, the original of which Convention, being in the English language, is word for word as follows:

ISTHMIAN CANAL CONVENTION.

The United States of America and the Republic of Panama being desirous to insure the construction of a ship canal across the Isthmus of Panama to connect the Atlantic and Pacific oceans, and the Congress of the United States of America having passed an act approved June 28, 1902, in furtherance of that object, by which the President of the United States is authorized to acquire within a reasonable time the control of the necessary territory of the Republic of Colombia, and the sovereignty of such territory being actually vested in the Republic of Panama, the high contracting parties have resolved for that purpose to conclude a convention and have accordingly appointed as their plenipotentiaries,—

The President of the United States of America, JOHN HAY, Secretary of State, and

The Government of the Republic of Panama, PHILIPPE BUNAU-VARILLA, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, thereunto specially empowered by said government, who after communicating with each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

## ARTICLE I.

The United States guarantees and will maintain the independence of the Republic of Panama.

## ARTICLE II.

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

## ARTICLE III.

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

## ARTICLE IV.

As rights subsidiary to the above grants the Republic of Panama grants in perpetuity to the United States the right to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or water-power or other purposes, so far as the use of said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal.

## ARTICLE V.

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any

system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific ocean.

#### ARTICLE VI.

The grants herein contained shall in no manner invalidate the titles or rights of private land holders or owners of private property in the said zone or in or to any of the lands or waters granted to the United States by the provisions of any Article of this treaty, nor shall they interfere with the rights of way over the public roads passing through the said zone or over any of the said lands or waters unless said rights of way or private rights shall conflict with rights herein granted to the United States in which case the rights of the United States shall be superior. All damages caused to the owners of private lands or private property of any kind by reason of the grants contained in this treaty or by reason of the operations of the United States, its agents or employees, or by reason of the construction, maintenance, operation, sanitation and protection of the said Canal or of the works of sanitation and protection herein provided for, shall be appraised and settled by a joint Commission appointed by the Governments of the United States and the Republic of Panama, whose decisions as to such damages shall be final and whose awards as to such damages shall be paid solely by the United States. No part of the work on said Canal or the Panama railroad or on any auxiliary works relating thereto and authorized by the terms of this treaty shall be prevented, delayed or impeded by or pending such proceedings to ascertain such damages. The appraisal of said private lands and private property and the assessment of damages to them shall be based upon their value before the date of this convention.

#### ARTICLE VII.

The Republic of Panama grants to the United States within the limits of the cities of Panama and Colon and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain, any lands, buildings, water rights or other properties necessary and convenient for the construction, maintenance, operation and protection of the Canal and of any works of sanitation, such as the collection and disposition of sewage and the distribution of water in the said cities of Panama and Colon, which, in the discretion of the United States may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal and railroad. All such works of sanitation, collection and disposition of sewage and distribution of water in the cities of Panama and Colon shall be made at the expense of the United States, and the Government of the United States, its agents or nominees shall be authorized to impose and collect water rates and sewerage rates which shall be sufficient to provide for the payment of interest and the amortization of the principal of the cost of said works within a period of fifty years and upon the expiration of said term of fifty years the system of sewers and water works shall revert to and become the properties of the cities of Panama and Colon respectively, and the use of the water shall be free to the inhabitants of Panama and Colon, except

to the extent that water rates may be necessary for the operation and maintenance of said system of sewers and water.

The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United States the Republic of Panama grants to the United States the right and authority to enforce the same.

The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgment of the United States, able to maintain such order.

#### ARTICLE VIII.

The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama and authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all the shares or part of the shares of that company; but the public lands situated outside of the zone described in Article II of this treaty now included in the concessions to both said enterprises and not required in the construction or operation of the Canal shall revert to the Republic of Panama except any property now owned by or in the possession of said companies within Panama or Colon or the ports or terminals thereof.

#### ARTICLE IX.

The United States agrees that the ports at either entrance of the Canal and the waters thereof, and the Republic of Panama agrees that the towns of Panama and Colon shall be free for all time so that there shall not be imposed or collected custom house tolls, tonnage, anchorage, lighthouse, wharf, pilot, or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation and protection of the main Canal, or auxiliary works, or upon the cargo, officers, crew, or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the Canal and other works, and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal.

The Government of the Republic of Panama shall have the right to establish in such ports and in the towns of Panama and Colon

such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama and to prevent contraband trade. The United States shall have the right to make use of the towns and harbors of Panama and Colon as places of anchorage, and for making repairs, for loading, unloading, depositing, or transshipping cargoes either in transit or destined for the service of the Canal and for other works pertaining to the Canal.

#### ARTICLE X.

The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the Canal, the railways and auxiliary works, tugs and other vessels employed in the service of the Canal, store houses, work shops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the Canal or railroad and auxiliary works, or their officers or employees, situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the Canal and railroad and auxiliary works.

#### ARTICLE XI.

The United States agrees that the official dispatches of the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

#### ARTICLE XII.

The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the Canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said Canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

#### ARTICLE XIII.

The United States may import at any time into the said zone and auxiliary lands, free of custom duties, imposts, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation and protection of the Canal and auxiliary works, and all provisions, medicines, clothing, supplies and other things necessary and convenient for the officers, employees, workmen and laborers in the service and employ of the United States and for their families. If any such articles are disposed of for use outside of the zone and auxiliary lands granted to the United States

and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama.

#### ARTICLE XIV.

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars (\$250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition to all other benefits assured to the Republic of Panama under this convention. But no delay or difference of opinion under this Article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this convention in all other respects.

#### ARTICLE XV.

The joint commission referred to in Article VI shall be established as follow:

The President of the United States shall nominate two persons and the President of the Republic of Panama shall nominate two persons and they shall proceed to a decision; but in case of disagreement of the Commission (by reason of their being equally divided in conclusion) an umpire shall be appointed by the two Governments who shall render the decision. In the event of the death, absence, or incapacity of a Commissioner or Umpire, or of his omitting, declining or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated. All decisions by a majority of the Commission or by the umpire shall be final.

#### ARTICLE XVI.

The two Governments shall make adequate provision by future agreement for the pursuit, capture, imprisonment, detention and delivery within said zone and auxiliary lands to the authorities of the Republic of Panama of persons charged with the commitment of crimes, felonies or misdemeanors without said zone and for the pursuit, capture, imprisonment, detention and delivery without said zone to the authorities of the United States of persons charged with the commitment of crimes, felonies and misdemeanors within said zone and auxiliary lands.

#### ARTICLE XVII.

The Republic of Panama grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the Canal enterprise, and for all vessels passing or bound to pass through the Canal which may be in distress and be driven to seek refuge in said ports. Such vessels shall



be exempt from anchorage and tonnage dues on the part of the Republic of Panama.

#### ARTICLE XVIII.

The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section I of Article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

#### ARTICLE XIX.

The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

#### ARTICLE XX.

If by virtue of any existing treaty in relation to the territory of the Isthmus of Panama, whereof the obligations shall descend or be assumed by the Republic of Panama, there may be any privilege or concession in favor of the Government or the citizens and subjects of a third power relative to an interoceanic means of communication which in any of its terms may be incompatible with the terms of the present convention, the Republic of Panama agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting its modifications or annulment, the Republic of Panama agrees to procure its modification or annulment in such form that there shall not exist any conflict with the stipulations of the present convention.

#### ARTICLE XXI.

The rights and privileges granted by the Republic of Panama to the United States in the preceding Articles are understood to be free of all anterior debts, liens, trusts, or liabilities, or concessions or privileges to other Governments, corporations, syndicates or individuals, and consequently, if there should arise any claims on account of the present concessions and privileges or otherwise, the claimants shall resort to the Government of the Republic of Panama and not to the United States for any indemnity or compromise which may be required.

#### ARTICLE XXII.

The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the Canal under Article XV of the concessionary contract with Lucien N. B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary

nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, confirms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Panama at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above mentioned party and companies, and all right, title and interest which it now has or may hereafter have, in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

The aforesaid rights and property shall be and are free and released from any present or reversionary interest in or claims of Panama and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute, so far as concerns the Republic of Panama, excepting always the rights of the Republic specifically secured under this treaty.

#### ARTICLE XXIII.

If it should become necessary at any time to employ armed forces for the safety or protection of the Canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

#### ARTICLE XXIV.

No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

#### ARTICLE XXV.

For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary

for naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States.

## ARTICLE XXVI.

This convention when signed by the Plenipotentiaries of the Contracting Parties shall be ratified by the respective Governments and the ratifications shall be exchanged at Washington at the earliest date possible.

In faith whereof the respective Plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their respective seals.

Done at the City of Washington the 18th day of November in the year of our Lord nineteen hundred and three.

JOHN HAY [SEAL]  
P. BUNAU VARILLA [SEAL]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the twenty-sixth day of February, one thousand nine hundred and four;

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington, this twenty-sixth day of February, in the year of our Lord one thousand nine hundred [SEAL] and four, and of the Independence of the United States the one hundred and twenty-eighth.

THEODORE ROOSEVELT

By the President:

JOHN HAY  
*Secretary of State.*

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LEGACIÓN DE LA REPÚBLICA DE  
PANAMÁ EN WASHINGTON,  
*Washington, D. C., February 18, 1904.*

His Excellency JOHN HAY,  
*Secretary of State, etc., Washington, D. C.*

SIRS I have the honor of acknowledging the receipt of your communication, No. 23, of January 30th, 1904, in which you express to me certain observations about the translation of the treaty of November 18th, 1903, contained in the decree ratifying the Treaty.

I accept in the name of the Government of the Republic what you propose in said letter, which reads as follows:

“SIR: I have the honor to acknowledge the receipt of your note of the 9th instant, transmitting a copy of the decree ratifying the treaty of November 18, 1903, and containing its text in the Spanish language.

"In reply to your request to be notified 'in case the translation is in every respect satisfactory,' I have the honor to invite your attention to a few omissions, as follows:

"1. In Article VIII, line 4, of page 6 of the translation, the words 'á la República de Panamá,' after 'traspaso de soberanía de la República de Colombia,' should be added.

"2. In the same article, last line of the article, the word 'ó' should be inserted between 'puertos' and 'terminales.'

"3. In Article IX, last line but two in the second paragraph of the article on page 7, the words 'cargar, descargar, almacenar y,' omitted from the English text should come before the words 'trasbordar cargas.'

"4. In article XXII, page 11, line 2 of the last paragraph, the words 'present or' in the English text have been omitted, and should be represented by the words 'ó actuales' placed in the Spanish text after the words 'derechos de reversión.'

"In regard to the exact equivalence of words in both languages, I have to indicate the following changes which appear to be necessary:

"1. In Article VII, line 2 of page 5, the word 'puertos' should be used instead of 'bahías' for the English word 'harbors.'

"2. In Article IX, line 4 of the article, page 6 of the copy submitted by you, the words 'custom-house tolls' have been rendered into 'derechos de aduana,' which are understood to mean duties collected on merchandise entered for actual consumption in the country. It is believed that the word 'peajes' would be preferable.

"3. In article XIII, line 2 of page 8, the English word 'lands' has been translated 'obras,' for which 'terrenos' should obviously be substituted.

"There are a number of other words the accurate meaning of which may give rise to a difference of interpretation, but inasmuch as there could be no other difficulty in connection with the said words, and in view of the fact that the Spanish text has already been formally approved by your Government, the necessity of making further changes therein will be obviated by your official statement that the English text shall prevail in case of such difference of interpretation.

"Accept, Mr. Minister, the renewed assurances of my highest consideration.

FRANCIS B. LOOMIS,

*Acting Secretary.*"

I am, sir, with great respect, your very obedient servant,

P. BUNAU VARILLA.

DECRETO NÚMERO 24 DE 1903 (DE 2 DE DICIEMBRE), POR EL CUAL SE APRUEBA UN TRATADO CON LOS ESTADOS UNIDOS DE NORTE AMERICA.

La junta de gobierno provisional de la República de Panamá,

Por cuanto se ha celebrado entre el Enviado Extraordinario y Ministro Plenipotenciario de la República acreditado ante el Gobierno de los Estados Unidos de América, y el Señor Secretario de Estado de aquella Nación un tratado que copiado á la letra dice así:

## CONVENCIÓN DE CANAL Á TRAVÉS DEL ISTMO.

Los Estados Unidos de América y la República de Panamá, deseosos de asegurar la construcción de un Canal para naves á través del Istmo de Panamá para comunicar los oceanos Atlántico y Pacífico y habiendo expedido el Congreso de los Estados Unidos de América una ley aprobada el 28 de Junio de 1902 en prosecución de aquel objeto por la cual se autoriza al Presidente de los Estados Unidos para adquirir de la República de Colombia dentro de un plazo razonable el control del territorio necesario y perteneciendo actualmente la soberanía de ese territorio á la República de Panamá, las altas partes contratantes han resuelto con ese propósito concluir una convención y han designado de conformidad como sus Plenipotenciarios,

El Presidente de los Estados Unidos de América á John Hay, Secretario de Estado, y

El Gobierno de la República de Panamá á Philippe Bunau-Varilla, Enviado Extraordinario y Ministro Plenipotenciario de la República de Panamá, para ello especialmente facultado por dicho Gobierno, quienes despues de haberse comunicado reciprocamente sus respectivos plenos poderes y de haberlos hayado en buena y debida forma, han convenido y concluído los siguientes artículos:—

## ARTÍCULO I.

Los Estados Unidos garantizan y mantendrán la Independencia de la República de Panamá.

## ARTÍCULO II.

La República de Panamá concede á perpetuidad á los Estados Unidos el uso, ocupación y control de una zona de tierra y de tierra cubierta por agua, para la construcción, conservación, servicio, sanidad y protección de dicho Canal, zona de una anchura de diez millas que se extenderá cinco millas á cada lado de la línea central del Canal que se va á construir, principiando dicha zona á tres millas de la línea media de la baja mar en el mar Caribe, extendiéndose á través del Istmo y terminando en el océano Pacífico á tres millas de distancia de la línea media de la baja mar, con la condición de que las ciudades de Panamá y Colón y los puertos adyacentes á dichas ciudades que están incluídos dentro de los límites de la zona descrita no quedarán comprendidos en esta concesión. La República de Panamá concede además á perpetuidad á los Estados Unidos el uso, ocupación y control de otras tierras y aguas fuera de la zona arriba descrita que puedan ser necesarias y convenientes para la construcción, conservación, servicio, sanidad y protección de dicha empresa.

La República de Panamá concede también del mismo modo y á perpetuidad á los Estados Unidos todas las islas que se encuentren dentro de los límites de la zona y descrita y además el grupo de pequeñas islas situadas en la bahía de Panamá y conocidas con los nombres de Naos, Perico, Culebra y Flamenco. /

## ARTÍCULO III.

La República de Panamá concede á los Estados Unidos todos los derechos, poder y autoridad en la zona mencionada y descrita en el artículo II de este convenio y dentro de los límites de todas las tierras y aguas auxiliares mencionadas y descritas en dicho artículo II las cuales poseerán y ejercerán los Estados Unidos como si fuesen soberanos del territorio en que dichas tierras y aguas se encuentran situadas, con entera exclusión de la República de Panamá en el ejercicio de tales derechos soberanos, poder ó autoridad. /

## ARTÍCULO IV.

Como derechos subsidiarios de las concesiones que anteceden la República de Panamá concede á perpetuidad á los Estados Unidos el derecho de usar los ríos, riachuelos, lagos y otras aguas dentro de sus límites para la navegación, provisión de agua ó agua para fuerza motriz ú otros objetos, en cuanto el uso de tales ríos, riachuelos y aguas puedan ser necesarios y convenientes para la construcción, conservación, servicio, sanidad y protección del dicho Canal.

## ARTÍCULO V.

La República de Panamá concede á los Estados Unidos á perpetuidad el monopolio para la construcción, conservación y servicio de cualquier sistema de comunicación per medio de Canal ó ferrocarril á través de su territorio entre el mar Caribe y el océano Pacífico.

## ARTÍCULO VI.

Las concesiones que aquí se expresan de ninguna manera invalidarán los títulos de derecho de los ocupantes de tierras ó dueños de propiedad particular en la referida zona, ó en cualquiera de las tierras ó aguas concedidas á los Estados Unidos según las provisiones de cualquier artículo de este tratado, ni tampoco se opondrán á los derechos de tránsito por las vías públicas que pasen á través de la referida zona ó por cualquiera de dichas tierras ó aguas á menos que esos derechos de tránsito ó derechos particulares se hallen en conflicto con los derechos que aquí se le conceden á los Estados Unidos, caso en el cual los derechos de los Estados Unidos serán de mayor valor. Todos los daños que se causen á los dueños de tierras ó de propiedades particulares de cualquiera clase que sean, á causa de las concesiones que contiene este tratado ó por causa de las obras que se efectúen por los Estados Unidos, por sus agentes ó sus empleados, ó debido á la construcción, conservación, servicio, sanidad y protección de dicho Canal ó de las obras de saneamiento y protección de que aquí se hace mérito, serán valorados y arreglados por una comisión mixta que se nombrará por los Gobiernos de los Estados Unidos y de la República de Panamá, y cuyas decisiones con respecto á daños serán finales, y cuyos avalúes serán cubiertos solamente por los Estados Unidos. Ninguna parte de los trabajos del Canal ó del Ferrocarril de Panamá, ni ninguna de las obras auxiliares que á éstos se refieran y autorizadas por los términos de este tratado, será impedida, demorada ni estorbada mientras esten pendientes los pro-

cedimientos para averiguar dichos daños. La apreciación de esas tierras ó propiedades particulares y el avalúo de los daños á ellas causados tendrán por base el valor que tenían ántes de celebrarse este tratado.

#### ARTÍCULO VII.

La República de Panamá concede á los Estados Unidos, dentro de los límites de las ciudades de Panamá y Colón y de sus bahías y territorios adyacentes, el derecho de adquirir por compra ó en ejercicio del derecho de dominio eminente, las tierras, edificios, derechos de aguas ú otras propiedades necesarias y convenientes para la construcción, conservación, servicio y protección del Canal ú otras obras de saneamiento tales como el recogimiento y disposición de desperdicios y la distribución de agua en las referidas ciudades de Panamá y Colón, y que á juicio de los Estados Unidos sean necesarios y convenientes para la construcción, conservación, servicio, saneamiento y protección de dicho Canal y del Ferrocarril. Todas las obras de sanidad, colección y distribución de desperdicios así como la distribución de aguas en las ciudades de Panamá y Colón se ejecutarán por los Estados Unidos y á su costo, y el Gobierno de los Estados Unidos, sus agentes y representantes tendrán autoridad para imponer y cobrar tarifas de agua y de alcantarillado que sean suficientes para proveer al pago de los intereses y á la amortización del capital del costo de esas obras dentro del término de cincuenta años; y al expirar esos cincuenta años el alcantarillado y el acueducto vendrán á ser propiedad de las ciudades de Panamá y Colón, respectivamente, y el uso del agua será libre para los habitantes de Panamá y Colón, excepto en cuanto la contribución de agua sea necesaria para el servicio y conservación de dicho sistema de albañales y acueducto.

La República de Panamá conviene en que las ciudades de Panamá y Colón cumplirán á perpetuidad las disposiciones sanitarias de carácter preventivo ó curativo dictadas por los Estados Unidos y si llega el caso de que el Gobierno de Panamá no pueda ó falte á su deber de hacer que se cumplan tales deposiciones en Panamá y Colón, la República de Panamá concede á los Estados Unidos el derecho y la autoridad de ponerlas en vigor. El mismo derecho y la misma autoridad se concede á los Estados Unidos para el mantenimiento del orden público en las ciudades de Panamá y Colón y sus territorios y bahías adyacentes en caso de que, á juicio de los Estados Unidos, la República de Panamá no pueda mantenerlo.

#### ARTÍCULO VIII.

La República de Panamá concede á los Estados Unidos todos los derechos que hoy tiene y que más tarde pueda adquirir sobre las propiedades de la Compañía Nueva del Canal de Panamá y la Compañía del Ferrocarril, como resultado del traspaso de soberanía de la República de Colombia sobre el Istmo de Panamá y autoriza á la Compañía Nueva del Canal de Panamá para vender y traspasar á los Estados Unidos sus derechos, privilegios, propiedades y concesiones, como también el Ferrocarril de Panamá, y todas las acciones ó parte de las acciones de dicha Compañía, pero las tierras públicas situadas fuera de la zona descrita en el artículo II de este tratado, actualmente incluidas en las concesiones á ambas de las ex-

presadas Compañías y que no sean necesarias para la construcción y servicio del Canal, volverán á poder de la República con excepción de aquellas propiedades que ahora pertenecen á ó están en posesión de dichas Compañías en Panamá ó Colón ó en los puertos terminales de éstas.

#### ARTÍCULO IX.

Los Estados Unidos convienen en que los puertos en ambas entradas del Canal y aguas de éstas, y la República de Panamá conviene en que las poblaciones de Panamá y Colón sean libres en todo tiempo de modo que en ellos no se impondrá ni cobrarán derechos de aduana, tonelaje, anclaje, faros, muelles, pilotaje ó cuarentena ni ninguna otra contribución ó derecho sobre las naves que usen ó que pasen por el Canal ó que pertenezcan á los Estados Unidos ó que sean empleados por ellos directa ó indirectamente en conexión con la construcción, mantenimiento, servicio, saneamiento y protección del Canal principal ú obras auxiliares ó sobre la carga, oficiales, tripulación ó pasajeros de ninguna de las dichas naves, excepto los derechos é impuestos que establezcan los Estados Unidos por el uso del Canal ú otras obras y excepto los derechos é impuestos que establezca la República de Panamá sobre las mercancías destinadas á ser introducidas para el consumo del resto de la República de Panamá y sobre los buques que toquen en los puertos de Panamá y Colón y que no crucen el Canal.

El Gobierno de la República de Panamá tendrá el derecho de establecer en dichos puertos y en las ciudades de Panamá y Colón los edificios y vigilancia que crea necesarios para el cobro de derechos sobre importaciones destinadas á otras partes de Panamá y para impedir los contrabandos. Los Estados Unidos tendrán el derecho de hacer uso de las poblaciones y puertos de Panamá y Colón como lugares de anclaje y para hacer reparaciones, trasbordar cargas ya sean de tránsito ó destinadas al servicio de Canal ó para otros trabajos que pertenezcan al Canal.

#### ARTÍCULO X.

La República de Panamá se obliga á no imponer contribuciones de ninguna clase, ya sean nacionales, municipales ó departamentales sobre el Canal, los ferrocarriles y obras auxiliares, remolcadores, naves empleadas en el servicio de Canal, depósitos, talleres, oficinas, habitaciones para obreros, fábricas de todas clases, almacenes, muelles, maquinaria y demas obras, á sus oficiales ó empleados que se encuentren dentro de las ciudades de Panamá y Colón; y á no establecer contribuciones ó impuestos de carácter personal de ninguna clase que deban pagar los oficiales, empleados, obreros y demas individuos al servicio del Canal y ferrocarriles y obras auxiliares.

#### ARTÍCULO XI.

Los Estados Unidos se obligan á transmitir los despachos oficiales del Gobierno de la República de Panamá por las líneas telegráficas y telefónicas establecidas para el Canal y usadas para negocios públicos y privados á precios no mayores que los exigidos de los empleados al servicio de los Estados Unidos.



## ARTÍCULO XII.

El Gobierno de la República de Panamá permitirá la inmigración y libre acceso á las tierras y talleres del Canal y á sus obras auxiliares de todos los empleados y obreros de cualquiera nacionalidad bajo contrato de trabajar en el Canal ó que busquen empleo en él ó que esten relacionados con el dicho Canal y obras auxiliares, con sus respectivas familias y todas estas personas estarán libres del servicio militar de la República de Panamá.

## ARTÍCULO XIII.

Los Estados Unidos podrán importar en cualquier tiempo á dicha zona y obras auxiliares, libres de derechos de aduana, impuestos, contribuciones y gravámenes de otra clase y sin ninguna restricción, toda clase de naves, dragas, máquinas, carros, maquinarias, instrumentos, explosivos, materiales, abastos y otros artículos necesarios y convenientes para la construcción, conservación, servicio, sanidad y protección del Canal y de sus obras auxiliares, y todas las provisiones, medicinas, vestidos, abastos y otras cosas necesarias y convenientes para los oficiales, empleados, obreros y jornaleros al servicio y en el empleo de los Estados Unidos y para sus familias. Si de algunos de esos artículos se dispone y se hace uso fuera de la zona y de las tierras accesorias concedidas á los Estados Unidos y dentro del territorio de la República, quedarán sujetos á los mismos impuestos de importación ú otros derechos á que lo están iguales artículos importados bajo las leyes de la República de Panamá.

## ARTÍCULO XIV.

Como precio ó compensación por los derechos, poder y privilegios concedidos en esta convención por la República de Panamá á los Estados Unidos, el Gobierno de los Estados Unidos se obliga á pagar á la República de Panamá la suma de diez millones de dollars (\$10,000,000.00) en oro amonedado de los Estados Unidos al efectuarse el canje de la ratificación de este convenio y también un pago anual de doscientos cincuenta mil dollars (\$250,000.00) en la misma moneda de oro durante la vida de esta convención, principiando nueve años después de la fecha antes expresada.

Las provisiones de este artículo serán en adición á todos los demas beneficios asegurados á la República de Panamá en esta convención. Pero ninguna demora ó diferencia de opiniones respecto de este artículo ó de otras estipulaciones de este tratado afectará ó interrumpirá la completa ejecución y efectos de esta convención en todos los demás respectos.

## ARTÍCULO XV.

La Comisión mixta á que se refiere el artículo VI se establecerá como sigue:

El Presidente de los Estados Unidos nombrará dos personas y el Presidente de la República de Panamá nombrará dos personas y ellas procederán á dictar una decisión; pero en caso de desacuerdo de la Comisión (con motivo de estar igualmente divididas sus con-

clusiones) se nombrará por los dos Gobiernos un dirimente que dictará su decisión. En caso de muerte, ausencia ó incapacidad de un miembro de la comisión ó del dirimente, ó en caso de omisión excusa ó cesación de actuar, su puesto será llenado por nombramiento de otra persona del modo antes indicado. Todas las decisiones dictadas por la mayoría de la Comisión ó por el dirimente serán finales.

#### ARTÍCULO XVI.

Los dos Gobiernos proveeran de modo adecuado por un arreglo futuro á la persecución, captura, prisión, detención y entrega en dicha zona y tierras accesorias á las autoridades de la República de Panamá de las personas acusadas de la comisión de crímenes, delitos ó faltas fuera de dicha zona, y para la persecución, captura, prisión, detención y entrega fuera de dicha zona á las autoridades de los Estados Unidos de personas acusadas de la comisión de crímenes, delitos ó faltas en la zona mencionada y sus tierras accesorias.

#### ARTÍCULO XVII.

La República de Panamá concede á los Estados Unidos el uso de todos los puertos de la República abiertos al comercio, como lugares de refugio para todas las naves empleadas en la Empresa del Canal y para todas aquellas que hallándose en las mismas circunstancias de arribada forzosa vayan destinadas á atravesar el Canal y necesiten anclar en dichos puertos. Esas naves estarán exentas de derechos de anclaje y tonelaje por parte de la República de Panamá.

#### ARTÍCULO XVIII.

El Canal, una vez construido, y las entradas á él serán neutrales perpetuamente y estarán abiertas en los términos de la sección I del artículo tercero del tratado celebrado entre los Estados Unidos y la Gran Bretaña el 18 de Noviembre de 1901 y de conformidad con las estipulaciones de este tratado.

#### ARTÍCULO XIX.

El Gobierno de la República de Panamá tendrá el derecho de transportar por el Canal sus naves, tropas y elementos de guerra en esas naves en todo tiempo sin pagar derechos de ninguna clase. Esta exención se extiende al Ferrocarril auxiliar para el transporte de las personas al servicio de la República de Panamá y de la fuerza de policía encargada de guardar el orden público fuera de la dicha zona, así como para sus equipajes pertrechos y provisiones.

#### ARTÍCULO XX.

Si en virtud de algún tratado existente en relación con el territorio del Istmo de Panamá, cuyas obligaciones corresponden ó sean asumidas por la República de Panamá, existieren algunos privilegios ó concesiones en favor del Gobierno ó de los ciudadanos y súbditos de una tercera potencia, relativos á una vía de comunicación interoceanica, que en alguna de sus estipulaciones puedan ser incompati-

bles con los términos de la presente convención, la República de Panamá se obliga á cancelar ó modificar tal tratado en debida forma para lo cual le dará al dicho tercer poder la necesaria notificación dentro del término de cuatro meses desde la fecha de esta convención, y en caso de que el tratado existente no contenga cláusula que permita su modificación ó anulación, la República de Panamá se obliga á procurar su modificación ó anulación en tal forma que no exista conflicto con las estipulaciones de la presente convención.

#### ARTÍCULO XXI.

Los derechos y privilegios concedidos por la República de Panamá á los Estados Unidos en los artículos precedentes se entiende que están libres de toda deuda, limitación, enfiteusis ó responsabilidad anterior, ó de concesiones ó privilegios á otros Gobiernos, corporaciones, sindicatos é individuos, y en consecucional si surgieren algunos reclamos con motivo de las presentes concesiones y privilegios ó de otro modo los reclamantes se dirigirán contral la República de Panamá y no contra los Estados Unidos para obtener la indemnización ó el arreglo que pueda ser del caso.

#### ARTÍCULO XXII.

La República de Panamá renuncia y concede á los Estados Unidos la participación á que puede tener derecho en los futuros productos del Canal fijada en el artículo XV del Contrato de concesión celebrado con Lucien N. B. Wyse del cual hoy es dueño la Compañía Nueva del Canal de Panamá y á cualesquiera otros derechos ó reclamos de naturaleza pecuniaria que pudieran originarse de esa concesión ó relativos á ella ó que pudieran surgir de las concesiones á la Compañía del Ferrocarril de Panamá ó relativas á ellas, ó á algunas de sus modificaciones ó prorrogas; y del mismo modo renuncia, confirma y concede á los Estados Unidos desde ahora y para el futuro todos los derechos y propiedades reservadas en las mencionadas concesiones y que de otro modo habrían de corresponderle á Panamá ántes ó á la expiración de los términos de noventa y nueve años de las concesiones otorgadas, al interesado y á las Compañías arriba mencionadas y todo derecho, título y participación que ahora tenga y que en lo futuro pueda corresponderle en las tierras en el Canal, en las obras propiedades y derechos pertenecientes á dichas compañías en virtud de las citadas concesiones ó de otra manera, y los que los Estados Unidos hayan adquirido ó adquieran de la Compañía Nueva del Canal de Panamá ó por su conducto incluyendo cualesquiera propiedades ó derechos que en lo futuro pudieren corresponderle á la República de Panamá en virtud del trascurso del tiempo de caducidad ó de otra manera, en virtud de reversión según los contratos ó concesiones con dicho Wyse, la Compañía Universal del Canal de Panamá, la Compañía del Ferrocarril de Panamá y la Compañía nueva del Canal de Panamá.

Los arriba mencionados derechos y propiedades quedarán libres de todos los derechos de reversión que pueda tener Panamá y el título de los Estados Unidos, cuando se efectúe la compra proyectada á la Compañía Nueva del Canal de Panamá, será absoluto en

cuanto toca á la República de Panamá, exceptuándose siempre los derechos de la República expresamente asegurados en este tratado.

#### ARTÍCULO XXIII.

Si en algún tiempo fuere necesario el empleo de fuerzas armadas para la seguridad y protección del Canal ó de las naves que lo usen, ó de los ferrocarriles y obras auxiliares, los Estados Unidos tendrán el derecho en todo tiempo y á su juicio para usar su fuerza de policía y sus fuerzas terrestres y navales ó para establecer fortificaciones con ese objeto.

#### ARTÍCULO XXIV.

Ningún cambio en el Gobierno ó en las leyes y tratados de la República de Panamá afectará, sin el consentimiento de los Estados Unidos, los derechos que correspondan á los Estados Unidos en virtud de esta convención ó en virtud de estipulaciones en tratados que existan entre los dos países ó que para lo futuro lleguen á existir en lo relativo al objeto de esta convención.

Si la República de Panamá llegare á ser más tarde parte constituyente de otro Gobierno ó forme unión ó confederación de Estados de tal modo que su soberanía ó independencia quede confundida con la de otro Gobierno, unión ó confederación, los derechos de los Estados Unidos según esta convención no serán de manera alguna minorados ó restringidos.

#### ARTÍCULO XXV.

Para el mejor cumplimiento de las obligaciones de esta convención y con el fin de dar protección eficaz al Canal y de preservar su neutralidad, el Gobierno de la República de Panamá venderá ó arrandará á los Estados Unidos las tierras adecuadas y necesarias para estaciones navales ó carboneras en la costa del Pacífico y en la parte occidental de la costa del mar Caribe de la República en ciertos puntos que serán convenidos con el Presidente de los Estados Unidos.

#### ARTÍCULO XXVI.

Esta Convención, despues de firmada por los Plenipotenciarios de las partes contratantes, será ratificada por los respectivos Gobiernos y las ratificaciones canjeadas en Washington á la mayor brevedad posible.

En fé de lo cual los respectivos Plenipotenciarios firman la presente convención en duplicado y la sellan con sus respectivos sellos.

Hecha en la ciudad de Washington el 18 de Noviembre del año del Señor de mil novecientos tres.

(Fdo.)	P. BUNAU-VARILLA	[HAY UN SELLO]
(Fdo.)	JOHN HAY.	[HAY UN SELLO]

y Considerando:

1° Que en ese Tratado se ha obtenido para la República la garantía de su Independencia:

2° Que por razones de seguridad exterior es indispensable proceder con la mayor celeridad á la consideración del Tratado, á efecto

de que esa obligación principal por parte de los Estados Unidos de América, principie á ser cumplida con eficacia;

3°. Que con el tratado se realiza la aspiración de los pueblos del Istmo cual es la apertura del Canal y su servicio en favor del comercio de todas las naciones; y

4°. Que la Junta de Gobierno Provisional formada por voluntad unánime de los pueblos de la República, posee todos los poderes del soberano del territorio.

DECRETA :

Artículo único. Apruébese el tratado celebrado en Washington, Distrito Capital de la República de los Estados Unidos de América, el día 18 de Noviembre del presente año, entre su Excelencia Philippe Bunau-Varilla, Enviado Extraordinario y Ministro Plenipotenciario de esta República y Su Excelencia John Hay, Secretario de Estado de la República de los Estados Unidos de América.

Publíquese.

Dado en Panamá, á 2 de Diciembre de 1903.

(sgd.)

J. A. ARANGO.

(sgd.)

TOMAS ARIAS.

(sgd.)

MANUEL ESPINOZA B.

El Ministro de Gobierno

(sgd.)

EUSEBIO A. MORALES

El Ministro de Relaciones Exteriores

(sgd.)

F. V. DE LA ESPRIELLA

El Ministro de Justicia

(sgd.)

CARLOS A. MENDOZA

El Ministro de Hacienda

(sgd.)

MANUEL E. AMADOR

El Ministro de Guerra y Marina

(sgd.)

NICANOR A. DE OBARRIO

Por el Ministro de Instrucción Pública, El Subsecretario,

(sgd.)

FRANCISCO A. FACIO

[HAY UN SELLO DE LA REPÚBLICA DE PANAMÁ.]

No. 6.

[Executive N, Sixtieth Congress, second session.]

**TREATIES WITH PANAMA AND COLOMBIA RELATING TO THE PANAMA CANAL.<sup>1</sup>**

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING TREATIES BETWEEN THE UNITED STATES AND THE REPUBLICS OF PANAMA AND COLOMBIA RELATING TO THE PANAMA CANAL, BOTH SIGNED ON JANUARY 9, 1909.

[January 11, 1909: Read; treaties read the first time and referred to the Committee on Foreign Relations, and, together with the message and accompanying papers, ordered to be printed in confidence for the use of the Senate. February 24, 1909: Injunction of secrecy removed. February 24, 1909: Treaty with Colombia ratified. March 3, 1909: Treaty with Panama ratified.]

The PRESIDENT:

I have the honor to submit herewith, with a view to their transmission to the Senate to receive the advice and consent of that body to ratification, a treaty between the United States and the Republic of Panama and a treaty between the United States and the Republic of Colombia, both signed on January 9, 1909.

I transmit also, for your information and that of the Senate, a copy of treaty between the Republic of Colombia and the Republic of Panama, concluded at the same time, the three treaties being in effect parts of the same transaction whereby peace is established between Panama and Colombia, the separation of the two Republics is agreed to, and the relations incident to the separation are adjusted.

Respectfully submitted.

ELIHU ROOT.

DEPARTMENT OF STATE,

*Washington, January 11, 1909.*

*To the Senate:*

I transmit, with a view to receiving the advice and consent of the Senate to their ratifications, a treaty between the United States and the Republic of Panama and a treaty between the United States and the Republic of Colombia, both signed on January 9, 1909.

I transmit also, for the information of the Senate, a copy of the treaty between the Republic of Colombia and the Republic of Panama, concluded at the same time, and mentioned in the accompanying report of the Secretary of State.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *January 11, 1909.*

<sup>1</sup> Consented to by United States Senate Feb. 24, 1909, and Mar. 3, 1909, and by Panama  
Never acted upon by Colombian Congress.

## TREATY WITH PANAMA.

The United States of America and the Republic of Panama, mutually desiring to facilitate the construction, maintenance and operation of the interoceanic canal across the Isthmus of Panama and to promote a good understanding between the nations most closely and directly concerned in this highway of the world's commerce, and thereby to further its construction and protection, deem it well to amend and in certain respects supplement the treaty concluded between the United States of America and the Republic of Panama on the 18th of November, 1903, and to that end have appointed their respective Plenipotentiaries, to wit:

The President of the United States of America, Elihu Root, Secretary of State of the United States;

The President of the Republic of Panama, Carlos Constantino Arosemena, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama,

Who, after exchange of their full powers, found to be in good and due form, have agreed upon the following articles:

## ARTICLE I.

It is mutually agreed between the High Contracting Parties that Article XIV of the treaty concluded between them on the 18th day of November, 1903, be and the same is hereby amended by substituting therein the words "four years" for the words "nine years," and accordingly the United States of America agrees to make the annual payments therein provided for beginning four years from the exchange of said treaty instead of nine years from that date.

The United States of America consents that the Republic of Panama may assign and transfer, in advance, to the Republic of Colombia, and to its assigns or nominees, the first ten annual installments of Two Hundred and Fifty Thousand Dollars each, so falling due under said treaty as thus amended, on the 26th days of February in the years 1908 to 1917, both inclusive, and its right and title thereto, and, upon the direction and acquittance therefor of the Republic of Panama, will pay said ten installments as they respectfully fall due directly to the Republic of Colombia, its assigns or nominees, for account of the Republic of Panama. Such installments as may have matured when the ratifications of this treaty shall be exchanged pursuant to its terms shall be payable on the ninetieth day after the date of such exchange.

## ARTICLE II.

Final delimitation of the cities of Panama and Colon and of the harbors adjacent thereto, under and to effectuate the provisions of Article II of said treaty of November 18th, 1903, shall be made by agreement between the Executive Departments of the two Governments, immediately upon the exchange of ratifications of this treaty.

It is further agreed that the Republic of Panama shall have the right, upon one year's previous notice, at any time within the period of fifty years mentioned in Article VII of said treaty of November 18th, 1903, to purchase and take over from the United

States of America so much of the water mains and distributing system of the water works mentioned in said article, for the supply of the City of Panama, and of the appliances and appurtenances thereof, as may lie outside the Canal Zone, and terminate the provisions of said treaty for the ultimate acquisition by the Republic of Panama of said water works, upon payment of such sum in cash as may be agreed upon as just by the Presidents of the two High Contracting Parties, who are hereby fully empowered so to agree; if there shall arise any dispute or difference between the High Contracting Parties with respect to such delimitation, or if their Presidents shall not be able to agree as to the sum so to be paid, then upon the request of either party, any such difference shall be submitted to the Tribunal of Arbitration, hereinafter provided for.

### ARTICLE III.

// It is further agreed that all differences which may arise relating to the interpretation or application of the treaty between the United States of America and the Republic of Panama concluded on the 18th day of November, 1903, which it may not have been possible to settle by diplomacy, shall be referred, on the request of either party, to a Tribunal of Arbitration to consist of three members, of whom the United States shall nominate one member, the Republic of Panama shall nominate one member, and the two members thus nominated shall jointly nominate a third member, or, in the event of their failure to agree within three months after appointment, upon the nomination of the third member, such member shall be appointed by the President of Peru.// Said Tribunal shall decide by a majority vote all questions respecting its procedure and action, as well as all questions concerning the matters submitted to it. The Tribunal shall deliver duplicate copies of its decisions upon any of the matters submitted to it, as hereinafter specified, to the United States and to the Republic of Panama, and any such decision signed by a majority of the members of the Tribunal shall be conclusively deemed the decision of the Tribunal. Any vacancy in the membership of the Tribunal caused by the death, incapacity, or withdrawal of any member shall be filled in the manner provided for the original appointment of the member whose office shall thus become vacant. The determinations of said Tribunal shall be final, conclusive and binding upon the High Contracting Parties hereto, who bind themselves to abide by and conform to the same.

The temporary working arrangement or *modus vivendi* contained in the Executive Orders of December 3rd, 6th, 16th, and 28th, 1904, and January 5, 1905, made at Panama by the Secretary of War of the United States, and by the President of Panama, on December 6, 1904, which was entered into for the purpose of the practical operation of the aforesaid Treaty of November 18, 1903, shall be submitted to revision by the Executive Departments of the two Governments with the view to making the same and the practice thereunder conform (if in any respect they shall be found not to conform) to the true intent and meaning of the said treaty and to the preservation and protection of the rights of the two Governments and of the citizens of both parties thereunder; and any question as



to such conformity arising upon such revision which shall remain in dispute shall be submitted to said Tribunal of Arbitration.

It is now agreed, however, that the rate of duty to be levied by the Republic of Panama and fixed at 10 per cent *ad valorem* by the first proviso to said Executive Order of December 3rd, 1904, may be increased to any rate not exceeding twenty per cent *ad valorem*, at the pleasure of said Republic.

#### ARTICLE IV.

There shall be a full, entire and reciprocal liberty of commerce and navigation between the citizens of the two High Contracting Parties, who shall have reciprocally the right, on conforming to the laws of the country, to enter, travel, and reside in all parts of the respective territories, saving always the right of expulsion of undesirable persons which right each Government reserves to itself, and they shall enjoy in this respect, for the protection of their persons and their property, the same treatment and the same rights as the citizens or subjects of the most favored nation; it being understood and agreed that citizens of either of the two Republics thus residing in the territory of the other shall be exempt from military service imposed upon the citizens of such Republic.

And the United States of America further agrees that the Republic of Panama and the citizens thereof shall have and shall be accorded on equal terms all such privileges, rights, and advantages in respect to the construction, operation, and use of the Canal, railroad, telegraph and other facilities of the United States within the Canal Zone, and in respect of all other matters relating thereto, operating within or affecting the Canal Zone or property and persons therein, as may at any time be granted by the United States of America in accord with said treaty of November 18th, 1903, directly or indirectly, to any other nation or the citizens or subjects thereof, it being the intention of the Parties that the Republic of Panama and the citizens thereof shall be with respect thereto placed at least on an equal footing with the most favored nation and the citizens or subjects thereof.

#### ARTICLE V.

It is expressly understood and agreed that this treaty shall not become operative nor its provisions obligatory upon either of the High Contracting Parties, until and unless the treaties of even date between the Republic of Colombia and the Republic of Panama and between the Republic of Colombia and the United States of America are both duly ratified and the ratifications thereof are exchanged simultaneously with the exchange of ratifications of the present treaty.

#### ARTICLE VI.

This treaty shall be ratified and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof, we the respective Plenipotentiaries have signed the present treaty, in duplicate, in the English and Spanish languages and have hereunto affixed our respective seals.

Done at Washington the 9th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed)	ELIHU ROOT	[SEAL]
(Signed)	C. C. AROSEMENA	[SEAL]

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### TREATY WITH COLOMBIA.

The United States of America and the Republic of Colombia, being equally animated by the desire to remove all obstacles to a good understanding between them and to facilitate the settlement of the questions heretofore pending between Colombia and Panama by adjusting at the same time the relations of Colombia to the canal which the United States is now constructing across the Isthmus of Panama, have resolved to conclude a Treaty and to that end have appointed as their Plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States:

The President of the Republic of Colombia, Señor Don Enrique Cortes, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Colombia at Washington;

Who, after communicating to each other their respective full powers, which were found to be in due and proper form, have agreed upon the following articles:

#### ARTICLE I.

There shall be mutual and inviolable peace and sincere friendship between the Governments and peoples of the two High Contracting Parties without exception of persons or places under their respective dominion.

#### ARTICLE II.

In consideration of the provisions and stipulations hereinafter contained it is agreed as follows:

The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war and ships of war of the Republic of Colombia, without paying any duty to the United States: even in the case of an international war between Colombia and another country.

While the said interoceanic canal is in course of construction the troops and materials for war of the Republic of Colombia, even in the case of an international war between Colombia and any other country, shall be transported on the railway between Ancon and Cristobal, or on any other railway substituted therefor, upon the same conditions on which similar service is rendered to the United States.

The officers, agents and employees of the Government of Colombia shall, during the same period, be entitled to free passage upon the said railway across the Isthmus of Panama upon due notification to the railway officials and the production of evidence of their official character.

The foregoing provisions of this article shall not, however, apply in case of war between Colombia and Panama.

### ARTICLE III.

The products of the soil and industry of the Republic of Colombia, such as provisions, cattle, etc., shall be admitted to entry in the Canal Zone subject only to such duty as would be payable on similar products of the United States of America under similar conditions, so far as the United States of America has any right or authority to fix the conditions of such importations.

Colombian laborers employed in the Canal Zone during the construction of the canal, who may desire that their own families supply them with provisions for their personal use, shall be entitled to have such provisions admitted to the Canal Zone for delivery to them free of any duty, provided that declaration thereof shall first have been made before the commissary officers of the Isthmian Canal Commission, in order to obtain the previous permit for such entry, and subject to such reasonable regulations as shall be prescribed by the Commission for ensuring the *bona fides* of the transaction.

### ARTICLE IV.

Colombian mails shall have free passage through the Canal Zone and through the post-offices of Ancon and Cristobal in the Canal Zone, paying only such duties or charges as are paid by the mails of the United States.

During the construction of the canal Colombian products passing over the Isthmian Railway from and to Colombia ports shall be transported at the lowest rates which are charged for similar products of the United States passing over said railway to and from the ports of the United States; and sea salt, exclusively produced in Colombia, passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, shall be transported over said railway free of any charge except the actual cost of handling and transportation, not exceeding one-half of the ordinary freight charges.

### ARTICLE V.

The United States recognizes and accepts notice of the assignment by the Republic of Panama to the Republic of Colombia of the right to receive from the United States payment of \$250,000 in American gold in each year from the year 1908 to the year 1917, both inclusive, such assignment having been made in manner and form as contained in the treaty between the Republic of Colombia and the Republic of Panama bearing even date herewith, whereby the independence of the Republic of Panama is recognized by the Republic of Colombia and the Republic of Panama is released from obligation for the payment of any part of the external and internal debt of the Republic of Colombia.

### ARTICLE VI.

The Republic of Colombia grants to the United States the use of all the ports of the Republic open to commerce as places of refuge

for any vessels employed in the canal *entêrprise*, and for all vessels in distress passing or bound to pass through the canal and seeking shelter or anchorage in said ports, subject in time of war to the rules of neutrality properly applicable thereto. Such vessels shall be exempt from anchorage or tonnage dues on the part of the Republic of Colombia.

The Republic of Colombia renounces all rights and interests in connection with any contract or concession made between it and any corporation or person relating to the construction or operation of a canal or railway across the Isthmus of Panama.

#### ARTICLE VII.

As soon as practicable after the exchange or ratifications of this treaty and the contemporaneous treaties of even date herewith between the United States of America and the Republic of Panama, and between the Republic of Colombia and the Republic of Panama, the United States of America and the Republic of Colombia will enter into negotiations for the revision of the Treaty of Peace, Amity, Navigation, and Commerce between the United States of America and the Republic of New Granada, concluded on the 12th day of December, 1846, with a view to making the provisions therein contained conform to existing conditions, and to including therein provision for a general treaty of arbitration.

#### ARTICLE VIII.

This treaty, duly signed by the High Contracting Parties, shall be ratified by each according to its respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

But it is understood that such ratifications are not to be exchanged nor the provisions of this treaty made obligatory upon either party, until and unless the aforesaid treaties between the Republic of Colombia and the Republic of Panama, and between the United States of America and the Republic of Panama, bearing even date herewith, are both duly ratified, and the ratifications thereof are exchanged simultaneously with the exchange of ratifications of this treaty.

In witness whereof, We, the respective Plenipotentiaries, have signed the present treaty in duplicate, in the English and Spanish languages, and have hereunto affixed our respective seals.

Done at the City of Washington, the 9th day of January, in the year of our Lord nineteen hundred and nine.

(Signed)	ELIHU ROOT	[SEAL]
(Signed)	ENRIQUE CORTES	[SEAL]

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### TREATY BETWEEN THE REPUBLICS OF PANAMA AND COLOMBIA.

The Republic of Colombia and the Republic of Panama, equally animated by the desire to remove all obstacles to their good understanding, to adjust their pecuniary and other relations to each other and to secure mutually the benefits of amity and accord, have de-

terminated to conclude a convention for these purposes and, therefore, have appointed as their respective Plenipotentiaries, that is to say:

The President of the Republic of Colombia, Enrique Cortes, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Colombia, in Washington, and

The President of the Republic of Panama, Carlos Constantino Arosemena, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, in Washington.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

#### ARTICLE I.

The Republic of Colombia recognizes the Independence of the Republic of Panama and acknowledges it to be a free, sovereign; and independent nation.

#### ARTICLE II.

There shall be a mutual and inviolable peace and friendship between the Government of the Republic of Colombia and its citizens on the one part and the Government of the Republic of Panama and its citizens on the other part, without exception of persons or places under their respective dominion.

#### ARTICLE III.

The Republic of Panama assigns and transfers to the Republic of Colombia, and its assigns and nominees, in lawful and due form, the first ten annual installments of two hundred and fifty thousand dollars gold coin each becoming due to it, the Republic of Panama, from the United States of America, on the 26th days of February in the years 1908 to 1917, both inclusive, under and pursuant to the provisions of Article XIV of the treaty between the United States of America and the Republic of Panama concluded November 18, 1903, and under and pursuant to the amendment thereof, embodied in a treaty of even date between said nations, whereby said Article XIV is amended by substituting the words "four years" for the words "nine years," so that the first annual payment of which that article treats shall begin four years from the exchange of ratifications of said treaty on February 26th, 1904, instead of nine years from said date, in such manner that the said installments shall be paid by the United States of America directly to the Republic of Colombia or its assigns and nominees for account of the Republic of Panama, in lawful and due form, beginning the 26th day of February, 1908. Such installments as may have matured when the ratifications of this treaty shall be exchanged pursuant to its terms, shall be payable on the ninetieth day after the date of such exchange.

In consideration of the payments and releases which the Republic of Panama makes to the Republic of Colombia, the latter recognizes and agrees that the Republic of Panama has no liability upon and no obligations to the holders of the external and internal debt of

the Republic of Colombia, nor to the Republic of Colombia, by reason of any such indebtedness or claims relating thereto. The Republic of Colombia recognizes and agrees that it is itself solely obligated for such external and internal debt; assumes the obligation to pay and discharge the same by itself alone; and agrees to indemnify and hold harmless the Republic of Panama, should occasion arise, from any liability in respect of such external and internal indebtedness, and from any expense which may result from failure or delay in respect of such payment and discharge.

#### ARTICLE IV.

Each of the contracting Republics releases and discharges the other from all pecuniary claims and obligations of any nature whatever, including the external and internal debt of the Republic of Colombia, which either had against the other on the 3rd day of November, 1903, it being understood that this reciprocal exoneration relates only to the national debts and claims of one against the other, and that it does not relate to individual rights and claims of the citizens of either Republic. Neither party shall be bound to allow or satisfy any of such individual claims arising from transactions or occurrences prior to November 3, 1903, unless the same would be valid according to the laws of the country against which the claim is made, as such laws existed on November 3rd, 1903.

#### ARTICLE V.

The Republic of Panama recognizes that it has no title or ownership of any sort to the fifty thousand shares of the capital stock of the New Panama Canal Company, standing in the name of the Republic of Colombia on the books of said company at Paris, and the Republic of Panama confirms the abandonment of all right and title, which, with respect to said shares, it made in the Courts of Justice of France.

#### ARTICLE VI.

The citizens of each Republic, residing in the territory of the other, shall enjoy the same civil rights which are or shall hereafter be accorded by the laws of the country of residence to the citizens of the most favored nation. It being understood, however, that the citizens of either of the two Republics residing in the other shall be exempt from military service imposed upon the citizens of such Republic.

All persons born within the territory now of the Republic of Panama, prior to the 3rd day of November, 1903, who were, on that day, residents of the territory now of the Republic of Colombia, may elect to be citizens of the Republic of Colombia or of the Republic of Panama; and all persons born within the territory now of the Republic of Colombia who were, on said 3rd day of November, 1903, residents of the territory now of the Republic of Panama, may elect to be citizens of the Republic of Panama or of the Republic of Colombia, by making declaration of their election in the manner hereinafter provided, within one year from the date of the

proclamation of the exchange of the ratifications of this treaty, or, in case of any persons who shall not on that day be of full age, within one year from their attainment of their majority according to the laws of the country of their residence.

Such election may be made by filing in the office of the Minister or Secretary of Foreign Affairs of the country of residence a declaration of such election. Such declaration may be made before any officer authorized to administer oaths and may be transmitted by mail to such Minister or Secretary of Foreign Affairs, whose duty it shall be to file and register the same, and no other formality except the transmission thereof shall be required and no fees shall be imposed for making of filing thereof. It shall be the duty of the respective Departments of Foreign Affairs of the High Contracting Parties to communicate promptly to each other the names, occupations, and addresses of the persons so exercising such election.

All persons entitled to make such declarations who shall not have made the same within the period hereinbefore limited shall be deemed to have elected to become citizens of the country within whose present territory they were born. But no further declaration shall be required from any such person who has already by formal declaration before a public official of either country, and in accordance with its laws, made election of the nationality of that country.

The natives of the countries of either of the two contracting Republics who have heretofore or shall hereafter become citizens by naturalization, or otherwise as herein provided for, in the other Republic, shall not be punished, molested, or discriminated against by reason of their acts of adhesion to the country whose citizenship they have adopted.

#### ARTICLE VII.

Both Republics agree, each for itself, that neither of them shall admit to form any part of its nationality any part of the territory of the other which separates from it by force.

#### ARTICLE VIII.

As soon as this treaty and the contemporaneous treaties of even date between the United States of America and the Republic of Colombia and between the United States of America and the Republic of Panama shall be ratified and exchanged, negotiations shall be entered upon between the Republics of Colombia and Panama for the conclusion of additional treaty or treaties, covering questions of commerce, postal, telegraph, copyright, consular relations, extradition of criminals, arbitration and the like.

#### ARTICLE IX.

It is agreed between the High Contracting Parties and is declared, that the dividing line between the Republic of Colombia and the Republic of Panama shall be as follows, to wit:

From Cape Tiburon on the Atlantic to the head waters of the Rio de la Miel, and following the range by the Cerro de Gandi to the Sierra de Chugargun and that of Mali, going down by the

Cerros of Nique to the heights of Aspave, and from there to the Pacific at such point and by such line as shall be determined by the Tribunal of Arbitration hereinafter provided for, and the determination of said line shall conform to the decision of such Tribunal of Arbitration as next provided.

As to the territory submitted to arbitration (the region of Jurado) the boundaries and attribution of which to either the Republic of Colombia or the Republic of Panama will be fixed by the determination of the line aforesaid by said Tribunal of Arbitration, the title thereto and the precise limits thereof, and the right to the sovereignty thereof as between the High Contracting Parties, shall be conclusively determined by arbitration in the following manner:

A Tribunal of Arbitration shall be created to investigate and determine all questions of fact and law concerning the rights of the High Contracting Parties to or in all the territory in the above mentioned region of Jurado. The Tribunal shall consist of three members: the Republic of Colombia shall nominate one member, the Republic of Panama shall nominate one member, both of whom shall be nominated within three months after the exchange of ratifications of this treaty, and the two members of the Tribunal thus nominated shall jointly nominate a third member, or, in the event of their failure to agree within three months next after the appointment of the last of them, and on request of the President of either of the High Contracting Parties, the third member of the Tribunal shall be appointed by the President of the Republic of Cuba.

The Tribunal shall hold its sessions at such place as the Tribunal shall determine.

The case on behalf of each party, with the papers and documents, shall be communicated to the other party within three months after the appointment of the third member of the Tribunal.

The counter-cases shall be similarly communicated with the papers and documents within three months after communication of the cases respectively.

And within two months after communication of the counter-case the other party may communicate its reply.

The proceedings of the Tribunal shall be governed by the provisions, so far as applicable, of the Convention for the Pacific Settlement of International Disputes signed at The Hague by the representatives of both the parties hereto on the 18th day of October, 1907.

The Tribunal shall take into consideration all relevant laws and treaties and all facts proved of occupancy, possession and political or administrative control in respect of the territory in dispute.

#### ARTICLE X.

This treaty shall not be binding upon either of the High Contracting Parties, nor have any force until and unless the treaties signed on this same date between the Republic of Colombia and the United States of America and between the Republic of Panama and the United States of America are both duly ratified and ratifications thereof are exchanged simultaneously with the exchange of the ratifications of this treaty.



## ARTICLE XI.

The present treaty shall be submitted for ratification to the respective Governments, and ratifications hereof exchanged at Washington as soon as possible.

In Witness Whereof, We, the respective Plenipotentiaries, have signed the present treaty in duplicate in the Spanish and English languages, and have hereunto affixed our respective seals.

Done at the City of Washington, the 9th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed)	ENRIQUE CORTES	[SEAL]
(Signed)	C. C. AROSEMENA	[SEAL]

No. 7.

MESSAGE OF PRESIDENT TAFT, AUGUST 19, 1912.

[House Document No. 914, Sixty-second Congress, second session.]

THE PANAMA CANAL.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, SUGGESTING  
PASSAGE OF JOINT RESOLUTION RELATIVE TO THE HAY-PAUNCEFOTE  
TREATY.

[August 19, 1912, read, referred to the Committee on Military Affairs, and ordered to be printed.]

*To the Senate and House of Representatives:*

Congress has passed a bill for the government of the Panama Canal when it shall have been completed, in section 5 of which it is provided that no tolls shall be levied upon vessels engaged in the coastwise trade of the United States. Under existing law no vessels but those of the United States can engage in the coastwise trade. The same bill provides for the imposition, within the discretion of the President, of tolls not exceeding \$1.25 per net registered ton upon all other vessels using the canal.

In the debates in the House and Senate it was contended that this was a discrimination in favor of vessels of the United States in violation of the following provision of the Hay-Pauncefote treaty:

The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable. (Art. III, sec. 1, p. 1904.)

After full examination of the Hay-Pauncefote treaty and of the treaty which preceded it, I feel confident that the exemption of the coastwise vessels of the United States from tolls and the imposition of tolls on vessels of all nations engaged in the foreign trade is not a violation of the Hay-Pauncefote treaty. But distinguished lawyers in the House and Senate differ from this construction, and the Secretary of State has received an informal protest from the British Government that the contemplated legislation is a violation of her treaty rights.

The necessity for the enactment of the provisions of the bill looking to the maintenance and government of the canal I have already explained in a special message, and this necessity makes me anxious to sign the bill. On the other hand, the question of the foreign relations of the Government is one in respect of which the Executive has especial responsibility, and such a protest from a friendly Government, supported as it is by the expressed views of distinguished Members of both Houses, invites the greatest care and the closest

examination on our part of our rights under our treaties, with a view to preserving national honor and observing our solemn obligations.

I am sure that it is not the intention of Congress to violate the Hay-Pauncefote treaty or to enact anything inconsistent with its provisions, and that it certainly is not its purpose to repeal, by subsequent enactment, the treaty, in so far as it represents the law of the land. It is of the highest importance, however, that this attitude should be made clearly known to the nations of the world, and that we should avoid any apparent justification for criticism.

I suggest, therefore, that before the time has elapsed in which I am called upon to express approval or disapproval of this bill Congress consider the wisdom of passing a joint resolution of the following tenor:

That nothing contained in the act entitled "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and Government of the Canal Zone" shall be deemed to repeal any provision of the Hay-Pauncefote treaty, or to affect the judicial construction thereof, or in any wise to impair any rights or privileges which have been or may be acquired by any foreign nation under the treaties of the United States relative to tolls or other charges for the passage of vessels through the Panama Canal, and that when any alien, whether natural person, partnership, company, or corporation, considers that the charging of tolls or the enforcement of any other regulation under and pursuant to the provisions of this act violates in any way any such treaty rights or privileges, such alien shall have the right to bring an action against the United States for a redress of the injury which he considers himself to have suffered, and the district courts of the United States are hereby given jurisdiction to hear and determine such cases and to decree the appropriate relief, and from the decision of such district courts **there shall be an appeal by either party to the action to the Supreme Court of the United States.**

Or, in the alternative, that Congress recall the bill and insert the foregoing as an amendment to the bill.

Unless some such clause is embodied in the law, it would probably be contended that the legislative construction of the treaty given by Congress in enacting the law is binding upon our courts when the question of the rights of aliens under the treaty comes before them. The foregoing provision would avoid such effect and would leave the matter entirely free to judicial construction, unaffected by the political decision of either the executive or legislative branch of our Government.

This language negatives absolutely any desire on the part of Congress to repeal the Hay-Pauncefote treaty or to violate its provisions by this legislation and leaves open to any person who deems himself aggrieved by the provisions of the act an opportunity to appeal to our courts.

I think the importance of our standing before the world as anxious to give to the world an opportunity to test this question in the courts is an earnest of our good faith in attempting to keep within our treaty obligations.

WM. H. TAFT.

THE WHITE HOUSE, August 19, 1912.

No. 8.

PANAMA CANAL ACT.

[PUBLIC—No. 337.]

[H. R. 21969.]

AN ACT To provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the zone of land and land under water of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the canal now being constructed thereon, which zone begins in the Caribbean Sea three marine miles from mean low-water mark and extends to and across the Isthmus of Panama into the Pacific Ocean to the distance of three marine miles from mean low-water mark, excluding therefrom the cities of Panama and Colon and their adjacent harbors located within said zone, as excepted in the treaty with the Republic of Panama dated November eighteenth, nineteen hundred and three, but including all islands within said described zone, and in addition thereto the group of islands in the Bay of Panama named Perico, Naos, Culebra, and Flamenco, and any lands and waters outside of said limits above described which are necessary or convenient or from time to time may become necessary or convenient for the construction, maintenance, operation, sanitation, or protection of the said canal or of any auxiliary canals, lakes, or other works necessary or convenient for the construction, maintenance, operation, sanitation, or protection of said canal, the use, occupancy, or control whereof were granted to the United States by the treaty between the United States and the Republic of Panama, the ratifications of which were exchanged on the twenty-sixth day of February, nineteen hundred and four, shall be known and designated as the Canal Zone, and the canal now being constructed thereon shall hereafter be known and designated as the Panama Canal. The President is authorized, by treaty with the Republic of Panama, to acquire any additional land or land under water not already granted, or which was excepted from the grant, that he may deem necessary for the operation, maintenance, sanitation, or protection of the Panama Canal, and to exchange any land or land under water not deemed necessary for such purposes for other land or land under water which may be deemed necessary for such purposes, which additional land or land under water so acquired shall become part of the Canal Zone.

SEC. 2. That all laws, orders, regulations, and ordinances adopted and promulgated in the Canal Zone by order of the President for the government and sanitation of the Canal Zone and the construction of

the Panama Canal are hereby ratified and confirmed as valid and binding until Congress shall otherwise provide. The existing courts established in the Canal Zone by Executive order are recognized and confirmed to continue in operation until the courts provided for in this Act shall be established.

SEC. 3. That the President is authorized to declare by Executive order that all land and land under water within the limits of the Canal Zone is necessary for the construction, maintenance, operation, sanitation, or protection of the Panama Canal, and to extinguish, by agreement when advisable, all claims and titles of adverse claimants and occupants. Upon failure to secure by agreement title to any such parcel of land or land under water the adverse claim or occupancy shall be disposed of and title thereto secured in the United States and compensation therefor fixed and paid in the manner provided in the aforesaid treaty with the Republic of Panama, or such modification of such treaty as may hereafter be made.

SEC. 4. That when in the judgment of the President the construction of the Panama Canal shall be sufficiently advanced toward completion to render the further services of the Isthmian Canal Commission unnecessary the President is authorized by Executive order to discontinue the Isthmian Canal Commission, which, together with the present organization, shall then cease to exist; and the President is authorized thereafter to complete, govern, and operate the Panama Canal and govern the Canal Zone, or cause them to be completed, governed, and operated, through a governor of the Panama Canal and such other persons as he may deem competent to discharge the various duties connected with the completion, care, maintenance, sanitation, operation, government, and protection of the canal and Canal Zone. If any of the persons appointed or employed as aforesaid shall be persons in the military or naval service of the United States, the amount of the official salary paid to any such person shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this Act. The governor of the Panama Canal shall be appointed by the President, by and with the advice and consent of the Senate, commissioned for a term of four years, and until his successor shall be appointed and qualified. He shall receive a salary of ten thousand dollars a year. All other persons necessary for the completion, care, management, maintenance, sanitation, government, operation, and protection of the Panama Canal and Canal Zone shall be appointed by the President, or by his authority, removable at his pleasure, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same, but salaries or compensation fixed hereunder by the President shall in no instance exceed by more than twenty-five per centum the salary or compensation paid for the same or similar services to persons employed by the Government in continental United States. That upon the completion of the Panama Canal the President shall cause the same to be officially and formally opened for use and operation.

Before the completion of the canal, the Commission of Arts may make report to the President of their recommendation regarding the artistic character of the structures of the canal, such report to be transmitted to Congress.

SEC. 5. That the President is hereby authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the United States for the use of the Panama Canal: *Provided*, That no tolls, when prescribed as above, shall be changed, unless six months' notice thereof shall have been given by the President by proclamation. No tolls shall be levied upon vessels engaged in the coastwise trade of the United States. That section forty-one hundred and thirty-two of the Revised Statutes is hereby amended to read as follows:

"SEC. 4132. Vessels built within the United States and belonging wholly to citizens thereof: and vessels which may be captured in war by citizens of the United States and lawfully condemned as prize or which may be adjudged to be forfeited for a breach of the laws of the United States: and seagoing vessels, whether steam or sail, which have been certified by the Steamboat-Inspection Service as safe to carry dry and perishable cargo, not more than five years old at the time they apply for registry, wherever built, which are to engage only in trade with foreign countries or with the Philippine Islands and the islands of Guam and Tutuila, being wholly owned by citizens of the United States or corporations organized and chartered under the laws of the United States or of any State thereof, the president and managing directors of which shall be citizens of the United States or corporations organized and chartered under the laws of the United States or of any State thereof, the President and managing directors of which shall be citizens of the United States, and no others, may be registered as directed in this title. Foreign-built vessels registered pursuant to this Act shall not engage in the coastwise trade: *Provided*, That a foreign-built yacht, pleasure boat, or vessel not used or intended to be used for trade admitted to American registry pursuant to this section shall not be exempt from the collection of ad valorem duty provided in section thirty-seven of the Act approved August fifth, nineteen hundred and nine, entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.' That all materials of foreign production which may be necessary for the construction or repair of vessels built in the United States and all such materials necessary for the building or repair of their machinery and all articles necessary for their outfit and equipment may be imported into the United States free of duty under such regulations as the Secretary of the Treasury may prescribe: *Provided further*, That such vessels so admitted under the provisions of this section may contract with the Postmaster General under the Act of March third, eighteen hundred and ninety-one, entitled 'An Act to provide for ocean mail service between the United States and foreign ports, and to promote commerce,' so long as such vessels shall in all respects comply with the provisions and requirements of said act."

Tolls may be based upon gross or net registered tonnage, displacement tonnage, or otherwise, and may be based on one form of tonnage for warships and another for ships of commerce. The rate of tolls may be lower upon vessels in ballast than upon vessels carrying passengers or cargo. When based upon net registered tonnage for ships of commerce the tolls shall not exceed one dollar and twenty-five cents per net registered ton, nor be less, other than for vessels of the United States and its citizens, than the estimated propor-

tionate cost of the actual maintenance and operation of the canal subject, however, to the provisions of article nineteen of the convention between the United States and the Republic of Panama, entered into November eighteenth, nineteen hundred and three. If the tolls shall not be based upon net registered tonnage, they shall not exceed the equivalent of one dollar and twenty-five cents per net registered ton as nearly as the same may be determined, nor be less than the equivalent of seventy-five cents per net registered ton. The toll for each passenger shall not be more than one dollar and fifty cents. The President is authorized to make and from time to time amend regulations governing the operation of the Panama Canal, and the passage and control of vessels through the same or any part thereof, including the locks and approaches thereto, and all rules and regulations affecting pilots and pilotage in the canal or the approaches thereto through the adjacent waters.

Such regulations shall provide for prompt adjustment by agreement and immediate payment of claims for damages which may arise from injury to vessels, cargo, or passengers from the passing of vessels through the locks under the control of those operating them under such rules and regulations. In case of disagreement suit may be brought in the district court of the Canal Zone against the governor of the Panama Canal. The hearing and disposition of such cases shall be expedited and the judgment shall be immediately paid out of any moneys appropriated or allotted for canal operation.

The President shall provide a method for the determination and adjustment of all claims arising out of personal injuries to employees thereafter occurring while directly engaged in actual work in connection with the construction, maintenance, operation, or sanitation of the canal or of the Panama Railroad, or of any auxiliary canals, locks, or other works necessary and convenient for the construction, maintenance, operation, or sanitation of the canal, whether such injuries result in death or not, and prescribe a schedule of compensation therefor, and may revise and modify such method and schedule at any time; and such claims, to the extent they shall be allowed on such adjustment, if allowed at all, shall be paid out of the moneys hereafter appropriated for that purpose or out of the funds of the Panama Railroad Company, if said company was responsible for said injury, as the case may require. And after such method and schedule shall be provided by the President, the provisions of the Act entitled "An Act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," approved May thirtieth, nineteen hundred and eight, and of the Act entitled "An Act relating to injured employees on the Isthmian Canal," approved February twenty-fourth, nineteen hundred and nine, shall not apply to personal injuries thereafter received and claims for which are subject to determination and adjustment as provided in this section.

SEC. 6. That the President is authorized to cause to be erected, maintained, and operated, subject to the International Convention and the Act of Congress to regulate radio-communication, at suitable places along the Panama Canal and the coast adjacent to its two terminals, in connection with the operation of said canal, such wireless telegraphic installations as he may deem necessary for the operation, maintenance, sanitation, and protection of said canal, and for other

purposes. If it is found necessary to locate such installations upon territory of the Republic of Panama, the President is authorized to make such agreement with said Government as may be necessary, and also to provide for the acceptance and transmission, by said system, of all private and commercial messages, and those of the Government of Panama, on such terms and for such tolls as the President may prescribe: *Provided*, That the messages of the Government of the United States and the departments thereof, and the management of the Panama Canal, shall always be given precedence over all other messages. The President is also authorized, in his discretion, to enter into such operating agreements or leases with any private wireless company or companies as may best insure freedom from interference with the wireless telegraphic installations established by the United States. The President is also authorized to establish, maintain, and operate, through the Panama Railroad Company or otherwise, dry docks, repair shops, yards, docks, wharves, warehouses, storehouses, and other necessary facilities and appurtenances for the purpose of providing coal and other materials, labor, repairs, and supplies for vessels of the Government of the United States and, incidentally, for supplying such at reasonable prices to passing vessels, in accordance with appropriations hereby authorized to be made from time to time by Congress as a part of the maintenance and operation of the said canal. Moneys received from the conduct of said business may be expended and reinvested for such purposes without being covered into the Treasury of the United States; and such moneys are hereby appropriated for such purposes, but all deposits of such funds shall be subject to the provisions of existing law relating to the deposit of other public funds of the United States, and any net profits accruing from such business shall annually be covered into the Treasury of the United States. Monthly reports of such receipts and expenditures shall be made to the President by the persons in charge, and annual reports shall be made to the Congress.

SEC. 7. That the governor of the Panama Canal shall, in connection with the operation of such canal, have official control and jurisdiction over the Canal Zone and shall perform all duties in connection with the civil government of the Canal Zone, which is to be held, treated, and governed as an adjunct of such Panama Canal. Unless in this Act otherwise provided all existing laws of the Canal Zone referring to the civil governor or the civil administration of the Canal Zone shall be applicable to the governor of the Panama Canal, who shall perform all such executive and administrative duties required by existing law. The President is authorized to determine or cause to be determined what towns shall exist in the Canal Zone and subdivide and from time to time resubdivide said Canal Zone into subdivisions, to be designated by name or number, so that there shall be situated one town in each subdivision, and the boundaries of each subdivision shall be clearly defined. In each town there shall be a magistrate's court with exclusive original jurisdiction coextensive with the subdivision in which it is situated of all civil cases in which the principal sum claimed does not exceed three hundred dollars, and all criminal cases wherein the punishment that may be imposed shall not exceed a fine of one hundred dollars, or imprisonment not exceeding thirty days, or both, and all violations of police regula-



tions and ordinances and all actions involving possession or title to personal property or the forcible entry and detainer of real estate. Such magistrates shall also hold preliminary investigations in charges of felony and offenses under section ten of this Act, and commit or bail in bailable cases to the district court. A sufficient number of magistrates and constables, who must be citizens of the United States, to conduct the business of such courts, shall be appointed by the governor of the Panama Canal for terms of four years and until their successors are appointed and qualified, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same. The rules governing said courts and prescribing the duties of said magistrates and constables, oaths and bonds, the times and places of holding such courts, the disposition of fines, costs, forfeitures, enforcements of judgments, providing for appeals therefrom to the district court, and the disposition, treatment, and pardon of convicts shall be established by order of the President. The governor of the Panama Canal shall appoint all notaries public, prescribe their powers and duties, their official seal, and the fees to be charged and collected by them.

Sec. 8. That there shall be in the Canal Zone one district court with two divisions, one including Balboa and the other including Cristobal; and one district judge of the said district, who shall hold his court in both divisions at such time as he may designate by order, at least once a month in each division. The rules of practice in such district court shall be presented or amended by order of the President. The said district court shall have original jurisdiction of all felony cases, of offenses arising under section ten of this Act, all causes in equity; admiralty and all cases at law involving principal sums exceeding three hundred dollars and all appeals from judgments rendered in magistrates' courts. The jurisdiction in admiralty herein conferred upon the district judge and the district court shall be the same that is exercised by the United States district judges and the United States district courts, and the procedure and practice shall also be the same. The district court or the judge thereof shall also have jurisdiction of all other matters and proceedings not herein provided for which are now within the jurisdiction of the Supreme Court of the Canal Zone, of the Circuit Court of the Canal Zone, the District Court of the Canal Zone, or the judges thereof. Said judge shall provide for the selection, summoning, serving, and compensation of jurors from among the citizens of the United States, to be subject to jury duty in either division of such district, and a jury shall be had in any criminal case or civil case at law originating in said court on the demand of either party. There shall be a district attorney and a marshal for said district. It shall be the duty of the district attorney to conduct all business, civil and criminal, for the Government, and to advise the governor of the Panama Canal on all legal questions touching the operation of the canal and the administration of civil affairs. It shall be the duty of the marshal to execute all process of the court, preserve order therein, and do all things incident to the office of marshal. The district judge, the district attorney, and the marshal shall be appointed by the President, by and with the advice

and consent of the Senate, for terms of four years each, and until their successors are appointed and qualified, and during their terms of office shall reside within the Canal Zone, and shall hold no other office nor serve on any official board or commission nor receive any emoluments except their salaries. The district judge shall receive the same salary paid the district judges of the United States, and shall appoint the clerk of said court, and may appoint one assistant when necessary, who shall receive salaries to be fixed by the President. The district judge shall be entitled to six weeks' leave of absence each year with pay. During his absence or during any period of disability or disqualification from sickness or otherwise to discharge his duties the same shall be temporarily performed by any circuit or district judge of the United States who may be designated by the President, and who, during such service, shall receive the additional mileage and per diem allowed by law to district judges of the United States when holding court away from their homes. The district attorney and the marshal shall be paid each a salary of five thousand dollars per annum.

SEC. 9. That the records of the existing courts and all causes, proceedings, and criminal prosecutions pending therein as shown by the dockets thereof, except as herein otherwise provided, shall immediately upon the organization of the courts created by this Act be transferred to such new courts having jurisdiction of like cases, be entered upon the dockets thereof, and proceed as if they had originally been brought therein, whereupon all the existing courts, except the supreme court of the Canal Zone, shall cease to exist. The President may continue the supreme court of the Canal Zone and retain the judges thereof in office for such time as to him may seem necessary to determine finally any causes and proceedings which may be pending therein. All laws of the Canal Zone imposing duties upon the clerks or ministerial officers of existing courts shall apply and impose such duties upon the clerks and ministerial officers of the new courts created by this Act having jurisdiction of like cases, matters, and duties.

All existing laws in the Canal Zone governing practice and procedure in existing courts shall be applicable and adapted to the practice and procedure in the new courts.

The Circuit Court of Appeals of the Fifth Circuit of the United States shall have jurisdiction to review, revise, modify, reverse, or affirm the final judgments and decrees of the District Court of the Canal Zone and to render such judgments as in the opinion of the said appellate court should have been rendered by the trial court in all actions and proceedings in which the Constitution, or any statute, treaty, title, right, or privilege of the United States, is involved and a right thereunder denied, and in cases in which the value in controversy exceeds one thousand dollars, to be ascertained by the oath of either party, or by other competent evidence, and also in criminal causes wherein the offense charged is punishable as a felony. And such appellate jurisdiction, subject to the right of review by or appeal to the Supreme Court of the United States as in other cases authorized by law, may be exercised by said circuit court of appeals in the same manner, under the same regulations, and by the same procedure as nearly as practicable as is done in reviewing the final judgments and decrees of the district courts of the United States.

SEC. 10. That after the Panama Canal shall have been completed and opened for operation the governor of the Panama Canal shall have the right to make such rules and regulations, subject to the approval of the President, touching the right of any person to remain upon or pass over any part of the Canal Zone as may be necessary. Any person violating any of such rules or regulations shall be guilty of a misdemeanor, and on conviction in the District Court of the Canal Zone shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding a year, or both, in the discretion of the court. It shall be unlawful for any person, by any means or in any way, to injure or obstruct, or attempt to injure or obstruct, any part of the Panama Canal or the locks thereof or the approaches thereto. Any person violating this provision shall be guilty of a felony, and on conviction in the District Court of the Canal Zone shall be punished by a fine not exceeding ten thousand dollars or by imprisonment not exceeding twenty years, or both, in the discretion of the court. If the act shall cause the death of any person within a year and a day thereafter, the person so convicted shall be guilty of murder and shall be punished accordingly.

SEC. 11. That section five of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby amended by adding thereto a new paragraph at the end thereof, as follows:

“From and after the first day of July, nineteen hundred and fourteen, it shall be unlawful for any railroad company or other common carrier subject to the Act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.”

Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said commission shall be final.

If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and

is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen. In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: *Provided*, Any application for extension under the terms of this provision filed with the Interstate Commerce Commission prior to July first, nineteen hundred and fourteen, but for any reason not heard and disposed of before said date, may be considered and granted thereafter.

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the Act of Congress approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," or the provisions of sections seventy-three to seventy-seven, both inclusive, of an Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," or the provisions of any other Act of Congress amending or supplementing the said Act of July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act, and amendments thereto, or said sections of the Act of August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

That section six of said Act to regulate commerce, as heretofore amended, is hereby amended by adding a new paragraph at the end thereof, as follows:

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten:

"(a) To establish physical connection between the lines of the rail carrier and the dock of the water carrier by directing the rail carrier to make suitable connection between its line and a track or tracks which has been constructed from the dock to the limits of its right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a spur track or tracks to the dock.

This provision shall only apply where such connection is reasonably practicable, can be made with safety to the public, and where the amount of business to be handled is sufficient to justify the outlay.

"The commission shall have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier. The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved.

"(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

"(c) To establish maximum proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

"(d) If any rail carrier subject to the Act to regulate commerce enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Interstate Commerce Commission may require such railway to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country."

The orders of the Interstate Commerce Commission relating to this section shall only be made upon formal complain or in proceedings instituted by the commission of its own motion and after full hearing. The orders provided for in the two amendments to the Act to regulate commerce enacted in this section shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the commission made under the provisions of section fifteen of the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

SEC. 12. That all laws and treaties relating to the extradition of persons accused of crime in force in the United States, to the extent that they may not be in conflict with or superseded by any special treaty entered into between the United States and the Republic of Panama with respect to the Canal Zone, and all laws relating to the rendition of fugitives from justice as between the several States and Territories of the United States, shall extend to and be considered in force in the Canal Zone, and of such purposes and such purposes only the Canal Zone shall be considered and treated as an organized Territory of the United States.

SEC. 13. That in time of war in which the United States shall be engaged, or when, in the opinion of the President, war is imminent,

such officer of the Army as the President may designate shall, upon the order of the President, assume and have exclusive authority and jurisdiction over the operation of the Panama Canal and all of its adjuncts, appendants, and appurtenances, including the entire control and government of the Canal Zone, and during a continuance of such condition the governor of the Panama Canal shall, in all respects and particulars as to the operation of such Panama Canal, and all duties, matters, and transactions affecting the Canal Zone, be subject to the order and direction of such officer of the Army.

SEC. 14. That this Act shall be known as, and referred to as, the Panama Canal Act, and the right to alter, amend, or repeal any or all of its provisions or to extend, modify, or annul any rule or regulation made under its authority is expressly reserved.

Approved, August 24, 1912.

**MEMORANDUM TO ACCOMPANY THE PANAMA CANAL ACT.**

In signing the Panama Canal bill, I wish to leave this memorandum. The bill is admirably drawn for the purpose of securing the proper maintenance, operation and control of the canal, and the government of the Canal Zone, and for the furnishing, to all the patrons of the canal, through the Government, of the requisite docking facilities and the supply of coal and other shipping necessities. It is absolutely necessary to have the bill passed at this session, in order that the capital of the world engaged in the preparation of ships to use the canal may know in advance the conditions under which the traffic is to be carried on through this waterway.

I wish to consider the objections to the bill in the order of their importance.

First, the bill is objected to because it is said to violate the Hay-Pauncefote Treaty in discriminating in favor of the coastwise trade of the United States, by providing that no tolls shall be charged to vessels engaged in that trade passing through the canal. This is the subject of a protest by the British Government.

The British protest involves the right of the Congress of the United States to regulate its domestic and foreign commerce in such manner as to the Congress may seem wise, and specifically the protest challenges the right of the Congress to exempt American shipping from the payment of tolls for the use of the Panama Canal, or to refund to such American ships the tolls which they may have paid, and this without regard to the trade in which such ships are employed, whether coastwise or foreign. The protest states "the proposal to exempt all American shipping from the payment of the tolls would in the opinion of His Majesty's Government, involve an infraction of the treaty (Hay-Pauncefote), nor is there, in their opinion, any difference in principle between charging tolls only to refund them and remitting tolls altogether. The result is the same in either case and the adoption of the alternative method of refunding tolls in preference of remitting them, while perhaps complying with the letter of the treaty, would still controvert its spirit". The provision of the Hay-Pauncefote Treaty involved is contained in Article Third, which provides:

The United States adopts, as the basis of the neutralization of such ship canal, the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

Then follows five other rules to be observed by other nations to make neutralization effective, the observance of which is the condition for the privilege of using the canal.

In view of the fact that the Panama Canal is being constructed by the United States wholly at its own cost, upon territory ceded to it by the Republic of Panama for that purpose, and that unless it has restricted itself the United States enjoys absolute rights of ownership and control, including the right to allow its own commerce the use of the canal upon such terms as it sees fit, the sole question is, has the United States in the language above quoted from the Hay-Pauncefote Treaty deprived itself of the exercise of the right to pass its own commerce free or to remit tolls collected for the use of the canal.

It will be observed that the rules specified in Article 3 of the treaty were adopted by the United States for a specific purpose, namely, as the basis of the neutralization of the canal and for no other purpose. The Article is a declaration of policy by the United States that the canal shall be neutral, that the attitude of this Government towards the commerce of the world is that all nations will be treated alike and no discrimination made by the United States against any one of them observing the rules adopted by the United States. The right to the use of the canal and to equality of treatment in the use depends upon the observance of the conditions of the use by the nations to whom we extended that privilege. The privileges of all nations to whom we extended the use upon the observance of these conditions were to be equal to that extended to any one of them which observed the conditions. In other words, it was a conditional favored nation treatment, the measure of which in the absence of express stipulation to that effect, is not what the country gives to its own nationals, but the treatment it extends to other nations.

Thus it is seen that the rules are but a basis of neutralization, intended to effect the neutrality which the United States was willing should be the character of the canal and not intended to limit or hamper the United States in the exercise of its sovereign power to deal with its own commerce using its own canal in whatsoever manner it saw fit.

If there is no "difference in principle between the United States charging tolls to its own shipping only to refund them and remitting tolls altogether," as the British protest declares, then the irresistible conclusion is that the United States, although it owns, controls and has paid for the canal is restricted by treaty from aiding its own commerce in the way that all the other nations of the world may freely do. It would scarcely be claimed that the setting out in a treaty between the United States and Great Britain of certain rules adopted by the United States as the basis of the neutralization of the canal would bind any government to do or refrain from doing anything other than the things required by the rules to insure the privilege of use and freedom from discrimination. Since the rules do not provide as a condition for the privilege of use upon equal terms with other nations that other nations desiring to build up a particular trade involving the use of the canal shall not either directly agree to pay the tolls or to refund to its ships the tolls collected for the use of the canal, it is evident that the treaty does not affect that inherent, sovereign right, unless, which is not likely, it be claimed that the promulgation by the United States of these rules insuring all nations against its discrimination, would authorize the



United States to pass upon the action of other nations and require that no one of them should grant to its shipping larger subsidies or more liberal inducement for the use of the canal than were granted by others. In other words, that the United States has the power to equalize the practice of other nations in this regard.

If it is correct then to assume that there is nothing in the Hay-Pauncefote Treaty preventing Great Britain and the other nations from extending such favors as they may see fit to their shipping using the canal, and doing it in the way they see fit, and if it is also right to assume that there is nothing in the treaty that gives the United States any supervision over, or right to complain of such action, then the British protest leads to the absurd conclusion that this Government in constructing the canal, maintaining the canal, and defending the canal, finds itself shorn of its right to deal with its own commerce in its own way, while all other nations using the canal in competition with American commerce enjoys that right and power unimpaired.

The British protest, therefore, is a proposal to read into the treaty a surrender by the United States of its right to regulate its own commerce in its own way and by its own methods, a right which neither Great Britain herself, nor any other nation that may use the canal, has surrendered or proposes to surrender. The surrender of this right is not claimed to be in terms. It is only to be inferred from the fact that the United States has conditionally granted to all the nations the use of the canal without discrimination by the United States between the grantees, but as the treaty leaves all nations desiring to use the canal with full right to deal with their own vessels as they see fit, the United States would only be discriminating against itself if it were to recognize the soundness of the British contention.

The bill here in question does not positively do more than to discriminate in favor of the coastwise trade, and the British protest seems to recognize a distinction between such exemption and the exemption of American vessels engaged in foreign trade. In effect, of course, there is a substantial and practical difference. The American vessels in foreign trade come into competition with vessels of other nations in that same trade, while foreign vessels are forbidden to engage in the American coastwise trade. While the bill here in question seems to vest the President with discretion to discriminate in fixing tolls in favor of American ships and against foreign ships engaged in foreign trade, within the limitation of the range from fifty cents a ton to \$1.25 a net ton, there is nothing in the act to compel the President to make such a discrimination. It is not, therefore, necessary to discuss the policy of such discrimination until the question may arise in the exercise of the President's discretion.

The policy of exempting the coastwise trade from all tolls really involves the question of granting a Government subsidy for the purpose of encouraging that trade in competition with the trade of the trans-continental railroads. I approve this policy. It is in accord with the historical course of the Government in giving government aid to the construction of the trans-continental roads. It is now merely giving Government aid to a means of transportation that competes with those trans-continental roads.

Second, the bill permits the registry of foreign-built vessels as vessels of the United States for foreign trade, and it also permits the admission, without duty, of materials for the construction and repair of vessels in the United States. This is objected to on the ground that it will interfere with the ship-building interests of the United States. I can not concur in this view. The number of vessels of the United States engaged in foreign trade is so small that the work done by the present shipyards is almost wholly that of constructing vessels for the coastwise trade or government vessels. In other words, there is substantially no business for building ships in the foreign trade in the shipyards of the United States which will be injured by this new provision. It is hoped that this registry of foreign-built ships in American foreign trades will prove to be a method of increasing our foreign shipping. The experiment will hurt no interest of ours, and we can observe its operation. If it proves to extend our commercial flag to the high seas, it will supply a long-felt want.

Third. Section 5 of the interstate commerce act is amended by forbidding railroad companies to own, lease, operate, control or have any interest in any common carrier by water operated through the Panama Canal, with which such railroad or other carrier does or may compete for traffic. I have twice recommended such restriction as to the Panama Canal. It was urged upon me that the Interstate Commerce Commission might control the trade so as to prevent an abuse from the joint ownership of railroads and of Panama steamships competing with each other, and, therefore, that this radical provision was not necessary. Conference with the Interstate Commerce Commission, however, satisfied me that such control would not be as effective as this restriction. The difficulty is that the interest of the railroad company is so much larger in its railroad and in the maintenance of its railroad rates than in making a profit out of the steamship line that it can afford temporarily to run its vessels for nearly nothing, in order to drive out of the business, independent steamship lines and thus obtain complete control of the shipping in the trade through the canal and regulate the rates according to the interest of the railroad company. Jurisdiction is conferred on the Interstate Commerce Commission finally to determine the question of fact as to the competition or possibility of competition of the water carrier with the railroad, and this may be done in advance of any investment of capital.

Fourth. The effect of the amendment of Section 5 of the Interstate Commerce Act also is extended so as to make it unlawful for railroad companies owning or controlling lines of steamships in any other part of the jurisdiction of the United States to continue to do so, and as to such railroad companies and such water carriers, the Interstate Commerce Commission is given the duty and power not only finally to determine the question of competition or possibility of competition, but also to determine "that the specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration"; and if it finds this to be the case, to extend the time during which such service by water may

continue beyond the date fixed in the act for its first operation, to wit, July 1, 1914. Whenever the time is extended, then the water carrier, its rates and schedules and practices are brought within the control of the Interstate Commerce Commission. How far it is within the power of Congress to delegate to the Interstate Commerce Commission such wide discretion, it is unnecessary now to discuss. There is ample time between now and the time of this provision of the act's going into effect to have the matter examined by the Supreme Court, or to change the form of the legislation, should it be deemed necessary. Certainly the suggested invalidity of this section, if true, would not invalidate the entire act, the remainder of which may well stand without regard to this provision.

Fifth. The final objection is to a provision which prevents the owner of any steamship who is guilty of violating the anti-trust law from using the canal. It is quite evident that this section applies only to those vessels engaged in the trade in which there is a monopoly contrary to our Federal statute, and it is a mere injunctive process against the continuance of such monopolistic trade. It adds the penalty of denying the use of the canal to a person or corporation violating the anti-trust law. It may have some practical operation where the business monopolized is transportation by ships, but it does not become operative to prevent the use of the canal until the decree of the court shall have established the fact of the guilt of the owner of the vessel. While the penalties of the anti-trust law seem to me to be quite sufficient already, I do not know that this new remedy against a particular kind of a trust may not sometimes prove useful.

In a message sent to Congress, after this bill had passed both Houses, I ventured to suggest a possible amendment by which all persons, and especially all British subjects, who felt aggrieved by the provisions of the bill, on the ground that they are in violation of the Hay-Pauncefote Treaty, might try that question in the Supreme Court of the United States. I think this would have satisfied those who oppose the view which Congress evidently entertains of the treaty, and might avoid the necessity for either diplomatic negotiation or further decision by an arbitral tribunal. Congress, however, has not thought it wise to accept the suggestion, and, therefore, I must proceed in the view, which I have expressed and am convinced is the correct one, as to the proper construction of the treaty and the limitations which it imposes upon the United States. I do not find that the bill here in question violates those limitations.

On the whole, I believe the bill to be one of the most beneficial that has passed this or any other Congress, and I find no reason in the objections made to the bill which should lead me to delay until another session of Congress, provisions that are imperatively needed now in order that due preparation by the world may be made for the opening of the canal.

WM H TAFT

THE WHITE HOUSE, August 24, 1912.

No. 10.

PRESIDENT'S PROCLAMATION RELATING TO CANAL TOLL RATES.

[No. 1225.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

I, WILLIAM HOWARD TAFT, President of the United States of America, by virtue of the power and authority vested in me by the Act of Congress, approved August twenty-fourth, nineteen hundred and twelve, to provide for the opening, maintenance, protection and operation of the Panama Canal and the sanitation and government of the Canal Zone, do hereby prescribe and proclaim the following rates of toll to be paid by vessels using the Panama Canal:

1. On merchant vessels carrying passengers or cargo one dollar and twenty cents (\$1.20) per net vessel ton—each one hundred (100) cubic feet—of actual earning capacity.

2. On vessels in ballast without passengers or cargo forty (40) percent less than the rate of tolls for vessels with passengers or cargo.

3. Upon naval vessels, other than transports, colliers, hospital ships and supply ships, fifty (50) cents per displacement ton.

4. Upon army and navy transports, colliers, hospital ships and supply ships one dollar and twenty cents (\$1.20) per net ton, the vessels to be measured by the same rules as are employed in determining the net tonnage of merchant vessels.

The Secretary of War will prepare and prescribe such rules for the measurement of vessels and such regulations as may be necessary and proper to carry this proclamation into full force and effect.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this thirteenth day of November in the year of our Lord one thousand nine hundred and twelve and of the independence of the United States the one hundred and thirty-seventh.

[SEAL.]

WM H TAFT.

By the President:

P C KNOX

*Secretary of State.*

No. 11.

**PRESIDENT'S MESSAGE GIVING CORRESPONDENCE ON REVOLUTION ON ISTHMUS OF PANAMA.**

[House Document No. 8, Fifty-eighth Congress, first session.]

**CORRESPONDENCE, ETC., RELATING TO THE RECENT REVOLUTION ON THE ISTHMUS OF PANAMA.**

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING, IN RESPONSE TO RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF NOVEMBER 9, 1903, ALL CORRESPONDENCE AND OTHER OFFICIAL DOCUMENTS RELATING TO THE RECENT REVOLUTION ON THE ISTHMUS OF PANAMA.

[November 16, 1903: Message and accompanying papers referred to the Committee on Foreign Affairs and ordered to be printed.]

*To the House of Representatives:*

In response to a resolution of the House of Representatives of November 9, 1903, requesting the President "to communicate to the House if not, in his judgment, incompatible with the interests of the public service, all correspondence and other official documents relating to the recent revolution on the Isthmus of Panama," I transmit herewith copies of the papers called for.

THEODORE ROOSEVELT.

WHITE HOUSE, *Washington, November 16, 1903.*

The PRESIDENT:

The Secretary of State, to whom was referred a copy of the resolution of the House of Representatives of November 9, 1903, requesting copies of all correspondence and other official documents relating to the recent revolution on the Isthmus of Panama, has the honor to lay before the President copies of the correspondence from and to the Department of State on the subject.

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE,  
*Washington, November 13, 1903.*

**CORRESPONDENCE BETWEEN THE DEPARTMENT OF STATE AND THE UNITED STATES CONSULATE GENERAL AT PANAMA.**

A press bulletin having announced an outbreak on the Isthmus, the following cablegram was sent both to the consulate general at Panama and the consulate at Colon:

DEPARTMENT OF STATE,  
*Washington, November 3, 1903.*  
(Sent 3.40 p. m.)

Uprising on Isthmus reported. Keep department promptly and fully informed.

LOOMIS, *Acting.*

*Mr. Ehrman to Mr. Hay.*

PANAMA, *November 3, 1903.*

(Received 8.15 p. m.)

No uprising yet. Reported will be in the night. Situation is critical.

EHRMAN.

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*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 3, 1903.*

(Received 9.50 p. m.)

Uprising occurred to-night, 6; no bloodshed. Army and navy officials taken prisoners. Government will be organized to-night, consisting three consuls, also cabinet. Soldiers changed. Supposed same movement will be effected in Colon. Order prevails so far. Situation serious. Four hundred soldiers landed Colon to-day Barranquilla.

EHRMAN.

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*Mr. Loomis to Mr. Ehrman.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 3, 1903.*

(Sent 11.18 p. m.)

Message sent to *Nashville* to Colon may not have been delivered. Accordingly see that following message is sent to *Nashville* immediately:

NASHVILLE, *Colon:*

In the interests of peace make every effort to prevent Government troops at Colon from proceeding to Panama. The transit of the Isthmus must be kept open and order maintained. Acknowledge.

(Signed) DARLING, *Acting.*

Secure special train, if necessary. Act promptly.

LOOMIS, *Acting.*

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*Mr. Loomis to Mr. Ehrman.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 4, 1903.*

(Sent 12.02 p. m.)

Communicate with commander of gunboat *Bogota* and state plainly that this Government being responsible for maintaining peace and keeping transit open across Isthmus desires him to refrain from wantonly shelling the city. We shall have a naval force at Panama in two days, and are now ordering men from the *Nashville* to Panama in the interests of peace.

LOOMIS, *Acting.*

*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 4, 1903.*

(Received 7.10 p. m.)

Mass meeting held. Independence publicly declared. Three consuls approved organize government, composed Federico Boyd, José Agustín Arango, Tomás Arias. *Bogotá* in sight.

EHRMAN.

*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 4, 1903.*

(Received 9.50 a. m.)

Cables *Nashville* received. *Nashville* notified. Troops will not be moved. Last night gunboat *Bogotá* fired several shells on city; one Chinaman killed. *Bogotá* threatens bombard city to-day.

EHRMAN.

*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 5, 1903.*

(Received 12.50 p. m.)

6 Received an official circular letter from the committee of the provisional government saying that on 4th political move occurred, and the Department of Panama withdraws from the Republic of the United States of Colombia and formed the Republic of Panama.

Requested to acknowledge the receipt of circular letter.

EHRMAN.

*Mr. Loomis to Mr. Ehrman.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 5, 1903.*

(Sent 3.15 p. m.)

Acknowledge the receipt of circular letter and await instructions before taking any further action in this line.

LOOMIS, *Acting.*

*Mr. Loomis to Mr. Ehrman.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 5, 1903.*

(Sent 5.09 p. m.)

Keep department informed as to situation.

LOOMIS, *Acting.*

*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 5, 1903.*

(Received 9.42 p. m.)

Colombian troops reembarked per Royal Mail for Carthagena. *Bogota* supposed at Buenaventura. Quiet prevails.

EHRMAN.

*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 6, 1903.*

(Received 11.55 a. m.)

The situation is peaceful. Isthmian movement has obtained so far success. Colon and interior provinces have enthusiastically joined independence. Not any Colombian soldiers known on isthmian soil at present. *Padilla* equipped to pursue *Bogota*. Buneau Varilla has been appointed officially confidential agent of the Republic of Panama at Washington.

EHRMAN.

*Mr. Hay to Mr. Ehrman.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 6, 1903.*

(Sent 12.51 p. m.)

The people of Panama have, by an apparently unanimous movement, dissolved their political connection with the Republic of Colombia and resumed their independence. When you are satisfied that a de facto government, republican in form, and without substantial opposition from its own people, has been established in the State of Panama, you will enter into relations with it as the responsible government of the territory and look to it for all due action to protect the persons and property of citizens of the United States and to keep open the isthmian transit in accordance with the obligations of existing treaties governing the relation of the United States to that territory. *A*

Communicate above to Malmros, who will be governed by these instructions in entering into relations with the local authorities.

HAY.

*Mr. Hay to Mr. Ehrman.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 6, 1903.*

(Sent 2.45 p. m.)

I send, for your information and guidance in the execution of the instructions cabled to you to-day, the text of a telegram dispatched this day to the United States minister at *Bogota* :

The people of Panama having by an apparently unanimous movement dissolved their political connection with the Republic of Colombia and resumed



their independence, and having adopted a government of their own, republican in form, with which the Government of the United States of America has entered into relations, the President of the United States in accordance with the ties of friendship which have so long and so happily existed between the respective nations, most earnestly commends to the Governments of Colombia and of Panama the peaceful and equitable settlement of all questions at issue between them. He holds that he is bound, not merely by treaty obligations, but by the interests of civilization, to see that the peaceable traffic of the world across the Isthmus of Panama shall not longer be disturbed by a constant succession of unnecessary and wasteful civil wars.

HAY.

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*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 6, 1903.*

(Received 7.23 p. m.)

Filippe Bunau Varilla has been appointed envoy extraordinary and minister plenipotentiary to the United States of America. Perfect quiet.

EHRMAN.

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*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 8, 1903.*

(Received 11.23 p. m.)

It is reported that Colombian authorities have detained English steamers *Manavi* and *Quito* at Buenaventura. Supposed to be to bring troops to the Isthmus.

EHRMAN.

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*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 7, 1903.*

(Received 12.20 p. m.)

I have communicated to Panama Government that they will be held responsible for the protection of the persons and property of citizens of the United States, as well as to keep the isthmian transit free in accordance with obligations of existing treaties relative to the isthmian territory.

EHRMAN.

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*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, *November 10, 1903.*

(Received 1.35 p. m.)

Federico Boyd, a member of the Committee of the Government, Amador Guerrero, both delegates, on the way to Washington to arrange in satisfactory manner to the United States the canal treaty

and other matters. Pablo Arosemena, attorney, proceeds next steamer. English steamers were not held at Buenaventura. Gunboat *Bogota* has left Buenaventura.

EHRMAN.

---

*Mr. Loomis to Mr. Ehrman.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, November 10, 1903.

(Sent 3.42 p. m.)

Keep in touch with commander of United States naval forces at Panama, advising him concerning news bearing on military situation.

LOOMIS, *Acting.*

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*Mr. Ehrman to Mr. Hay.*

[Telegram.]

PANAMA, November 11, 1903.

(Received 5.32 p. m.)

I am officially informed that Bunau Varilla is the authorized party to make treaties. Boyd and Amador have other missions and to assist their minister.

EHRMAN.

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CORRESPONDENCE BETWEEN THE DEPARTMENT OF STATE AND  
THE UNITED STATES CONSULATE AT COLON.

*Mr. Malmros to Mr. Hay.*

[Telegram.]

COLON, November 3, 1903.

(Received 2.35 p. m.)

Revolution imminent. Government force on the Isthmus about 500 men. Their official promised support revolution. Fire department Panama, 441, are well organized and favor revolution. Government vessel, *Cartagena*, with about 400 men, arrived early to-day with new commander in chief, Tobar. Was not expected until November 10. Tobar's arrival is not probable to stop revolution.

MALMROS.

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*Mr. Loomis to Mr. Malmros.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, November 3, 1903.

(Sent 4 p. m.)

Are troops from the vessel *Cartagena* disembarking or preparing to land?

LOOMIS.

*Mr. Loomis to Mr. Malmros.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, November 3, 1903.

(Sent 4.28 p. m.)

Did you receive and deliver to *Nashville* last night or early this morning a message?

LOOMIS, *Acting.*

*Mr. Malmros to Mr. Hay.*

[Telegram.]

COLON, November 3, 1903.

(Received 8.20 p. m.)

Troops from vessel *Cartagena* have disembarked; are encamping on Pacific dock awaiting orders to proceed to Panama from commander in chief, who went there this morning. No message for *Nashville* received.

MALMROS.

*Mr. Loomis to Mr. Malmros.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, November 3, 1903.

(Sent 8.45 p. m.)

The troops which landed from the *Cartagena* should not proceed to Panama.

LOOMIS, *Acting.*

*Mr. Loomis to Mr. Malmros.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, November 3, 1903.

(Sent 10.10 p. m.)

An important message was sent at 6 Monday night in your care for the *Nashville*. Make all possible effort to get it.

LOOMIS.

*Mr. Hay to Mr. Malmros.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, November 3, 1903.

(Sent 10.30 p. m.)

If dispatch to *Nashville* has not been delivered inform her captain immediately that she must prevent Government troops departing for

Panama or taking any action which would lead to bloodshed, and must use every endeavor to preserve order on Isthmus.

HAY.

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*Mr. Malmros to Mr. Hay.*

[Telegram.]

COLON, *November 4, 1903.*

(Received 3.35 p. m.)

Met captain of *Nashville* at 6 p. m. yesterday. Heard that message had been delivered to captain boat alongside of wharf instead of to me. No rebels or invading force near Panama or Colon or line of transit. Panama intended revolutionary movement known here to few persons only, up to 8 a. m. to-day. Revolutionary committee of six in Panama at 6 p. m. took charge of revolutionary movement. General Tobar and five officers taken prisoners. Panama in possession of committee with consent of entire population. This fact appears not known as yet to conservatives in Colon. Panama committee expect to have 1,500 men armed by this time. State of affairs at Panama not known by Colombian force at Colon as yet. Official in command of disembarked force applied for transportation this morning. Captain meanwhile communicated to committee about 10 p. m. last night his refusal to allow train with force to be sent to Panama and the committee assented. This leaves Colon in the possession of the Government.

MALMROS.

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*Mr. Malmros to Mr. Hay.*

[Telegram.]

COLON, *November 5, 1903.*

(Received 11.50 a. m.)

On arrival yesterday morning's train Panama revolution and Tobar's imprisonment became generally known; 12.30 commander Colombian troops threatens to kill every American unless Tobar released by 2 p. m. Provisional Government informed these facts. *Nashville* landed 50 men; stationed in and near railroad office where Americans, armed, met. Negotiations Colombian commander and Panama Government commenced and progressing. Hostilities suspended. Colombians occupy Colon and Monkey Hill.

MALMROS.

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*Mr. Loomis to Mr. Malmros.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 5, 1903.*

(Sent 5.10 p. m.)

What is the situation this evening?

LOOMIS, *Acting.*

*Mr. Malmros to Mr. Hay.*

[Telegram.]

COLON, *November 5, 1903.*

(Received 9.34 p. m.)

All Colombian soldiers at Colon now, 7 p. m., going on board Royal Mail steamer returning to Cartagena. Vessel, supposed to be *Diwle*, in sight.

MALMROS.

*Mr. Malmros to Mr. Hay.*

[Telegram.]

COLON, *November 6, 1903.* \*

(Received 4.50 p. m.)

Tranquillity absolute in Colon. Perfirio Melendez appointed governor of this province. Proclaimed Republic of Panama at Colon prefectura at 10 o'clock a. m. English and French consuls present. I arrived after proclamation, and upon my suggestion I told governor that presence of consuls must not be looked upon as recognition of revolutionary state by their respective Governments. Melendez sent steam launch to Bocas del Toro to proclaim independence.

MALMROS.

#### COMMUNICATIONS FROM THE PANAMA GOVERNMENT.

[Telegram—Translation.]

PANAMA, *November 4, 1903.*

(Received 8.45 p. m.)

SECRETARY OF STATE, *Washington:*

We take the liberty of bringing to the knowledge of your Government that on yesterday afternoon, in consequence of a popular and spontaneous movement of the people of this city, the independence of the Isthmus was proclaimed and, the Republic of Panama being instituted, its provisional government organizes an (executive) board consisting of ourselves, who are assured of the military strength necessary to carry out our determination.

JOSÉ A. ARANGO.  
FEDERICO BOYD.  
TOMAS ARIAS.

[Telegram.—Translation.]

PANAMA, *November 4, 1903.*

(Received 10.30 p. m.)

A. SU EXCELENCIA PRESIDENTE DE LOS ESTADOS UNIDOS,

*Washington:*

The municipality of Panama is now (10 p. m.) holding a solemn session, and joins in the movement of separation of the Isthmus of

Panama from the rest of Colombia. It hopes for the recognition of our cause by your Government.

DEMETRO S. BRIDA.

[Telegram.—Translation.]

PANAMA, *November 5, 1903.*  
(Received 8.48 p. m.)

SECRETARY OF STATE, *Washington:*

We notify you that we have appointed Señor Philippe Bunau-Varilla confidential agent of the Republic of Panama near your Government and Dr. Francisco V. de la Espriella minister of foreign affairs.

ARANGO.  
BOYD.  
ARIAS.

[Telegram.—Translation.]

PANAMA, *November 6, 1903.*  
(Received 10.40 a. m.)

SECRETARY OF STATE, *Washington:*

Colon and all the towns of the Isthmus have adhered to the declaration of independence proclaimed in this city. The authority of the Republic of Panama is obeyed throughout its territory.

ARANGG.  
ARIAS.  
BOYD.

[Telegram.—Translation.]

PANAMA, *November 6, 1903.*

SECRETARY OF STATE, *Washington:*

The board of provisional government of the Republic of Panama has appointed Señor Philippe Bunau-Varilla envoy extraordinary and minister plenipotentiary near your Government with full powers to conduct diplomatic and financial negotiations. Deign to receive and heed him.

J. M. ARANGO,  
TOMAS ARIAS,  
FEDERICO BOYD,  
*Foreign Relations.*

[Telegram.—Translation.]

NEW YORK, *November 7, 1903.*  
(Received 1.40 p. m.)

His Excellency JOHN HAY, *Secretary of State:*

I have the privilege and the honor of notifying you that the Government of the Republic of Panama have been pleased to designate me as its envoy extraordinary and minister plenipotentiary near the Government of the United States. In selecting for its first represen-

tative at Washington a veteran servant and champion of the Panama Canal, my Government has evidently sought to show that it considers a loyal and earnest devotion to the success of that most heroic conception of human genius as both a solemn duty and the essential purpose of its existence. I congratulate myself, sir, that my first official duty should be to respectfully request you to convey to His Excellency the President of the United States on behalf of the people of Panama an expression of the grateful sense of their obligation to his Government. In extending her generous hand so spontaneously to her latest born, the Mother of the American Nations is prosecuting her noble mission as the liberator and the educator of the peoples. In spreading her protecting wings over the territory of our Republic the American Eagle has sanctified it. It has rescued it from the barbarism of unnecessary and wasteful civil wars to consecrate it to the destiny assigned to it by Providence, the service of humanity, and the progress of civilization.

PHILIPPE BUNAU VARILLA.

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CORRESPONDENCE BETWEEN THE DEPARTMENT OF STATE AND  
THE UNITED STATES LEGATION AT BOGOTA.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

BOGOTA, *November 4, 1903.*

(Received November 6, 1903, 5 p. m.)

Fourth, 5 p. m. Confidential. I have been shown telegram from reliable source in Panama to the effect that Isthmus is preparing for secession and that proclamation of independence may be expected soon. The particulars carefully guarded. Reliable information hard to obtain. This Government is evidently alarmed and troops are being sent to Isthmus. Repeat telegrams of importance from United States consul general. His telegrams to me may be interfered with.

BEAUPRÉ.

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,

*Washington, November 6, 1903.*

The people of Panama having by an apparently unanimous movement dissolved their political connection with the Republic of Colombia and resumed their independence, and having adopted a government of their own—republican in form—with which the Government of the United States of America has entered into relations, the President of the United States, in accordance with the ties of friendship which have so long and so happily existed between the respective nations, most earnestly commends to the Governments of Colombia and of Panama the peaceful and equitable settlement of all

questions at issue between them. He holds that he is bound not merely by treaty obligations but by the interests of civilization, to see that the peaceful traffic of the world across the Isthmus of Panama shall not longer be disturbed by a constant succession of unnecessary and wasteful civil wars.

HAY.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

BOGOTA, November 6, 1903.

(Received November 8—11.05 p. m.)

November 6. 6 p. m. Knowing that the revolution has already commenced in Panama, \_\_\_\_\_ says that if the Government of the United States will land troops to preserve Colombian sovereignty, and the transit, if requested by the Colombian chargé d'affaires, this Government will declare martial law, and by virtue of vested constitutional authority, when public order is disturbed, will approve by decree the ratification of the canal treaty as signed; or, if the Government of the United States prefers, will call extra session of Congress with new and friendly members next May to approve the treaty. General Reyes has the perfect confidence of Vice President, he says, and if it becomes necessary will go to the Isthmus or send representatives there to adjust matters along above lines to the satisfaction of the people there. If he goes he would like to act in harmony with the commander of the United States forces. This is the personal opinion of Reyes, and he will advise this Government to act accordingly. (There is a great reaction of public opinion in favor of the treaty, and it is considered certain that the treaty was not legally rejected by Congress.) To-morrow martial law will be declared; 1,000 troops will be sent from the Pacific side; about the same number from the Atlantic side. Please answer by telegraph./

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

BOGOTA, November 7, 1903.

(Received November 10—7.30 p. m.)

November 7, 2 p. m. General Reyes leaves next Monday for Panama, invested with full powers. He has telegraphed chiefs of the insurrection that his mission is to the interests of Isthmus. He wishes answer from you, before leaving, to the inquiry in my telegram of yesterday, and wishes to know if the American commander will be ordered to cooperate with him and with new Panama Government to arrange peace and the approval of canal treaty, which will be accepted on condition that the integrity of Colombia be preserved. He has telegraphed President of Mexico to ask the Government of the United States and all the countries represented at



the Pan-American conference to aid Colombia to preserve her integrity. The question of the approval of the treaty mentioned in my telegram of yesterday will be arranged in Panama. He asks that before taking definite action you will await his arrival there, and that the Government of the United States in the meantime preserve the neutrality and transit of the Isthmus and do not recognize the new Government. Great excitement here. Martial law has been declared in the Cauca and Panama. Answer.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

BOGOTÁ, *November 7, 1903.*

(Received November 10, 7.55 p. m.)

November 7, 6 p. m. As the Government of the United States has war vessels at Panama and Colon, minister for foreign affairs has requested me to ask, Will you allow Colombian Government to land troops at those ports to fight there and on the line of railway? Also if the Government of the United States will take action to maintain Colombian right and sovereignty on the Isthmus in accordance with article 35, the treaty of 1846, in case the Colombian Government is entirely unable to suppress the secession movement there?

I am entirely unable to elicit from minister for foreign affairs confirmation of the promises made by ————.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

BOGOTÁ, *November 9, 1903.*

(Received November 11, 12.30 a. m.)

November 9, 9 a. m. I am desired to inform you by General Reyes that Gen. Bedronel Ospina and Lucas Cabellero, prominent party leaders, accompany him on his mission.

Very great excitement here. Large crowds paraded streets yesterday, crying "Down with Marroquin." Mass meeting denounced him; called for a change of government. Hundreds gathered at the palace, and their orator, a prominent national general, addressed the President, calling for his resignation. Troops dispersed gathering, wounding several. Martial law is declared here, and the city is being guarded by soldiers. Legation of the United States under strong guard, but apparently no indications of hostile demonstration.

The residence of Lorenzo Marroquin attacked with stones.

Referring to the questions presented by minister for foreign affairs in my telegram of 7th, I have preserved silence, but bear in mind page 578, Foreign Relations, part 3. 1866, and instructions 134 to minister to the United States of Colombia. 1865.

BEAUPRÉ.

*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, November 11, 1903.

(Sent 12.12 p. m.)

Earnestly desiring an amicable solution of matters at issue between Colombia and Panama, we have instructed our consul general at Panama to use good offices to secure for General Reyes a courteous reception and considerate hearing. It is not thought desirable to permit landing of Colombian troops on Isthmus, as such a course would precipitate civil war and disturb for an indefinite period the free transit which we are pledged to protect. I telegraphed you on November 6 that we had entered into relations with the provisional government.

HAY.

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CORRESPONDENCE BETWEEN THE SECRETARY OF STATE AND  
THE CHARGÉ D'AFFAIRES OF COLOMBIA.

*Mr. Hay to Doctor Herran.*

DEPARTMENT OF STATE,  
Washington, November 6, 1903.

DEAR DOCTOR HERRAN: I inclose copy of a dispatch which has today been sent to our minister at Bogota.

Very sincerely, yours,

JOHN HAY.

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[Inclosure.]

*Mr. Hay to Mr. Beaupré.*

[Telegram.]

NOVEMBER 6, 1903.

BEAUPRÉ, *Bogota:*

The people of Panama having by an apparently unanimous movement dissolved their political connection with the Republic of Colombia and resumed their independence, and having adopted a government of their own, republican in form, with which the Government of the United States of America has entered into relations, the President of the United States, in accordance with the ties of friendship which have so long and so happily existed between the respective nations, most earnestly commends to the Governments of Colombia and Panama the peaceful and equitable settlement of all questions at issue between them. He holds that he is bound not merely by treaty obligations, but by the interests of civilization, to see that the peaceable traffic of the world across the Isthmus of Panama shall not longer be disturbed by a constant succession of unnecessary and wasteful civil wars.

HAY.

*Dr. Herran to Mr. Hay.*

[Translation.]

LEGATION OF COLOMBIA,  
*Washington, D. C., November 7, 1903.*

EXCELLENCY: I acknowledge the reception of your excellency's note of the 6th instant, inclosing a copy of the telegram sent on the same day to the legation of the United States at Bogota by the Department of State.

In that telegram your excellency refers to the relations already entered into by the Government of the United States of America with the Colombian rebels who on the evening of the 3d usurped the power in the capital of the Colombian Department of Panama and imprisoned the lawful civil and military authorities.

Your excellency will undoubtedly receive the reply of the Colombian Government through the same channel that was used to forward the notice of which your excellency was pleased to send me a copy, but, in the meanwhile, I am discharging a duty by lodging in advance with your excellency, in the name of my Government, a solemn protest against the attitude assumed in the Department of Panama by the Government of the United States to the injury of Colombia's rights and in disaccord with the stipulations of article 35 of the still existing treaty of 1846-1848 between Colombia and the United States of America.

I reiterate, etc.,

TOMAS HERRAN.

*Mr. Hay to Dr. Herran.*

No. 22.]

DEPARTMENT OF STATE,  
*Washington, November 11, 1903.*

SIR: I have the honor to acknowledge the receipt of your note of the 7th instant, in which, acknowledging my communication of the 6th instant, you are pleased, of your own motion and in the absence of instructions from your Government, to lodge a protest against the attitude assumed by the Government of the United States in respect to the situation on the Isthmus of Panama.

Accept, sir, etc.,

JOHN HAY.

*Mr. Tower to Mr. Hay.*

[Telegram.]

EMBASSY OF THE UNITED STATES,  
*Berlin, November 10, 1903.*

(Received 5.40 p. m.)

In regard to the report telegraphed from New York that the Colombian consul general there had declared that Colombian citizens had petitioned the Colombian Government to send a deputation to thank the German Government for its offered protection and to make concessions of land to Germany therefor, I have just received the assur-

ance of the German minister for foreign affairs that there is no truth whatever in this report. He added that Germany has no interest in the Panama matter, and that the question of an interference on the part of Germany does not exist.

TOWER.

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*Mr. Porter to Mr. Hay.*

[Telegram.]

EMBASSY OF THE UNITED STATES,  
*Paris, November 11, 1903.*

(Received 3.50 p. m.)

The French generally are much pleased with events in Panama and our attitude there. In conversation with minister for foreign affairs he expressed himself in very sympathetic manner. Has authorized French consul at Panama to enter into relations with de facto government. Recognition will no doubt follow in time, and it seems to be disposition of European powers to await formal recognition by the United States before acting.

PORTER.

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RECEPTION OF MINISTER OF PANAMA.

*Mr. Varilla to Mr. Hay.*

[Translation.]

LEGATION OF THE REPUBLIC OF PANAMA,  
*Washington, November 11, 1903.*

MR. SECRETARY OF STATE:

I have the very great honor to bring to your knowledge the fact that the Republic of Panama has designated me to fill, near the Government of the United States of America, the post of envoy extraordinary and minister plenipotentiary, with full powers to negotiate.

While begging you, Mr. Secretary of State, to transmit to His Excellency the President of the Republic of the United States the substance of the present communication, I venture to ask you to solicit from his kindness the appointment of a date on which he will authorize me to present to him my letters of credence.

I have, etc.,

P. BUNAU VARILLA.

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*Mr. Loomis to Mr. Varilla.*

No. 1.]

DEPARTMENT OF STATE,  
*Washington, November 12, 1903.*

SIR: I have the honor to acknowledge the receipt of your note of the 11th instant, in which you advise me that the Republic of Panama has appointed you to fill, near this Government, the post of envoy extraordinary and minister plenipotentiary, with full powers to negotiate.

You further ask that this information may be communicated to the President and that he will kindly fix a date at which you may present your letters of credence.

In reply I have the honor to say that the President will be pleased to receive you for the purpose mentioned to-morrow, Friday, at 9.30 a. m.

If you will be good enough to call at this department shortly before the hour mentioned, the Secretary of State will be pleased to accompany you to the White House.

Accept, etc.,

FRANCIS B. LOOMIS,  
*Acting Secretary.*

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REMARKS MADE BY THE MINISTER OF PANAMA.

MR. PRESIDENT: In according to the minister plenipotentiary of the Republic of Panama the honor of presenting to you his letters of credence you admit into the family of nations the weakest and the last born of the republics of the New World.

It owes its existence to the outburst of the indignant grief which stirred the hearts of the citizens of the Isthmus on beholding the despotic action which sought to forbid their country from fulfilling the destinies vouchsafed to it by Providence.

In consecrating its right to exist, Mr. President, you put an end to what appeared to be the interminable controversy as to the rival waterways, and you definitely inaugurate the era of the achievement of the Panama Canal.

From this time forth the determination of the fate of the canal depends upon two elements alone, now brought face to face, singularly unlike as regards their authority and power, but wholly equal in their common and ardent desire to see at last the accomplishment of the heroic enterprise for piercing the mountain barrier of the Andes.

The highway from Europe to Asia, following the pathway of the sun, is now to be realized.

The early attempts to find such a way unexpectedly resulted in the greatest of all historic achievements, the discovery of America. Centuries have since rolled by, but the pathway sought has hitherto remained in the realm of dreams. To-day, Mr. President, in response to your summons, it becomes a reality.

THE PRESIDENT'S REPLY THE REMARKS MADE BY SEÑOR BUNAU VARILLA ON THE OCCASION OF THE PRESENTATION OF HIS LETTERS OF CREDENCE.

MR. MINISTER: I am much gratified to receive the letters whereby you are accredited to the Government of the United States in the capacity of envoy extraordinary and minister plenipotentiary of the Republic of Panama.

In accordance with its long-established rule, this Government has taken cognizance of the act of the ancient territory of Panama in reasserting the right of self-control and, seeing in the recent events on the Isthmus an unopposed expression of the will of the people of Panama and the confirmation of their declared independence by the institution

of a de facto government, republican in form and spirit, and alike able and resolved to discharge the obligations pertaining to sovereignty, we have entered into relations with the new Republic. It is fitting that we should do so now, as we did nearly a century ago when the Latin peoples of America proclaimed the right of popular government, and it is equally fitting that the United States should, now as then, be the first to stretch out the hand of fellowship and to observe toward the new-born State the rules of equal intercourse that regulate the relations of sovereignties toward one another.

I feel that I express the wish of my countrymen in assuring you, and through you the people of the Republic of Panama, of our earnest hope and desire that stability and prosperity shall attend the new State, and that, in harmony with the United States, it may be the providential instrument of untold benefit to the civilized world through the opening of a highway of universal commerce across its exceptionally favored territory.

For yourself, Mr. Minister, I wish success in the discharge of the important mission to which you have been called.

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NAVY DEPARTMENT.

*Washington, November 12, 1903.*

SIR: In accordance with the resolution of the House of Representatives of the 9th instant, calling for all correspondence and other official documents relating to the recent revolution on the Isthmus of Panama, I have the honor to transmit herewith all such matter on file in the Navy Department.

Very respectfully,

WILLIAM H. MOODY,  
*Secretary.*

The PRESIDENT.

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NAVY DEPARTMENT.

*Washington, D. C., November 2, 1903.*

[Translation.]

NASHVILLE. *cave American Consul, Colon.*<sup>1</sup>

Maintain free and uninterrupted transit. If interruption threatened by armed force, occupy the line of railroad. Prevent landing of any armed force with hostile intent, either Government or insurgent, either at Colon, Porto Bello, or other point. Send copy of instructions to the senior officer present at Panama upon arrival of *Boston*. Have sent copy of instructions and have telegraphed *Divie* to proceed with all possible dispatch from Kingston to Colon. Government force reported approaching the Isthmus in vessels. Prevent their landing if in your judgment this would precipitate a conflict. Acknowledgment is required.

DARLING, *Acting.*

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<sup>1</sup> Same order to commander of *Dirte*, at Kingston, Jamaica.

NAVY DEPARTMENT,  
Washington, D. C., November 2, 1903.

GLASS, *Marblehead, Acapulco*:<sup>1</sup>

Proceed with all possible dispatch to Panama. Telegraph in cipher your departure. Maintain free and uninterrupted transit. If interruption is threatened by armed force occupy the line of railroad. Prevent landing of any armed force, either Government or insurgent, with hostile intent at any point within 50 miles of Panama. If doubtful as to the intention of any armed force, occupy Ancon Hill strongly with artillery. If the *Wyoming* would delay *Concord* and *Marblehead* her disposition must be left to your discretion. Government force reported approaching the Isthmus in vessels. Prevent their landing if in your judgment landing would precipitate a conflict.

DARLING, *Acting*.

NAVY DEPARTMENT,  
Washington, D. C., November 3, 1903.

CRUISER ATLANTA, *Kingston, Jamaica*:

Proceed with all possible dispatch to Colon. Acknowledge immediately. When will you sail?

DARLING, *Acting*.

NAVY DEPARTMENT,  
Washington, D. C., November 3, 1903.

NASHVILLE, *Colon*:

In the interest of peace make every effort to prevent Government troops at Colon from proceeding to Panama. The transit of the Isthmus must be kept open and order maintained. Acknowledge.

DARLING, *Acting*.

NAVY DEPARTMENT,  
Washington, D. C., November 3, 1903.

AMERICAN CONSUL, *Panama*:

Message sent *Nashville* to Colon may not have been delivered. Accordingly see that the following message is sent to *Nashville* immediately:

NASHVILLE, *Colon*:

In the interest of peace make every effort to prevent Government troops at Colon from proceeding to Panama. The transit of the Isthmus must be kept open and order maintained. Acknowledge.

DARLING, *Acting*.

Secure special train if necessary. Act promptly.

LOOMIS, *Acting*.

<sup>1</sup> Same to commander of *Boston* at San Juan del Sur, Nicaragua.

[Translation.]

NAVY DEPARTMENT,  
Washington, D. C., November 4, 1903.NASHVILLE, *Colon*:

Gunboat of Colombia shelling Panama. Send immediately battery 3-inch field gun and 6-pounder with a force of men to Panama to compel cessation bombardment. Railroad must furnish transportation immediately.

DARLING, *Acting*.

[Translation.]

WASHINGTON, D. C., November 5, 1903.

BOSTON, *care of American consul, Panama*:

Prevent recurrence bombardment of Panama. Acknowledge.

MOODY.

NAVY DEPARTMENT,  
Washington, D. C., November 5, 1903.NASHVILLE, *Colon*:

Prevent any armed force of either side from landing at Colon, Porto Bello, or vicinity.

MOODY.

[Translation.]

WASHINGTON, D. C., November 6, 1903.

MAINE, *Woods Hole, Mass.*:

Proceed at once to Colon, coaling wherever necessary to expedite your arrival. Acknowledge.

MOODY.

[Translation.]

WASHINGTON, D. C., November 9, 1903.

DIEHL, *Boston*:

Upon the arrival of the *Marblehead* sufficient force must be sent to watch movements closely of the British steamers seized at Buenaventura and to prevent the landing of men with hostile intent within limits of the State of Panama. Protect the British steamers if necessary.

MOODY.

[Translation.]

WASHINGTON, D. C., November 10, 1903.

GLASS, *Marblehead, Panama*:

Reported that the British steamers at Buenaventura were not detained. Did they leave with Colombian troops aboard?

MOODY.



[Translation.]

COLON, *October 15, 1903.*SECNAV, *Washington, D. C.:*

Report is current to the effect that a revolution has broken out in the State of Cauca. Everything is quiet on the Isthmus unless a change takes place. On this account there is no necessity to remain here. Do not think it necessary to visit St. Andrews Island.

HUBBARD,  
*Commanding Officer U. S. S. Nashville.*

[Translation.]

COLON, *November 3, 1903.*SECNAV, *Washington, D. C.:*

Receipt of your telegram of November 2 is acknowledged. Prior to receipt this morning about 400 men were landed here by the Government of Colombia from Cartagena. No revolution has been declared on the Isthmus and no disturbances. Railway company have declined to transport these troops except by request of the governor of Panama. Request has not been made. It is possible that movement may be made to-night at Panama to declare independence, in which event I will \* \* \* (message mutilated here) here. Situation is most critical if revolutionary leaders act.

HUBBARD.

[Translation.]

COLON, *November 4, 1903.*SECNAV, *Washington:*

Provisional government was established at Panama Tuesday evening; no organized opposition. Governor of Panama, General Tobar, General Amaya, Colonel Morales, and three others of the Colombian Government troops who arrived Tuesday morning taken prisoner at Panama. I have prohibited transit of troops now here across the Isthmus. /

HUBBARD.

COLON *November 4, 1903.*SECRETARY OF THE NAVY, *Washington, D. C.:*

Government troops yet in Colon. Have prohibited transportation of troops either direction. No interruption of transit as yet. Will make every effort to preserve peace and order.

HUBBARD.

COLON, *November 4, 1903.*SECNAV, *Washington, D. C.:*

I have landed force to protect the lives and property of American citizens here against threats Colombian soldiery. I am protecting water front with ship. I can not possibly send to Panama until affairs are settled at Colon.

HUBBARD.

ACAPULCO, MEXICO, *November 4, 1903.*

SECRETARY NAVY, *Washington, D. C.:*

*Marblehead* and *Concord* to Panama to-day 4 p. m.; *Wyoming* will follow to-morrow afternoon. If *Boston* is to go with squadron, I would suggest Department will order her to rendezvous off Cape Mala, Colombia, about 6 p. m., on November 9. I have ordered *Nero* to Acapulco. I will leave sealed orders for her to proceed without delay to Panama unless otherwise directed.

GLASS.

COLON, *November 5, 1903—9.41 a. m.*

SECNAV, *Washington, D. C.:*

British man-of-war *Amphion* is protecting American interests at Panama. Reported bombardment much exaggerated.

HUBBARD.

COLON, *November 5, 1903—9.45 a. m.*

SECNAV, *Washington, D. C.:*

Have withdrawn force landed Wednesday afternoon. No bloodshed. I do not apprehend difficulty of any serious nature.

HUBBARD.

COLON, *November 5, 1903.*

SECRETARY OF THE NAVY,  
*Washington, D. C.:*

Situation here this morning again acute. Have deemed advisable to reland force.

HUBBARD.

[Translation.]

COLON, *November 5.*

SECNAV, *Washington:*

Atlas Line's steamer, with large body of troops, reported sailing from Cartagena, Colombia.

HUBBARD.

NAVY DEPARTMENT,  
*Washington, D. C., Colon, November 6, 1903.*

SECRETARY OF THE NAVY,  
*Washington, D. C.:*

All quiet. Independents declare Government established as Republic of Panama. Have withdrawn marines.

DELANO.

COLON, *November 6, 1903—9.15 a. m.*

SECNAV, *Washington:*

Arrived Thursday evening; landed force. Following conditions prevailing: Just before landing all the troops of Colombia have left

for R. M. S. P. Company's steamer *Orinoco* for Cartagena. Independent party in possession of Colon, Panama, and railroad line. *Nashville* withdrawn force.

DELANO.

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[Translation.]

PANAMA, *November 7, 1903—7.40 p. m.*

SECNAV, *Washington:*

All quiet; traffic undisturbed; message to prevent received.

DIEHL.

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COLON, *November 8, 1903—7.05 p. m.*

SECNAV, *Washington, D. C.:*

*Atlanta* left yesterday for Bocas del Toro.

DELANO.

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PANAMA, *November 9.*

SECRETARY OF THE NAVY,  
*Washington:*

The British consul and the minister of war of the provisional government fear seizure of two British steamers at Buenaventura to transport troops convoyed by gunboat. Prevailed upon minister to dispatch gunboat, fearing possible destruction British steamers. The landing of troops in the territory within the limit under my control will cause prolonged campaign. Instructions from the Department are requested.

DIEHL.

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PANAMA, *November 10, 1903.*

SECNAV:

Your telegram of the 9th of November to the *Boston* acknowledged. No interference British vessels yet. Report seems to be well founded that the steamship *Bogota* sailed from Buenaventura yesterday afternoon with 1,000 for Rio Dulce. Have sent *Concord* to patrol in that vicinity in order to prevent landing. Everything is quiet at Panama.

GLASS.

No. 12.

**PRESIDENT'S SECOND MESSAGE GIVING CORRESPONDENCE ON  
REVOLUTION ON THE ISTHMUS OF PANAMA.**

[House Document No. 8, part 2, Fifty-eighth Congress, first session.]

REVOLUTION ON THE ISTHMUS OF PANAMA.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING  
ADDITIONAL CORRESPONDENCE RELATING TO THE RECENT REVOLUTION  
ON THE ISTHMUS OF PANAMA.

[November 27, 1903: Read; referred to the Committee on Foreign Affairs and ordered  
to be printed.]

*To the House of Representatives:*

In response to a resolution of the House of Representatives of November 9, 1903, requesting the President "to communicate to the House, if not, in his judgment, incompatible with the interests of the public service, all correspondence and other official documents relating to the recent revolution on the Isthmus of Panama," I transmit herewith copies of additional papers on the subject which have been received subsequent to the resolution referred to.

THEODORE ROOSEVELT.

WHITE HOUSE,  
*Washington, November 27, 1903.*

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THE PRESIDENT:

The Secretary of State, to whom was referred a copy of the resolution of the House of Representatives of November 9, 1903, requesting copies of all correspondence and other official documents relating to the recent revolution on the Isthmus of Panama, has the honor to lay before the President copies of additional correspondence on the subject received subsequent to the resolution referred to.

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE,  
*Washington, November 24, 1903.*

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No. 464.] CONSULATE GENERAL OF THE UNITED STATES,  
*Panama, November 9, 1903.*

HON. FRANCIS B. LOOMIS,  
*Assistant Secretary of State, Washington, D. C.*

SIR: I have the honor to say that on the 5th instant I received from the Committee of the Provisional Government a circular letter (No. 1), dated November 4, 1903, informing me that Panama had dissolved its political relations with the Republic of Colombia and requesting me to acknowledge receipt of circular. Inclosed please

find translation of circular letter, marked "A." I immediately cabled the department the contents of said circular letter, and upon receipt of the department's cable instructing me to acknowledge receipt of circular and await instructions, I wrote acknowledging same. Please find copy of my letter, marked "B."

On receipt of the two telegrams from the department in regard to entering into relations with the local authorities here, being satisfied that there was a de facto government established, and as there was no opposition to same in the State of Panama, I wrote on the morning of the 7th to the committee, informing them that they would be held responsible for the protection of the persons and property of American citizens, as well as responsible for carrying out treaty obligations, in accordance with treaties in regard to isthmian territory. Inclosed please find copy of my letter, marked "C."

On the afternoon of the 8th instant I received a letter from the minister of foreign relations, saying that the Republic of Panama would protect American citizens and their property, as well as to carry out all treaty obligations in regard to isthmian territory. Inclosed find translation of letter, marked "D."

I am, sir, your obedient servant,

FELIX EHRLMAN,  
*United States Vice Consul General.*

A.

[Translation.]

CIRCULAR }  
No. 1. }

REPUBLIC OF PANAMA. PROVISIONAL GOVERNMENT.  
*Panama, November 4, 1903.*

SIR: We have the honor of informing you, for your knowledge and that of the Government which you represent, that in this date a political movement has taken place by which the former department of Panama is separated from the Republic of Colombia, in order to constitute a new state under the name of "Republic of Panama," and that those who subscribe themselves have received the honor of being designated to form the Committee of the Provisional Government of the Republic.

We beg you to kindly acknowledge receipt and accept the sentiments of consideration, which it is pleasing to subscribe ourselves.

Your attentive servants,

J. A. ARANGO.  
TOMAS ARIAS.  
FEDERICO BOYD.

The CONSUL GENERAL OF THE UNITED STATES OF NORTH AMERICA, *Pte.*

B.

PANAMA, *November 5, 1903.*

Messrs. J. A. ARANGO, TOMAS ARIAS, and FEDERICO BOYD,  
*Committee of the Provisional Government, Panama.*

SIRS: I have the honor to acknowledge receipt of your circular letter No. 1, dated November 4, 1903.

I am, sirs, very respectfully, yours,

FELIX EHRLMAN,  
*United States Vice Consul General.*

## C.

PANAMA, November 7, 1903.

MESSESS. J. A. ARANGO, TOMAS ARIAS, and FEDERICO BOYD,  
*Committee of the Provisional Government, present.*

GENTS: As it appears that the people of Panama have, by unanimous movement, dissolved their political connection with the Republic of Colombia and resumed their independence, and as there is no opposition to the Provisional Government in the State of Panama, I have to inform you that the Provisional Government will be held responsible for the protection of the persons and property of citizens of the United States, as well as to keep the Isthmian transit free, in accordance with obligations of existing treaties relative to the Isthmian territory.

I have the honor to remain, gentlemen, very respectfully,

FELIX EHRMAN,  
*United States Vice Consul General.*

## D.

[Translation.]

No. 2.]

REPUBLIC OF PANAMA,  
*Panama, November 8, 1903.*

SIR: The Committee of the Provisional Government, informed of your communication of yesterday, has requested me to inform you that the Republic of Panama shelters the most sincere determination of protecting, as it has so far protected, the lives and properties of the United States citizens, determination that involves for the Republic a sacred and pleasant duty, and that in regard to the obligations existing on account of treaties in connection with the Isthmian territories heretofore with the Republic of Colombia are now with the Republic of Panama that has substituted the former in them and their rights.

With the sentiments of the highest consideration, I beg to remain,  
 Very attentive servant,

F. V. DE LA ESPRIELLA.

The VICE CONSUL GENERAL OF THE UNITED STATES OF AMERICA.

No. 463.]

CONSULATE GENERAL OF THE UNITED STATES,  
*Panama, November 9, 1903.*

HON. FRANCIS B. LOOMIS,

*Assistant Secretary of State, Washington, D. C.*

SIR: I have the honor to report that on the 3d of November, at about 6 p. m., there occurred an uprising in the city of Panama. It seems that everything had been prearranged with the officials of the army and navy, as there was practically accord among all the officers. General Tovar, General Castro, and Commander Tovar of the gunboat *Bogota*, finding out about the movement just a short while before it occurred, rushed to the barracks in the hope of frustrating the plans, but on their arrival General Huertas, second in command of the troops stationed at Panama, and chief of the "Colombia Battalion," ordered the soldiers out and arrested the above-mentioned generals, together with Governor Obaldia. The movement was to occur at 8 o'clock, but as the people had assembled and everything in readiness they moved at 6 o'clock. At 8 o'clock a boat was sent off from the gunboat *Bogota*, saying that unless Generals Tovar and Castro were set at liberty immediately they would bombard the town. This note was not answered by the people on shore.

At about 10 o'clock on the night of the 3d the *Bogota* fired several shells, which were answered by the fort. These shots struck in different parts of the city, and one Chinaman was killed. After firing, the *Bogota* hoisted her anchor and steamed away. She was supposed to be behind some islands which are directly in front of Panama. On the morning of the 4th I received information direct from one of the chiefs of the movement, and he said that the *Bogota* had threatened to again bombard the city, and on this I immediately sent word by telegraph to the commander of the *Nashville* and cabled the Department. The consular corps met in this consulate general and decided to send a protest to the commander of the *Bogota*, protesting against the action of the commander. Inclosed please find copy of protest, marked "A." This letter was not sent, as the *Bogota* was not in sight and no boats were available at the time. The gunboat *Twenty-first of November (Padilla)* was lying off Panama all this time, but did not try to intercept or pursue the *Bogota*. On the morning of the 4th the *Twenty-first of November* came in and anchored near the fort, and in the afternoon of the same day hauled down the Colombian flag and hoisted the flag of Panama. In the afternoon of the 4th, at 3 p. m., there was a general mass meeting held in the central plaza, and the declaration of independence was read and signed. The following is a list of the Government officials, as given me by the Committee of the Provisional Government:

Committee of provisional government, J. A. Arango, Tomas Arias, and Federico Boyd; minister of government, Eusebio A. Morales; minister of foreign relations, F. V. de la Espriella; minister of war and marine, Nicanor A. de Obarrio; minister of justice, Carlos A. Mendoza; minister of finance, Manuel E. Amador; minister of public instruction, Julio J. Fabrega; chief of the division of Panama, Gen. Domingo Diaz; general in chief of the army of the Republic, Gen. Esteban Huertas; commander of civil battalion, Gen. Manuel Quintero; general treasurer of the Republic, Señor Albino Arosemena; commander of the gunboat *Twenty-first of November*, Gen. H. O. Jeffries.

I may say that the above mentioned are all men of high standing in Panama and men who have had wide experience in public affairs.

During the recent troubles I am pleased to state that everything was carried on in an orderly manner, and I have not heard of a case where foreigners were threatened or molested in any way.

Inclosed I send you clipping from the *Star and Herald* of this city containing a translation of the declaration of independence and manifesto by the committee of the provisional government, marked "B."

We have heard several stories of the happenings in Colon, but I will leave that to be reported on from Colon, as we have received nothing definite. The declaration of independence was read and signed at Colon at 1.30 p. m. on the afternoon of the 5th instant.

Telegrams have been received from different parts of the department of Panama, and all say that independence has been unanimously declared.

I am, sir, your obedient servant.

FELIX EHRLMAN,  
United States Vice Consul General.

## A.

[Translation]

PANAMA, *November 4, 1903.*

THE COMMANDER OF THE BOGOTA.

SIR: The consular corps of this city considers the action of the steamship *Bogota*, under your command, last night in bombarding a defenseless city without advice of any kind to the consuls is contrary to all rights and practice of civilized nations. Consequently the consular corps protests in the most solemn manner, and holds responsible for the consequences and responsibilities of this act whoever is to blame, furnishing account to their respective Governments of the referred circumstance.

Yours, respectfully,

FELIX EHRLMAN,  
*United States Vice Consul General.*  
E. H. ROHRWEGER,  
*Acting British Vice Consul.*  
EMILE GREY,  
*Agent of the French Consulate.*  
ARTHUR KOHPCKE,  
*Consul of Germany and in charge of Italian Consulate.*  
A. JESURUM, JR.,  
*Consul of Holland.*  
ED. JARAMILLO AVILES,  
*Consul of Ecuador.*  
J. F. ARANGO,  
*Consul General of Guatemala.*  
FEDERICO BOYD,  
*Consul of Spain and of Salvador.*  
JACOB L. MADURO,  
*Consul of Denmark.*  
B. D. FIDANQUE,  
*Consul of Belgica.*  
J. G. DUQUE,  
*Consul of Cuba.*  
B. MENDEZ,  
*Consul of Mexico.*  
PEDRO ARIAS,  
*Consul of Brazil.*  
JERONIMO OSSA,  
*Consul of Chile and Honduras.*  
JUAN VALLARINO,  
*Consul of Peru.*

## B.

*Declaration of independence and manifesto.*

[Extract from Star and Herald, Panama (Republic of Panama), Thursday, November 5, 1903.]

## INDEPENDENCE OF PANAMA.

"Viva la Republica de Panama!"

"Viva la independencia!"

At last the State of Panama has awakened from the torpor which appeared to have overpowered all branches of its population. The people have at last come to the conclusion that there was no hope for their future as long as they remained under the jurisdiction of the national Government as a department of the Republic of Colombia and have risen in a body to protest to the injustice meditated by the Bogota Government toward them in refusing its sanction to the Herran-Hay canal treaty, the passing of which treaty actually means life or death to the State of Panama.

The cry of independence was started on the evening of the 3d and taken up by every Isthmian as one body, as well as all those in sympathy with the



cause. Due to the celebrated Battalion Colombia, under the command of their intrepid and universally-beloved commander, Gen. E. Huertas, being in sympathy with the movement and declaring themselves on the side of the "separatists," all bloodshed, fighting, etc., has been avoided, the greatest order and unity reigning on all sides. The populace repaired without distinction to the arsenal and were supplied with the necessary arms with which to uphold their independence.

The movement had been planned to take place later on but was precipitated by the arrival at Colon of 300 troops under command of Generals Tovar and Amaya on the *Cartagena* on the night of the 2d instant. The only deplorable incident has been the killing of two Chinamen and part destruction of two buildings in the city by some shells thrown from the cruiser *Bogota*, the commander of which refused his adhesion to the cause and threatened to bombard the city unless Generals Tovar and Amaya and their staffs, who were imprisoned on the afternoon of the 3d while attempting to take command of the garrison in this city, were released within three hours.

This request was not acceded to, in consequence of which the threat was carried out, but as the ship has got very little coal and supplies there is no doubt that she will not be able to hold out long and will have to surrender to the *21 de Noviembre*, which is being gotten ready for giving chase. The consular corps met and signed the following formal protest:

PANAMA, November 4, 1903.

THE COMMANDER OF THE BOGOTA.

SIR: The consular corps of this city considers the action of the steamship *Bogota*, under your command, last night in bombarding a defenseless city, without advice of any kind to the consuls, is contrary to all right and practice of civilized nations. Consequently the consular corps protests in the most solemn manner and holds responsible for the consequences and responsibilities of this act whoever is to blame, furnishing account to their respective governments of the referred-to circumstance.

Yours, respectfully,

FELIX EHRLMAN,  
*United States Vice Consul General.*

E. H. ROHRWEGER,  
*Acting British Vice Consul.*

EMILE GREY,  
*Agent of the French Consulate.*

ARTHUR KOEHPCKE,  
*Consul of Germany and in charge of the Italian Consulate.*

A. JESURUM, JR.,  
*Consul of Holland.*

ED. JARAMILLO AVILES,  
*Consul of Ecuador.*

I. F. ARANGO,  
*Consul General of Guatemala.*

FEDERICO BOYD,  
*Consul of Spain and of Salvador.*

JACOB L. MADURO,  
*Consul of Denmark.*

B. D. FIDANQUE,  
*Consul of Belgica.*

J. G. DUQUE,  
*Consul of Cuba.*

B. MENDEZ,  
*Consul of Mexico.*

PEDRO ARIAS,  
*Consul of Brazil.*

JERONIMO OSSA,  
*Consul of Chile and Honduras.*

JUAN VALLARINO,  
*Consul of Peru.*

In compliance with an invitation stuck up and distributed all over the city by the municipal board, Demetrio H. Brid, president, a public meeting of all the corporations, civilians, military and religious bodies took place at 3 p. m. yesterday at the Cathedral Park, where the act of independence was signed by the members of the municipality, the chiefs of the provisional government, etc., after which patriotic speeches were delivered in profusion.

The provisional government has been composed of the following gentlemen: Jose Agustin Arango, Federico Boyd, and Tomas Arias, with the following ministers: State, E. A. Morales; treasury, M. E. Amador; justice, C. A. Mendoza; foreign relations, F. V. de la Espriella; war and navy, N. A. de Obarrio.

From latest information we regret to state that Colon does not appear inclined to join the movement for separation. A commission from that city arrived yesterday evening to consult with the chiefs of the provisional government here, and we sincerely hope that the differences of opinion existing may be amicably settled in order to avoid all disturbance. The manifesto and declaration of independence we have translated for the benefit of our English readers.

We voice the sentiments of one and all, natives as well as foreigners, in wishing great prosperity to the new Republic.

Hurrah for the Republic of Panama!

Hurrah for the third of November!

#### DECLARATION OF INDEPENDENCE.

In the city of Panama, capital of the district of the same name, at 4 o'clock in the afternoon of the 4th day of November, 1903, the municipal council by its own right assembled, there being present the following members of the city council: Aizpuru, Rafael; Arango, Ricardo M.; Arias, F. Agustin; Arosemena, Fabio; Brid, Demetrio H.; Chiari, R. Jose Maria; Cuelalon, P.; Manuel, J.; Dominguez, Alcides; Lewis, Samuel; Linares, Enrique; McKay, Oscar M.; Mendez, Manuel Maria; and Vallarino, Dario, the mayor of the district and the municipal attorney, and having for its exclusive object to debate regarding the situation in which the country is at present, and to decide regarding what should be most convenient toward the tranquility for the development and aggrandizement of the citizens that constitute the ethnographic and political entity denominated the Isthmus of Panama.

Councilmen Arias F., Arosemena, Chiari, Brid, Cuelalon, B., Aizpuru, Lewis, and Linares carefully took under special consideration the historical facts by virtue of which the Isthmus of Panama, by its own free will and in hopes of procuring for itself the ample benefits of right and liberty, cut asunder, on the 28th of November, 1821, its ties from Spain, and spontaneously joined its destiny to that of the great Republic of Colombia. Reflections were made tending to show that the union of the Isthmus with the old and modern Colombia did not produce the benefits that were expected from this act, and on mature consideration particular mention was made of the great and incessant injury that has been caused to the Isthmus of Panama in its material and moral interests at all times by the governments of the nation which have succeeded each other during the intervals of the federation, as well as those of the centralization—injuries which, instead of being looked after and patriotically remedied by those whose duty it was, were being augmented each day and increasing in importance with a persistency and ignorance that has exterminated in the cities of the department of Panama the inclinations which were spontaneously felt for Colombia, thus demonstrating to them that, their cup of bitterness overflowing and all hope of the future being lost, the moment had arrived in which to dissolve certain ties which were a drawback to civilization, which placed insurmountable barriers to all progress, and which, on the whole, has produced unhappiness, upsetting and undoing the ends of the political union in which they entered, moved by the necessity to satisfy the desire of prospering within the right respected and liberty assured.

In view of the circumstances mentioned, the municipal council of the district of Panama, as a faithful interpreter of the sentiments of those they represent, declares in a solemn form that the people under their jurisdiction from to-day and henceforth sever their ties with Colombia in order to form, with the other towns of the Department of Panama that accept the separation and unite with them, the State of Panama, so as to constitute a republic with an independent government, democratic, representative, and responsible, that would tend to the happiness of the natives and of the other inhabitants of the territory of the Isthmus.

In order to practically attain the fulfillment of the resolution of the people of Panama of emancipating themselves from the Government of Colombia, making use of their autonomy in order to dispose of their destiny, to establish a new nationality free from all foreign elements, the municipal council of the district of Panama, for itself and in the name of the other municipal councils of the department, places the administration, working, and direction of affairs, temporarily and while the new Republic be constituted, in a board of government composed of Messrs Jose Agustin Arango, Federico Boyd, and Tomas Arias, in whom and without any reserve whatsoever it gives powers, authorizations, and faculties necessary and sufficient for the satisfactory compliance of the duties which in the name of the Fatherland are confided to them.

It was ordered that the inhabitants of Panama be assembled to an open council in order to submit for their approval the ordinance that the present minutes contain, and which was signed by the officers and members of the corporation present.

Demetrio H. Brid. R. Aizpuru. A. Arias F., Manuel J. Cucalon P., Fabio Arosemena, Oscar M. McKay, Alcides Dominguez, Enrique Linares, J. M. Chiari R., Dario Vallarino, S. Lewis, Manuel M. Mendez.

The secretary of the council, Ernesto J. Goti.

In our next issue we will publish the very extensive list of the signers of the above declaration.

#### MANIFESTO.

The transcendental act that by a spontaneous movement the inhabitants of the Isthmus of Panama have just executed is the inevitable consequence of a situation which has become graver daily.

Long is the recital of the grievances that the inhabitants of the Isthmus have suffered from their Colombian brothers; but those grievances would have been withstood with resignation for the sake of harmony and national union had its separation been possible and if we could have entertained well-founded hopes of improvement and of effective progress under the system to which we were submitted by that Republic. We have to solemnly declare that we have the sincere and profound conviction that all the hopes were futile and useless, all the sacrifices on our part.

The Isthmus of Panama has been governed by the Republic of Colombia with the narrow-mindedness that in past times were applied to their colonies by the European nations—the isthmian people and territory was a source of fiscal resources and nothing more. The contracts and negotiations regarding the railroad and the Panama Canal and the national taxes collected in the Isthmus have netted to Colombia tremendous sums which we will not detail, not wishing to appear in this exposition which will go down to posterity as being moved by a mercenary spirit, which has never been nor is our purpose; and of these large sums the Isthmus has not received the benefit of a bridge for any of its numerous rivers, nor the construction of a single road between its towns, nor of any public building, nor of a single college, and has neither seen any interest displayed in advancing her industries, nor has a most infinite part of those sums been applied toward her prosperity.

A very recent example of what we have related above is what has occurred with the negotiations of the Panama Canal, which, when taken under consideration by Congress, was rejected in a summary manner. There were a few public men who expressed their adverse opinion, on the ground that the Isthmus of Panama alone was to be favored by the opening of the canal by virtue of a treaty with the United States, and that the rest of Colombia would not receive any direct benefits of any sort by that work, as if that way of reasoning, even though it be correct, would justify the irreparable and perpetual damage which would be caused to the Isthmus by the rejection of the treaty in the manner in which it was done, which was equivalent to the closing of the doors to future negotiations.

The people of the Isthmus, in view of such notorious causes, have decided to recover their sovereignty and begin to form a part of the society of the free and independent nations, in order to work out its own destiny, to insure its future in a stable manner, and discharge the duties which it is called on to do by the situation of its territory and its immense richness.

To that we, the initiators of the movement effected, aspire and have obtained a unanimous approval.

We aspire to the formation of a true republic, where tolerance will prevail, where the law should be the invariable guide of those governing and those

governed, where effective peace be established, which consists in the frequent and harmonious play of all interests and all activities, and where, finally, civilization and progress will find perpetual stability.

At the commencement of the life of an independent nation we fully appreciate the responsibilities that state means, but we have profound faith in the good sense and patriotism of the isthmian people, and we possess sufficient energy to open our way by means of labor to a happy future without any worry or any danger.

At separating from our brothers of Colombia we do it without any hatred and without any joy. Just as a son withdraws from his paternal roof, the isthmian people in adopting the lot it has chosen have done it with grief, but in compliance with the supreme and inevitable duty it owes to itself—that of its own preservation and of working for its own welfare.

We therefore begin to form a part among the free nations of the world, considering Colombia as a sister nation, with which we shall be whenever circumstances may require it, and for whose prosperity we have the most fervent and sincere wishes.

JOSE AGUSTIN ARANGO.  
FEDERICO BOYD.  
TOMAS ARIAS.

No. 13.

PRESIDENT'S MESSAGE GIVING CORRESPONDENCE BETWEEN  
UNITED STATES AND COLOMBIA.

[Senate Document No. 51, Fifty-eighth Congress, second session.]

CORRESPONDENCE CONCERNING THE CONVENTION BETWEEN THE  
UNITED STATES AND COLOMBIA FOR THE CONSTRUCTION OF AN  
INTEROCEANIC CANAL ACROSS THE ISTHMUS OF PANAMA.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING A  
REPORT FROM THE SECRETARY OF STATE, WITH ACCOMPANYING PAPERS,  
CONCERNING THE CONVENTION BETWEEN THE UNITED STATES AND CO-  
LOMBIA FOR THE CONSTRUCTION OF AN INTEROCEANIC CANAL ACROSS  
THE ISTHMUS OF PANAMA.

[December 19, 1903: Read; referred to the Committee on Foreign Relations and ordered  
to be printed.]

*To the Senate and House of Representatives:*

I transmit, for the information of the Congress, in connection with  
the correspondence already transmitted relating to the recent revolu-  
tion on the Isthmus of Panama, and contained in House Document  
No. 8, Fifty-eighth Congress, first session, parts 1 and 2, a report  
from the Secretary of State, with accompanying papers, concerning  
the convention between the United States and Colombia for the con-  
struction of an interoceanic canal across the Isthmus of Panama.

THEODORE ROOSEVELT.

WHITE HOUSE,  
*Washington, December 18, 1903.*

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The PRESIDENT:

The undersigned, Secretary of State, has the honor to lay before  
the President, with a view to their transmission to Congress for the  
information of that body, in connection with the correspondence  
already transmitted, relating to the recent revolution on the Isthmus  
of Panama, and contained in House Document No. 8, Fifty-eighth  
Congress, first session, parts 1 and 2,<sup>1</sup> copies of the correspondence  
between the Department of State and the legation of the United  
States at Bogotá concerning the convention between the United  
States and Colombia for the construction of an interoceanic canal  
across the Isthmus of Panama.

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE,  
*Washington, December 18, 1903.*

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<sup>1</sup> See Nos. 11 and 12, appendix.

## List of papers.

No.	From and to whom.	Date.	No.	From and to whom.	Date.
		1903.			1903.
	Mr. Loomis to Mr. Beaupré (tele-gram).....	Mar. 18	105	Mr. Beaupré to Mr. Hay.....	Aug. 15
741	Mr. Hay to Mr. Beaupré (telegram).....	Apr. 7		Mr. Loomis to Mr. Beaupré (tele-gram).....	Aug. 15
6	Mr. Beaupré to Mr. Hay.....	Mar. 30		Mr. Beaupré to Mr. Hay (telegram).....	Aug. 15
10	Same to same.....	Apr. 15	107	Same to same.....	Aug. 17
13	Same to same.....	Apr. 24		Same to same (telegram).....	Aug. 17
16	Same to same.....	Apr. 27	110	Same to same.....	Aug. 18
17	Mr. Hay to Mr. Beaupré.....	Apr. 28		Mr. Adee to Mr. Beaupré (telegram).....	Aug. 19
18	Mr. Beaupré to Mr. Hay.....	May 4		Mr. Hay to Mr. Beaupré (telegram).....	Aug. 24
	Same to same.....	May 5		Mr. Beaupré to Mr. Hay (telegram).....	Aug. 24
	Same to same (telegram).....	May 7	115	Same to same.....	Aug. 24
19	Same to same.....	May 7		Same to same (telegram).....	Aug. 26
24	Same to same.....	May 12		Mr. Hay to Mr. Beaupré (telegram).....	Aug. 29
	Same to same (telegram).....	May 28		Mr. Beaupré to Mr. Hay (telegram).....	Aug. 29
37	Same to same.....	May 28		Same to same (telegram).....	Aug. 30
	Mr. Hay to Mr. Beaupré (telegram).....	May 30		Same to same (telegram).....	Aug. 31
15	Same to same.....	June 2		Same to same (telegram).....	Sept. 1
	Same to same (telegram).....	June 9		Same to same (telegram).....	Sept. 2
44	Mr. Beaupré to Mr. Hay.....	June 10		Same to same (telegram).....	Sept. 5
45	Same to same.....	June 10	129	Same to same.....	Sept. 5
48	Same to same.....	June 13		Same to same (telegram).....	Sept. 10
	Same to same (telegram).....	June 17	133	Same to same.....	Sept. 11
	Same to same (telegram).....	June 17		Same to same (telegram).....	Sept. 14
55	Same to same.....	June 20		Same to same (telegram).....	Sept. 17
56	Same to same.....	June 20	139	Same to same.....	Sept. 18
57	Same to same.....	June 20		Same to same.....	Sept. 22
	Same to same (telegram).....	June 23	150	Same to same.....	Sept. 24
	Same to same (telegram).....	June 25	154	Same to same.....	Sept. 25
	Same to same.....	June 26		Same to same (telegram).....	Sept. 28
67	Same to same.....	July 1		Same to same (telegram).....	Sept. 30
	Mr. Loomis to Mr. Beaupré (tele-gram).....	July 1	164	Same to same.....	Sept. 30
	Mr. Beaupré to Mr. Hay.....	July 2		Mr. Beaupré to Mr. Hay (telegram).....	Oct. 9
68	Same to same (telegram).....	July 5	176	Same to same (telegram).....	Oct. 14
	Same to same (telegram).....	July 5		Same to same.....	Oct. 10
72	Mr. Beaupré to Mr. Hay.....	July 6	179	Same to same.....	Oct. 15
	Same to same (telegram).....	July 9	181	Same to same.....	Oct. 16
	Same to same (telegram).....	July 9		Same to same.....	Oct. 16
78	Same to same.....	July 11	183	Same to same (telegram).....	Oct. 17
	Mr. Hay to Mr. Beaupré (telegram).....	July 11		Same to same.....	Oct. 19
	Mr. Beaupré to Mr. Hay (telegram).....	July 13	185	Same to same.....	Oct. 19
83	Same to same.....	July 15	186	Same to same.....	Oct. 20
23	Mr. Loomis to Mr. Beaupré.....	July 21		Mr. Hay to Mr. Beaupré (telegram).....	Oct. 21
85	Mr. Beaupré to Mr. Hay.....	July 21	188	Mr. Beaupré to Mr. Hay.....	Oct. 22
	Mr. Loomis to Mr. Beaupré (tele-gram).....	July 22		Mr. Beaupré to Mr. Hay (telegram).....	Oct. 23
	Same to same.....	July 29		Mr. Beaupré to Mr. Hay (telegram).....	Oct. 23
	Mr. Hay to Mr. Beaupré (telegram).....	July 31		Same to same (telegram).....	Oct. 27
90	Mr. Beaupré to Mr. Hay.....	Aug. 3		Same to same (telegram).....	Oct. 29
26	Mr. Loomis to Mr. Beaupré.....	Aug. 3		Mr. Hay to Mr. Beaupré (telegram).....	Oct. 30
	Mr. Beaupré to Mr. Hay (telegram).....	Aug. 5	199	Mr. Beaupré to Mr. Hay (telegram).....	Oct. 31
	Same to same (telegram).....	Aug. 5	207	Same to same (telegram).....	Nov. 1
	Same to same (telegram).....	Aug. 5		Same to same.....	Nov. 2
	Same to same (telegram).....	Aug. 5		Same to same (telegram).....	Nov. 4
	Same to same (telegram).....	Aug. 5		Same to same (telegram).....	Nov. 4
98	Same to same.....	Aug. 6		Same to same (telegram).....	Nov. 6
101	Same to same.....	Aug. 7		Mr. Hay to Mr. Beaupré (telegram).....	Nov. 6
	Mr. Loomis to Mr. Beaupré (tele-gram).....	Aug. 10		Mr. Beaupré to Mr. Hay (telegram).....	Nov. 7
	Mr. Beaupré to Mr. Hay (telegram).....	Aug. 10		Same to same (telegram).....	Nov. 7
	Same to same (telegram).....	Aug. 12		Same to same (telegram).....	Nov. 9
	Same to same (telegram).....	Aug. 12		Same to same (telegram).....	Nov. 11
	Mr. Loomis to Mr. Beaupré (tele-gram).....	Aug. 12		Mr. Hay to Mr. Beaupré (telegram).....	Nov. 11
	Same to same (telegram).....	Aug. 12		Mr. Beaupré to Mr. Hay (telegram).....	Nov. 12
	Same to same (telegram).....	Aug. 12		Same to same (telegram).....	Nov. 14
	Mr. Loomis to Mr. Beaupré (tele-gram).....	Aug. 13		Same to same (telegram).....	Nov. 17
				Mr. Hay to Mr. Beaupré (telegram).....	Nov. 18

*Mr. Loomis to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE.

*Washington, March 18, 1903.*

Inform Colombian Government Senate yesterday approved canal convention without amendment.

LOOMIS, *Acting.*

*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE.

*Washington, April 7, 1903.*

Referring to requests of Colombia to canal and railroad companies for appointment of agents to negotiate cancellation of the present concessions, et cetera, if the subject arises inform the Colombian Government that the treaty covers entire matter, and any change would be in violation of Spooner law and not permissible.

HAY.

*Mr. Beaupré to Mr. Hay.*

No. 741.]

LEGATION OF THE UNITED STATES,

*Bogotá, March 30, 1903.*

SIR: The matter of the ratification of the Panama Canal convention is intensely interesting to the people of this capital, and there is much public discussion of it. Without question public opinion is strongly against its ratification, but, of course, public opinion in Colombia is not necessarily a potent factor in controlling legislation.

It is quite impossible to come to a definite conclusion as to the outcome until the result of the recent elections for members of Congress is known. It has been generally thought that the Government would be able to control the elections and that the members returned would be favorable to the administration's view on the canal question; but there has been serious disappointment to the governmental party in the result of some of the elections heard from, prominent and able members of the National Party, opposed to the Marroquin administration and to the canal convention, have been elected. Ex-President Caro and Gen. Pedro Nel Ospina, Nationalists, are to represent the Department of Antioquia in the Senate. It seems altogether probable that unless the Government is thoroughly in earnest in its desire to have the convention ratified, it will not be done; and there is a possibility that it may not go through in any event.

There is no public information as to the date at which the Congress will be called, but from private source I am given to understand that it will be about the 20th of May, owing to the slowness of returns from remote election districts.

It is apparent lately that the French Canal Company is to take a decided interest in securing the ratification of the convention, and that its influence to that end will be of much importance.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 6.]

LEGATION OF THE UNITED STATES,

*Bogotá, April 15, 1903.*

SIR: I have the honor to advise you that within the last month there has been such a sudden outburst of controversy, both in the Bogotá press and among the public in this city, with regard to the

Panama Canal convention that I feel it my duty to report on what I regard as the chances for and against its passing Congress.

During the long revolution which has but lately come to an end the measures employed by the Government to prevent public discussion of affairs of state had the effect of destroying anything like public opinion. It may have been for this reason that when, in the early part of February last, news came of the signing of the canal convention complete apathy on the subject seemed to reign, as far as the general public was concerned. The financial crisis had, previous to this announcement, reached a most acute stage, and the only feeling expressed was that of relief at the prospect of receiving \$10,000,000, which was then considered sufficient to put in reasonably good condition the finances of the country. I am convinced I am right in saying that the public had never expected better terms. The proof is that when the news of the signing of the convention came foreign exchange ran down from 10,000 per cent to 6,300 per cent, and when it was rumored that the United States Senate had refused its assent a panic immediately ensued on the market, and exchange at once rose again to over 10,000 per cent.

This was the state of affairs until General Fernandez, the minister of Government in charge of the ministry of finance, issued a circular to the Bogotá press (which had suddenly sprung into existence), inviting discussion on the canal convention. The circular was to the effect that the Government had no preconceived wishes for or against the measure; that it was for Congress to decide, and Congress would be largely guided by public opinion. At the same time what purported to be a translation of the text of the convention was published.

Since then a complete revolution in feeling has taken place. From approbation to suspicion and from suspicion to decided opposition have been the phases of change in public sentiment during the last month. The newspapers of the city are full of strongly worded articles denouncing the convention, and, in general, these articles show the most bitter hostility to a scheme which they represent as being the attempt of a strong nation to take an unfair advantage of the crisis through which Columbia is passing, and, for a paltry sum, rob her of one of the most valuable sources of wealth which the world contains. So ridiculous are the facts brought forward by these journalists in support of their arguments that they are not even worth comment. As, for instance, I may mention that one of the most widely read of the newspapers states, and brings forward a whole collection of figures in support of its statement, that on the initial deal alone the United States starts with a clear profit of \$190,000,000. Absurd as such statements are, they voice the opinions and convictions of the Bogotá public.

This fact is clear, that if the proposed convention were to be submitted to the free opinion of the people it would not pass. The Congress about to assemble has been elected under the supervision of Government officials, and a system of quite indigenious wirepulling has undoubtedly been used: and yet if Congress, as now constituted, were allowed to give a free vote I feel convinced the convention would not be ratified.

This, then, is the present state of affairs. As to what will happen it is impossible to predict: yet this much seems certain to me, if it is



the wish of the Government that the convention be ratified it will be done.

It now seems likely that Congress will be convened about the 25th of May next for twenty days.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 10.]

LEGATION OF THE UNITED STATES,  
*Bogotá, April 24, 1903.*

SIR: I have the honor to refer to your telegram of the 7th instant, confirmed elsewhere, in regard to the negotiations for the cancellation of the present concessions of the Panama Canal and Railroad Companies.

The subject had not arisen, within my knowledge, but I deemed it best, in two interviews with the minister for foreign affairs, to bring the conversation as cautiously as possible to a point that would enlighten me. I can not say that his excellency showed any disposition to be entirely frank in the matter, but sufficient was said to elicit from him the information that such negotiations were at least under the consideration of the Colombian Government, if not actually started. I then imparted to the minister the purport of your telegram of the 7th instant, whereupon he requested me to convey those instructions officially. This I did in a note, copy of which I herewith transmit.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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[Inclosures.]

LEGATION OF THE UNITED STATES,  
*Bogotá, April 24, 1903.*

His Excellency DR. LUIS CARLOS RICO,  
*Minister for Foreign Affairs of the Republic of Colombia, etc.*

SIR: Referring to the two interviews I have had with your excellency, in which the question of the negotiations for the cancellation of the present concessions of the Panama Canal and railroad companies and other matters were brought up, I have the honor to inform your excellency that I am in receipt of instructions from my Government on the subject.

I am directed to inform your excellency, should the subject arise, that the entire matter above referred to is covered by the recently signed convention between the Republic of Colombia and the United States on the 22d of January last. Moreover, that any change would be in violation of the Spooner law and therefore not permissible.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 13.]

LEGATION OF THE UNITED STATES,  
*Bogota, April 27, 1903.*

SIR: I have the honor to advise you that it seems quite impossible to tell just when the Congress will be convened. Forty days' notice is required, and no notice has as yet been given.

In a conversation with the minister for foreign affairs I ascertained that the session would probably commence at some time between the middle of June and the 1st of July, but this is no more definite than the dates I have mentioned in my previous dispatches.

The Government is evidently "mending fences" in many election districts. It is said that owing to the disordered condition of the interior of the country, especially in the department of the Tolima, elections were illegally conducted, for which reason new elections were necessary. Hence the delay in calling Congress.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Hay to Mr. Beaupré.*

No. 6.]

DEPARTMENT OF STATE,  
*Washington, April 28, 1903.*

SIR: I confirm to you my dispatch by cable of the 7th instant in the following terms:

WASHINGTON, *April 7, 1903.*

AMERICAN MINISTER, *Bogotá:*

Referring requests Colombia to canal and railroad companies for appointment agents negotiate cancellation present concessions, etc.

If subject arises, inform Colombian Government that treaty covers entire matter and any change would be in violation of Spooner law and not permissible.

HAY.

and I now inclose to you copies of the notices given by the minister of hacienda of the Republic of Colombia to the New Panama Canal Company and the Panama Railroad Company, respectively.

You will observe that by these notices the Colombian Government contemplates the formal grant to these companies by the Colombian Congress of a further permission to transfer their concessions to the United States besides that contained in the treaty which is to be ratified by that Congress. You will also note that as a preliminary to this permission the companies are expected to enter into agreements with Colombia for the authorization and canceling of all obligations of Colombia to either of them contracted by Colombia under the concession.

Such action on the part of Colombia or on that of the companies would be inconsistent with the agreements already made between this Government and the canal company, with the act of June 28, 1902, under the authority of which the treaty was made, and with the express terms of the treaty itself.

By the act of June 28, 1902, the President was authorized to acquire, at a cost not exceeding \$40,000,000, "the rights, privileges, franchises, concessions," and other property of the New Panama Canal Company, and an agreement to that end was made by him with the company. It was, of course, known to the President, to the company, and to the Government of Colombia that, by articles 21 and 22 of the Salgar-Wyse concession of 1878, the company could not transfer to the United States its "rights, privileges, franchises, and concessions" without the consent of Colombia. Therefore, and before entering upon any dealings with the New Panama Canal Company, the present treaty with Colombia was negotiated and signed.

The first article of that treaty provides as follows:

The Government of Colombia authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties, and concessions, as well as the Panama Railroad and all the shares or parts of shares of said company.

The authorization thus given, it will be observed, covers expressly the "rights, privileges, \* \* \* and concessions" of the company, as well as its other property.

Colombia, now, by these notices, indicates a purpose not only of disregarding the authorization thus explicitly given (a matter to which I shall refer more at length later on), but to destroy a great part of the subject matter to which it refers. She states an intention of requiring the company to cancel all obligations of Colombia to it, and thus deprive the United States of the rights, privileges, and concessions which she has expressly authorized the company to transfer to them, and which the canal company has contracted to sell and convey to the United States.

This Government can not approve such a transaction either by Colombia or by the company. If the company were to accede to the demands of Colombia, the President would be unable to consummate the proposed purchase from it, for it would have surrendered to Colombia a material part of the property for which he is authorized to make payment. Nor could the treaty itself be carried out, inasmuch as the payments to Colombia for which it provides are, by the express terms of Article XXV of the treaty itself, to be made in compensation, not only for the right to use the Canal Zone and to indemnify Colombia for the annuity which she renounces and the greater expenses which she may incur, but also "in compensation for other rights, privileges, and exemptions granted to the United States." Among these other rights and privileges, one of the most important is the right of acquiring the rights, privileges, and concessions of the New Panama Canal Company, secured by Article I of the treaty, and if these rights, privileges, and concessions were to be canceled, it would fundamentally change the terms of purchase.

The act of June 28, 1902, requires the President, if he should make the purchase of the New Panama Canal Company, to acquire its "rights, privileges, franchises, concessions." This act is annexed to the treaty, and the provisions of Article I of the treaty are framed expressly so as to enable this part of the law to be carried out. The action proposed by Colombia would constitute pro tanto an annulment of Article I, would render impossible the execution of the law, and is wholly inadmissible. Equally inadmissible would be any action by the canal company in the direction indicated which would destroy rights which it has agreed to convey to the United States.

Nor, upon the question of an authorization by Colombia of the transfers proposed, can it be admitted that any further or other authorization than that contained in Article I of the treaty is required or would be proper.

So far as the Panama Railroad Company is concerned, it is enough to point out that Articles XXVIII and XXIX of its contract with Colombia, and which contain the only provisions which impose any restriction upon any alienations of property connected with that company, have no bearing upon any transaction now in contemplation.

These articles declare that "the present privilege can not be ceded or transferred to any foreign government," under penalty of forfeiture. No transfer of this privilege by the company is contemplated, nor, indeed, any transfer by the company of anything. The purchase by the United States from the New Panama Canal Company of certain shares of the railroad company is the only operation now proposed, and this does not affect the railroad company itself. To this transfer of shares the railroad company is not a party and in it the company has no part. It neither makes it nor can it prevent it. Plainly, therefore, the provisions of the company's contract with the Colombian Government can have no application to such a transaction. This is irrespective of the rights in relation to the railroad property and concessions which the United States acquires under and pursuant to the provisions of the treaty itself.

With regard to the New Panama Canal Company the situation is different in this respect, for that company will make a direct transfer of all its property and concessions to the United States, and such a transfer was originally forbidden by articles 21 and 22 of the Salgar-Wyse concession of 1878.

Passing, for the moment, the terms of the treaty by which consent is given, the consent of the Colombian Government to the proposed sale has been given so repeatedly and in so many different ways, and has been so frequently and officially brought to the notice of this Government by the ministers plenipotentiary of Colombia, duly accredited to the United States, as to make it impossible for the executive Government of that Republic to retract it. The entire action of this Government upon the subject has been taken in reliance upon these official assurances of the consent of Colombia, and any withdrawal or qualification of that consent would be wholly inconsistent with such assurances.

In a memorandum presented by Doctor Martinez-Silva, then minister plenipotentiary of Colombia to the United States, to this department on March 27, 1901, this Government was officially assured that the Republic of Colombia would authorize the canal company to transfer its concessions to the United States, provided only that the latter agree with Colombia upon the terms on which the canal is to be constructed and operated by the United States.

On April 29, 1901, the Colombian minister wrote M. Maurice Hutin, then president of the canal company, requesting him to state generally the basis on which the company would transfer its property to the United States, assuming that the consent of Colombia be given.

This letter M. Hutin answered on May 1, 1901, and a copy of his answer was by the minister handed to Admiral Walker, president of the Isthmian Canal Commission. M. Hutin thereupon took up negotiations directly with Admiral Walker, of which fact he notified the minister by a letter of May 6, 1901. In answer to this letter the minister wrote M. Hutin on May 7, 1901, approving his action and stating to him the fact that it was stated that in the memorandum submitted by him to this department "no condition is formulated relative to the sale of the private rights and interests of the company."

It is in reliance upon these assurances, either made directly to this Government by the duly accredited minister of Colombia or communicated to it through his act, that the action resulting in the present

treaty has been taken, and to raise new conditions and impose new terms upon the consent thus freely tendered or to cancel any provisions of the concessions would be a complete departure from them. The Government of Colombia initiated the negotiations, and it can not be conceived that it should now disclaim its own propositions, nor can this Government acquiesce in such a course.

It is further to be noted that the Republic of Colombia is the second largest shareholder in the New Panama Canal Company. At the meeting of the shareholders of this company, held on December 21, 1901, at which the board of directors was authorized to make the proposal of sale to the United States which has been accepted, the Republic was represented by M. Uribe, her consul general at Paris, specially accredited for that purpose, who was one of the officers of the meeting and voted the shares of Colombia in favor of the sale. Similarly at the meeting of the board of directors of the company on December 23, 1901, M. Samper, the representative of the Colombian Government on the board, voted in favor of the sale.

It is not to be supposed that these representatives of Colombia acted without or contrary to instructions, nor has their action ever been disavowed by their Government.

These various considerations show that the Republic of Colombia is fully committed to the United States, wholly apart from her express agreement by the treaty, to consent fully and freely to the acquisition of the property of the New Panama Canal Company by the United States without other terms or conditions than those embodied in the treaty. It is not necessary here to consider the questions of good faith toward the canal company which would be raised by new exactions of that company at this time.

The foregoing considerations, however, though sufficient in themselves to justify this Government in declining to recognize any right in the Republic of Colombia to limit the consent given by Article I of the treaty by any terms or conditions of any kind, are less important than others arising from the actual negotiations attending the making of the treaty. These other considerations render it impossible that any such new limitations should even be considered and give any attempt by Colombia in that direction the character of a serious departure from the agreement reached between the Executive Governments of the two nations.

The treaty in its present form is the result of certain modifications in an original form presented to the Department of State by Mr. José Vicente Concha, minister plenipotentiary of Colombia to the United States, on March 31, 1902. This form of treaty represented the original proposal of Colombia to the United States, and was presented by Mr. Concha shortly after the recall of the former minister, Dr. Martínez Silva. In this draft the terms of Article I, by which Colombia authorizes the sale by the New Panama Canal Company to transfer its property to the United States, were the same as in the actual treaty. In fact, this article has undergone no change in any of the negotiations and it now expresses Colombia's original proposal.

No change in it was ever even suggested by Colombia, in all the discussions by which the presentation of the original treaty was followed, until November 11, 1902. On that day Mr. Concha submitted

to this department a memorandum of certain changes which he desired made in the treaty as it then stood. In this memorandum a modification of Article I was proposed in the following terms:

This same article shall clearly state that the permission accorded by Colombia to the canal and the railroad companies to transfer their rights to the United States shall be regulated by a previous special arrangement entered into by Colombia with the said company, and for which they have been notified that they are to appoint an attorney at Bogota.

To this proposal this department answered that "the United States considers this suggestion wholly inadmissible." The proposition was then abandoned by Colombia, and the treaty, as has been said, was signed by authority of her Government, without any modification of the absolute authorization to the company to sell.

It will thus be seen that this proposition to make Colombia's consent to the sale dependent upon an agreement between that country and the canal company is not new; that it has already been made to this Government and rejected, and that it was only upon the abandonment of it that the treaty was signed. It is impossible that this Government should even discuss the matter any further or permit this rejected and abandoned proposition to be put in force under any form.

The argument which it is understood has been advanced by Colombia in support of her pretensions upon this point (that the concession of the canal company, by its approval by the Colombian Congress, has become a law of Colombia, and must be obeyed as it stands until by another law it has been amended) can be allowed no force. The contract of concession was approved by the Colombian Congress in obedience to the provisions of Title VI, article 76, of the constitution of Colombia. The present treaty is to be ratified by the Congress of Colombia under the provisions of the same title and the same article in the same way. If every force be allowed to the constitution of Colombia, it can not be admitted that the approval of the treaty by the Congress should not be as effectual as approval by the same body of a new contract between the company and Colombia.

But the considerations which led to the rejection of the proposal of the Colombia minister in his memorandum of November 11, 1902, are of themselves decisive of the point.

The consent of Colombia to the sale of the canal company's property and concessions to the United States is a matter of agreement between the two nations. It has not been granted by Colombia to the company alone, but also to the United States. To that agreement neither the canal nor the railroad company is or can be a party; nor can the United States permit its international compacts to be dependent in any degree upon the action of any private corporation. Such a course would be consistent neither with the dignity of either nation nor with their interests. To make the effectiveness of the agreement between Colombia and the United States depend upon the willingness of the canal company to enter into arrangements with Colombia, of a character satisfactory to that country, would not only give that company an influence which it can never be permitted to exercise in the diplomatic affairs and international relations of this country, but would enable it to control the acquisition by the United States of the rights granted by Colombia and the enjoyment by Co-

lombia of the equivalent advantages secured to her by the United States.

It may be noted further that such a course would practically nullify Article I of the treaty. That article grants an unconditional consent to the sale. But if there be added the condition of an agreement between Colombia and the canal company this consent is wholly nugatory. No such arrangement may be reached, and in that case Article I of the treaty would never practically take effect. Such a possibility alone renders any such plan wholly impossible.

Upon every ground, therefore, the present proposals of the Colombian Government to make its consent to the sale to the United States of the property and rights of the New Panama Canal Company, contained in Article I of the present treaty, dependent upon arrangements between it and either the canal or the railroad company, is wholly inadmissible, and if the subject arises you will inform that Government that the United States can approve no dealings between either of these companies and Colombia relating either to that consent or to the sale.

I am, sir, your obedient servant,

JOHN HAY.

[Inclosures.]

1. Mr. José Ramon Lago to the president of the New Panama Canal Company, December 24, 1902.
2. Mr. Lago to the attorney of the Panama Railroad Company. December 27, 1902.

[Republic of Colombia, ministry of finance, No. 36. First section, Panama Canal and Railroad division.]

BOGOTÁ. December 24, 1902.

MR. PRESIDENT OF THE NEW PANAMA CANAL COMPANY,

7 Rue Louis-le-Grand, Paris.

The congress of this country being about to meet shortly to consider among other matters that relative to the permission which the Government of Colombia is to grant, should occasion arise, to the New Panama Canal Company to make a transfer of its concessions to the Government of the United States of America in consequence of the negotiations which have begun and are going on upon the subject, this department has thought it its duty to inform the company over which you worthily preside of this fact, in order that it may appoint in this capital, if it think fit, a representative of it who should be present when the sessions of that high body take place, provided with ample and sufficient authority and power to deal with all the points which are to be settled with the company concerning the rights and obligations existing between it and this Republic; an appointment which may be conferred upon its present agent, Mr. Alexander Mancini, if the same company thinks fit.

It will not be superfluous to inform you that the Government of my country, in view of the great interests which the French people have in this colossal enterprise, will not in any way oppose, and on the contrary, will support and second the granting of the permission for the transfer of the concession; but it will demand and require from the concessionary company, if this be done, by way of return, a sum of money which shall be previously agreed upon, and the cancellation on the part of the company of every (accion) undertaking or obligation which the Government of Colombia has contracted by virtue of the concession for the opening of the Isthmus of Panama, up to the date on which it passes to the new concern.

I am, your very obedient, faithful servant,

JOSÉ RAMON LAGO.

[Republic of Colombia, ministry of finance, No. 38. First section, Canal and Panama Railroad division.]

BOGOTA, December 27, 1902.

Mr. Dr. ELADIO GUTIERREZ,

*Attorney Panama Railroad Company, E. L. C.:*

The congress of Colombia being about to meet shortly to consider among other matters that, relative to the permission which the Government of this Republic is to grant, should occasion arise, to the New Panama Canal Company, to make a transfer of its concession to the Government of the United States of America, in consequence of the negotiations which have been begun and are going on upon the subject, this ministry has thought it its duty to inform the company, worthily represented by you, of this fact, in order that it may appoint in this capital, if it think fit, a representative who should be present at the time when the sessions of that high body take place, provided with ample and sufficient authority and power to deal with all the points which are to be settled with the company concerning the rights and obligations existing between it and this Republic.

It will not be superfluous to inform you, in order that you may so notify the Panama Railroad Company, if you think fit, that the Government will not in any way oppose and, on the contrary, will second and support the granting of the permission for the transfer of the concession, but it will demand and require, if there shall be occasion for it, a sum of money which shall be previously agreed upon and the cancellation, on the part of the same company, of every (accion) undertaking and obligation which the Government of Colombia has contracted by virtue of the concession for the construction of the Panama Railroad up to date on which it passes to the new concern.

I am, your obedient, faithful servant,

J. R. LAGO.

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*Mr. Beaupré to Mr. Hay.*

No. 17.]

LEGATION OF THE UNITED STATES,

*Bogotá, May 4, 1903.*

SIR: I have the honor to advise that the opposition to the ratification of the canal convention is intensifying. The press is teeming with articles rancorous in enmity to the proposed treaty, while public opinion is veering into a current of extreme bitterness against the authors of the pact, especially Mr. Herran.

A gentleman of my acquaintance prepared an article favorable to the convention and sent it to the publisher of a newspaper here. The article was declined, and the writer admonished that it would be to his welfare, with his views, to keep out of the controversy.

Mr. Mancini, the representative of the French Canal Company at the capital, says that he is emphatically of the opinion that the Congress will refuse to ratify the convention, and that he has written to his company to that effect. He also said that while there was a moral obligation clearly upon the Government to defend a contract of its own making, it had not done so, and evidently did not intend to do so. It is entirely impossible to convince these people that the Nicaragua route was ever seriously considered by the United States; that the negotiations concerning it had any other motive than the squeezing of an advantageous bargain out of Colombia; nor that any other than the Panama route ever will be selected. Therefore, it is contended, and generally believed, that there is no immediate necessity of confirming the Hay-Herran convention; that the negotiations can be safely prolonged, in the end securing very much better terms for Colombia.



The public discussion is largely along the lines of the loss of the national honor by the surrender of sovereignty; that the clause in the convention guaranteeing sovereignty means nothing, because the lease is perpetual; that the whole contract is favorable to the United States and detrimental to Colombia.

Private discussion, which perhaps more clearly reflects the real situation, is to the effect that the price is inadequate; that a much greater sum of money can be obtained, and that the United States can be obligated to guarantee the sovereignty of Colombian ports outside the Department of Panama against the invasion or seizure by foreign enemies. The one great determining point, however, is the belief that the price can be greatly augmented.

The Congress has not been called, but it is still thought that the session will commence about the 1st of July.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 18.]

LEGATION OF THE UNITED STATES,  
*Bogotá, May 5, 1903.*

SIR: I have the honor to advise you that information has reached me through a private source to the effect that within a week or two the Colombian Government will send Gen. Marcellano Vargas, a son-in-law of Vice President Marroquín, to Washington, to negotiate for better or different terms in connection with the Panama Canal convention.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, May 7, 1903.*

May 7, 4 p. m.: Special session of Congress has been called for June 20.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 19.]

LEGATION OF THE UNITED STATES,  
*Bogotá, May 7, 1903.*

SIR: I have the honor to advise you that in the course of a conversation I had yesterday with one of the ablest and most distinguished of Colombians, who is in close touch with the vice president and his administration, the question of the Panama Canal convention opportunely and confidentially arose.

His views are interesting and entitled to consideration, and from them I gather that the tremendous tide of public opinion against the canal treaty is appalling to the Government, and there is, in consequence, a diversity of opinion among its members as to the proper course to pursue. Some are in favor of forcing confirmation through Congress, while others, dreading the effect of such action in the present state of the public mind, counsel moderation and delay, and the adoption of measures to change public sentiment into a more favorable channel.

All of the enemies of the Government are united in an onslaught upon the canal convention. Many of them are sincere, of course, in their opposition to the proposed treaty as such, but many more, regarding it as an administration measure and at present unpopular, are assailing it with the indirect object of undermining the Government.

My informant is of the opinion that the convention may eventually be confirmed, but only after much discussion and maneuvering in Congress. The probabilities are that when the measure is presented to Congress there will be a lengthy debate and an adverse vote. Then the representatives of the coast departments of the Cauca-Panama, and Bolivar will ask for a reconsideration, and urge a ratification of the convention as the only means of preventing the secession of those departments and the attempt to constitute of their territories an independent republic. The debate will be resumed and in the end the friends of the Government and of confirmation will prevail.

My informant is on such intimate terms with the chief officers of the Government that I deem it best to transmit his statements for your consideration.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 24.]

LEGATION OF THE UNITED STATES,

*Bogotá, May 12, 1903.*

SIR: In my No. 17, of the 4th instant, I referred to the abuse which the authors of the Panama Canal convention were receiving at the hands of the press of the country. Apropos of this, I have the honor to give you an extract from an article written by Dr. Juan B. Perez y Sota, a senator in the coming Congress from the Department of Panama, which appeared in *El Correo Nacional* of yesterday. The article is long, abounds in vituperation, and closes as follows:

The Herran treaty will be rejected, and rejected by a unanimous vote in both chambers. That is what I hope, since there will not be a single representative of the nation who will believe the voice of people who have sold themselves; who have had the brazenness to recommend the shameful compact. The insult, however, which Herran has cast upon the Colombian name will never be wiped out.

The gallows would be a small punishment for a criminal of this class.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, May 28, 1903.* (Received 9.28 p. m., 29.)

May 28, 10 a. m. Am informed that the President has received a telegram relating to large number United States employees lately arrived at Isthmus. If explanation should be asked, what answer shall I make? If it is true, it will intensify opposition to the ratification of the convention.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 37.]

LEGATION OF THE UNITED STATES,  
*Bogotá, May 28, 1903.*

SIR: Referring to my telegram of this date, elsewhere confirmed, I have the honor to advise you that there was considerable excitement about the Government palace yesterday upon the receipt of news that about 150 employees of the United States had arrived at the Isthmus, and a cable was sent to the governor of Panama asking for information.

While the better informed seemed to understand that such employees were but necessary to the commission in the work it was engaged upon, others were disposed to take a more unfriendly view, and all were of the opinion that in the present excitable condition of the public mind the news, if it proved true, would have an unfavorable effect upon the ratification of the canal convention.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, May 30, 1903.*

The report that there is a large number of United States officials or citizens on Isthmus absolutely false. Deny it promptly and emphatically. This Government has three engineers there inspecting canal work. Also there may be a few engineers sent by private contractors.

HAY.

*Mr. Hay to Mr. Beaupré.*

No. 15.]

DEPARTMENT OF STATE,  
*Washington, June 2, 1903.*

SIR: I have to acknowledge the receipt of your No. 6, confidential, of April 15, last, in regard to the Panama Canal convention.

Your report has been read with much interest.

The department expects you to keep it fully informed respecting the situation in Bogotá and Colombia, so far as the ratification of the treaty is concerned.

From your long residence there you ought to be in a position to be in close touch with every phase of the situation and to know and understand the intricacies of Colombian politics as they may bear upon the very important question at issue. The department desires all of the pertinent, accurate information that it can obtain, and wants it promptly. You should, when the time seems opportune, in so far as you discreetly and properly may, exert your influence in favor of ratification. It is also expected that you will know what hostile influences, if any, are at work against the ratification of the treaty, and whether or not there is opposition to it from European sources. The situation is seemingly a grave one, but the department has confidence that you will rise to the full measure of its requirements.

I am, sir, your obedient servant,

JOHN HAY.

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, June 9, 1903.

The Colombian Government apparently does not appreciate the gravity of the situation. The canal negotiations were initiated by Colombia, and were energetically pressed upon this Government for several years. The propositions presented by Colombia, with slight modifications, were finally accepted by us. In virtue of this agreement our Congress reversed its previous judgment and decided upon the Panama route. If Colombia should now reject the treaty or unduly delay its ratification, the friendly understanding between the two countries would be so seriously compromised that action might be taken by the Congress next winter which every friend of Colombia would regret. Confidential. Communicate substance of this verbally to the minister of foreign affairs. If he desires it, give him a copy in form of memorandum.

HAY.

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*Mr. Beaupré to Mr. Hay.*

No. 44.]

LEGATION OF THE UNITED STATES,  
Bogotá, June 10, 1903.

SIR: Referring to the department's No. 6 of April 28, 1903, concerning the request of the Colombian Government to the Panama Canal and Railroad companies for the appointment of agents to negotiate the cancellation of present concessions, etc., and considering that the subject had arisen, as reported in my No. 10 of April 24, 1903, I have the honor to report that I have this day addressed a note to the minister for foreign affairs pursuant to the department's instructions.

Herewith I transmit a copy of said note.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Inclosure.]

LEGATION OF THE UNITED STATES,  
Bogotá, June 10, 1913.His Excellency LUIS CARLOS RICO,  
*Minister for Foreign Affairs of the Republic of Colombia.*

SIR: Referring to the note which I had the honor to address to your excellency on April 24, 1903, concerning the requests of the Colombian Government to the Panama Canal and Railroad companies for the appointment of agents to negotiate the cancellation of present concessions, etc., I now inclose to you copies of the notice given by the minister of hacienda of the Republic of Colombia to the New Panama Canal Company and the Panama Railroad Company.

Your excellency will observe that by these notices the Colombian Government contemplates the formal grant to these companies by the Colombian Congress of a further permission to transfer their concessions to the United States besides that contained in the treaty which is to be ratified by that Congress. Your excellency will also note that, as a preliminary to this permission, the companies are expected to enter into agreements with Colombia for the authorization and cancelling of all obligations of Colombia to either of them contracted by Colombia under the concessions.

Such action on the part of Colombia or on the part of the companies would be inconsistent with the agreements already made between my Government and the canal company, with the act of June 28, 1902, under the authority of which the treaty was made, and with the express terms of the treaty itself.

By the act of June 28, 1902, the President of the United States was authorized to acquire, at a cost not exceeding \$40,000,000, "the rights, privileges, franchises, concessions," and other property of the New Panama Canal Company, and an agreement to that end was made by him with the company. It was, of course, known to the President, to the company, and to the Government of Colombia that, by articles 21 and 22 of the Salgar-Wyse concession of 1878, the company could not transfer to the United States its "rights, privileges, franchises, and concessions" without the consent of Colombia. Therefore, and before entering upon any dealings with the New Panama Canal Company, the present treaty with Colombia was negotiated and signed.

The first article of that treaty provides as follows:

"The Government of Colombia authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties, and concessions, as well as the Panama Railroad and all the shares or parts of shares of said company."

The authorization thus given, it will be observed, covers expressly the "rights, privileges, \* \* \* and concessions" of the company, as well as its other property.

Colombia, now, by these notices, indicates a purpose not only of disregarding the authorization thus explicitly given (a matter to which I shall refer more at length later on), but to destroy a great part of the subject-matter to which it refers. She states an intention of requiring the company to cancel all obligations of Colombia to it, and thus to deprive the United States of the rights, privileges, and concessions which she has expressly authorized the company to transfer to them, and which the canal company has contracted to sell and convey to the United States.

My Government can not approve such a transaction either by Colombia or by the company. If the company were to accede to the demands of Colombia, the President of the United States would be unable to consummate the proposed purchase from it, for it would have surrendered to Colombia a material part of the property for which he is authorized to make payment. Nor could the treaty itself be carried out, inasmuch as the payments to Colombia, for which it provides, are, by the express terms of Article XXV of the treaty itself, to be made in compensation, not only for the right to use the Canal Zone and to indemnify Colombia for the annuity which she renounces and the greater expenses which she may incur, but also, "in compensation for other rights, privileges, and exemptions granted to the United States." Among these other rights and privileges, one of the most important is the right of acquiring the rights, privileges, and concessions of the New Panama Canal Company, secured by Article I of the treaty; and if these rights, privileges, and concessions were to be canceled, it would fundamentally change the terms of purchase.

The act of June 28, 1902, requires the President of the United States, if he should make the purchase of the New Panama Canal Company, to acquire its

"rights, privileges, and franchises and concessions." This act is annexed to the treaty, and the provisions of Article I of the treaty are framed expressly so as to enable this part of the law to be carried out. The action proposed by Colombia would constitute pro tanto an annulment of Article I, would render impossible the execution of the law, and is wholly inadmissible. Equally inadmissible would be any action by the canal company in the direction indicated which would destroy rights it has agreed to convey to the United States.

Nor upon the question of an authorization by Colombia of the transfers proposed can it be admitted that any further or other authorization than that contained in Article I of the treaty is required or would be proper.

So far as the Panama Railroad is concerned, it is enough to point out that articles 28 and 29 of its contract with Colombia, and which contain the only provisions which impose any restrictions upon any alienations of property connected with that company, have no bearing on any transaction now in contemplation. These articles declare that "the present privilege can not be ceded or transferred to any foreign Government" under penalty of forfeiture. No transfer of this privilege by the company is contemplated, nor, indeed, any transfer by the company of anything. The purchase by the United States from the New Panama Canal Company of certain shares of the railroad company is the only operation now proposed, and this does not affect the railroad company itself. To this transfer of shares the railroad company is not a party, and in it the company has no part. It neither makes it nor can it prevent it. Plainly, therefore, the provisions of the company's contract with the Colombian Government can have no application to such a transaction. This is irrespective of the rights in relation to the railroad property and concessions which the United States acquires under and pursuant to the provisions of the treaty itself.

With regard to the New Panama Canal Company, the situation is different, in this respect, for that company will make a direct transfer of all its property and concessions to the United States, and such a transfer was originally forbidden by articles 21 and 22 of the Salger-Wyse concession of 1878.

Passing, for the moment, the terms of the treaty by which consent is given, the consent of the Colombian Government to the proposed sale has been given so repeatedly and in so many different ways and has been so frequently and officially brought to the notice of my Government by the ministers plenipotentiary of Colombia duly accredited to the United States, as to make it impossible for the executive government of that Republic to retract it. The entire action of my Government upon the subject has been taken in reliance upon these official assurances of the consent of Colombia, and any withdrawal or qualification of that consent would be wholly inconsistent with such assurances.

In a memorandum presented by Dr. Martinez-Silva, then minister plenipotentiary of Colombia to the United States, to the Department of State at Washington on March 27, 1901, my Government was officially assured that the Republic of Colombia would authorize the canal company to transfer its concessions to the United States, provided only that the latter agree with Colombia upon the terms on which the canal is to be constructed and operated by the United States.

On April 29, 1901, the Colombian minister wrote M. Maurice Hutin, then president of the canal company, requesting him to state generally the basis on which the company would transfer its property to the United States, assuming that the consent of Colombia be given.

This letter M. Hutin answered on May 1, 1901, and a copy of his answer was by the minister handed to Admiral Walker, president of the Isthmian Canal Commission. M. Hutin thereupon took up negotiations directly with Admiral Walker, of which fact he notified the minister by a letter of May 6, 1901. In answer to this letter the minister wrote M. Hutin on May 7, 1901, approving his action and stating to him the fact that it was stated in the memorandum submitted by him to the Department of State "no condition is formulated relative to the sale of the private rights and interests of the company."

It is in reliance upon these assurances, either made directly to my Government by the duly accredited minister of Colombia, or communicated to it through his act, that the action resulting in the present treaty has been taken, and to raise new conditions and impose new terms upon the consent thus freely tendered, or to cancel any provisions of the concessions, would be a complete departure from them. The Government of Colombia initiated the negotiations, and it can not be conceived that it should now disclaim its own propositions, nor can my Government acquiesce in such a course.

It is further to be noted that the Republic of Colombia is the second largest shareholder in the New Panama Canal Company. At a meeting of the share-

holders of this company held on December 21, 1901, at which the board of directors was authorized to make the proposal of sale to the United States, which has been accepted, the Republic was represented by M. Uribe, her consul-general at Paris, specially accredited for that purpose, who was one of the officers at the meeting and voted the shares of Colombia in favor of the sale. Similarly, at the meeting of the board of directors of the company on December 23, 1901, M. Samper, the representative of the Colombian Government on the board, voted in favor of the sale.

It is not to be supposed that these representatives of Colombia acted without or contrary to instructions, nor has their action ever been disavowed by their Government.

These various considerations show that the Republic of Colombia is fully committed to the United States, wholly apart from her express agreement by the treaty, to consent fully and freely to the acquisition of the property of the New Panama Canal Company by the United States, without other terms or conditions than those embodied in the treaty. It is not necessary here to consider the questions of good faith toward the canal company which would be raised by new exactions of that company at this time.

The foregoing considerations, however, though sufficient in themselves to justify my Government in declining to recognize any right in the Republic to limit the consent given by article 1 of the treaty by any terms or conditions of any kind, are less important than others arising from the actual negotiations attending the making of the treaty. These other considerations render it impossible that any such new limitations should ever be considered and give any attempt by Colombia in that direction the character of a serious departure from the agreement reached between the Executive Governments of the two nations.

The treaty in its present form is the result of certain modifications in the original form presented to Department of State by Mr. José Vicente Concha, minister plenipotentiary of Colombia to the United States, on March 31, 1902. This form of treaty represented the original proposal of Colombia to the United States, and was presented by Mr. Concha shortly after the recall of the former minister, Mr. Martínez-Silva. In this draft the terms of article 1, by which Colombia authorizes the sale of the New Panama Canal Company to transfer its property to the United States, were the same as in the actual treaty. In fact, this article has undergone no change in any of the negotiations, and it now expresses Colombia's original proposal.

No change in it was ever even suggested by Colombia, in all the discussions by which the presentation of the original treaty was followed, until November 11, 1902. On that day Mr. Concha submitted to the Department of State a memorandum of certain changes which he desired made in the treaty as it then stood. In this memorandum a modification of article 1 was proposed in the following terms:

"This same article shall clearly state that the permission accorded by Colombia to the canal and railroad companies to transfer their rights to the United States shall be regulated by a previous special arrangement entered into by Colombia with the said company, and for which they have been notified that they are to appoint an attorney at Bogota."

To this proposal the Department of State answered that "the United States considers this suggestion wholly inadmissible." The proposition was then abandoned by Colombia, and the treaty, as has been said, was signed by authority of her Government, without any modification of the absolute authorization to the company to sell.

It will thus be seen that this proposition to make Colombia's consent to the sale dependent upon an agreement between that country and the canal company is not new; that it has already been made to my Government and rejected, and that it was only upon the abandonment of it that the treaty was signed. It is impossible that my Government should even discuss the matter any further or permit this rejected and abandoned proposition to be put in force under any form.

The argument which it is understood has been advanced by Colombia in support of her pretensions upon this point (that the concession of the canal company, by its approval by the Colombian Congress, has become a law of Colombia and must be obeyed as it stands until by another law it has been amended) can be allowed no force. The contract of concession was approved by the Colombian Congress in obedience to the provisions of Title VI, article 76, of the constitution of Colombia. The present treaty is to be ratified by the Congress of Colombia under the provisions of the same title and the same article in the

same way. If every force be allowed to the constitution of Colombia it can not be admitted that the approval of the treaty by the Congress should not be as effectual as approval by the same body of a new contract between the company and Colombia. But the considerations which led to the rejection of the proposal of the Colombian minister in his memorandum of November 11, 1902, are of themselves decisive of the point.

The consent of Colombia to the sale of the canal company's property and concessions to the United States is a matter of agreement between the two nations. It has not been granted by Colombia to the company alone, but also to the United States. To that agreement neither the canal nor railroad companies are or can be a party; nor can the United States permit its international compacts to be dependent in any degree upon the action of any private corporation. Such a course would be consistent neither with the dignity of either nation nor with their interests. To make the effectiveness of the agreement between Colombia and the United States depend upon the willingness of the canal company to enter into arrangements with Colombia of a character satisfactory to that country, would not only give that company an influence which it can never be permitted to exercise in the diplomatic affairs and international relations of my country, but would enable it to control the acquisition by the United States of the rights granted by Colombia and the enjoyment by Colombia of the equivalent advantages secured to her by the United States.

It may be noted further that such a course would practically nullify article 1 of the treaty. That article grants an unconditional consent to the sale. But if there be added the condition of an agreement between Colombia and the canal company, this consent is wholly nugatory. No such arrangement may be reached, and in that case article 1 of the treaty would never practically take effect. Such a possibility alone renders any such plan impossible.

Upon every ground, therefore, the present proposals of the Colombian Government to make its consent to the sale to the United States of the property and rights of the New Panama Canal Company, contained in article 1 of the present treaty, dependent upon arrangements between it and either the canal or railroad company, is wholly inadmissible, and if the subject arises you will inform that Government that the United States can approve no such dealings between either of these companies and Colombia relating either to that consent or the sale.

I avail myself, etc.,

(Signed) A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 45.]

LEGATION OF THE UNITED STATES,  
*Bogotá, June 10, 1903.*

SIR: Evidently a decided effort is being made to change public opinion into a more favorable consideration of the canal convention. Many strong men are now supporting it who but a short time ago were with the opposition. The great majority of people still continue to believe, however, that the convention will not be ratified.

Mr. Mancini, the local agent of the Panama Canal Company, has informed me that he had received an official note from the Colombian Government, stating that it did not think that the convention would be ratified, because of the opinion that the compensation was insufficient, but that if the canal company would pay to Colombia about \$10,000,000 ratification could be secured. Mr. Mancini has notified his company of this note.

Members of Congress are arriving for the session which commences on June 20, instant.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.



*Mr. Beaupré to Mr. Hay.*

No. 48.]

LEGATION OF THE UNITED STATES,  
*Bogotá, June 13, 1903.*

SIR: Referring to the department's telegram of the 9th instant, elsewhere confirmed, I have the honor to advise you that I have had an interview with the minister for foreign affairs, in which I communicated to him the substance of my instructions, and also left with him a memorandum containing a substantial copy of said telegram.

The minister's first question was as to what action by our Congress was contemplated—whether it meant action against Colombia, or the adoption of the Nicaragua route—to which I replied that I had received no other instructions than those contained in the telegram, and that I could not, therefore, aid him in construing it.

He said, in substance, that it must be understood that no matter what the Government's actions or desires may have been in the preliminary negotiations, a treaty could not be made without the approval of Congress; that this was true in the United States as well as Colombia; that the Colombian Congress was very soon to meet, and that upon it would devolve the consideration of all these matters.

I replied that his propositions were true enough in the abstract, but that in view of the facts, as outlined in the telegram, it seemed to me that it was incumbent upon the Government to acquaint the Congress with all the circumstances connected with the negotiations up to the signing of the convention and to use all its influence to secure a ratification.

He said that he would lay the matter before the Vice President for his consideration.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, June 17, 1903.*  
(Received 6.10 p. m., June 25.)

June 17, 4 p. m. Members of Congress arriving. Opposition to the ratifications of the canal convention is very strong. Public opinion is that the convention will not be ratified.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, June 17, 1903.*  
(Received June 25, 1903, 6.15 p. m.)

I can not obtain from the Colombian Government withdrawal of the quarantine at Panama, or any modification of orders. The matter left to governor of Panama, with discretionary power.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 55.]

LEGATION OF THE UNITED STATES,  
*Bogotá, June 20, 1903.*

SIR: Referring to my No. 48, of the 13th instant, I have the honor to report that I have received from the minister for foreign affairs a counter memorandum relating to the department's telegram of the 9th instant, and to the Panama Canal negotiations.

A copy and translation of the same are herewith inclosed.

I am, sir, your obedient servant.

A. M. BEAUPRÉ.

[Inclosure—Translation.]

DEPARTMENT OF FOREIGN AFFAIRS,  
*Bogotá, June 18, 1903.*

COUNTER MEMORANDUM.

In the memorandum presented to this department by the minister of the United States, personally, on the 13th of the present month, he says he has received instructions from his Government, by cable, to state that it seems that the Government of Colombia does not appreciate the gravity of the situation; that the negotiations for the opening of the Panama Canal were initiated by Colombia, and energetically pushed during several years; that the propositions presented by this Republic were finally accepted with slight modifications; that in virtue of the agreement, the Congress of the United States reversed its former judgment and decided for the Panama route, and that if Colombia rejects the treaty or unduly delays its ratification, the friendly understanding between the two countries would be so seriously compromised that the Congress of the United States might take measures which would be regretted by every friend of Colombia.

This ministry deems it indispensable to make the following observations, which it respectfully presents to the minister for transmission to his Government:

The fact of Colombia having initiated the negotiations does not demand the approval of the same by that Government, for the approval of Congress is necessary to the ratification of them, to which is given the constitutional power of approving or disapproving the treaties which the Government makes; this formality was recognized in the beginning by the Government of the United States in the course of the negotiations, as is seen in articles 25, 26, and 28 of the project of the convention signed November 28, 1902.

One of those articles (the twenty-fifth) says, textually, that the convention shall be ratified at a time when it is approved by the legislative bodies of both countries, and that condition is stipulated in articles 25 and 28 of the convention signed in Washington on January 22, 1903, the last of which articles in the part pertaining to this matter is as follows:

"The convention, when signed by the contracting parties, shall be ratified according to the laws of the respective countries, and shall be exchanged at Washington within a term of eight months from this date, or earlier if possible."

The Government of the United States sent the convention to the Senate with the request that it be confirmed, and in that body the debate was so long and vehement that it was not approved until in the following extra session, and if it had been rejected it would have been without any diminution of any right of Colombia, just as its rejection here will be without any diminution of any right of the United States.

Having proposed a negotiation does not necessarily imply that it is to be approved, either in whole or in part, by the legislative body of the country which began it. Among international instances which prove this statement can be cited the instance which occurred between the same United States of America and England over the projection for the abrogation of the Clayton-Bulwer treaty of 1850, which project, if I am not badly informed, was initiated by the

Government of the United States, and notwithstanding that the Senate proposed that it be modified in the following terms:

"It is determined, however, that none of the preceding stipulations and modifications in paragraphs 1, 2, 3, 4, and 5 of this article (2) shall apply to the methods which the United States believe it necessary to make to secure with their military forces the defense of the United States and the maintenance of the public order."

The British Government did not accept this modification, and this refusal deferred, for a long time, the approval and ratification of the treaty.

If the initiation of negotiations of a convention should imply the correlative obligation of approval by the legislative body, the submitting of such convention to their decision would be an illusion (superfluous), for the power to make treaties with foreign powers would be in reality vested solely in the executive power, which is openly contrary to the spirit and the letter of the constitution of this Republic.

The Government of Colombia has given to the negotiation all the importance pertaining thereto, on account of the great political and commercial interests involved. This is unmistakably shown in a note which the minister of this department, Hon. Sr. Paúl, sent on September 25, 1902, to the governors of the Departments, in which he invited them to discuss and study with all freedom, through the press, the project of the treaty and the documents which should be published, with the object that when Congress should meet the country should be sufficiently instructed in that which particularly applied to the patriotic interests, and their representatives in the legislative bodies could easily reach a solution which would harmonize with the rights and benefits of the Republic.

There is a very notable difference between some of the propositions presented by Colombia and the respective modifications introduced by the United States.

That difference is apparent comparing the memorandum presented by the Colombian Legation on March 31, 1903, with the proposed bases by the Secretary of State, especially those referring to the sovereignty of the zone, judicial jurisdiction in same, and the price of compensation for the use of the same for the mere proprietorship of the Panama Railroad, and for the rent of \$250,000 demanded for the same railroad, likewise as to the rights, privileges, and exemptions which she gave. It is further to be observed that in the memorandum of the legation the establishment of tribunals in the zone was not mentioned, while the Secretary of State, in a project sent with his note of November 18, 1902, proposed it, and that they be divided into three classes, Colombians, Americans, and mixed; as also in the Colombian memorandum, a sum of \$7,000,000 American gold was asked and an annual sum which was to be determined as a price for the enjoyment of the railroad and fee for use of the zone, and in attention to other circumstances. The Secretary of State only offered a sum of \$7,000,000 and an annual rent of \$100,000, or, if preferred, a sum of \$10,000,000 and an annual rent of \$10,000. The Government ordered the legation to ask a sum of \$10,000,000 and an annuity of \$600,000. The Secretary of State, in a note which had the form of an ultimatum, reduced the rent of \$250,000. The diminution of \$350,000 in a period of only one hundred years represents a difference of \$:5,000,000, and as the convention will probably last more than a century, it is clear that the difference is no light matter, but of much consideration.

It is also well to make known here what was a motive of substantial difference, that the canal and railroad companies can not transfer their privileges without the authority of the Colombian Government and without arrangement of their pending business.

The broad manner in which the Government of the United States has interpreted the stipulation of the projected convention in this respect has caused the refusal of the companies to enter into arrangements which ought to precede the ratification and exchange, among others, that relative to the shares which Colombia has in the capital of the New Panama Canal Company, a refusal which makes difficult the legislative approval of the pact. This ministry had not known that the United States revoked any law in order to make possible the treaty with Colombia. The Government of the Republic ordered its representative in Washington to sign the pact in the belief that, in conformity with article 4 of the law approved June 28, 1902 (Spooner bill), if the Government of the United States could not obtain from the Government of Colombia dominion over the necessary territory for the work, nor the rights mentioned in

articles 1 and 2 of the said law, nor a satisfactory title to the properties of the New Panama Canal Company, the President of the United States, by medium of the Isthmian Canal Commission, would dig and construct a canal for boats by the Nicaragua route. In consequence the Government of Colombia, which has held in view of this law that the base of the treaty on the part of the United States is according as it has been expressed in the introduction accompanying the treaty, has derived the correct conclusion that the only result that can affect adversely the interests of this nation, if their Congress should reject the project of the treaty, is that the Government of the United States will cease negotiations and adopt the Nicaragua route for the construction of the canal.

When is there such an undue delay in the ratification of a treaty which will tend to cause a serious compromise in the friendly relations with the contracting party?

In this country there would be an undue delay if, the ratification having been ordered by the law, the executive power should show a disposition to disregard it with the evident purpose of causing injury to his own country or the other nation interested in the pact.

But as has already been expressed, the previous requisite of legislative approval is indispensable for the exchange of ratifications, and before this is done the treaty is but a project which, according to the law of nations, has no rights or obligations, and for the same reason, according to that law, to reject or delay its ratification is not cause for the adoption of measures tending to alter the friendly relations between the two countries. If such were the case the preparing of the pact would be the occasion of a serious danger instead of an element of peace and progress, of which Colombia has no fear in that the political relations of the great Republic, which offered the blood of its sons to liberate Cuba, and after having stopped the disintegration of Venezuela, as a result of their boundary dispute with Great Britain, deeds which have been made notorious before the world, in most solemn manner, as showing their determination to procure and preserve the independence, sovereignty, and integrity of the American nations.

If the Congress, using its inherent prerogative of national sovereignty, rejects the pact in question because, in their judgment it is not for the benefit of the Republic, it will be, I am sure, with much regret that it can not comply with the desires of the Government and the Congress of the United States; but feeling confident for reasons of justice that by this act it will not have altered in any particular the friendly relations which fortunately exist between the two Republics, and to the preservation of which Colombia attaches the highest importance.

The Minister :

(Signed) LUIS CARLOS RICO.

*Mr. Beaupré to Mr. Hay.*

No. 56.]

LEGATION OF THE UNITED STATES,  
*Bogotá, June 20, 1903.*

SIR: I have the honor to confirm my telegram of this date, which should read as follows:

June 20, 5 p. m. Extra session of Congress convened to-day. Joaquin Velez, president of the Senate; José Medina Calderón, president of the Chamber of Representatives. The President's message deals with canal convention as follows: "To my Government has been presented this dilemma; either it lets our sovereignty suffer detriment or renounces certain pecuniary advantages, to which, according to the opinion of many, we have a right. In the first case, to consent to the sacrifice of our sovereignty and not aspiring to great indemnification, the just wishes of the inhabitants of Panama and other Colombians would be satisfied if the canal were opened, but the Government would be exposed to the charge afterwards that it did not defend our sovereignty and that it did not defend the interests of the nation. In the second case, if the canal is not opened by Panama the Government will be accused for not having allowed Colombia that benefit which is regarded as the commencement of our aggrandizement. I have already allowed my wish to be understood that the canal should be opened through our territory. I believe that even at the cost of

sacrifices we ought not to put obstacles to such a grand undertaking, because it is an immensely beneficial enterprise for the country, and also because once the canal is opened by the United States our relations will become more intimate and extensive, while our industries, commerce, and our wealth will gain incalculably. I leave the full responsibility the decision of this matter brings with Congress. I do not pretend to make my opinion weigh. When I have given instructions to our representative in Washington it has been coupled with the order that the decision of this important matter must be left with Congress. After years in which the question has been treated in a vague way, without precise conditions, it is now presented in a way to obtain practical and positive results. It has been our indisputable diplomatic triumph that the Senate and Government of the United States should declare, notwithstanding every effort to the contrary, the superiority of the Colombian route."

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 57.]

LEGATION OF THE UNITED STATES,

*Bogotá, June 20, 1903.*

SIR: I have the honor to report that the National Congress met in extra session on Saturday, the 20th instant, at 1 o'clock p. m.

In the Senate Gen. Joaquin F. Vélez was elected president; Dr. Antonio Gómez Restrepo, first vice-president; Luis A. Mesa, second vice-president, and Miguel A. Peñarredonda, secretary.

In the Chamber of Representatives José Medina Calderón was elected president; Carlos Matamoras, first vice-president; Guillernas Valencia, second vice-president; Dr. Fernando Restrepo Briceño, secretary.

There was not a full attendance, but sufficient for a quorum in each house.

As I have heretofore predicted, there is a full and ample majority of the friends of the Government in both houses of Congress, and such legislation as the Government may seriously desire will be enacted.

Under the laws the officers are elected for one month, and as General Vélez, the president of the Senate, is one of the most vehement and outspoken of the enemies of the canal convention, I take it that there will be no canal legislation undertaken during the first month of Congress.

It is understood that to-morrow a special message will be sent to the Senate upon the canal matter, but that the session will be a secret one.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,

*Bogotá, June 23, 1903. (Received June 27, 1903.)*

Confidential. Friends of the Government have control in Congress. I believe any legislation seriously desired by the Government will pass.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, June 23, 1903.* (Received June 27, 1903.)

Opposition Chamber of Representatives opened canal discussion yesterday demanding documents relating to the treaty. The Government objected because it was not ready to present the treaty. The Government was sustained; vote 38 to 5.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, June 26, 1903.*

Confidential. Am informed that the treaty will not be presented until the President is confident it will be confirmed. Chamber of Representatives is favorable, but unfriendly influence makes the majority in the Senate uncertain. Absentees have been sent for and the Government using influence on Senators here. Do you desire me to telegraph such information?

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 67.]

LEGATION OF THE UNITED STATES,  
*Bogotá, July 1, 1903.*

SIR: Referring to the Department's No. 6 of April 28, 1903, and to my No. 44 of June 10, 1903, concerning the request of the Colombian Government to the Panama Canal and Railroad companies for the appointment of agents to negotiate the cancellation of present concessions, etc., I have the honor to report that on yesterday I received a note from the minister for foreign affairs in reply to mine of the 10th ultimo, a copy and translation of which I herewith transmit.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

MINISTRY FOR FOREIGN RELATIONS,  
*Bogotá, June 27, 1903.*

MR. MINISTER: I have the honor to receive the attentive note which your excellency has been pleased to address to me on the 10th of the present month, with the English version of the notes in which the minister of hacienda of Colombia requested the railroad company and the New Panama Canal Company to name agents to represent them in the negotiations relative to the permission which is necessary for the transfer of their respective concessions to the Government of the United States.

The Congress being in session, to which belongs the decision as to the approbation of the treaty between the Republic of Colombia and the United States for the construction of the interoceanic canal between the Atlantic and Pacific

Oceans, the said note of your excellency will be presented to that body to the end that they may know the construction that the Government of the United States gives to article 1 of that compact.

The Congress of Colombia in determining the meaning, and, at the same time, the scope of article 1 of the treaty, will have to consult the antecedents of the negotiations, among which are found the said notes of the minister of hacienda, which have the dates 25th and 27th of December, 1902, respectively, while the treaty for the opening of the interoceanic canal was signed January 22, 1903; for this reason they were not interpretations of the pact, but they were destined to prevent certain foreseen eventualities in the course of the negotiations, as is seen in that which the minister of Colombia expressed in his memorial addressed to the Secretary of State in Washington the 22d of November, 1902.

In paragraph b, section A, it says:

"The preceding reasons serve in part also to show the necessity which exists that the Government of Colombia celebrate a special contract with the companies which are to cede their rights;" but to this must be added that the treaty alone between Colombia and the United States can not have the judicial effect of resolving or canceling the legal bonds which exist between the Republic of Colombia and those companies, bonds arising from a perfect contract which can not be dissolved, in conformity with the principles of universal jurisprudence, because one of the parties celebrates a compact, on the same material, with a third, which in this case would be the United States.

As in the same way the United States must celebrate a contract in order to acquire the rights of the said companies, and that negotiation can not be included in the treaty which is to be celebrated between the two countries, neither can the resolution of the obligation between Colombia and the two companies be verified in the treaty.

If such were admitted, it would result that Colombia, relinquishing all her rights in relation with these entities (corporations?), or depriving herself of the means to make them effective, would leave in force her obligations to them. The very payment of the privileged shares which Colombia possesses in the canal company would not have any guarantee by the omission of a special contract, so much the more so that in the proposed reform by the Department of State to article 1 of the memorandum of April, it was clearly expressed that the United States would not contract any obligation in that respect ("no obligation under this provision is imposed upon or assumed by the United States").

The affirmations of your excellency as to the legality of the sale to a foreign government of the shares of the Panama Railway and by that manner to transfer the control of the work, imposes upon me the duty to call your excellency's attention to a very important circumstance, in that the necessity for the consent of Colombia to that sale is recognized in article 1 of the treaty, and to manifest to your excellency that each share, by representing a certain proportionate value of the privilege, or, that is, of the railroad itself, and the transfer of that to a foreign government being prohibited, the shares can not be sold, because with them they would become copartners in the property of the privilege, which is judicially inadmissible.

The restrictive condition of the contracts of 1850 and 1867 do not exclude from the penalty of forfeiture the sale of portions of the privilege.

This is indivisible as to the rights conceded and the obligations imposed, and if it were not so the result would be that if a foreign government bought the total or a greater part of the shares, it would become, by this means, proprietor of the railroad, or at least of a part so great of its value that it would give to it the administration of the work, and in this way the prohibition of the sale of the privilege to a foreign government would be eluded.

Your excellency knows very well that any interpretation ought to be discarded that makes illusory that which is stipulated, and in this case the condition in reference would be reached if any proceeding was admitted by which the privilege for the construction and exploitation of the railroad could be transferred to a foreign government.

I avail myself, etc.,

(Signed)

LUIS CARLOS RICO.

To His Excellency, HON. A. M. BEAUPRÉ,  
*Minister Plenipotentiary of the United States, etc.*

*Mr. Loomis to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, July 1, 1903.

Have you fully acquainted Colombian Government with Department instruction of April 28? Keep department informed as to situation.

LOOMIS, *Acting.*

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*Mr. Beaupré to Mr. Hay.*

No. 68.]

LEGATION OF THE UNITED STATES,  
Bogotá, July 2, 1903.

SIR: I have the honor to confirm my telegram of this date, which should read as follows:

"July 2, 9 a. m. Confidential. Have received information, privately, that the President had a meeting of senators at the palace yesterday, urging the necessity of the ratification of the treaty. Heated discussion ensued, the majority declaring in opposition to the treaty. At present the majority in the Senate seem against ratification."

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, July 5, 1903. (Received July 9.)

I have fully acquainted Colombian Government with your instructions of April 28. The reply of ministry for foreign affairs I have the honor to transmit. Summary of reply as follows:

My note will be referred to Congress that it may know the construction given article 1 by the Government of the United States. To determine meaning article 1 Congress will take into consideration all negotiations prior to signing the treaty, including the notices minister hacienda to companies, which, antedating the treaty, are not explanatory thereof, intended in anticipation of foreseen events in the negotiations. See paragraph B, section A, memorial Colombian minister to the Department, 22d last November. The treaty alone can not cancel obligations between Colombia and companies as well. The United States must make contract to acquire rights of the companies which can not be included in the treaty. Were this not so Colombia, while relinquishing her rights, would yet be bound by obligations to companies. To omit contract Colombia would have no guarantee for the payment of her shares in canal company, especially as in article 1 of the memorandum of April obligation of this kind is waived by the United States. Necessity for consent of Colombia to sale of shares Panama Railway recognized in article



1 the treaty. The minister affirms the prohibition extends to purchase of one or more shares, as by this means control could be secured and the prohibition eluded.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION.

*Bogotá, July 5, 1903.* (Received July 12, 1903.)

Confidential. Have received information privately that a paraphrase of your cipher telegram June 9 was read in the Senate secret session. Created sensation. Construed by many as a threat of direct retaliation against Colombia in case the treaty is not ratified. This, and the statement of just-arrived members of Congress from Panama that this department would revolt if the treaty is not ratified, caused alarm, and the effect is favorable. Unusual honors extended legation of the United States 4th of July.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 72.]

LEGATION OF THE UNITED STATES,

*Bogotá, July 6, 1903.*

SIR: Referring to my No. 60 of June 24, 1903, with which I transmitted a copy of the President's message to Congress, I now have the honor to inclose herewith a translation of said message.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Honorable Senators and Representatives:*

Full of joy and smiling hopes I see to-day fulfilled the greatest of my desires in that I see reunited the National Congress. The afflicted country hopes, through your intelligence and your love of it, a remedy for the ills which oppress it. And I hope to see myself, for the greater part, relieved of the immense responsibility which has weighed over me, that of caring personally for the salvation of the institutions and the administration of the public business, by the meeting of the legislators.

The profound disturbance of the public order, which began in 1899, prevented the fulfillment of the laws in regard to elections, and consequently the reunion of Congress, which ought to have taken place in 1900 and 1902.

Therefore there arose a political situation unforeseen by the constitution and the law, in that the Government was forced to assume the functions of legislation as well as to protect itself against those who sought to destroy it by force, and to attend to the satisfaction of many necessities of all classes.

One of these necessities was that the National Congress should be formed and reunited, but this could not be attended to during the war, because many of the cities of the Republic were occupied, either continuously or for short times, by the forces of the rebels, and on this account the legal authorities could not reside in them nor exercise their proper functions.

I was authorized to call Congress in extraordinary session, but I could not have an election for members of the House of Representatives, nor was there a complete number of senators. Such being the circumstances, I resolved that as soon as the battles had ceased or been made insignificant I would see that an election was held for members of the departmental assemblies and for representatives, designating for each one of the acts prescribed by the election laws a different date from the one fixed by them.

In doing this I was moved by the fact that the Congress would owe its existence to this and would not fail to approve it, and also that the question of

the opening of an interoceanic canal by way of Panama demanded a more prompt solution than could be given by the Congress which ought to reunite on the 20th of July, 1904. For in this light it was possible that the deferring of the solution which the Government of the United States hoped from Colombia would be equivalent to a definite renunciation of the project of the contract.

Neither could I refuse to call Congress, having offered on various solemn occasions and in important documents, and having contracted to do so in my name, by agents as authorized and as respectable as those who signed the surrenders at the end of the war.

At the same time that I have hoped that the legislature, in the session of this year, would solve that question, I have desired and hoped also that it would solve others of supreme importance, and that it would take measures to remedy the infinite evils caused by the late war, and prepare and open for Colombia an era of greatness, prosperity, and peace.

The constitution, which authorized me to take measures which in time of peace could not have been exercised without consent of Congress, imposes on those governing the duty to give to that body, peace being declared, a reasonable account of the acts executed in the exercise of those extraordinary powers. This account ought to be prepared and completed in the forms which, according to the constitution, the ministers of Government have to give to Congress in their ordinary sessions. The ministers of my Government have made efforts to have ready the said reports, but they have only been able to prepare the main proofs, and at present it is impossible to make it complete. The disorder in which, on account of the last revolution, the public administration of all branches have been thrown for the last three years, and the lack of communications which in all that time was almost total and which is still so, have made and now make it impossible to collect the necessary data which have to be gotten in all the offices of the Republic—data which can not, without great labor, be collected before July of next year.

The ministers of Government will give you all the information necessary for the study and investigation of these points, and which they have acquired in many cases not without great study of these same questions and great difficulty.

A continuation of this message would require the placing therein the data of the ministers, data which I have not cared to include in this document, because they would give to it excessive length.

The ministers will submit to you for your consideration the businesses for which it is urgent that you provide legislation.

In my proclamation addressed to my fellow citizens on the 1st of January of this year I set forth most of the views that I should state now. Allow me to transcribe here some fragments of that document.

[NOTE.—This message of the vice president to the nation I will give a summary of rather than a translation.]

Doctor Marroquin begins by congratulating the country on the conclusion of peace, which is owing, he says, to the unselfish patriotism of so many Colombians who gratuitously lent their services. He refers to the revolution which broke out in 1899 as being the severest which this country has yet experienced, owing to the dissensions among the members of the Conservative Party; the open support given by foreigners; secret machinations in the countries of Europe and America with the object of impeding the acquisition of munitions of war; of a foreign press placed at the service of the disturbers of order; and sickness, the child of war, which, ravaging entire army corps, has frustrated plans and embarrassed operations. The result has been to bring about immense suffering, and to place the finances of the country, which were already in a bad condition, in the most critical situation the country has ever known. At the same time a spirit of speculation has been rife, and unfortunately many of those who ought to have done their utmost to bring about a restoration of peace have for this very reason desired the continuance of hostilities.

After enumerating the many evils which the country has suffered, he refers to the interoceanic canal, on the results of which undertaking he builds his hopes for future prosperity. He justifies the arbitrary action of the executive power by the results, i. e., by an honorable peace. The war has had this advantage, that it has taught the people, to their cost, the blessings inseparable from peace. He desires henceforth to rule as the chief not of a party but of the entire nation. His excellency then goes on to the policy to be adopted in the future. He frankly acknowledges the errors committed in the past, which were the cause of continuous revolutions. Colombians must set out to work,

each in their own particular sphere. It must be work and not politics. Politics, as this country has up to now considered the term, has nothing less than the furthering of personal interests at the expense of the public welfare. He refers with satisfaction to the approaching elections, to the fact that this country will henceforth be ruled by a constitutional government. Attention must be directed toward the improvement of the means of communication, and he trusts that this is a matter which will be seriously considered by the legislative chambers. The questions between this and other countries he expresses himself willing to settle and refers favorably to recourse to arbitration. He sympathizes with the troubles of his sister country, Venezuela, but states at the same time that such troubles are the action of a short-sighted government which does not know how to respect the rights of others. He speaks passingly of the troubles between Colombia and Venezuela, but the solution of such differences lies in the railway. Better communications will lead to better knowledge of neighboring States, and smooth all disagreements. Also, when this country is networked with railroads the energy of a large part of the population, which is at present expended in fomenting discord, will be turned into channels more profitable to themselves and to the country.

The Vice President then turns to the financial situation. He states frankly that the Government will have to continue as before, having recourse to emissions of paper money. The solution of the economic question lies in the gradual enrichment of the country. Every facility must be given to exports, so that in time their value shall exceed that of imports. Industry must be encouraged, so as to lessen the necessity of importing articles from abroad. To further this it will be necessary to push with all energy the construction of railways, which, he says, have under similar circumstances been the salvation of Chile, the Argentine Republic, and Mexico. Then there comes the question of revenues, which have become completely disorganized. Fresh taxes will have to be imposed, which he trusts the country will pay with good will. With the adoption of these measures the economic problem will resolve itself and the paper money will obtain its normal value, i. e., it will be at par with silver. This is the only solution, which can be attained neither by theories nor original plans of economists, nor laws, decrees, nor foreign loans. He congratulates himself that all his efforts to obtain a loan abroad have resulted in failure, as now none of the revenues of the country are burdened. He regrets being able to present no more prompt plan for remedying the financial situation.

With regard to the question of the completion of the interoceanic canal, the Vice President says as follows:

"Incidentally at the beginning of this address I touched on the question of the opening of the interoceanic canal. I feel it, however, my duty to explain to you more fully the opinion of the Government on this important matter. My Government is faced with this dilemma: We must either allow our sovereign rights to suffer and renounce certain pecuniary advantages to which, as many opine, we have a right, or we must rigorously stand up for our sovereign rights and claim peremptorily the pecuniary indemnization to which we have a right to consider ourselves entitled. In the first case—that is, should we consent to the curtailment of our sovereignty and not aspire to the full indemnity, should the canal be opened through Panama, the just wishes of the inhabitants of that department and of all Colombians will be satisfied; but the Government lays itself open to being charged in the future with not having duly defended our sovereignty and with having sacrificed the interests of the nation. In the second case, should the canal not be opened through Panama it will be laid to the charge of the Government that it did not allow Colombia to benefit by this undertaking which is regarded as the foundation of our future greatness. I have already expressed my desire that the interoceanic canal should be opened through our territory. I think that even at the cost of making sacrifices, we should put no obstacle in the way of so great an undertaking, for it means an enormous material improvement for our country, and, should the canal once be opened by the people of the United States, our relations with that people would be drawn closer. The result would be an incalculable gain to our industry, our commerce, and our wealth. Happily for me, the immense responsibility of coming to a decision falls to Congress. That is the body which has to give its approbation or disapprobation of the agreement proposed by the Government of the United States."

The vice-president, at the conclusion of his address, expresses his regret at not being able to place a more cheering outlook before the country, but it is as

well it should realize the difficulties which the people will have to aid him to overcome.

More than once I have solemnly promised to lay again before Congress the message that I addressed in 1898 about reforms. Some of said reforms were passed that year. Such as were neither considered nor embodied in our legislation I now submit to your consideration, recommending them as proper in their nature and conducive to the very material and paramount purpose of conciliating the aspirations of our political parties, thus arriving at an accord among the Colombians and assuring that tranquility which more than ever is necessary under the circumstances.

A printed copy of the above-mentioned message will be presented to you.

At the beginning of this year I asserted that, owing to the action taken by the Government, the effects of peace had commenced to be appreciated. With stronger reason can I assure it to-day. It was feared that to the disarmament of the enemies of the Government, vengeance and brutal violence would ensue; but owing to the Christian feelings that still animate our people, we had not seen such horrors realized. Industrial and mercantile movement has revived in every visible way, and in every quarter of the nation we can see such as were yesterday fetching their gain through violence and depredation devoted to their usual occupations. Let this consoling spectacle be a lesson to the Colombians and make them understood how great the power of peace is, and how much we should expect when it is solid and lasting.

But if private individuals have begun to enjoy that supreme and long-wished-for benefit; if their enterprises are again prosperous; if they see that the day is not distant when they shall successfully crown their effort, for the public powers the termination of the combats did not, and could not, produce immediately those advantageous results.

I shall not mention unimportant engagements in which the Government troops have recently been compelled to punish obstinate rebels, nor shall I mention either those acts showing that the danger of an invasion into our territory has not altogether disappeared; but I will point out the fact that public administration in the capital, departments, and municipalities is still encumbered by greater obstacles than such as in any other period of our independent life. Owing to the financial and economical situation, from which we scarcely begin to disengage, the difficulties to govern Colombia are now not less serious than those we had to combat in the roughest period of the war, and if in order to conquer the enemy under arms the Government was compelled to make use of such powers with which all of us are invested to defend life, not less legitimate and necessary was the use that after the actual fighting the Government made similar powers in order to defend and maintain social and political life—the life of the Republic.

Although fighting was almost over toward the end of November last, nevertheless public order was not on that account restored. The authorities were unable to discharge their duties in a regular way; communications with the several sections of the Republic remained as difficult as they were during the war. If it is true that the enemies of the institutions showed themselves unani- mously anxious to keep peace, those who defended or did not combat them being divided into numerous antagonistic and political groups, however ready they may be to take arms anew for the defense of the same institutions in case it should be necessary, have not offered the Government the assistance through which it could have restored to the country in a short time the repose and welfare that it is so much in want of. The Government received early this year from different quarters of the Republic alarming communications and intelligence respecting new plans to disturb public order and on facts making the possibility of the continuance of our differences with two of the neighboring Republics patent.

Notwithstanding the foregoing, the Government, desirous to inspire the Colombians with the assurance that they may rely upon the guaranties offered them by the constitution and laws, has declared public order restored and has abdicated such authorities as under the martial law have permitted it to provide for its own defense and existence.

Between this declaration and the disarmament of the adversary much shorter space has elapsed than it has been the case between the end of any of our other revolutions and the return to a normal state of affairs. Whoever takes into consideration that none of our previous wars lasted so long as the recent one, which has shaken the country with confusion, disturbances, ruin, and disorder, would repute that period much shorter still than the others.

To what I set forth in the proclamation, fragments of which I have inserted in this message, as to the necessity of constructing railways and as to the canal question, I have likewise to add what I hereafter suggest.

If the remedy to our evils lies in the construction of roads to promote industry and trade, that work is to-day more necessary than before for the purpose of offering a scope to the activity of our people, now impoverished and demoralized by the recent disturbance. Such work should also be a remedy to stop the difficulties which oppress trade in the northern part of the Republic. The construction of a railway to connect that section of the country with the Magdalena River is of imperative necessity. Our disputes with Venezuela can not definitely come to an end until trade in Santander can make use of an independent route. Perhaps in a short time, and such is my desire, we will be able to come to an understanding with the Republic; but such Government can not assure us that the succeeding ones would respect our rights.

When I took upon myself the responsibility of the government of my country, I had made up my mind to impede to the utmost that for the construction of railways and for any other undertakings of that kind we should negotiate with foreigners. The unpleasant impressions resulting from certain contracts had led me to form that resolution; and in my quality of supreme magistrate I have to feel more earnestly than before, and more than the rest of my fellow citizens, those impressions. To the contracts alluded to are owing in a great part the conflicts and misfortune that we have endured during the recent war, as well as the difficulties that we have with great trouble to combat.

Still, I have been compelled to change my mind in that respect. On the one hand I have come to the conclusion that the construction of railways is but the necessity of a self-preservation; on the other hand I have realized the impossibility of carrying out any works of such magnitude with the resources obtained by the Government so long as our treasure, credit, and revenues are in the condition in which they are at present. In the same manner I have realized the impossibility for private Colombian associations to take over and carry out the scheme above referred to.

In other Spanish-American nations railways have been constructed through contracts made with foreign companies. Why should we not be able to do the same in our country? The bad result of certain contracts was only owing to the fact that the concessions were granted to parties who were not fit for the purpose, or that said concessions have been approved without proper study, care, and precaution. The same disasters emanating therefrom are abundant warnings for us, and we ought not to judge ourselves so incapable as not to profit thereby.

The minister for foreign affairs will lay before you the project of a convention proposed by the Government of the United States of America, set forth the antecedents thereof, and give such explanations as may seem interesting in connection with the canal.

I think it unnecessary to state that since I have thrown upon you all the responsibility that the decision of this negotiation brings it is not my intention to allow my opinion to weigh in the matter. Whenever I have transmitted instructions to our representatives in Washington, I have directed them to formally express my resolution to submit the study and decision of this most serious affair, in its general sense and its details, to the supreme Congress.

Fortunately for transacting business with the American Government in connection with the canal the present time is more propitious than that in which, being inundated with difficulties and dangers, we could not work on behalf of our interest with serenity and liberty. On the other hand, after many years, during which that matter had been dealt with in a vague manner and without any precise conditions, to-day it is presented to us in such a light that the discussion thereof can not but lead to practical and positive results.

Indeed, it has been one of our indisputable diplomatic triumphs that the Senate and Executive of the United States, in spite of the strong efforts made to the contrary, declared the superiority of the Colombian route.

As I have already said to you and all my fellow citizens, I attribute the happy conclusion of the last war to the intervention of the Divine Providence, to whom I equally attribute the fact that the remedy to those evils which gave origin to that war has been able to commence, and from whom I expect for you the honor that your name may appear in our history by those of the legislators, who at an epoch of the greatest decay and backwardness, were clever enough to procure to Colombia, if not the immediate possession, at least the sure hope of the boons that her founders had devised.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, July 9, 1903.* (Received July 12, 1903.)

Confidential. [————] has requested me to say to you he does not think the treaty can be ratified without two amendments: To article 1, stipulating payment ten millions by the canal company for the right to transfer; to article 25, increasing payment to fifteen millions, and says that the treaty can be ratified at once with these amendments. He asks your views confidentially.

BEAUPRÉ

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, July 11, 1903.*

Confidential. The majority in the Senate are opposed to treaty. Apparently the Government is not defending the treaty, although it may intend to later. Its fear of public opinion and the criticism of the Liberal party very great. The danger is delay, which opposition fights for. I think strong intimation from you through the Colombian minister or this legation that unnecessary delay should be avoided would be effective. Otherwise debate may continue until September, necessitating instructions communicated by telegraph for exchange of ratifications.

BEAUPRÉ

*Mr. Beaupré to Mr. Hay.*

No. 78.]

LEGATION OF THE UNITED STATES,  
*Bogotá, July 11, 1903.*

SIR: I have the honor to report that the Colombian Congress has occupied itself with unimportant and preliminary matters since it convened on June 20 last. Really nothing has been done.

The most important and really only question relating to the canal treaty has been the motion made by the opposition to the Government party to the effect that the vice president must sign the treaty before it can be considered by the Senate. The debate on this question has been going on for many days and the end is not yet.

Ex-President Caro has been the leader of the opposition in this debate and has made many brilliant speeches. He has charged the Government with lack of good faith and consistency, both to the United States and Colombia, in not defending a treaty of its own making and endeavoring to throw the whole responsibility upon Congress.

The theory of the discussion is to the effect that if the vice president signs the treaty the entire responsibility for its making rests with the executive power, while if the vice president does not sign

and the treaty is either ratified or rejected no responsibility can attach to the Executive.

The vice president has positively declined to sign, and if the motion as presented should prevail, and he still refuses his signature, the Senate will not consider the treaty at all, and in all probability Congress will be dissolved.

It is understood that a final vote on the motion will be taken on Tuesday next. As near as I can determine, the Government is likely to have a majority of one or two votes, in which case something of a more definite nature can be undertaken.

As I informed the department to-day, in a telegram elsewhere confirmed, there is every prospect of the debates continuing without any decision until September, so that there will be only time to cable Washington just before the 22d of that month of the final action of Congress; and as cablegrams from this capital have often been delayed a month or more, as the department is aware, there is grave danger in this.

If one could know just what would be the attitude of the Government later on, it would be easy enough to predict the outcome, for I still adhere to my oft-repeated opinion that if the Government shall seriously desire it the treaty will be ratified. Its present attitude of washing its hands of the whole matter will not do, for while the House is favorable, there is a declared majority in the Senate against ratification, and only the influence of the Government can win it over.

I am inclined to believe, from information obtained at different times, some of which I have reported to the department, that the Government intends to use its influence later on, and at what it shall deem the proper time, in favor of the treaty. If so, the treaty will be ratified; if not, then it will be defeated.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, July 13, 1903.*

Neither of the proposed amendments mentioned in your telegram<sup>1</sup> received to-day would stand any chance of acceptance by the Senate of the United States, while any amendment whatever or unnecessary delay in the ratification of the treaty would greatly imperil its consummation.

HAY.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, July 15, (Received July 27, 1903.)*

Confidential. The situation is a little more favorable for the treaty. It is generally believed that it will be ratified, but with amendments. It is possible it can be passed without amendments;

<sup>1</sup> Dated July 9.

but as the belief prevails that additional concessions can be secured, I consider it important that this Government be informed through the Colombian minister or me of your position as to the matter. In any event, I would appreciate secret instructions as a guide in case of emergency.

Yesterday the treaty was submitted to a special committee of nine in the Senate, four, and probably more, of whom are for ratification.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 83.]

LEGATION OF THE UNITED STATES,  
*Bogotá July 21, 1903.*

SIR: AS I had the honor to report by cable on the 15th instant, the canal treaty was submitted to a special Senate committee of nine members, four of whom were known to be favorable to ratification. This committee is to report on or before the 31st instant.

The Government has continued to triumph on every important question brought forward in Congress. On the 18th instant officers were elected in both houses for the ensuing thirty days. Señor Quientero Calderón, formerly minister of government in Vice-President Marroquin's cabinet, and a staunch Government man, was elected president of the Senate; Gen. Pedro Nel Ospina, now identified with the Government forces, and certainly in favor of the canal treaty, first vice-president. In the House Señor Juan B. Valencia was chosen president.

Gradually, but certainly, the situation is growing more favorable for the canal treaty, and while I am not yet prepared to state the positive belief that it will be ratified, I see no reason to be discouraged by the present outlook. The great danger is that there may be enough members of the Senate to carry certain amendments.

I have endeavored, not only to keep in touch with the current events, but to create favorable sentiment for the treaty.

It has been most difficult to overcome the at one time almost general belief that the United States did not seriously intend to adopt the Nicaragua route should this Congress fail to ratify the treaty, and to make it understood that the great benefit Colombia expected to realize from the construction of the canal depended upon prompt action and could never be secured by future diplomatic negotiations.

At times I have thought, from the tone of the conversation of certain opponents, that foreign hostile influences were at work, but I have never been able to be certain of this. If there be opposition from this source, it is of too secret a nature to be discovered, and can not, therefore, be particularly effective. On the whole, I am inclined to believe that no direct hostile influence is being used here, but that, if any exists, it comes through Colombian legations or consulates in Europe.

I have certain, but private, information that Doctor Uricoechea, a member of the special Senate committee heretofore referred to, and who lived a great many years in Germany, called on Baron Grünau, the German chargé d'affaires, to inquire what would be the attitude of the German Government in case of trouble arising out of the matter, and whether it would be willing to undertake or aid the construction



of the canal in case the treaty with the United States should not be ratified. Baron Grünau replied that he had no instructions bearing upon the subject, but that he was of the positive opinion that, considering how desirous his Government was at the present moment to remain on friendly terms with the United States, it would not take any steps with reference to the construction of the canal or to any controversy growing out of the present negotiations; that he would, however, submit the matter to his Government.

My English colleague, with whom I have the most pleasant personal relations and whose attitude I know has been one of unswerving friendliness to our interests in this matter, informs me that one of the Deputies of the Chamber of Representatives called on him with an inquiry similar to the one above mentioned. To this he replied that this question was thoroughly considered by His Majesty's Government at the time the modifications were made in the Bulwer-Clayton treaty, and that his Government was of the opinion that the safeguards contained in the Hay-Pauncefote arrangement formed a sufficient guaranty for the commerce of the world and was, therefore, willing now to leave the United States quite free as regards any further negotiations with reference to the construction of a canal.

The generality of the legislators here have thought that further and greater concessions could be obtained from the United States, and that in this particular the treaty could be amended with safety to the interests of Colombia. This has been and is the most stubborn stronghold of the enemy—at all times the most dangerous to us—and to it I have given more attention than to all else. It was because of this that I cabled the department of the importance of informing the Colombian Government, through its minister at Washington or this legation, of its views. To be able to make an official representation would have far greater weight than an expression of opinion.

I have reason to know that the Government understands—at any rate, the Vice President does—that amendments are not to be thought of, but I hope to receive instructions from you, when cable communication is reestablished, to bolster up and strengthen this understanding.

I have believed that I could, with discretion and propriety, use my influence in creating a favorable sentiment, making the interests of Colombia the basis of my arguments; and I have not hesitated to do this whenever circumstances would permit a conversation with men whose influence would be of no avail.

I have the satisfaction of knowing that I have accomplished a certain amount of good, and that, whatever be the result, all of the ability and energy which I possess shall be given to the consummation of the department's desires.

I am, sir, your obedient servant.

A. M. BEAUPRÉ.

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*Mr. Loomis to Mr. Beaupré.*

No. 23.]

DEPARTMENT OF STATE.

*July 21, 1903.*

SIR: At the instance of the Hon. John T. Morgan, I have to request that you will forward two copies of the proclamation of Acting Presi-

dent Marroquin, calling the session of Congress to consider the canal treaty, and two copies of the law under which the proclamation was issued.

I am, sir, your obedient servant,

FRANCIS B. LOOMIS,  
*Acting Secretary.*

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*Mr. Beaupré to Mr. Hay.*

No. 85.]

LEGATION OF THE UNITED STATES,  
*Bogotá, July 22, 1903.*

SIR: Referring to the department's telegram of April 7, 1903, to my No. 10 of April 24, 1903, and No. 44 of June 10, 1903, concerning the proposed cancellation of the present concessions of the Panama Canal and Railroad Companies, I have the honor to transmit herewith a copy and translation of a note received from the minister for foreign affairs on the subject, together with a copy of my reply thereto. As soon as cable communication is reestablished I propose to telegraph the department the substance of this correspondence.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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[Inclosure 1.—Translation.]

MINISTRY OF FOREIGN RELATIONS,  
*Bogota, July 21, 1903.*

MR. MINISTER: In your polite note of the 24th of April last, your excellency was pleased to inform me, in accordance with the instructions of your Government, that all that referring to the cancellation of the actual shares of the Panama Canal and Railroad Companies, was included in the convention between Colombia and the United States, signed on the 22d of January last, for the opening of the canal.

I shall be obliged by your excellency's telling me, as early as possible, if modifications, which, according to the final part of the note referred to, are considered as violating the Spooner law, are only those which concern the concessions of each of the companies, or if they are such also as may be adopted with regard to the (treaty itself) convention spoken of.

With this motive, etc..

(Signed) LUIS CARLOS RICO

To his excellency A. M. BEAUPRÉ.

*Envoy Extraordinary and Minister  
Plenipotentiary of the United States, etc.*

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[Inclosure 2.]

*Mr. Beaupré to Doctor Rico.*

LEGATION OF THE UNITED STATES,  
*Bogota, July 22, 1903.*

His excellency Dr. LUIS CARLOS RICO.

*Minister for Foreign Affairs of the Republic of Colombia.*

SIR: I have the honor to acknowledge the receipt of your excellency's polite note of the 21st instant, referring to my note of April 24, 1903, concerning the requests of the Colombian Government to the Panama Canal and Railroad Companies for the appointment of agents to negotiate the cancellation of present

concessions, etc., in which I informed your excellency that my Government considers that the treaty covers the entire matter, and any change would be in violation of the Spooner law, and not permissible.

Your excellency asks me if any modifications in the treaty itself would be considered in violation of the Spooner law, as those other suggestions for special cancellation of the concessions of the companies have been so considered by my Government.

I have the honor to say to your excellency that with the approval by the United States Senate of the treaty between Colombia and the United States, signed on the 22d of January, 1903, the Spooner law, which authorized the making of that treaty, was fully complied with, in the opinion of the Senate, so far as the Panama route is concerned. Hence, the said law went out of active existence with reference to Panama, and can only again become a subject for discussion, and then in reference to the Nicaragua route, in the event of the rejection of the treaty by Colombia.

This is, of course, my personal opinion, which, unfortunately, I am unable at present to confirm by cable reference to my Government. But I consider it my duty to inform your excellency that I have no reason to believe that my Government will consider or discuss again any modifications whatever to the treaty as it stands. This strong impression I gather from a careful reading and study of the notes already in your excellency's possession, for, if in the case of the concessions of the companies my Government would consider their modification as violating the Spooner law, then, with much more reason, it would seem that the treaty itself, as the official interpretation of the law, can not be modified at all without violating that law.

I shall, of course, submit your excellency's note to my Government as soon as it is possible to do so by reopening of cable communication.

I embrace this opportunity, etc.,

(Signed)

A. M. BEAUPRÉ.

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*Mr. Loomis to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, July 29, 1903.

Would like information as to present situation.

LOOMIS, *Acting.*

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, July 31, 1903.

Instructions heretofore sent to you show the great danger of amending the treaty. This Government has no right or competence to covenant with Colombia to impose new financial obligation upon canal company and the President would not submit to our Senate any amendment in that sense, but would treat it as voiding the negotiation and bringing about a failure to conclude a satisfactory treaty with Colombia. No additional payment by the United States can hope for approval by United States Senate, while any amendment whatever requiring reconsideration by that body would most certainly imperil its consummation. You are at liberty to make discreet unofficial use of your instructions in the proper quarters. The Colombian Government and Congress should realize the grave risk of ruining the negotiation by improvident amendment.

HAY.

*Mr. Beaupré to Mr. Hay.*

No. 90.]

LEGATION OF THE UNITED STATES,  
*Bogotá, August 3, 1903.*

SIR: Mr. Spencer S. Dickson, British vice consul at this capital, has prepared for his Government an interesting memorandum relative to the discussions in the Bogota press on the question of the proposed Panama Canal as a business concern, and has been good enough to furnish me with a copy, which I have the honor to inclose herewith.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Inclosure 1.]

*Memorandum by Mr. Spencer S. Dickson, relative to the discussions in the Bogota press on the question of the proposed Panama Canal as a business concern.*

Since the news of the signing of the Hay-Herran treaty last February, the imagination of the Bogota public, as expressed in the local press, has been occupied with the question as to what is the extent of the pecuniary advantages which the Government of the United States is about to derive from the proposed undertaking. The articles written have so ridiculously exaggerated the possible takings, even from the most optimistic standpoint, as to render themselves unworthy of any notice whatever, were it not for an interesting answer they have called forth from the pen of Mr. J. T. Ford, the manager of the Cartagena Harbor, Railway, and River companies. Mr. Ford's article is principally directed against an article written by a Dr. Novoa Zerda, a prominent Bogota lawyer, who has published an elaborate statement in the Bogota press in which he proves, to his own satisfaction, that the Government of the United States are, by the terms of the Hay-Herran treaty, securing for themselves a net profit of \$1,186,537,377 during the first term of the concession.

My reason for transmitting this memorandum is that the statements made by Mr. Ford in his answer, based, as they are, on long experience and a thorough knowledge of the conditions ruling, merit attention and are, as far as I am aware, of a somewhat novel character, though on a question already so much discussed. Mr. Ford, M. I. C. E., a British subject, holds the position of consulting engineer to the Colombian Government, and has at various times been attached to the Colombian legation at Washington during the course of the negotiations which have taken place respecting the construction of an Isthmian Canal. He has brought his knowledge and experience to prove that the Panama Canal is not a profitable undertaking from a commercial point of view, and is valuable to the United States only because of its naval significance.

Mr. Ford, in estimating the commercial value of the projected Panama Canal, has taken as a basis the experience gained by the Suez Canal. The traffic of the latter is regulated by an international convention, the terms of which the United States and Great Britain adopted when formulating the Hay-Pauncefote treaty, signed to substitute that known as the Clayton-Bulwer. These regulations establish a special tonnage measurement, which is neither the gross nor the net of the ordinary tonnages of Lloyd's. Nor is it the tonnage system of Germany or France. It is the Suez Canal system.

The Suez Canal in 1900, thirty-two years after being open to trade and with all the extra traffic produced by the Transvaal war and the intervention of the European powers in the Boxer attack on Peking, had a traffic of 3,441 vessels of 13,699,238 gross tons, or 9,738,152 Suez tons.<sup>1</sup>

	Francs.
Its gross product in money was.....	93,451,403
Expenses of operation and maintenance.....	25,648,264
Resulting in a net income of.....	67,803,139

<sup>1</sup> The later returns for 1901 show a still greater increase.

Supposing that Colombia rejects the Hay-Herran treaty and constructs the Panama Canal for its own account, so as to have the full benefit of all the takings. Take also for granted the absurd supposition that, in the first year of its being opened to public traffic, this canal shall be able to show the same tonnage as that of Suez in 1900, thirty-two years after its opening. Taking the above tonnage only and the gross product of the canal in money, an average for purpose of comparison is deduced of 6.80<sup>1</sup> francs per ton (gross), or \$1.36 American gold, by the Suez route. With regard to the question of population served by the two canals, the continents of North and South America together contain but one hundred and fifty million inhabitants. The canal will only be used by a portion of the trade of the western coast of the two continents, with part of the eastern coast, and with Europe. It is evident that trade can not in the first year reach the same figure as the total trade of Suez, which unites the continents of Europe and Asia, with twelve hundred million inhabitants between them. To do this, Panama must take from Suez at least one-half its trade. Suppose this second absurdity be regarded as a possibility, owing to the superiority of the Panama route between certain ports, admitting a certain amount of competition in freights from Europe to Australia, New Zealand, and to the islands of the Pacific, it is a question whether Great Britain would, without a struggle, thus allow the deviation of this important trade from its present established route. The immediate creation of the 3,000 new vessels necessary for the traffic deviated from the transcontinental railroads must also be taken as an accomplished fact. Against these hypotheses there is the following consideration—the shares of the Suez Canal are being sold at nearly ten times their nominal value. It is perfectly evident that this extraordinary company would certainly be well able to attempt to avert its ruin or injury and face competition by making some reduction in its tariff; but supposing that the Panama Canal has, by competing with the Cape Horn route and the transcontinental railroads, created for itself a trade equal to half the trade of Suez; also, that owing to its admitted superiority in certain voyages now made via Suez, Panama has taken away from Suez the half of its total trade, the Panama Canal would then have its 13,699,238 gross tons as above; but also, for the above-mentioned reasons of competition, the rate per ton would have to be reduced, probably, to say \$0.70 gold to obtain that result in tonnage. This trade, on the same basis as above, would give to Panama a gross earning of \$9,589,466.<sup>2</sup>

As to the operating cost, the country in which the Suez Canal is situated has a dry climate, without rains, and is so healthy that the same class of invalids as go to the Riviera and other sanatoriums of Europe make it their residence in winter. It is moreover a simple canal in a sandy plain without locks, or any other artificial works of importance. Panama, on the other hand, has a disastrously unhealthy climate. Very high salaries would have to be paid and a much greater number of employees would be required than at Suez. There are unforeseen damages to be provided for, owing to the torrential rains. Difficulties have to be faced in the management of locks and the maintenance of artificial works without parallel up to the present in the entire world, because of their monumental proportions. Mr. Ford, however, to err on the right side, assumes that the cost of operating the Panama Canal will be no more than that expended at Suez. The gross cost of operation at Suez for handling the traffic of 1900 was 25,648,264 francs or \$5,129,653 American gold.

The Panama accounts, under these conditions, would be as follows:

13,699,238 tons at the above rate of \$0.70 per ton would be.....	\$9, 589, 466
Cost of administration (the same as Suez in 1900).....	5, 129, 653

Net earnings .....	4, 459, 813
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The minimum figure for the cost of construction of the Panama Canal, with locks, including cost of French canal works and other contingencies, may be taken at \$200,000,000, according to the best available estimates. Mr. Ford then assumes another favorable absurdity—that Colombia has a credit equal to the credit of the United States and that she could therefore obtain the \$200,000,000 capital required for the construction at 3 per cent interest without

<sup>1</sup> This, of course, is not the actual rate charged at Suez, since Mr. Ford has taken the gross and not the Suez tonnage, and the gross earnings include other charges beside the simple tonnage of the ships, but the above figure fully illustrates the point made.

<sup>2</sup> Mr. Ford again uses here his arbitrarily deduced average rate, and not the probable actual rate.

**initial discount.** She would then have in hand the \$4,459,813, the net earning of the canal, to pay the interest on the invested capital. The account then stands as follows:

Three per cent on \$200,000,000.....	\$6,000,000
Net earning .....	4,459,813

Colombia would therefore have an annual deficit of..... 1,540,187

instead of the net sum of \$550,000<sup>1</sup> per annum, which she would receive under the Hay-Herran treaty, leaving to the United States the above-mentioned deficit, plus the \$250,000 extra rent paid to Colombia.

Mr. Ford then goes on to point out that should Colombia build a sea-level canal, costing \$400,000,000 instead of \$200,000,000, she would find herself with an annual deficit of \$7,540,187, including the 3 per cent on the extra \$200,000,000.

In the discussions which have taken place, those opposed to the treaty have argued on the fact that in previous concessions made with private parties the terms for the Colombian Government have been much more favorable. To this Mr. Ford opposes the fact that those old contracts were signed in complete ignorance of the Suez undertaking and the enormous natural difficulties and cost of building a canal at Panama which would compare at all points with Suez, and before the experience gained through the working of that canal could throw real light on the profit and loss account of such an undertaking. The natural difficulties inherent to the working of the Isthmus of Panama, which were the cause of the failure of the French, even with their superior contract of 1878, were then all unknown. It is a mistake, says Mr. Ford, to suppose that the United States would make a contract similar to those made formerly when the same ignorance of conditions does not exist.

The canal can not be a paying concern for any country except the United States, and for the United States it is a paying concern, not from a commercial standpoint—it will therein be a loser—but on account of its Navy. To show that this statement as regards its commercial value is not exaggerated, Mr. Ford refers to the map of the continents of America. The cordillera of the Andes, from Patagonia to Panama, the Sierra Madre of Mexico, and the Rocky Mountains of the north, which end in Alaska, are so situated that on the side of the Pacific there is only a small strip of territory, very narrow and comparatively sterile, whereas on the Atlantic disk and in direct communication with Europe (where the Panama Canal will never be needed) are situated seven-eighths of its one hundred and fifty millions of inhabitants and the whole of its productive lands, i. e., Argentina, Brazil, Mexico, Colombia, Venezuela, the United States, and Canada to one hundred and fifteenth meridian west, approximately. As far as the above countries are concerned, their trade can never reasonably be expected to make use of the Panama Canal to any extent worth considering at present.

SPENCER S. DICKSON,

*His Britannic Majesty's Vice Consul.*

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*Mr. Loomis to Mr. Beaupré.*

No. 26.]

DEPARTMENT OF STATE.

*Washington, August 3, 1903.*

SIR: I have to acknowledge the receipt of your No. 67 of July 1, last, concerning the Panama Canal. It is receiving consideration.

There is an error in translation in the twentieth line of the second page of the note inclosed. "Dos compañías" has been translated "two countries" instead of "companies."

I am, sir, your obedient servant,

FRANCIS B. LOOMIS,  
*Acting Secretary.*

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<sup>1</sup> Three per cent on the \$10,000,000 compensation under the treaty, plus the \$250,000 annual rent.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, August 5, 1903. (Received 12.)

Referring to my dispatch of April 24, containing your cipher telegram, April 7, I have received a note from minister for foreign affairs asking if "any modification in the treaty itself would be considered in violation of Spooner law, the same as suggestions for canceling concessions of companies had been considered by the Government of the United States."

I replied July 22 substantially as follows: With the approval of the treaty by the Senate of the United States, the Spooner law, which authorized its making, was fully complied with, so far as the Panama route is concerned. Hence said law went out of active existence with reference to Panama, and can only become a subject of discussion, and then with reference to Nicaragua, in the event of rejection of the treaty by Colombia. This is my personal opinion, which I am unable at present to confirm by cable reference to my Government, but I believe it my duty to inform you that I have no reason to believe my Government will again consider or discuss any modification whatever to the treaty as it stands, which impression I gather from a careful reading and study of the notes already in your possession, for if in case of concessions of the companies my Government would consider their modifications in violation of Spooner law, then with great reason it would seem the treaty itself as the official interpretation of (the law) can not be modified at all without violating that law.

From conversations with prominent Senators I believe the Government does not consider my opinions as final or authoritative. I beg for an emphatic statement from you or instructions under my telegram of July 15. There is much danger that the treaty will be amended.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá (dated 5th). (Received August 12, 1903.)

August 5, 10 a. m. It is now apparent that the treaty will not be ratified without amendment, because the positive influence on the part of this Government can not be expected. There are but eight Senators of the twenty-four in favor of it, but more than two-thirds are in favor of the report of the committee, which is as follows:

First. In the preamble the references to the Spooner law shall be suppressed.

Second. In article 1 the condition shall be introduced that the Panama Railroad and Canal Company shall be obliged beforehand to make arrangements with Colombian Government in which the conditions shall be established under which that Government will grant consent necessary to enable these companies to transfer their rights

to the United States. It shall be expressed that Colombia shall recover ownership of all land grants which are at present in the possession of companies, without excepting any of such lands, to the end that the cities of Panama and Colon may remain effectively and completely excluded from zone which is the subject of the concession.

Third. Terms of articles 2 and 3 shall be modified in such a manner as to express clearly that Colombia grants the United States only the right of use of the zone and parts adjacent territory. It should be expressed with precision that the rights granted the United States are in nature of tenancy, excluding the idea of ownership, and establishing in a peremptory manner the perpetuity of the concession. The boundary of zone shall be indicated with the greatest precision, and the necessary properties to which concession extends shall be clearly determined, excluding from the concession, in an unequivocal manner, cities Panama and Colon; besides which it shall be stated that the guaranty of the treaty of 1846-1848 shall not be modified in any way whatever, and shall continue in its application to the whole Department of Panama, inclusive of the zone.

Fourth. In article 7 concession of the right of gratuitous use of the waters of lakes, lagoons, rivers, and the other streams, whether natural or artificial, which may be devoted to the supply of the canal or auxiliary channel, or which may be made use of during its construction, maintenance, or operation, shall be clearly limited, in order that they may be deviated in their course, elevated or lessened in their levels, converted into lakes, widened or narrowed, if necessary, for such purposes. It shall be established that this right is exclusive only in so far as it refers to use of such waters for the supply and maintenance of the canal, or of the auxiliary channels, without allowing that concessions are to prevent utilization of such waters by others in virtue of their legitimate rights for any purpose which is not one of navigation and would not disturb, make difficult, or prejudice employment that the United States may desire to give such waters for the above-mentioned purposes. The use of waters or rivers outside zone of the canal for the transportation materials, etc., shall not be an exclusive right of the United States, but the right shall be given to them to use the waters, without tax or charge of any kind, in so far as the use relates to maintenance and operations of the concession. The natural product property of the Republic which the United States may take for the work shall be determined with the greatest precision possible, limiting this concession to the Department of Panama, and determining that the compensations which may have to take place under article 7 in all things shall be subject to what is provided in article 14.

Fifth. In article 8 uncertainty of the clause shall be corrected under which no duties of any kind shall be collected in the cities Panama and Colon, with the exception of merchandise destined to be introduced for the consumption of the rest of the Republic.

Sixth. In article 13 all relating to establishment of tribunals of the United States and to application of the laws of United States in Colombian territory shall be suppressed, as it is contrary to article 10 of the constitution, and it shall be established that the regulations, police and sanitary, which will be in force in the zone shall be subject to an agreement between the two Governments.



Seventh. Indemnities which the concession mentioned in article 14 will decide upon for the seizures which may have to be made in those cases which are mentioned in the same article shall be determined and paid by the United States, in accordance with valuation at the time.

Eighth. In article 24 a clause of forfeiture shall be introduced fixing termination, which, if exceeded, and if work shall not have been executed, all the concessions must cease to exist and all properties and rights of the undertaking shall revert to Colombia. The last paragraph, article 25, beginning "But any delay," shall be suppressed.

Ninth. In an additional clause the tribunal, which must decide upon the differences which may arise between the contracting parties as to the fulfillment of the treaty, shall be indicated.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, August 5. (Received 16.)

August 5, 10 a. m. I have addressed a note minister for foreign affairs concerning the report of the committee appointed to consider the treaty, to the effect that the proposed modification article 1 is tantamount rejection the treaty. My opinion is that my Government would not consider or discuss the amendment; that the committee has been insufficiently acquainted with my notes, April 24, June 10, or have failed to give them importance they demand as definite expression of opinion and intention of the Government of the United States. The amendment, article 13, suppressing tribunals, will not be accepted in any event, and the other modifications, not so serious in principle, are too little value to Colombia to submit for the discussion of the Senate of the United States. They could be adjusted by assurances or by special legislation when the commission required by the treaty has been appointed. Closing with strong reminder of the dangerous consequences of further unnecessary delay, urging that if Colombia really desires to preserve friendly relations and to secure the advantages of canal, backed by so close an alliance of national interests, the treaty should be ratified without modification.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay, via consulate at Colon.*

[Telegram.]

UNITED STATES LEGATION TO COLOMBIA, August 5, 1903.  
(From Colon, August 18, 1903.)

No cable received since (the) 13th July, the company having closed Buenaventura office. Government does not allow cables to pass over land lines. Situation critical. American minister Bogota. August 5.

MALMROS.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, August 6, 1903.* (Received 12.)

August 6, 10 a. m. Confidential. Note reference to treaty 1846 in the committee report. Colombia dreads above all things newspaper-reported intention of the United States to denounce the treaty in the event of rejecting canal treaty.

I have additional confirmation the statement of my dispatch No. 49 June 15.

BEAUPRÉ.

*Mr. Beaupré to the Secretary of State.*

No. 98.]

LEGATION OF THE UNITED STATES,  
*Bogotá, August 7, 1903.*

SIR: I have the honor to report that the telegrams which I had the good fortune to get through yesterday and the day before give a more or less accurate idea of the situation in so far as the canal treaty is concerned.

These telegrams are the only ones thus far passed since the 15th ultimo. and it was only after very earnest interviews with the vice-president, the minister for foreign affairs, the minister of government, and the director-general of mails and telegraphs that I finally succeeded.<sup>1</sup>

The report of the special committee of the Senate appointed to consider the treaty presented on the 4th instant, and transmitted in my telegram of the 5th instant, was signed by seven of the nine members of the committee and was in the nature of a compromise. The two other members made independent reports amending nearly every article of the treaty, but as they will have no weight in the ultimate decision of the matter it is not necessary to mention them.

On the morning of the 5th instant I addressed a note to the minister for foreign affairs concerning the committee's report, a copy of which is herewith inclosed.

Early in the afternoon of the same day I received the department's telegram of the 31st ultimo, and as the instructions therein had a direct bearing upon the question I immediately dispatched another note to the minister for foreign affairs, a copy of which is herewith inclosed. A reference to my telegram of the 6th instant concerning the treaty of 1846 will give a better understanding of the last clause of this note. I have positive information that both notes were read to the Senate in secret session.

The situation is chaotic just now and intense feeling is being manifested in the debates in the Senate. Apparently there is little prospect that the treaty will be ratified without modifications, but I must still hope that a better sentiment will be brought about before the end.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

<sup>1</sup> The telegrams referred to were not received by the Department of State until August 12, 16, and 18, respectively.

[Inclosure 1.]

*Mr. Beaupré to Doctor Rico.*LEGATION OF THE UNITED STATES,  
*Bogota, August 5, 1903.*

His excellency Dr. LUIS CARLOS RICO.

*Minister for Foreign Affairs of the Republic of Colombia.*

SIR: I have the honor to inform your excellency that I observe with regret the terms in which the committee of the Senate has seen to frame their report with reference to the Panama Canal treaty, and would earnestly request your excellency to take into consideration the unfortunate circumstance of interrupted cable communication which has prevented my immediate consultation with my Government, and which alone has decided me to address another note to your excellency in further interpretation of the instructions I have referred to in my previous notes as having been received from my Government.

It would appear to me that the committee has either been insufficiently acquainted with the contents of my notes dated April 24 and June 10, 1903, or that they have failed to attach to these direct communications the importance they demand as definite expressions of opinion and intention on the part of my Government.

From them it is clear that the committee's proposed modification of article 1 is alone tantamount to an absolute rejection of the treaty. I feel it my duty to reiterate the opinion I have before expressed to your excellency that my Government will not consider or discuss such an amendment at all.

There is another important modification suggested by the committee to article 13, suppressing the forms of tribunals there provided. I deem it my duty again to express very emphatically my opinion that this also will not be acceptable in any case.

The other modifications, though not equally serious in principle, are nevertheless of such slight value to the interests of Colombia that they do not warrant the risk of further discussion by the Senate of the United States; even in the event, which I consider more than doubtful, that they be even submitted to that body by my Government, since all such amplifications or explanatory items can equally well be given, either by separate emphatic assurances of the Government itself, or be the subject of special legislation when the joint commission mentioned in the treaty shall have begun its official existence.

For the moment disregarding the probable correctness, or otherwise, of my convictions, there is one point that I would especially urge upon your excellency, and that is that the Senate should be reminded of the dangerous consequences to the whole negotiations that the undue delay hitherto experienced in arriving at conclusions will undoubtedly produce on the attitude of my Government.

If the present modifications of the committee constitute really the final decision that is likely to be arrived at by the Congress of Colombia, the matter should be voted without any delay, and so give at least a slight opportunity to my Government to consider the matter before the expiration of the time for exchange of ratifications provided in the treaty. Less than this can not be expected by my Government, which in good faith signed the pending treaty more than six months ago, and promptly ratified it without modifications.

I take this opportunity to respectfully reiterate what I have before expressed to your excellency, that if Colombia really desires to maintain the present friendly relations existing between the two countries, and at the same time secure to herself the extraordinary advantages that the construction of the canal in her territory will undoubtedly produce, if backed by so close an alliance of national interests as would supervene with the United States, the pending treaty should be ratified exactly in its present form, without any modifications whatever. I say this from a deep conviction that my Government will not in any case accept amendments.

I avail myself of this opportunity to renew, etc.,

(Signed)

A. M. BEAUPRÉ.

[Inclosure 2.]

*Mr. Beaupré to Doctor Rico.*LEGATION OF THE UNITED STATES,  
*Bogota, August 5, 1903.*His Excellency Dr. LUIS CARLOS RICO,  
*Minister for Foreign Affairs of the Republic of Colombia.*

SIR: I have the honor to inform your excellency that in the matter of the pending treaty for the construction of the Panama Canal it has hitherto been impossible for me to do more than advise you of the construction I have from time to time put upon the instructions received from my Government in more or less general terms, as the various questions involved had not been brought to a definite issue.

Now referring to my several notes on this subject, it is a matter for great satisfaction to me that to-day, together with the publication of the Senate committee's report on the treaty, I have received such definite instructions from my Government as enable me not only fully to confirm, but materially amplify the terms of all my previous notes above alluded to.

I may say that the antecedent circumstances of the whole negotiation of the canal treaty, from official information in the hands of my Government, are of such a nature as to fully warrant the United States in considering any modification whatever of the terms of the treaty as practically a breach of faith on the part of the Government of Colombia, such as may involve the very greatest complications in the friendly relations which have hitherto existed between the two countries.

I am instructed to say that my Government has no right to covenant with Colombia to impose new financial obligations upon the canal company, and that the President would not submit to the Senate of the United States any amendment in that sense, but would treat it as voiding the negotiation, and as a failure to conclude a satisfactory treaty with Colombia. The amendment to Article I of the treaty proposed by the Senate committee is clearly in that sense.

I am also instructed to say that no additional payment by the United States can in any case hope for approval by the Senate of the United States. What I said to your excellency in my note of this morning, with reference to the minor amendments proposed by the committee, I can now emphasize in the language of my instructions, that any amendment whatever requiring consideration by that body (the Senate) would most certainly imperil the treaty's consummation. Your excellency's Government and Congress should realize the great risk of ruining the negotiation by improvident amendment.

It is impossible for me to express to your excellency more emphatically the attitude of my Government on this important matter, or to implore more earnestly than I now do the careful consideration by Colombia of the reasons which in the opinion of my Government should impel your excellency's Government to urge upon Congress the necessity of ratifying the treaty in its present form.

It is to be regretted that the reference to the necessity for the practical re-enactment of the treaty of 1846-1848 in the Senate committee's report should constitute almost a doubt as to the good faith of the intention of the United States in its compliance therewith. I must assure your excellency that unless that treaty be denounced in accordance with its own provisions my Government is not capable of violating it, either in letter or spirit; nor should there be any fear on the part of Colombia that if ratified the clauses guaranteeing her sovereignty in the pending treaty, couched as they are in still more precise and solemn terms than those of 1846, will ever be disregarded in the slightest degree by the Government of the United States.

I avail myself of this opportunity, etc.

(Signed) A. M. BEAUPRÉ.

*Mr. Beaupré to the Secretary of State.*

No. 101.]

LEGATION OF THE UNITED STATES,  
*Bogotá, August 10, 1903.*

SIR: Referring to my No. 98 of the 7th instant, I have the honor to inclose herewith a copy and translation of a note from the minister for foreign affairs, together with a copy of my reply thereto.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Inclosure 1.—Translation.]

*Dr. Rico to Mr. Beaupré.*

MINISTRY FOR FOREIGN RELATIONS,  
*Bogotá, August 8, 1903.*

MR. MINISTER: One of your attentive communications which your excellency had the pleasure to address to me on the 5th of the present month, relative to the business of the Inter-oceanic Canal of Panama, contained the part which I take the liberty to quote as follows:

"I may say that the antecedent circumstances of the whole negotiation of the canal treaty, from official information in the hands of my Government, are of such a nature as to fully warrant the United States in considering any modification of the terms of that treaty as practically a breach of faith on the part of the Government of Colombia, such as may involve the very greatest complications in the friendly relations which have hitherto existed between the two countries."

Wishing to give to your excellency as soon as possible the required answer to the two notes to which I refer in the present. I will appreciate it if you will inform me that if among the circumstances alluded to in the paragraph, a version of which I have transcribed, there exist any others not mentioned in the notes which your excellency has seen fit to address to me on this subject.

With this motive I renew to your excellency the assurance of my highest consideration.

(Signed) LUIS CARLOS RICO.

His Excellency A. M. BAUPRÉ,  
*Envoy Extraordinary and Minister Plenipotentiary of the United States.*

[Inclosure 2.]

*Mr. Beaupré to Doctor Rico.*

LEGATION OF THE UNITED STATES,  
*Bogotá, August 8, 1903.*

His Excellency DR. LUIS CARLOS RICO,  
*Minister for Foreign Affairs of the Republic of Colombia.*

SIR: I have the honor to acknowledge receipt of your excellency's courteous note of to-day, quoting a paragraph of my note of the 5th instant, and asking if the statement therein contained is based upon information not mentioned in my previous notes.

In reply I have the honor to inform your excellency that the antecedent circumstances to which I made reference are fully outlined in my previous notes, and particularly in the one of June 10, 1903.

If your excellency will permit me a few words more on this subject I would like to refer to the extraordinary efforts made by my Government to keep faith with Colombia after an agreement had been reached between the executive Governments of the two nations.

As your excellency is aware, when the canal convention was presented to the Senate of the United States it encountered the most violent opposition. Not

only were strenuous efforts made to defeat the treaty in its entirety, but many amendments of varying degrees of importance were presented and urged. During all that period the friends of the Government were steadfast in their determination to uphold the action of the Executive and to preserve intact the agreement made with Colombia. It was a momentous struggle, and the final and close victory was secured in the end only by the most stupendous efforts on the part of the administration, imbued as they were with the idea that such a compact, made after mature and careful consideration by the executive departments of the two Governments, must be ratified as it stood.

In view of the foregoing, it is absolutely believed by my Government that any modification, as such, to the pending treaty could not be safely submitted to the present Senate.

The intense feeling over large sections of the United States in favor of the Nicaragua route on the one hand and interests on the other hand hostile to any canal at all, and especially the Panama route, are circumstances that, I fear, your excellency's Government and the people of Colombia have not weighed sufficiently to attach to them the importance they deserve.

While my previous notes may have expressed an almost exaggerated desire to impress upon your excellency the dangers of delay or modification of any kind, they were inspired by a full knowledge of conditions in my own country, which I feared would not be fully appreciated in Colombia.

The condition which appears to me to be absolute, at least, is that the proposed treaty should be ratified as it is, in good faith with my Government, or the opportunity will be lost for any later negotiations of any kind whatever.

In my own behalf, I most earnestly desire to assure your excellency that, aside from fulfilling the instructions of my Government, I have the deepest personal concern in the honor and glory of the country to which I am accredited, and in which I have been extended so much kindness and consideration. Every conviction of my mind leads me to the belief that enormous aggrandizement must accrue to Colombia if an interoceanic canal be constructed through her territory, while the desire to bring the two countries into closer and lasting friendship is ever present. Feeling thus deeply every effort I may have made, or shall make to this end, has or will have as its incentive the ultimate good not only of the country which I represent but of that in which I have the privilege and pleasure of residing.

I avail myself of this opportunity to renew, etc.

(Signed)

A. M. BEAUPRÉ.

*Mr Loomis to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,

Washington, August 10, 1903.

Keep the department advised and embody date in messages.

LOOMIS, *Acting.*

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

BOGOTÁ, August 12, 1903. (Received 15.)

August 12, 7 p. m. The treaty was rejected by the Senate to-day in its entirety. Confidential. Do not accept this as final. There is still some hope. Wait for further advices.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, August 12, 1903. (Received 23.)

August 12, 9 p. m. Referring to my telegram of August 12, 7 p. m., I do not believe that rejection of treaty is final, for the following reasons: Yesterday's debate and vote was undoubtedly previously arranged. This I believe both from the tone of the debate and from information which I had already received through persons of high influence. Debate lasted five hours. All communications between myself and the Colombian Government read. The fact that the Government of the United States can not accept modifications or delay was made clear to the Senate. The most important speech made was that of General Ospina. It was to the effect that while desiring canal he could not give his vote for the ratification of the treaty because the terms were contrary to the provisions of the constitution. He implied that to bring negotiations to a conclusion the constitution should be modified, so as to allow negotiations to be brought to a successful conclusion without prejudice to the honor of the country. He stated also that to effect this no delay was necessary, as two debates will be sufficient for the purpose; he intimated that the Congress should be immediately dismissed by a decree for the purpose of modifying the constitution. Upon that a new law will be passed authorizing the Executive, without further recourse to Congress, to conclude a canal treaty with the United States. Should this prove true the text of the present treaty could be accepted without hesitation. By this means Congress will be able to conclude negotiations without individual senators publicly speaking in favor of it.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, August 12, 1903. (Received 19.)

August 12, 10 p. m. Confidential. [————] called to inform me that this day's action of Congress was in accordance with plans perfected by the Government and influential Senators and citizens in the belief that the treaty could not now be passed without amendments, but that within very short time such a reaction public sentiment can be created as will enable the President to present the treaty again to the Senate and secure its passage without amendments. I have been aware of such a movement for some days, hence my telegram advising that there was still hope.

[————] asks if you will give two weeks more for the consummation of this plan before taking other action, and requests immediate reply. He doubts whether the constitution can be amended in time, and thinks it is not necessary.

BEAUPRÉ.

*Mr. Loomis to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, August 13, 1903.

Have you received department cable of July 31? Amendments suggested in your cable of the 5th would be fatal to treaty.

LOOMIS, *Acting.*

*Mr. Beaupré to Mr. Hay.*

No. 105.]

LEGATION OF THE UNITED STATES,  
Bogotá, August 15, 1903.

SIR: I have the honor to report that the most intensely critical period for the canal treaty seems to have passed, and that now there is some hope for a satisfactory conclusion. Since the rejection of the treaty on the 12th instant there has been an almost hysterical condition of alarm and uncertainty in Bogotá as to the future action of the United States. Yesterday there was a widely circulated report that United States troops had landed on the Isthmus. When, finally, large posters were put up all over the city, announcing that because of a desire to maintain the most cordial relations with the United States, a joint committee would be appointed by Congress to confer as to the way and means of an agreement for the construction of a canal, I am certain that there was a genuine feeling of relief.

When the report of the special committee of the Senate was prepared and I had positive information that twenty of the twenty-seven votes in the Senate had been secured to pass it, I knew at once that such action would be fatal; and there being no cable communication to permit of instructions from you, I determined upon a course of energetic action which, while it might seriously lessen my popularity here and seem undiplomatic unless viewed in the light of the exigency and the circumstances, resulted in my two notes of the 5th instant and one of the 8th instant to the minister for foreign affairs. These notes were as strong and incisive as I could make them, with no attempt to disguise in suave phrases the fact that there was no probability that the United States Senate would accept the amendments proposed by the committee. Whether or not I was justified in writing such strong notes is best judged in the light of events, for they accomplished what I deemed to be necessary, and no other course could have prevented the adoption of the report of the committee.

Some of the newspapers and members of Congress are expressing dissatisfaction with what they term my dictatorial attitude, but I do not consider this important, provided a satisfactory treaty is finally ratified, which now seems probable.

When action was taken on the 12th instant no one in authority believed that it was final. Aside from the tone of the public debate, which would indicate this to the public, the senators had come to an agreement some days before as to the policy to be pursued. Because of the apparent fatality of the amendments proposed, it seems to have been thought best by those in charge (and I was so informed about



the 10th instant), in view of the present state of public opinion, to reject the treaty in the first debate, and then, believing that there would be a reaction of this public opinion, to resort to some coup to get the treaty again before Congress and pass it.

Apparently the manner of getting at this has not been definitely determined, for there are various ideas of ways and means.

General Ospina, the chairman of the new committee, stated to a friend of mine yesterday that the main objections to the treaty rested upon lawful or constitutional grounds. That the treaty was not unconstitutional, but contrary to law 2 of 1886 and law 153 of 1887. That the committee could recommend an annulment of these laws, which, if done, would permit the ratification of the treaty, with some trivial amendment intended to soothe the apparent inconsistency of the two votes. That the action of the 12th instant was taken on the minority report of the committee, and the majority report could still be called up and a reconsideration had.

General Valencia, a senator and lawyer of reputation, says that the treaty is not unconstitutional, except with reference to the appointment of United States tribunals on the Isthmus, which is not highly important; that it is not necessary to annul laws, because the treaty itself would become a superseding law if passed; that the only thing to look to was to get enough votes to pass the treaty when it again came before the Senate.

The feasible scheme, however, and the one most generally talked of as being likely to be adopted, is to frame a law authorizing the executive to continue and finish the negotiations for a canal without further recourse to Congress.

Whatever may be the means determined upon, it is altogether probable that the report of the joint committee will be passed when presented.

There is a seeming of good intentions in this movement, and yet I can not forget that there has never been a favorable word said for the treaty in the Senate, nor in fact has it been discussed at all, and there is little evidence of a desire to treat the matter with open good faith to the United States.

The first weeks of the session were devoted to the discussion of the question as to whether the vice president must sign the treaty before it was considered by the Senate. In other words, an attempt of the vice president's political enemies to place the responsibility for the negotiations upon him, which he declined to assume. When this point was settled to the satisfaction of the Government and the burden was apparently placed upon Congress, came the appointment of the special committee of one member from each of the nine departments of the Republic, who consumed nearly three weeks in their deliberations, and then reported recommending the nine amendments, which I immediately cabled to you.

The first (and only) debate upon the committee's report occurred on the 12th instant, and that you may understand how the matter has been treated I will give a summary of that day's proceedings:

Senator Marroquin (son of the vice president) moved that the debate be preceded by the reading of the correspondence which had passed between the United States minister and the minister for foreign affairs on the canal negotiations.

Senator Caro gave notice of a law he would move, containing two clauses, viz:

- (1) To reject the Hay-Herran treaty.
- (2) That the United States Government be informed that the Congress of Colombia meant no manifestation of hostility by this act, nor any antagonism to the construction of a canal by the United States.

The correspondence above referred to was then read.

My memorandum and notes in which I pointed out that the Colombian Government did not apparently realize the gravity of the situation, and that if Colombia should now reject the treaty or unduly delay its ratification the friendly understanding between the two countries would be so seriously compromised that action might be taken by our Congress next winter which every friend of Colombia would regret, was received with loud murmurs of disapproval by the densely packed gallery. The minister for foreign affairs' replies, read mostly by himself, were, on the other hand, greeted with applause.

Besides the above, the tenor of my notes was (*a*) that any modifications would be fatal; (*b*) that any modifications affecting the arrangements with the Panama Canal and Railway companies would not be accepted. The minister's replies were to the effect that the Government was bound to submit the treaty to the Congress, and that in the event of its not passing that body he understood that the United States would proceed to the negotiation with Nicaragua; but that he did not see that the refusal to ratify the treaty could in any way alter the friendly relations existing between Colombia and the United States.

Senator Caro vehemently attacked the Government for its attitude in the conducting of the negotiations. He taunted the minister for foreign affairs for his action in having the correspondence between the United States minister and himself read as an attempt to elude the responsibility resting on the Government, and to cover it by courting the applause of the gallery as the champion of the rights of the Colombian Senate; rights which, he said, had never been called in question by the United States minister.

This same attitude was taken by Senator Arango, in a short speech.

The minister for foreign affairs then went through the whole history of the negotiations, beginning with the project of an inter-oceanic canal first made. He gave a detailed résumé of the whole De Lesseps scheme, and its subsequent failure, and deduced the following conclusion: That the present situation, as shown by the history of antecedent schemes and negotiations, was that Colombia must choose one of two things—either the whole scheme of a Panama Canal must be abandoned, or Colombia must hand the undertaking over to the United States. Feelers had been thrown out which had proved that no other power or entity would under any circumstances take the project in hand. The concession, therefore, if given to anybody, must be given to the United States Government. But this fact must not be lost sight of, that the United States Government would not even consider the cutting of a canal which should not be its own canal. The minister then made reference to the notes which had passed between him and the legation of the United States. The

result of that correspondence was that the Colombian Congress found itself in the dilemma of either accepting the treaty as it stands or losing all hope of seeing the great work cut through Colombian territory. He concluded by expressing the hope that, in discussing this matter, the Senate would strictly limit itself to the points at issue. The Government had done what it could in the matter. The negotiations had been initiated by the ablest of their statesmen, Dr. Martinez Silva, and the treaty, even as it now stood, bore the impress of that initiatory work. The Government had, moreover, left the decision of the issue to the free judgment of the country, and had exerted no influence whatever upon public opinion, when it could have passed the measure through by the use of dictatorial measures. (This evoked marked disapprobatory murmurs from the gallery.)

Senator Marroquin then made a short speech to the effect that the question turned on the acceptance or nonacceptance of the treaty, and not on questions of government policy, brought in by honorable senators, and which were foreign to the discussion.

A speech by Gen. Pedro Nel Ospina then followed, in which he blamed the minister for foreign affairs for having in a note given the United States minister the opportunity of raising the question as to whether or not his Government would accept any modifications. He said the minister's position reminded him of the man who, on being told by an alcalde that he must furnish three horses for the use of the Government, turned, as he was leaving the room, and inquired: "Must I furnish saddles, also?" To which the alcalde replied: "Certainly!" He also said that, outside of the question as to whether he did or did not favor the canal treaty as it stood, he could not, in view of the existing laws of the country, give his vote for its ratification. That the Congress should, in his opinion, first so amend the laws of the country as to enable the Colombian Government to come to an agreement with that of the United States in a manner honorable to both countries.

Senator Rodriguez spoke in the same sense, expressing his advocacy of the construction of a canal and his friendly disposition toward the Government of the United States. He should, however, as privately agreed upon, give a negative vote on this occasion.

And thus ended the only debate ever had in the Colombian Senate on the canal treaty.

A vote was taken at 6.30 p. m., and every senator present was recorded as voting against the ratification of the treaty.

As I have on many occasions informed you, ratification has seemed almost hopeless from the beginning without the active influence of the Government, and this it has never used. The Nationalists, under the lead of Senator Caro, have been too deeply concerned in their efforts to belittle the Government to consider the merits of the treaty at all. The Liberals, while not represented in Congress, are the most active factors in creating public opinion, and have taken an almost identical position. The coffee planters and exporters, who think their business would be ruined by low foreign exchange, have been unpatriotic enough to place personal interests above national good, and have been against the treaty because the \$10,000,000 once paid Colombia would send exchange so low that coffee could not be exported from the interior. Even the Panama representatives have lately become so

thoroughly imbued with the idea of an independent republic that they have been more or less indifferent to the fate of the treaty.

As a matter of fact the treaty, as such, has had no active friends or supporters, and if it is ratified at all it will be because of the strong attitude taken by the United States and the earnest repetition of the statement that the friendly understanding between the two countries depended upon it.

It has been a difficult and trying situation from the first, rendered more so by the interruption of cable communication, and one in which a strong, rather than a velvet hand, was imperative.

I await the consummation with some hope and much distrust.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Loomis to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
August 15, 1903.

Cable additional information concerning rejection of treaty as soon as possible.

LOOMIS, *Acting.*

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, August 15, 1903.* (Received August 23.)

August 15, 1 p. m. Prominent senator says that the vote on Wednesday was upon the minority report of the committee; hence it is believed reconsideration possible on the line of majority report Thursday. Senate appointed new committee of three, General Ospina, chairman, in cooperation with similar committee appointed Friday by Chamber of Representatives, to report as joint committee of both Houses. The appearance is a disposition to find the means of ratifying the treaty. The committee seems one that will work to that end.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 107.]

LEGATION OF THE UNITED STATES,  
*Bogotá, August 17, 1903.*

SIR: I have the honor to send you inclosed copies and translations of two notes from the minister for foreign affairs in regard to the Panama Canal treaty.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Inclosure 1.—Translation.]

*Doctor Rico to Mr. Beaupré.*MINISTER OF FOREIGN RELATIONS,  
*Bogotá, August 11, 1903.*

MR. MINISTER: In your polite note written the 8th of the present month, in answer to the one I had the honor to address to you on the same date, your excellency has been pleased to inform me that your previous notes have fully defined the antecedent circumstances which, as it appears from one of the two notes of your excellency of date of the 5th instant, "attended the whole negotiation of the canal treaty," and according to the same note, "are of such a nature as to fully warrant the United States in considering as a violation of the pact any modification whatever of the conditions stipulated in the treaty, such as may cause the gravest complications in the friendly relations which have hitherto existed between the two countries."

The said note makes special reference to your excellency's note of June 10 last, which deals with the permission the canal company and the Panama Railroad Company must obtain in order to transfer their respective concessions. I answered said note on the 27th of that month and stated to your excellency that in order to determine the meaning of article 1 of the treaty, Congress would have to consult the antecedents of the negotiation, among which were included the notes of the minister of "hacienda" dated December 25 and 27, 1902, and an extract from the memorandum addressed to his excellency the Secretary of State on the 22d of November of the same year by the Colombian legation in Washington.

In the opinion of the Colombian Government the view expressed by your excellency's Government that the circumstances attending the whole negotiation of the canal treaty are of such a nature as would fully authorize the United States in considering as a violation of the pact any modification whatever of the conditions of the treaty is not compatible with diplomatic usages nor with the express stipulation of article 28 of the same convention.

In fact, plenipotentiaries in concluding public treaties propose and accept conditions with the purpose of facilitating the negotiation which is not final except by means of ratification, which in republics is vested in the executive power with the concurrence, direct or indirect, of some other high power of state.

This doctrine is expressly recognized in the said article 28, which reads: "This convention when signed by the contracting parties, which shall be ratified according to the laws of the respective countries, and shall be exchanged in Washington within a term of eight months from this month, or earlier if possible."

Under that article the Government of the United States submitted the treaty to the Senate for its approval, and the Government of Colombia has had to do the same in respect to its Congress. The former proceeded in conformity to a constitutional provision, and the latter adopted analogous proceedings, because, according to paragraph 10 of article 120 of the constitution, the power of making treaties with foreign powers is qualified by the necessity of submitting them to the approval of Congress; so that the convention for the opening of the canal must, in order to be ratified in accordance with the laws of Colombia, as stipulated in said article 28, be ratified by the Congress; and the obtention of such approval, with or without amendments, could not have been a matter for agreement in any of the circumstances which attended the negotiation and to which your excellency refers when you say that any modification of the terms or any delay in the exchange of ratifications would be considered a violation of the stipulated conditions. If my Government had entered into that agreement your excellency would have said so in your note of the 8th instant, by which you were pleased to explain the paragraph in which those circumstances are discussed.

Your excellency tells me that when the canal convention was presented to the Senate of the United States it met there the most violent opposition; that not only were the strongest efforts made to reject it as a whole, but that many amendments more or less important were proposed for immediate discussion, and that the final and definite victory was only attained after the most strenuous efforts on the part of the friends of the administration, convinced as they were that it ought to be ratified without any alteration.

The course of the honorable Senators who proposed the modifications makes it clear that they used their constitutional rights in proposing changes in the conditions of the pact, without any reason to consider that the Government of the United States was bound to approve the treaty without modifications, as has been claimed in regard to the Government of Colombia.

I suppose that your excellency's Government has never denied to the Senate the right to introduce modifications in the international pacts, and that this right has the same legal force as that of approving or disapproving public treaties, and I understand that the Senate has exercised its right to propose modifications not only in this case, but also in others, as I pointed out to your excellency in my contra memorandum of June 18, in connection with the project of convention dated November 28, 1902, between the United States and Great Britain, for the abrogation of the Clayton-Bulwer treaty of 1850.

The Colombian Government, fully aware that justice and equity govern the course of the United States in its relations with all powers, and that its respect for the autonomy of the Spanish-American countries is a substantial guaranty of the stability and independence of those nations, is confident that the principles which I have adduced in favor of the right which the Colombian Congress has, not only to propose modifications to the convention for the opening of the canal, but also to refuse its approval, can not but convince your excellency's Government that the exercise of that right can not in any manner entail complications, great or small, in the relations of the two countries, which it is to be hoped will continue on the same equal footing and in the same good understanding which has happily existed until now, and that they will facilitate the removal of the difficulties which have retarded the final agreement, the result of which is to accomplish that work of such great importance to the two high contracting parties and to the world's commerce.

My attention has been especially called to a paragraph of your excellency's note of the 8th of this month which says that the opposition the treaty's approval met in the United States Senate convinces your excellency's Government beyond a doubt that no modifications to this pact could be submitted to the same Senate, because they would not be accepted.

I might observe that the general opinion which has been developing itself in favor of the Panama route might induce the Senate in Washington to accept some or all of the modifications which may be adopted by the Colombian Congress; but as the Government of your excellency does not think possible the presentation of modifications to the pact, I will call the attention of the Congress of Colombia to this grave circumstance.

I am gratified at the explanation of your excellency in your notes relative to the approval of the treaty, that you have done nothing but fulfill the instructions of your Government, and I fully appreciate the personal interest which your excellency manifests in the honor and glory of the nation to which you are accredited, as well as the declaration that you wish to procure as great benefits as possible, not only to the country you represent, but also to that in which you reside, which it is hoped may exercise a beneficial influence in maintaining the most cordial friendship between the two Republics.

I beg that your excellency accept the reiterations of my highest and most distinguished consideration.

(Signed)                      LUIS CARLOS RICO.

His Excellency A. M. BEAUPRÉ,

*Envoy Extraordinary and Minister Plenipotentiary of the United States,  
etc.*

[Inclosure 2.—Translation.]

MINISTRY OF FOREIGN RELATIONS.

*Bogotá, August 14, 1903.*

MR. MINISTER: As your excellency has been pleased to address me various notes relative to the treaty for the opening of the Panama Canal which was signed in Washington the 22d of January last, I inform your excellency that the Senate of the Republic disapproved that pact, by the unanimous vote of the senators present, in the session of the 12th of this month, and the day following approved, also unanimously, the proposition which I have the honor to communicate to your excellency, and which is as follows:

"The Senate of the Republic, in view of the disapproval given to the treaty signed in Washington the 22d of January of the present year, by the chargé d'affaires of Colombia and the Secretary of State of the American Union, and taking into account the desire of the Colombian people to maintain the most cordial relations with the people of the United States of America, and its sentiment that the completion of the interoceanic canal across the Isthmus of Panama is a work of the greatest importance for the commerce and advancement of the world, as well as for the development and progress of the American nations, resolved:

"1. That a commission of three senators, appointed by the president of the Senate, consulting in every possible way the opinion of the House of Representatives, study the manner of meeting the earnest desire of the Colombian people touching the construction of the Panama Canal, in harmony with the national interests and observance of the law by which the Senate was ruled on this solemn occasion; and

"2. That the widest publicity be given both at home and abroad to this resolution, to the modifications to said treaty proposed by the commission of the Senate, and to the other documents which had led to this resolution."

Although I have made known by cable to the Colombian legation in Washington the contents of the proposition above quoted, in order that it may inform the Department of State of both actions, I communicate the same to your excellency in order that you may, if you see fit, also bring them to the knowledge of the Government of the United States.

I renew to your excellency the assurances of my highest consideration.

(Signed) LOUIS CARLOS RICO.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, August 17, 1903. (Received August 25.)

The President informs me that Congress will pass law authorizing him to continue and finish negotiations for canal; but what conditions will be specified he can not state at the present moment.

BEAUPRÉ.

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*Mr. Beaupré to the Department of State.*

No. 110.]

LEGATION OF THE UNITED STATES,  
Bogotá, August 18, 1903.

SIR: I have the honor to report that the department's telegram of the 31st ultimo is the only instruction I have received since the telegram of the 13th of July concerning the canal treaty.

As telegrams have arrived from London, Paris, and Berlin, there is something mysterious in the fact that none have come from the United States during this critical period.

There is a feverish anxiety here to know what your position will be upon receiving news of the rejection of the treaty, and further action by Congress upon it.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Adee to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, August 19, 1903.*

A telegram from consul at Colon communicates a telegram in Spanish, dated August 5, saying no cable received since July 13. Department of State telegraphed you on July 13, 24, 29, 31, August 10, 13, and 15, and has received telegrams from you dated July 15, five dated August 5, one August 6, 10, and 12. Have you received department's messages? If not, protest against interference with your official communications which are entitled to privilege.

ADEE, *Acting.*

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, August 24, 1903.*

The President will make no engagement as to his action on the canal matter, but I regard it as improbable that any definite action will be taken within two weeks.

HAY.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, August 24, 1903. (Received 28.)*

August 24, 11 a. m. Nothing has been done, and very little satisfactory action, this depending upon the attitude of the Government of the United States, which is waited for in great anxiety. The report of the committee prepared. Have received telegram of 13th; none later.

BEAUPRÉ.

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*Mr. Beaupré to Secretary of State.*

No. 115.]

LEGATION OF THE UNITED STATES,  
*Bogotá, August 24, 1903.*

SIR: Referring to the department's No. 23 of July 21, 1903, I have the honor to inclose herewith two copies of the decree of Vice-President Maroquin calling the session of Congress to consider the canal treaty, and two copies of the sections of the constitution referred to in said decree as requested by the Hon. John T. Morgan.

I might add that the constitution of Colombia is to be found at page 179 of Foreign Relations for 1886.

I am, sir, your obedient servant.

A. M. BEAUPRÉ.



[Inclosure in 115.]

## EXTRACTS FROM CONSTITUTION.

ARTICLE 72. Congress shall assemble in extraordinary session when summoned by the Government. It shall, in such sessions, consider only such business as is specially submitted by the Government for its consideration.

Paragraph 2 of article 118. To convene Congress in extraordinary sessions for serious reasons of public convenience and after previous consultation with the council of state.

The preamble of article 118 reads: "The President of the Republic shall exercise the following powers in relation to the legislative department."

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, August 26, 1903. (Received 29.)

August 26, 7 a. m. Have received telegram 19th. Have not received department's messages of July 24, 29, and August 15, which is most unfortunate, for the situation is grave, and much depends upon your attitude.

Will protest.

BEAUPRÉ.

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, August 29, 1903.

The President is bound by the Isthmian Canal statute, commonly called the Spooner law. By its provisions he is given a reasonable time to arrange a satisfactory treaty with Colombia. When, in his judgment, the reasonable time has expired and he has not been able to make a satisfactory arrangement as to the Panama route, he will then proceed to carry into effect the alternative of the statute. Meantime the President will enter into no engagement restraining his freedom of action under the statute.

HAY.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, August 29, 1903. (Received September 4.)

August 29, 12 m. I have not yet received any messages from the department concerning the rejection of the treaty nor those mentioned in my telegram of the 26th. The committee has not yet reported, and the prospects of satisfactory report are not good.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

BOGOTÁ, August 30, 1903.

(Received September 12.)

August 30, 8 a. m. Confidential. I am informed authoritatively that to assure the election of Reyes, Marroquín has already changed the governors of Bolivar, Magdalena, and Panama, nominating, respectively, Insignares, Barrios, and Senator Obaldía. All pledged to the treaty and to Reyes.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,

*Bogotá, August 31, 1903.* (Received September 5.)

August 31, 1903, 2 p. m. I had an interview with Senator Ospina to-day. He informed me that he is willing to remain so long as there is hope for the treaty, but he is convinced that there is none, and will leave, therefore, on the 6th proximo. Confirms General Reyes statement concerning presidential candidate, and says that the next Senate was made certain for the treaty; that he bears instructions to Governors Signares and Barrios concerning the elections which will be held next December; that in accepting governorship of Panama he told the President that in case that the department found it necessary to revolt to secure canal, he would stand by Panama; but he added if the Government of the United States will wait for the next session of Congress canal can be secured without a revolution. Senator Campo, from the Cauca, is about to leave, thinking the treaty gone.

Confidential. My opinion is that nothing satisfactory can be expected from this Congress. Caro's party has been joined by Velez and Soto and their followers, constituting a decisive majority against the treaty. General Reyes seems to still entertain hopes.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,

*Bogotá, September 1, 1903.*

(Received through German embassy September 5.)

Have not received department's messages, while others of late date for various legations have arrived. I have sent important telegrams 30 and 31. On receiving, answer by German minister.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,

*Bogotá, September 2, 1903.* (Received September 6.)

Have received your telegram 24.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, September 2, 1903.* (Received September 6.)

September 5. Have received telegram 29. The committee have reported a law which approves rejection of the treaty; authorizes the President to conclude treaties for Panama Canal or contract for same with private parties, subject to rights of companies; railroad company permitted to transfer, purchaser assuming all obligations, including annual payments of \$250,000 and transfer of property to Colombia in 1967; canal company permitted to transfer on payment to Colombia of \$10,000,000; the President authorized to make following concessions: Lease of zone for one hundred years, not including Panama or Colon; annual rent \$150,000 until 1967; lease renewing every hundred years on payment of 25 per cent increase; neutrality of canal and the recognition of Colombian sovereignty over the whole territory and inhabitants; mixed tribunals only; police and sanitary commissions Colombian only; excluded from zone; time limit for completion of works; Colombia to receive from contracting Government \$20,000,000 on the ratifications of the treaty; fixing regulations concerning purchase of private company.

It is now highly probable even this may not be accepted by the Senate. In any event nothing more satisfactory may be expected from this Congress. The debates will begin next Monday.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 129.]

LEGATION OF THE UNITED STATES,  
*Bogotá, September 5, 1903.*

SIR: I have the honor to report that since the appointment of the joint congressional committee to consider the canal matter nothing was done until the committee made its report on the 4th instant. I cabled the substance of that report, and should there seem any prospect of its passing I will send it in full.

As the situation seems at present, it is not likely to pass. The first debate in the Senate will commence on the 7th instant, and the question may be settled during the week.

I think my previous reports have given the department a very good idea of the situation, but there are some phases of it which I should like to discuss personally when I next visit the United States. This will be in March of next year, I think, if I can get the department's permission, and circumstances admit of it.

The impressions which I set forth in my No. 6 of April 15, 1903, that there would be an attempt to secure greater concessions from the United States before a canal treaty would be ratified, are now confirmed. It is quite probable that the Government originally intended that a treaty of some sort should be passed, but apparently not the one under consideration in its entirety.

If in the earlier days of Congress, when the Government had a majority in the Senate, the United States or the canal company could

have been induced to add \$10,000,000 or \$15,000,000 to the recompense to be received by Colombia, I believe the treaty would have been ratified; but lately the tide of opposition has set in so strongly that it has seemed beyond control.

The public discussion which the Government invited has not only overwhelmed the treaty, but has been immensely disastrous to the Government itself. It has not been a discussion in fact, but a rivalry among the newspapers as to which could produce the most violent and bitter attacks upon the whole negotiation. The only articles which have appeared in defense of the treaty were written by Mr. J. T. Ford and Mr. Enrique Cortez. These were answered by personal attacks upon the writers. Mr. Ford was accused of desiring the passage of the treaty in order to secure the payment of the claims of his companies.

I must give Mr. Ford the credit of working for the treaty to the utmost of his ability during the three months that he remained at this capital.

Some of the newspapers are now urging that by threats and intimidation a powerful nation has been trying to coerce the acceptance of an unconstitutional and unsatisfactory treaty upon a weak one, but that through the loyalty of its legislators Colombia has emerged from the ordeal with unstained honor.

With respect to the assurances from certain quarters that the next Congress would be made up so that the canal treaty may be ratified, I believe that this must be taken with due allowance. That any one in authority here has any intention of securing the ratification of the treaty in its present form I can not believe. They will insist upon more money and other modifications.

It is now understood that the vice president will close this Congress on the 20th instant, so that little consideration can be given to the important questions before it. I believe a law concerning foreign claims will be passed. It is said that in this the Government will distinctly refuse to recognize its responsibility for damages occasioned by the revolutionists.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, September 10, 1903. (Received September 12.)*

Since the report of the canal committee the question has not been discussed in the Senate. First consideration of the report postponed until 14th instant. Fierce attack to-day in the Senate upon the appointment of Obaldía as governor of Panama. The appointment is regarded as being the forerunner of separation. Of several Senators who spoke only the son of the President defended the action of the Government. A resolution passed by almost unanimous vote, which is equivalent vote of censure against the Government. The situation is not improved. There is no prospect of satisfactory action.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 133.]

LEGATION OF THE UNITED STATES,  
*Bogotá, September 11, 1903.*

SIR: I have the honor to report that events of interest have taken place in connection with the appointment of Senator Obaldia to the post of governor of the department of Panama.

Senator Obaldia's separatist tendencies are well known, and he is reported to have said that, should the canal treaty not pass, the department of Panama would declare its independence, and would be right in doing so. That these are his opinions there is, of course, no doubt, as I stated in my telegram to the Department of August 31, 1903.

At yesterday's session of the Senate the feeling of opposition to Señor Obaldia's appointment was given expression by a resolution proposed by Senator Perez y Soto, to the effect that—

The Senate of the Republic can not see with indifference the appointment which has been made for the post of governor of the department of Panama which it regards as a menace to the safety of the Republic.

This resolution was amended by omitting the reference to the governorship of Panama in particular, and made to include all administrative posts held under the Government.

In this form it passed with an almost unanimous vote.

The debate itself, though short, for it lasted under two hours, was one of the most important that has yet taken place in open session. As I telegraphed yesterday, it was nothing more or less than a direct vote of censure.

It was said that Obaldia's appointment could have one, and only one, explanation: That he was sent to the Isthmus to make necessary preparations for the presidential election; and that other similar appointments had been made with the same end in view—such as that of insignares to the Department of Bolivar.

The speakers showed greater heat than I have yet known them to evince in this Congress. It seemed to be the general opinion that the Government was prostituting the general interests of the country for purposes of electioneering intrigue.

Gen. Pedro Nel Ospina, in a passionate and much applauded speech, warned the Government that should it persist in its present course, exhausted as the country was, a fresh revolution was not far distant.

The notable feature in the debate was the general spirit of hostility shown toward the Government, both by the Senators themselves and by the public assembled in the gallery and round the lobbies. With the exception of one Senator there was not a speaker who did not bitterly and uncompromisingly denounce the Government. When Senator Marroquin, the son of the President, rose to defend the action of the Government, he was greeted with hisses from all parts of the house, and hisses and jeers accompanied him throughout his speech. There was absolutely no sympathy for him nor for his position.

It is evident, I think, that a cross current was at work during the debate. It was initiated by an opponent of the canal and a believer in the integrity of Colombia against the appointment of a Panamanian who ardently supported the canal, and who, if forced to accept an

alternative, would rather see the Isthmus independent than lose the chance of seeing the canal built through his department. The opponent of the canal scheme carried the house with him, but he gained their support, not in virtue of his attitude on the canal question, but because his resolution opened the door to a general attack on the Government.

It really begins to appear that the majority of the senate care little about the canal, except in so far as that subject ministers to their own political ends.

During yesterday's session the senators were presented with a document published by Senator Perez y Soto, protesting against the appointment of Senator Obaldia to Panama. The large portion of this publication consists of a copy of a letter addressed to the President on the subject. Treating of the canal in this letter, the following significant passage occurs:

When we (Perez y Soto and the President) met again, in December (1902), my first care was to entreat you to allow nothing to be signed—nothing at the time pending with the American Government—for by knowing how to wait we might be able to obtain greater advantages in the canal treaty. You answered me that the Government could very well allow the treaty to be signed, leaving it to Congress to make such modifications as it might see fit. I then observed to you that even that was a dangerous course to pursue, because with the Americans there was no playing. I said that you did not escape responsibility by making concessions ad referendum.

I have no reason to doubt the senator's veracity, and his statement brings vividly to mind the predictions I made in my No. 6 of April 15, 1903, to the effect that when the President ordered the treaty to be signed he anticipated amendments, and indulged in the hope of having them accepted by the United States.

In view of recent representations made to the department that the election for members of the Congress of 1904 would be so looked after that the canal treaty could be passed, it is well to remember that the present Congress was specially called to consider the treaty, and that the same methods were employed in electing this one as must be in electing the one of next year. Why, then, if that power is lodged in the Government, were not the present senators and deputies pledged to the ratification of the treaty?

If the Government intended to elect a minority strongly opposed to the treaty, and to give them full play in their attacks upon it with the view of obtaining better terms from the United States, it has reckoned without its host, for it has brought into existence a Congress a large portion of which is not only against the treaty but intensely hostile to the Government itself. This is partly due to blunders on the part of some of the governors of departments, especially the one in Panama, but also to the rupture with General Fernandez. A considerable number of the senators and deputies elected were supporters of the latter, and were regarded as votes upon which the Government could count. After the break with Fernandez these votes joined the opposition, and to-day the Government finds itself confronted with a hostile majority instead of a noisy minority.

It was evidently plain to the Government some time ago that there is no hope for the ratification of the treaty; that the treaty would be rejected not on its own merits, but as a means of dealing a blow at the Government of President Marroquin. Seeing how the political game

was being played the Government abandoned any intent it may have had to advocate the treaty and turned its attention to averting from itself the current of opposition, or at any rate the responsibility for the rejection of the treaty. For this reason, on a motion by Senator Marroquin, the President's son, on the day which had been set apart by previous arrangement for the rejection of the treaty, the debate was preceded by the reading of the correspondence which had passed between the minister for foreign affairs and myself. The object of this move is clear. The Government desired to make it appear that the rejection of the treaty was not a blow aimed at the President and his ministers, but was a protest against what was asserted to be the dictatorial attitude assumed by the United States Government through its minister.

The first debate on the report of the joint congressional committee appointed to consider the canal matter has been postponed until the 14th instant, but nothing satisfactory is to be expected from this Congress.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, September 14, 1903.* (Received September 15.)

Canal committee report unanimously passed first reading to-day. Perez Soto gave notice amendment absolutely restricting the Executive to terms of proposed law. The situation has not changed, and nothing better than this law may be expected.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, September 17, 1903.* (Received 7.30 p. m., 18.)

September 17, 11 a. m. No discussion of canal question and no change in the situation.

The probability is that Congress will not adjourn before 20th proximo.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 139.]

LEGATION OF THE UNITED STATES,  
*Bogotá, September 18, 1903.*

SIR: I have the honor to send you inclosed a copy of the Diario Oficial of September 15, 1903, containing the majority and minority reports of the special committee of the Senate appointed to consider

the Panama Canal treaty, which reports were made on August 4, 1903. I also inclose the printed report of the Senate members of the joint committee appointed to consider the question of the construction of a canal, which report was made on September 4, 1903.

I informed you that the last report had passed the first debate in the Senate. Since that time the matter has not been considered at all. It is altogether probable that amendments will be made before the project passes the Senate, and that still others will be attached to it in the lower house.

It is the general opinion that the Congress will be closed on October 20, but this has not been definitely decided. At any rate the canal matter is not likely to be disposed of until the last days of the session.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Translation.]

PANAMA CANAL.

[Several papers concerning the treaty between Colombia and the United States. From the *Diario Oficial*.]

[Translation of a project of a law submitted by certain senators on August 3, 1903, by which the treaty between the Republic of Colombia and the United States of America, for the construction of an interoceanic canal between the Atlantic and Pacific Oceans, is approved with modifications. From the *Diario Oficial*, September 15, 1903.]

The Colombian Congress, having examined the treaty signed the 22d of January of the present year between the chargé d'affaires of Colombia before the Government of the United States of America and the Secretary of State of that Republic, which treaty reads literally as follows (see text of treaty as signed), decrees:

Sole article. That the above-inserted treaty is approved with modifications set forth as follows:

First. In the preamble the reference to the law of the United States of June 28, 1902 (Spooner law), shall be suppressed.

Second. In the first article a provision shall be introduced that the Panama Canal and Railroad Companies shall previously enter into an agreement with the Colombian Government setting forth certain conditions, among which the Colombian Government shall give the necessary consent that such companies may transfer their rights to the United States. It shall be stipulated that Colombia shall recover control of all the public lands which are now in the possession of the said companies, without exception, so that the cities of Panama and Colon shall remain effectively and completely outside of the zone of the concession.

Third. The terms of the second and third articles shall be modified so as to clearly provide that Colombia concedes to the United States only the right to use the zone of the canal and such part of the adjacent territory as may be necessary for the work; it must be clearly set forth that the rights conceded to the United States are in the nature of a tenancy, excluding any idea of transfer of dominion by establishing clearly and peremptorily the perpetuity of the concession. The boundaries of the zone shall be indicated with the greatest possible precision and the accessory properties included in the concession shall be clearly set forth, definitely excluding from the latter the cities of Panama and Colon. It shall be stipulated, moreover, that the guaranty of the treaty of 1846-1848 shall not be modified in any way and shall continue to be in force in the Department of Panama, including the zone of concession.

Fourth. In the seventh article the concession shall be limited expressly to the right to use gratuitously the waters of the lakes, lagoons, rivers, and other streams, natural or artificial, which are necessary for the feeding of the canal, or for its construction, sustenance, and operation, having the right to deviate the course of such waters, to raise or lower their levels, to convert them into



lakes, widen or reduce them, as may be most convenient for the purposes; and it shall be stipulated that such right is exclusive so far as it relates to the use of said waters for the feeding and supply of the canal and canal auxiliaries, this concession not preventing the waters referred to being used, under legitimate authority, for other purposes than navigation, which do not interfere with or obstruct the use which the United States may desire to make of them. The use of water or waterways outside of the canal zone for the transportation of materials shall not be the exclusive right of the United States, but this right shall be granted to them without taxes or imposts of any kind, so far as relates to materials for the construction, support, and working of the canal.

The natural products, property of the Republic, which the United States may require for the work shall be stipulated with the greatest possible exactness, the right being limited to the Department of Panama, and providing that the expropriations which shall be made under this article (seventh) shall be subject to the provisions of article 14.

Fifth. In the eighth article the vagueness of the clause shall be corrected, under which no taxes shall be collected in the cities of Panama and Colon except upon merchandise imported for consumption in the rest of the Republic of Colombia, etc.

Sixth. In the thirteenth article there shall be suppressed as being contrary to the constitution all that relates to the establishment of United States tribunals and the application of the laws of that country in Colombian territory, and it shall be stipulated that the regulations of police and sanitation which shall be in force in the Canal Zone shall be a matter for agreement between the two Governments.

Seventh. Indemnifications which may be named by the committee mentioned in article 14 of the convention for expropriations made in certain cases referred to in the same article shall be paid by the United States, and the valuations shall be in accordance with the regulations set forth in article 9 of the law 119 of 1890.

Eighth. In the twenty-fourth article a clause of forfeiture shall be introduced designating a term after which, if the work is not completed, all the concessions shall lapse and all the rights and property of the enterprise shall return to Colombia.

The last part of article 25, beginning, "But no delay, etc.," shall be suppressed.

Ninth. In the additional clause the tribunal shall determine what must be done concerning differences that may arise between the contracting parties touching the fulfillment of the treaty provisions. Given, etc.

Submitted to the honorable Senate, in special committee, by the undersigned senators in the session of Monday, the 3d of August, 1903.

Pedro Nel Ospina, J. D. de Obaldia, J. M. Uricoechea, Luis F. Campo, Eduardo B. Gerlein, J. M. Ribas Groot, José M. González Valencia.

Joaquin M. Uribe B. and Juan B. Pérez y Soto reserve the privilege of a separate report.

(In their minority reports they greatly amend the treaty.)

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COLOMBIA, SENATE CHAMBER, OFFICE OF THE SECRETARY, No. 116,

Bogotá, August 13, 1903.

*To the Minister for Foreign Affairs:*

In compliance with article 322 of the Senate rules, I have the honor to inform your excellency that this body, in yesterday's session, rejected on first debate the project of law "by which the treaty (signed in Washington on January 22, 1903) for the opening of the Panama Canal is approved."

God preserve your excellency.

MIGUEL A. PEÑAREDONDA.

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COLOMBIA, SENATE CHAMBER, OFFICE OF THE SECRETARY, No. 121,

Bogotá, August 13, 1903.

*Minister of Foreign Relations:*

In order that the department under your excellency may take such course as may be deemed proper for foreign publicity, I communicate at once to your excellency the resolution unanimously approved by the Senate at to-day's session.

"The Senate of the Republic, in view of the rejection given to the treaty signed in Washington on January 22 of the present year, between the chargé d'affaires of Colombia and the Secretary of State of the American Union, and taking into account the fact that the people of Colombia desire to maintain the most cordial relations with the United States of America, and deem the construction of an interoceanic canal across the Isthmus of Panama a matter of the greatest importance to commerce and the world's progress, as well as for the development and progress of the American nations, resolves:

"First. That a committee of three senators, designated by the president of the Senate, consulting as far as possible the views of the House of Representatives, shall investigate a way of satisfying the desire of the Colombian people regarding the construction of the Panama Canal in harmony with the national interests and respect for law which has been on this solemn occasion the guide of the Senate.

"Second. That the greatest possible publicity shall be given, in this country as well as elsewhere, to this resolution, to the modifications which the Senate committee may propose to said treaty, and to the other documents which have preceded in the consideration of this matter."

God preserve your excellency.

MIGUEL A. PEÑAREDONDA.

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[Inclosure with dispatch No. 139, September 18, 1903, from the United States minister at Bogotá.—Translation.]

#### PANAMA CANAL—REPORT OF A COMMITTEE AND DRAFT OF A LAW.

##### *Honorable Senators:*

Having been designated on the 13th instant by this honorable chamber to "find a way to satisfy the desire of the Colombian people regarding the construction of the Panama Canal in harmony with the national interests and respect for law, which has been on this solemn occasion the guide of the Senate," a designation made in conformity with the resolution adopted on the same day and reached after the unanimous rejection, on first debate, of the draft of law "which approves the treaty signed in Washington on the 22d of January of the present year between the plenipotentiaries of the Republic of Colombia and of the United States of America for the construction of an interoceanic canal through the Colombian Isthmus," we have given our whole attention to this difficult subject, endeavoring to find a solution which may harmonize and satisfy the exigencies of the case.

It is known that the treaty was disapproved because of unconstitutionality, illegality, and inconvenience for Colombia of some of its provisions, and because, while the Senate was considering it (under its constitutional prerogative and in accordance with the provisions of the treaty itself) and was in possession of the report which, at the first debate, the majority of the committee named for the purpose submitted, and of the restrictions proposed, the Government of the United States made known to Colombia, through their United States minister in Bogotá and the department of foreign affairs, and by the latter directly to the Senate, that any modification which might be introduced into the convention would not be admitted and would be equivalent to a rejection of the treaty. The Colombian Senate, in view of the attitude and declaration of the United States Government, was left necessarily with the alternative of approving what the constitution and the interest of the country ordered it to reject, or of refusing its approbation to what had been conditionally agreed upon by the two Governments. The Senate determined upon the latter of these alternatives, as was to have been expected.

Keeping within the constitutional limits (according to our loyal understanding of the constitution) and admitting such concessions as reason and experience show are indispensable, in order to arrive in this matter at a satisfactory and practical solution, we have formulated a draft of a law of authorizations, which we submit on a separate page, and which, if certainly an imperfect result because of the difficulties of the subject, of our incapacity, and of the many peculiar circumstances of the present case, will show our desire to succeed, and that an initiative which may tend to solve a problem of such universal importance as that of communication between the two oceans through our Isthmus of Panama, is not abandoned without some fresh effort made in good faith and loyalty by both parties.

It is too clear to us (as to all the world) that this matter can not be determined heedlessly, but that its solution, the result of which will affect our entire country for centuries, and represents at this time the hope of life and prosperity or the fear of ruin to important sections of the country, and even to those sections apparently remote and isolated with respect to the colossal work, demands that it be considered and acted upon in an especial manner, not permitting the standard to be disturbed either by erroneous notions or half-formed truths, which usually divert it or carry it to extremes which, the fervor of the moment having passed, may afterwards appear improper. Calmness, a precise appreciation of the present and future national needs, in the widest and noblest sense of those words, foresight and prudence must enter into the study of this thorny question in order that it can be said that it was settled for the country's good, which must consist in acts, not in words; in serving the country, not in harming it in the belief of serving it. We may feel sure that this is the first occasion in which this problem has been presented before the world under the conditions which we now have before us. It would be, then, useless to look for precedents. Whatever may be done to settle the matter under these circumstances, which no one can alter, will be the precedent for future cases. We must bravely and loyally meet the problem because it is ours, and at the same time interests the entire civilized world. It is necessary, then, to proceed without losing sight of the most important points, which are not necessary to enumerate here, and not only to look for the greatest good possible in the facts for Colombia, but to try to patriotically avoid serious evils whose character and importance might perhaps involve worse results than those which are now circulated around by the best intentioned but, perchance, not sufficiently discerning persons who, in desiring that things shall be as they are not, close their eyes to the reality of a situation which if prudently looked into might be converted into good to the country, but if unknown or carelessly studied, will not fail to bring about dangers and complications in no way compensated by good intentions or friendly words. Civil courage demands, in cases like this, a frank expression of honest conviction.

In view of which we have the honor to propose the following draft of a resolution:

"That there be a first debate of the draft of a law by which a disapproval is ratified and authorizations are given to the Government to negotiate the opening of an interoceanic canal across the Isthmus of Panama."

Bogotá, August 29, 1903.

Submitted by the undersigned members of the committee designated by the president of the Senate:

PEDRO NEL OSPINA.

MANUEL MARÍA RODRÍGUEZ.

Upon the recommendation of the honorable Senator Luis F. Campo.

PEDRO NEL OSPINA.

OFFICE OF THE SECRETARY OF THE SENATE.

On this date it was resolved to extend the time for consideration of the draft to which this report refers until the session of next Monday, and to publish prior to that date the report of the draft of the law in a loose sheet.

September 2, 1903.

*Draft of a law which ratifies the disapproval and gives authorization to the Government to negotiate for the opening of an interoceanic canal across the Isthmus of Panama.*

The Colombian Congress decrees:

Article. Ratifies the rejection made on the 12th of August in the Senate chamber of the "convention between the Republic of Colombia and the United States of America for the construction of an interoceanic canal between the Atlantic and Pacific Oceans," signed at Washington on the 22d of January of the present year, 1903.

Article. Invests the President of the Republic with all the necessary powers, in order that at any time he may deem proper and opportune he may negotiate public treaties or conventions for the opening of an interoceanic canal across the Isthmus of Panama, or contract for the construction of such a work with corporations or private companies who may give sufficient guarantee of being able to carry the work to completion within the term that may be designated.

Article. The foregoing authorizations shall be understood to be granted without prejudice to the rights acquired by the New Panama Canal and Railroad companies, which companies shall continue in the full use and enjoyment of their privileges and concessions, and subject to the fulfillment of their obligations, so long as they have not come to an agreement with the Government of Colombia concerning the manner of transferring to another company, political entity (corporation?), or foreign government the rights, concessions, and privileges growing out of the contracts entered into with them.

Article. The Government of Colombia shall permit the railroad company of Panama to transfer to another government or entity the rights and enjoyments which said company may possess in the aforesaid enterprise, providing that the concessioner and concessionist respect the contracts which are now in force in the matter, particularly as regards the recognition of the obligation to pay to Colombia the annual rental of 250,000 pesos in gold, and to transfer (to her) the absolute ownership in the enterprise at the expiration of the year 1967, or pay in that year a fair price for the work, fixed by an agreement between the two parties or, in case of disagreement, a sum to be determined by the government of some friendly nation as arbitrator.

Paragraph. In the transfer mentioned, the public lands referred to in title 2 of the contract entered into with the railroad company on the 15th of April, 1850, shall not be included, such lands shall then be returned to Colombia. The lands used by the line of the railroad, the stations and other appurtenances shall be turned over to the Republic at the expiration of the existing concession.

Article. The Government of Colombia will likewise permit the New Panama Canal Company to transfer its rights and engagements to any other Government or political entity providing that the said company fulfills the following conditions:

First. That there be paid to the Government of Colombia when the transfer is made the sum of 50,000,000 francs.

Second. That there shall not be included in the cession 500,000 hectares of public land which, under the present contract, belongs to it. These lands shall be returned to the full control of Colombia.

Paragraph. The 50,000 preferred shares which the Republic has in the New Canal Company shall be canceled as soon as the Government receives the 50,000,000 francs referred to in the second part of this article.

Article. In the negotiation of the treaties or conventions mentioned in this law the Government of Colombia is authorized to make, if it shall be necessary, concessions on the following bases:

First. To constitute a right for the sole end of constructing, maintaining, and operating a canal and its auxiliary works upon a strip of Colombian territory 10 miles wide, from the Caribbean Sea to the Pacific Ocean, in which (zone) the cities of Panama and Colon shall not be included. The duration of this right shall be for one hundred years and the concessioner shall pay for this right an annual rental sum of \$150,000 in gold up to the year 1967, inclusive, and \$400,000 from 1968 and thereafter, this concession being renewable at the option of the concessioner for periods of equal duration (one hundred years), provided the latter agrees to increase, in the proportion of 25 to 100, above the maximum bases of the preceding period, the annual rental sum.

The concessioner shall also have the right to use and dispose of materials of construction which are within the zone referred to and of the waters necessary for the construction, operation, and maintenance of the canal and its auxiliary works.

2<sup>a</sup>. Expropriation in conformity with Colombian law, and at the cost of the contracting Government, of private properties in the aforementioned zone, and previous indemnification, at the cost of the same Government, for damages and injuries which the works or labors undertaken may occasion to private properties.

3<sup>a</sup>. The consent of Colombia for the construction of ports at the mouths of the canal and for the use of the portion of the sea adjacent to them, so far as said use is necessary for anchorage, repair, and protection of vessels.

4<sup>a</sup>. The free use across the zone for public roadways already existing or for those that may be constructed between the towns and districts of the Department of Panama.

5<sup>a</sup>. Exemption from customs duties, established in favor of the foreign contracting Government for the introduction of machinery, fixtures, and tools necessary for the construction and maintenance of the work.

6<sup>a</sup>. The neutrality of the canal and explicit recognition of the sovereignty of Colombia over all its territory and inhabitants.

7<sup>a</sup>. For the judging of all causes or litigations, whether the interested parties are foreigners or Colombians and foreigners, the Colombian Government shall agree with the foreign contracting Government upon the establishment, in the constituted zone, of mixed tribunals with civil, criminal, and admiralty jurisdiction, which tribunals shall be composed of jurists named in equal number by each of the two Governments, and the laws and regulations which they may agree upon shall be in force.

8<sup>a</sup>. It shall be the duty of the Colombian Government to maintain order, security, and public sanitation by means of police and the national army in the aforementioned zone of the canal; but Colombia shall be permitted to ask the loan of such service from the foreign contracting Government, and in such event the latter Government must render the service at its own cost.

9<sup>a</sup>. And, finally, that the Bahía del Almirante shall be, in no case, included in the waters which are at the disposal of the contracting Government, and that the right is reserved to Colombia to utilize as seems best the present geographical communication between the channels of the Atrato and San Juan Rivers.

Article. The Government of Colombia shall stipulate in the treaty or convention a provision for forfeiture in the event that the concessioner does not begin or complete the work on the canal within the appropriate and sufficient periods that may be fixed for that purpose.

Article. It shall be expressly stipulated that any disagreement as to the meaning or interpretation of the treaty shall be settled by the arbitration of a nation friendly to both contracting parties.

Article. An as initial compensation for the granting of the right which is referred to in article —, and for the other rights and concessions authorized by this law, the contracting Government shall pay to Colombia, as a minimum, the sum of \$20,000,000 in American gold upon the exchange of ratifications of the treaty.

Article. If the negotiation shall be made with a private company or association, the bases shall be analogous to those of the contract entered into with the French company, and shall primarily stipulate the following conditions:

- (a) Recognition of the legislation and jurisdiction of Colombia;
- (b) Renunciation of diplomatic intervention in case of any claim not a denial of justice;
- (c) Forfeiture of the privilege for nonexecution of the work within the fixed periods;
- (d) Recognition in favor of Colombia of such shares in the enterprise as may be the estimated value of the works already made, of the machinery, fixtures, and tools of which the nation shall be the owner at the expiration of the extension granted to the Canal Company;
- (e) The complete acquisition of the enterprise gratuitously by Colombia at the termination of the one-hundredth year of the concession.

Bogotá, August 29, 1903.

Submitted by the undersigned members of the committee designated by his excellency the president of the Senate: Pedro Nel Ospina; Manuel María Rodríguez. Upon the recommendation of the honorable Senator Luis F. Campo. Pedro Nel Ospina.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, September 22, 1903. (Received 1.36 p. m., 23.)

September 22, 5 p. m. The proposed law concerning the canal treaty has not been discussed since the first reading. No new developments.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 150.]

LEGATION OF THE UNITED STATES,  
*Bogotá September 24, 1903.*

SIR: The report of the committee with its project of law authorizing the executive to negotiate for the construction of an Isthmian canal has not yet been presented to the Senate since the first debate.

The legislative procedure in the Colombian Congress is as follows:

At the first debate the project of law is presented, and if it is a subject that the Senate desires to consider, it is passed. If rejected it is implied that the Senate does not wish to consider the matter at all.

If the project of law passes the first debate it is referred to a committee appointed by the president of the Senate. The committee is given a reasonable time to study the law and has the power to suggest amendments. When this committee reports the matter comes up for the second debate, and this is the crucial test. Aside from the report of the committee individual members may propose amendments, and there is a general discussion of the whole question. As the law comes out of this debate it will pass, for the third debate is but a matter of form.

The project then goes to the Chamber of Representatives, where the same rules are observed.

A law may originate in either the Senate or the Chamber, and may be introduced by any member thereof or by the ministers of the Government, and the ministers may take part in all legislative debates.

There is no provision for conference committees, but if amendments are made to a Senate law by the Chamber, it is sent back to the original body for further consideration.

As I have previously reported, the proposed law authorizing the Executive to negotiate for the construction of a Panama canal, passed the first debate in the Senate; it was then referred to a committee headed by Senator Quintero Calderón as chairman. That Senator has since been very ill, so that nothing has been done toward a report. Yesterday, the 23d instant, the president of the Senate appointed Senator Rivas G. as chairman of the committee to succeed Senator Quintero Calderón, and gave him five days in which to prepare a report.

According to the very best information that I can get at this time, there is very little probability of the law passing the second debate in its present form. The enemies of the Government and the canal treaty threaten to add amendments still more unfavorable to the United States, and that they will succeed I do not doubt. I had an interview this morning with Gen. Pedro Nel Ospina, one of the strong men of the Senate, and he, too, is of the opinion that modifications are certain to be made.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 154.]

LEGATION OF THE UNITED STATES,  
*Bogotá, September 25, 1903.*

SIR: I have the honor to report some further details relating to the Panama Canal treaty.

A resident of the United States, and one not thoroughly familiar with the people of Colombia and especially of Bogotá and the interiors, can not understand the embarrassments and trials experienced by this legation during the course of the canal negotiations.

The difficulty of getting reliable information of the status of affairs has been almost insurmountable, because public opinion and the ideas of the leaders on both sides have varied and shifted with the succeeding days.

When Congress convened and the first votes taken in the Senate indicated that the Government had been sustained and that its friends were in the majority, most people believed that the treaty would be ratified.

As time went on and the Government did not use its influence in favor of the treaty, and the committee to whom it had been referred were twice given an extension of time for their deliberations, the long wait and inaction lessened public interest in the main question, and there was little discussion of it.

Then Senator Caro appeared upon the scene and commenced his violent assaults upon the Government, and the executive power began certainly and surely to lose ground. Again the public was aroused into vehement opposition to the treaty. During this period, and before there was an opportunity for another reaction, and before there was any real discussion of the merits of the treaty, it was presented and rejected.

While this latter period lasted it seemed impossible to get the expression of the real opinion of any of the senators, with the exception of Obaldia, Perez y Soto, and Velez. It is a positive fact that some of the most prominent senators avoided me because of the charges frequently made that bribery was being resorted to by the United States, and the consequent fear that if seen in conversation with the American minister they would be under suspicion. This was admitted to me after the rejection of the treaty.

Mr. Enrique Cortez was one of the two men who defended the treaty in public articles. Because I was seen making a social call at his residence, he was openly accused the next day of being in the pay of the United States minister. He afterwards intimated to my son-in-law that for the above reason he could not see as much of me and my family as he wished.

Of course these matters are unimportant, except that they show the annoyances and difficulties one has to contend with in this country, where, after all, the little things so greatly affect and influence the great ones.

The minister for foreign affairs was evidently as reluctant as others to express any opinion, and it was very apparent that he did not wish to discuss canal matters. About all I could get from him was that conditions were "very bad" or "a little better." I found the President much more inclined to tell me his hopes and fears on the question.

General Reyes said to me that he had advised the Government against forcing the ratification of the treaty in the early days of Congress, thinking it best to influence public opinion into a more favorable state before taking such action, and that this had been the Government's view. He realized that this course had been a serious mistake, for the reaction that they had anticipated had not come. His own actions had been influenced by these views, and it was only a few days before the rejection of the treaty that he came out in the open and advocated its ratification. I believe that he did the best he could after that, but it was too late.

It was in these last few days that the idea presented itself to members of the Government, General Reyes, and others, that it would be best to have the treaty rejected at the first debate, in the hope that such precipitous and unusual action would arouse the coast departments into vehement protests, send exchange up enormously, and so disturb the country that there would be a reaction of public sentiment which would enable them to either have the treaty reconsidered or to pass a law authorizing the President to complete the negotiations.

But their plans and anticipations were built upon sand. The reaction they hoped for did not come. The mere announcement that a joint congressional committee had been appointed to provide ways and means for the construction of a canal was enough to calm the public pulse, for the public has continued in the secure belief that the United States would never seriously consider any other route for a canal than that through Colombian territory; that she was abundantly able and would in the end concede to Colombia a much greater recompense in money and more favorable concessions generally; that whatever proposals the new committee would make would be accepted by the United States. With this belief abroad, the opposition to the terms of the proposed treaty has intensified rather than otherwise, culminating in the report of the joint committee now before the Senate.

With all this shifting and changing of plans and sentiments, it has been most difficult to forward to the department reliable information. I have several times been about to telegraph news which came to me from what should be absolutely authoritative sources, when further investigation convinced me that it was a myth; a theory of one day which would be abandoned the next.

In connection with the unreliability of the information given out by people in high places, I might mention that one day a prominent Senator told me very confidentially of a plan concerning the treaty that was to be carried out. Within an hour afterwards, a friend came to the legation, fresh from an interview with the same Senator, who had told him that a plan would be proposed in all respects different from the one explained to me. When I informed my visitor of my conversation with the Senator, he said: "Mr. Beaupré, am I going mad! or have these people all lost their senses? There is nothing but lies and lies! I walk two blocks to hear an important bit of news, and in the next two hear an entire contradiction, both coming from the same source." I should add that neither of the plans were ever acted on.

And so it has been from the beginning.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.



*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, September 27, 1903.  
(Received September 28, 1.12 p. m.)

September 27, 8 p. m. No change in canal matter. Second debate of projected law will probably be decisive, and this will occur within a few days. Additional amendments practically certain.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, September 30, 1903. (Received 10.55 p. m.)

September 30, noon. The Senate commission appointed at the first debate on canal committee's report of September 12, to prepare the matter for second debate, have prepared their report, and it will be presented in a few days. It approves rejection of the treaty August 12, but disapproves the proposed law authorizing the executive to negotiate for the construction of a canal under mentioned conditions. The object is to leave the Government at liberty to negotiate a new treaty without restriction. There is a prospect that it will be adopted.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 164.]

LEGATION OF THE UNITED STATES,  
Bogotá, September 30, 1903.

SIR: I have the honor to report that I have succeeded in obtaining from Senator Rivas G., chairman of the committee to whom was referred the report made to the Senate by the canal committee on September 12, the substance of the report which he will make in the next day or two. As I telegraphed to the department to-day, he will recommend the approval of the action of the Senate on August 12 in rejecting the Panama Canal treaty with the United States. He will also recommend the disapproval and rejection of the proposed law authorizing the President to make treaties or contracts for the construction of an Isthmian canal. This law was embodied in the committee's report made on September 12, and contained many provisions binding the President to a certain line of action, and prescribing the concessions which could be made, of which I have previously informed the department.

Senator Rivas said that by simply rejecting this proposed law, and adding no further legislation, the Government would be left at full liberty to negotiate, without restrictions, on such terms as could be obtained, and as would be honorable and just to the contracting parties. He felt confident that his plan would be accepted by the Senate and confirmed by the Chamber of Representatives.

If the Senate takes this step, and there seems to be a reasonable probability that it will, the canal matter will stand just as it did the

day after its rejection on August 12; or, in fact, as it did before the treaty was signed in Washington on January 22, 1903.

It is said, and generally believed in this city, that there is a project on foot among certain Senators to annul the arrangement entered into by the Colombian Government and the French Canal Company in 1900, extending the franchise and privileges of that company. Even men good enough to be candidates for President are advocating this action with all seriousness and solemnity. It is urged that Congress has full power to either annul or ratify the action of the Government in this matter, and that if the arrangement made extending the contract is declared null and void, the French company's rights and interests on the Isthmus cease to exist, and Colombia could then arrange with the United States to receive not only the \$10,000,000 offered her, but the \$40,000,000 offered the company.

The good or bad faith of such a movement is not of sufficient consideration to prevent an attempt being made to carry it out, and were it not for one important element in the situation, it is quite among the possibilities that it would be successful.

Senator Caro and his followers are powerful factors in the present Senate. Senator Caro was an intimate friend and advisor of President Sanclemente, under whose administration the franchise of the French company was extended, and it is quite certain that he will defend that administration to the extent of his ability. He would probably favor any investigation or action tending to the detriment of the present Government, but not any retrospective measure censuring the previous Government. As the situation now is, any project seriously opposed by him would stand little chance of success.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, October 9, 1903. (Received October 14, 2.10 p. m.)

The report of the committee referred to in my telegram of September 30 will be presented this afternoon. Informed the principal recommendation will be to annul the arrangement made with the canal company in 1900 extending its concession. By such action Colombian Government evidently hopes to renew the negotiations without any reference to company, and by this means United States of Colombia would be enabled to accept the money compensation otherwise accruing to the company.

Will advise further as soon as I can see report.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, October 10, 1903. (Received October 14, 2.59 p. m.)

October 10, 1 p. m. Presentation of the committee report postponed until 12th. My telegram of September 30 states the first two

clauses of the report. The third and last presents a project for law approving extension in time granted canal company. Apparently this is proposed with the expectation that the Senate will negative the project and annul extension, thus accomplishing the object stated in my telegram, 9th. However, I think in case most of them vote, extension in time to the company will be annulled. The probability is that Congress will adjourn without taking conclusive action on this report.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 176.]

LEGATION OF THE UNITED STATES,  
*Bogotá, October 10, 1903.*

SIR: I have the honor to make reference to my telegrams of yesterday and to-day concerning the probable terms of the report to be presented by the commission of three Senators to whom the project of law authorizing the Government to negotiate for the construction of an interoceanic canal across the Isthmus of Panama was referred.

I had been given to understand that this report was to be presented and discussed yesterday, the 9th instant. On sending to the Senate, however, I was told that the canal question would not be brought up, and several Senators informed me that they were not even aware of the terms of the report, but that the question would in all probability be brought before the Senate on Monday next, the 12th instant.

My only source of information was therefore of an entirely private nature. Through ——— I obtained a summary, the substance of which was contained in my telegram to the department.

As I telegraphed the commission has decided that there is no need for the rejection of the treaty to be reaffirmed by the Senate; that neither is it advisable to pass the special law authorizing the Government to conclude a fresh treaty for the construction of an isthmian canal on certain basis, thinking it best not to tie the hands of the Government with hard and fast conditions. Lastly, the commission suggest that the Senate should settle the question of the extension of time to the New Panama Canal Company and present a project of law approving the action of the Colombian Government in this matter.

With regard to this extension of time, known as "proroga," there is no doubt that many people high in authority have cherished the hope that some means might be found to undo this act of the Sanclamente Government. The feeling of the Bogota public on this question is, moreover, very patent. They have been led to believe through the medium of the press that, could the "proroga" be annulled, Colombia would thereby inherit the whole of the money compensation otherwise accruing to the French company. However, as I reported in my No. 164 of September 30, 1903, I am informed that there is no danger of this taking place. Such men as Senators Caro, Pedro Nel Ospina, and even Perez y Soto thoroughly realize that the preceding Government and this one are equally involved in the "proroga." The Sanclamente Government agreed upon the grant of an extended time limit, while the Marroquin Government received the 5,000,000 francs, the price paid for that exten-

sion. Besides, it is the view of these senators that the "proroga" was a contract concluded in good faith between the Colombian Government and the canal company, and to rescind this contract will need the consent of both parties to it. It is, therefore, thought that while the "proroga" may be used as a means of bringing up a discussion in Congress with the view to censuring the Government, no act of that body can have the effect of annulling the extension contract without the consent of the other party to it—the New Panama Canal Company. Because of the attitude of these and other senators, there is decided ground for believing that this project of law approving the extension will be passed.

Monsieur Mancini, the local agent of the canal company, is taking an active interest in this matter, and takes every opportunity to impress upon the Senators the fact that even should the contract now held by the French Company lapse, the Colombian Government would be no better off than they are at present, for the reason that, in such event, all the material would remain the property of the French Company, leaving the Colombian Government merely in possession of the ditch itself. The Panama Railroad, however, remains. Since the French Canal Company owns the majority of the shares in that railroad, it has practical control of the undertaking. Now, the canal works have been carried on within the zone of territory controlled by the railroad company, and could only be continued subject to the consent of that company. Therefore, even though the concession held by the French Company lapse, that company nevertheless retains control of the territory, and its previous consent would be required before the Colombian Government could dispose of its rights over the canal zone.

Monsieur Mancini informs me that he had made this point clear to the principal members both of the Government and of Congress, and that many concur in his views. Moreover, that some time before the rejection of the Hay-Herran treaty, he wrote to Mr. Cromwell informing him that in all probability an attempt would be made to override the rights of the French Company and to call in question the validity of the extension of time granted to it. To this he received no reply beyond the mere acknowledgment of his message, and his only instructions have been not to move in the matter at all. He therefore concludes, so he told me, that the United States Government and the French Company have arrived at some satisfactory understanding.

I desire to take this opportunity to state that my position during the whole course of the canal negotiations has been a most embarrassing one. I have thoroughly realized what must have been the anxiety of the department to be well informed of the progress of events. And yet, although it is nearly four months since Congress met, there have been but four or five days during which the canal question was considered, from the initiation of the discussion up to the present time. I have kept in touch with the principal members both of the Government and Congress, and whenever I have succeeded in getting any reliable news, which has not been often, I have reported it. During the long intervals between the days above mentioned there was really nothing to report, except street gossip and wise people's predictions. I have, therefore, had to choose between adopting the attitude of the newspaper reporter and forward such as news, or limit

myself to the scanty facts I was able to gain from authentic and official sources. I chose the latter course. When I did obtain information which I deemed of sufficient importance to cable, I have had the misfortune to have some of my most important messages mutilated in transmission.

During the long interims, when the canal treaty was buried with inactive committees, there was apparently an absolute lack of interest in the matter on the part both of the Government and Congress. One would have thought that the question was some matter of trivial or temporary importance to judge by the attitude in official circles. During one of these periods, when Congress was devoting its attention to resolutions concerning prominent individuals who were killed in the late revolution, the Liberal daily *El Comercio* said:

“Cover with laurels dead heroes, praise the memories of your illustrious men, make panegyrics over this who have served in your cause; all this is very well, and we do not wish to discuss it; but, Mr. Legislators, why sing songs of love to God over these things when you ought to consider the great questions which compromise the tranquillity and life of the Republic?”

Except then, on the few days heretofore mentioned, there was no reliable or satisfactory information to send to the department.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, October 15, 1903.* (Received 6.20 p. m., 18.)

The report of the committee referred to in my telegram of the 10th has been read in the Senate, was ordered printed, and will probably be discussed next week. It is true that the committee proposes a project for law ratifying the time extension granted canal company, but the tone of report clearly gives to understand that Colombia would greatly benefit by the canceling of the extension, and states that in that case Colombia would next year obtain possession of all the rights and properties of the canal company [and] thereby be free to come to terms with Government of the United States under most advantageous circumstances. The committee provides for the case of the annulment of time extension by recommending the appropriation of the necessary sum for the repayment with interest of the 5,000,000 francs paid by the French company.

In view of developing sentiment, my opinion of final result is less decided than stated in my telegram of 10th.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 179.]

LEGATION OF THE UNITED STATES,  
*Bogotá, October 16, 1903.*

SIR: I have the honor to report that in compliance with the request contained in a newspaper article written by Dr. Emilio Ruiz Bar-

reto, that the candidates for the presidency should publicly express their views on certain named questions of national interest, Gen. Joaquín F. Vélez publishes a signed communication in to-day's issue of *El Nuevo Tiempo*.

It is apparent that General Vélez will be the candidate for President to be named in opposition to the one selected by the Government, for he has demonstrated far more strength than anyone else mentioned. As the election will take place on the first Sunday of December next, it becomes interesting to know General Vélez's views on the Panama Canal question, and I inclose herewith a copy and translation of that portion of his communication dealing with this subject.

General Vélez has some very remarkable ideas concerning public construction, the duties of foreigners, etc., some of which he very freely expressed when he was governor of the Department of Bolívar in a letter addressed to Mr. George Colvig, United States consul at Barranquilla, on February 11, 1902.

A copy of this letter was set to this legation by the Department in its No. 385 of March 26, 1902,<sup>1</sup> as one of the inclosures in a letter from the Board of Foreign Missions of the Presbyterian Church in the United States, dated March 19, 1902, and I respectfully refer to it.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

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[Translation.]

Overcoming numerous difficulties, I have assisted at the late sessions of the Senate with the main, if not the sole, object of voting against the Hay-Herrán treaty, as I was rejoiced to do at the celebrated session of August 12, a session at which that august body rejected that treaty in first debate and by a unanimity of votes. That treaty was a violation of our fundamental institutions, of the sovereignty of our nation. I say, therefore, that any other project respecting the building of an interoceanic canal presented to the Senate and having implicitly or explicitly any of the numerous mistakes which rendered the treaty in question unacceptable to the common sense and dignity of Colombia, will always receive my adverse vote. The integrity of its territory, the attributes of independence and sovereignty, and other important points which form the principal constituents of a civilized country are absolutely inviolable. This is a universal and unalterable canon which may not be altered out of false considerations of worldly or territorial purposes, and still less for a certain kind of pessimism engendered by errors and false views in governments or by vile speculation. Nations, like families, in their development and growth, must use their own forces without defiling the natural laws of growth with exotic stimulants, which paralyze or unnerve even when they do not ruin. Foreign aid will be beneficial under our own intelligent and well-supported direction. Our beautiful country will surely acquire in epochs that are, who knows, not far off the tranquillity and maturity, the practical spirit and the political wisdom, which nations of all races have been without for long periods of time; nations which, while certainly being models of culture, have been powerless to do good.

Of life-giving wisdom there is more than enough; all that is wanting is a man of superior talents who will put that knowledge into practice. In one word, I desire, as do many of my countrymen, that any canal that shall cross our isthmus shall be for all time, in the rigorous significance of the world, a Colombian canal; and if it is not to be a Colombian canal, that it shall not be constructed. Better times will come which will admit of the carrying out of that gigantic work without detriment to the national existence, and in a way satisfactory to the sentiments of patriotism.

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<sup>1</sup> Published in *Foreign Relations*, 1902, p. 293.

*Mr. Beaupré to Mr. Hay.*

No. 181.]

LEGATION OF THE UNITED STATES,

*Bogotá, October 16, 1903.*

SIR: I have the honor to inclose herewith a copy and translation of the report of the committee to whom was referred the project of law authorizing the Executive of the Republic to negotiate for the construction of a Panama canal. This report was read in the Senate on the 14th instant.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Inclosure with No. 181, October 16, 1903, from Mr. Beaupré—translation.]

MAJORITY REPORT OF THE PANAMA CANAL COMMITTEE.

*Honorable Senators:*

Colombia desires the construction of a canal via the Isthmus of Panama that will bring the two oceans into communication with each other. Since it became independent our Republic has considered such a work as an enterprise of universal progress. In 1825, at the initiative of this country, an effort was made to organize a company for this purpose. In 1828 and 1829 the liberator president gave wise and precise orders looking to the construction of a canal, and to that end a scientific commission began the work, made a survey of the route, and explored the entire distance between the two oceans.

On the 27th of May, 1835, the Congress of New Granada issued a decree for the development of the enterprise, granted a privilege to Baron de Thiéri, and in 1838 sanctioned a legislative decree making a concession to the company organized in France and New Granada.

After several years of exploration, the reports of the company were so satisfactory that the Government of France appointed, in 1843, a special commission which finished its examination with the most hearty support of the Government of New Granada.

We deem it unnecessary to enumerate here the successive efforts and concessions which, during seventy years, seconding the initial thought of the liberator, Colombia has made in behalf of the interoceanic canal.

We will recall, in passing, some of the various official acts designed to promote the work.

Decree of Congress in 1835; legislative decree of 1838; decree of Congress in July, 1842; legal convention of 1851; official instructions of 1843; law 60 of 1866; treaty of January, 1869; congressional instructions of 1869; treaty of January, 1870; law of approval, July, 1870; law of authorization, 1876; treaty of May, 1876; treaty and law of approval, 1878; extension granted by law 107 of 1890; new second extension granted by law 91 of 1892; contract for extension, April, 1893; legislative decree granting extension in 1900.

As is seen, Colombia, by solemn public acts, has shown that she considers the construction of the canal as a great national work and as a necessity for the commerce of the world. Although the Senate unanimously rejected the Herran-Hay treaty, it did so not with a view to opposing so glorious and necessary a work, but from the fairest and highest motives.

The foreign press affirms our right to reject said treaty, and it is recognized by the chairman of the Interoceanic Canal Committee. That remarkable public man who for more than a quarter of a century has fought for an interoceanic canal controlled by the United States, hearing of the rejection, expressed his views as follows:

"If the Colombian Congress has rejected the treaty, it is because that country respects its constitution, is mindful of the integrity of its territorial limits, desires to maintain its friendly relations with the United States, and is watchful of its financial interests. All this will raise that Republic in the estimation of other peoples and nations."

We will now examine the bill ratifying the rejection and authorizing the Government to negotiate for the construction of an interoceanic canal via the Isthmus of Panama.

As is seen, the said bill has two objects, viz. to confirm the Senate's rejection of the treaty between the Republic of Colombia and the United States of America, concluded at Washington January 22, 1903, and to invest the President of the Republic with such powers as will enable him to conclude public treaties or conventions relative to the Panama Canal or to contract for the same work with private companies.

We consider that the first object is not only superfluous, because the rejection by the Senate is based upon constitutional provisions to which an authentic interpretation has been given and which have constantly been put into practice in the same sense, which interpretation and practice render the rejection sound and correct in the form in which it was made, but also that the new form of ratification which is proposed would introduce a doctrinal theory different from that already established and accepted for seeking to decide a special case of grave import, to which, for this and many other reasons, it would be wholly inapplicable.

In fact, it is a constitutional provision that every proposed law by means of which the legislative houses exercise, or seek to exercise, their powers in conformity with article 76 of the constitution, may be rejected in any of their debates, thereby fulfilling the negative in contrast to the positive form, both of which are the outcome of the twentieth provision of said article.

If this were not so, the members of the houses would be deprived of the necessary freedom in their opinions and votes, and both would cease to be deliberative bodies.

The authentic interpretation to which we refer is contained with great clearness in article 323 of the rules of the Senate, identical with article 322 of those of the house of delegates, which we here insert:

"As it is not possible for a treaty to be constitutionally approved otherwise than by Congress, with the sanction of the Executive, but as it may be rejected by the Senate or House of Representatives, like any other proposed law, according to the constitution, if any decree should come from the House of Representatives totally and absolutely rejecting a treaty, it shall return it, stating that the Senate is apprised of its rejection."

When the said article 76 of the constitution provided that the Congress should exercise by law the powers enumerated in that article, among which is the power to approve or reject public treaties, it tended to prevent the exercise of those powers, notwithstanding the prohibition contained in paragraph 2 of article 78 of the same constitution, by means of simple resolutions, but it did not pretend to compel the legislators to vote in a determinate sense or to pass laws, even those most necessary.

The second object of the proposed law concerning authorizations consists in finding a way to satisfy the desire of the Colombian people regarding the excavation of the Panama Canal in harmony (says the proposition approved by the Senate on the 13th of August last) with the national interests and respect for law, which has been on this solemn occasion the guide of the Senate.

Your committee considers that the proposed law relative to authorizations is unconstitutional. Article 120 of the constitution says:

"It shall be the duty of the President of the Republic, invested with the supreme administrative authority \* \* \* 10. To direct diplomatic and commercial relations with other powers and Governments \* \* \* and to conclude treaties and conventions with foreign powers. Treaties shall be submitted to Congress for approval and conventions shall be approved by the President during the recess of Congress, with the advice and consent of the ministers and council of state. The proposed law shall not modify the provisions of the constitution."

Besides, that law is not only unconstitutional, but fails to meet its object because the instructions which would be given to our diplomatic agents, instead of being necessarily confidential, would be public, and known to the other Government or to the contracting company, which would consequently have an indisputable advantage in the case.

Furthermore, the Senate does not overlook the fact that if this law concerning authorizations should be passed, and if the Executive, basing his action upon it as upon a firm basis, should expedite a negotiation and conclude a treaty, he would perhaps give occasion to the power with which the treaty was concluded to complain, subsequently, that a Congress had rejected what this Congress and the Executive branch of the Government had presented as a basis of negotiations.



Moreover, the matter being carefully considered, no negotiations could, in any case, be properly carried on upon the bases that would be presented to this Congress by that law; and the law would not have the serious and efficient character which every law ought to have.

Your committee thinks that this law is not only unconstitutional and ill adapted to meet its purpose, but that it is unnecessary. The constitution which has provided for the independence of the different branches of the Government, thus consecrating a principle which has been recognized since the adoption of the constitution of 1811, has also traced limits for those branches, and, although it leaves to the Executive the power to conclude treaties, it makes it absolutely obligatory upon him at the same time to submit them to the legislative branch for its approval. Article 57 says: "All branches of the Government shall be limited, and shall exercise their respective powers separately." And article 76 says that it shall be the duty of the Congress "to approve or reject such treaties as the Government may conclude with foreign powers."

Even if a law concerning authorizations should be passed, the treaty that should be concluded in virtue thereof by the Government would necessarily have to be submitted to the approval of another legislature, which might fail to pass it.

What would, therefore, be gained by a law that would give no force to the treaty which would be concluded on the bases and authorizations which it contained?

We present these abstract considerations, and they would all be pertinent even if the Executive were free to conclude treaties looking to the construction of the Panama Canal, but it is known that the Government of Colombia is not at liberty to do so; a contract exists which binds it, and this link has not been broken.

This is, in our opinion, the greatest obstacle to the law in question, which would be premature if not calculated to defeat its own object. We think it useless to demonstrate that the fundamental point to which the attention of the Senate should be confined is the one relating to the validity of the engagement already contracted by the Government.

The Herran-Hay treaty has ceased to exist, both because of its unanimous rejection by the Senate and because the time for the exchange of its ratifications, the 22d of September, has already expired, without any extension having been provided or asked for. Consequently the state of the case is the same that it was before the conclusion of the treaty. The first condition therein established was the permission granted to the new company to transfer its rights. The Senate having refused to accept this condition, the company has remained under obligations to fulfill its contract, and the Colombian Government is still under obligations to respect all its provisions and to cause them to be respected.

How can it be asked that Congress shall enact a law of authorizations to negotiate with a foreign government when the rights and privileges of the New Panama Canal Company are still in force?

The treaty concluded April 4, 1893, which amended those of March 23, 1878, and December 10, 1890, granted to the New Panama Canal Company an extension of ten years—that is to say, until December 31, 1904. Consequently, even without a new extension, the company will be in the full enjoyment of its rights and privileges until October of the coming year. But there is another consideration: The legislative decree No. 721 of 1900 granted to the company a new extension of six years, which begins to be reckoned next year and will end October 31, 1910.

One point now remains to be examined, which has so often been discussed by the press, a point which, now that the matter is under discussion, should be defined.

Is the extension granted by that legislative decree valid or not? In the first case—that is to say, if it is considered valid—seven years must elapse before the extension expires, and therefore any law concerning authorizations seems premature, as three sessions might still be held which would be able to examine the matter and to legislate concerning it with better data and evidence than the present Congress has; and if the extension is not valid, the aspect of the question changes entirely, and the basis of discussion will be quite different. By the 31st of October of next year—that is to say, when the next Congress shall have met in ordinary session—the extension will have expired and every privilege with it. In that case "the Republic will become the possessor and owner, without any need of a previous judicial decision and without any indemnity, of the canal itself and of the adjuncts that belong to it, according to the contracts of 1878 and 1900."

When that times arrives, the Republic, without any impediment, will be able to contract, and will be in more clear, more definite, and more advantageous possession both legally and materially. The authorizations which would then be given by the next Congress would be very different from those that can be given by the present one.

It is seen, therefore, that it is the duty of Congress to decide, as a previous question that can not be shirked, concerning the validity of the extension granted in 1900. We venture nothing on the subject, and we respect, in advance, the decision of Congress in so delicate a matter. Supposing that it does not ratify said extension, it is well to observe now that it would be necessary to include in the budget the appropriation that would be necessary to repay to the company the sum of 5,000,000 francs with interest.

In view of all the foregoing, we conclude our report by laying before you a draft of a law whereby a contract is approved, and by submitting to your consideration the following:

Let the discussion of the draft of a law whereby a rejection is ratified and authority is granted to the Government to negotiate for the construction of an interoceanic canal across the Isthmus of Panama be indefinitely postponed.

Honorable Senators:

GUILLERMO QUINTERO CALDERON.  
J. M. RIVAS GROOT.  
LUIS MARIA CALVO.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

LEGATION OF THE UNITED STATES,  
*Bogotá, October 17, 1903.*  
(Received October 19—2.20 p. m.)

Have received information, confidentially, that there was a meeting of the cabinet yesterday to discuss the question of renewing canal negotiations with the United States and that the adjournment of congress will be followed by the mission of special envoy to Washington for that purpose. The president's message dissolving the congress will be delivered probably before 30th instant.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 183.]

LEGATION OF THE UNITED STATES,  
*Bogotá, October 19, 1903.*

SIR: I have the honor to inform you that during the evening of the fateful 12th of August last, on which day the Hay-Herran treaty was rejected by the Colombian senate, I sent the department three telegrams concerning the matter. Two of these reached the Department with an interval of about a week between them, but the third, the one of most timely import of all, was never received, or at least has not been acknowledged. This telegram was sent at 10 o'clock p. m. of that day and was confirmed in my No. 104 of that date.

I beg that the department will accept the cipher dates of my telegrams as in all cases correct. The open date given by the telegraph office is made to suit its convenience.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 185.]

LEGATION OF THE UNITED STATES,  
*Bogotá, October 20, 1903.*

SIR: I have the honor to inform you that it would be of great utility and satisfaction to me to be kept posted as to the course of events on the Isthmus, and, if not inconsistent with the rules, I would be glad to have it arranged so that our consular officers at Panama and Colon could send me copies of their dispatches to the department on the political situation, and that the consul-general at Panama could telegraph me whenever anything of unusual importance occurs.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 186.]

LEGATION OF THE UNITED STATES,  
*Bogotá, October 21, 1903.*

SIR: I have the honor to inform you that there is no disguising the alarm existing as to the possible action of the Government of the United States should the feeling of disaffection undoubtedly existing in the Department of Panama find expression in overt acts. This alarm took the form of a heated debate in the Senate yesterday when the Government was again attacked for the appointment of Señor Obaldia as governor of Panama. The reply elicited from the minister for foreign affairs was rather significant. He read an extract from the treaty of 1846, in which the United States guaranteed Colombian sovereignty on the Isthmus, and assured the Senate that in case of an insurrection in the Department of Panama the United States would be bound to support the Government.

In the course of this debate Señor Caro said that the minister for foreign affairs had the notes of the American minister read to the Senate, in secret session, with the object of convincing that body of the necessity of accepting the Hay-Herran treaty, in view of the menacing attitude outlined in those communications. Finding in that secret session that the Senate disapproved the treaty and was determined to act accordingly, the Government, through Senator Lorenzo Marroquin, its spokesman, obtained a resolution demanding that those notes be read in public session, with the object of making it appear that the rejection of the treaty was influenced by a sentiment of indignation at the threatening attitude assumed by the United States minister. This comedy became known to the Government of the United States, and it has resented it. He was not influenced, generally, by what was reported in the newspapers, but the statement universally given expression to in the press of the United States that the Washington Government resented the criticism made against the United States minister in carrying out the orders emanating both from the President and Secretary Hay can not be without foundation. This was only one instance proving that the Colombian Government had not acted in good faith in these negotiations. The refusal on the part of President Marroquin to sign the treaty

before presenting it to the Senate was another. Whatever reasons the Government adduced as to there being no necessity for such a signature was outside the point. The intention was clear that the treaty was not signed because the Government wanted to have a loophole whereby to escape their obligations to the United States. In other words, it did not want to be under the obligation of coming forward to defend and support a treaty which was signed by its order. It was bound in good faith to the United States to do so. It was for Congress alone to accept or reject it. Had such a course been followed there would have been no reason to look forward with alarm to the attitude which the United States might adopt. The Colombian Government had nothing to fear from the United States had it clearly done all in its power in supporting the treaty. No responsibility would then have attached to this country for the rejection of the treaty by Congress, a body which had the perfect right to reject or accept as it pleased. What he feared was that the United States might take the Isthmus from us under the just plea that we had acted in bad faith with them. The only strength which a small nation has is its good faith.

In reply the minister for foreign affairs said that the press of the United States was given entire liberty of public discussion, but that the statements made therein were not always to be accepted as entire statements of fact. That he had just received positive information that no resentment was entertained by the Washington Government for this Government's action in having Mr. Beaupré's notes read.

The report of the committee on the canal question, which was read in the Senate on the 14th instant, has not yet been called up for discussion. As a matter of fact, the Government and Congress are playing a waiting game. At various times it has been announced authoritatively that the Congress would adjourn at a given date, but thus far there have been timely reconsiderations and other dates fixed. Last week it was said that the President had certainly and definitely concluded that an adjournment must take place on the 30th instant, now that it has been determined that the closing day shall be the 14th proximo.

As a matter of fact, the Government and the Congress have waited and are waiting to ascertain, if possible, the final attitude of the Government of the United States concerning the canal matter before the life of this Congress is ended.

An effort was made by the Government to falsely place the blame for the rejection of the Hay-Herran treaty upon the notes addressed by this legation to the minister for foreign affairs, and the result was awaited in the belief that this view would be accepted by the Government of the United States. This attempt failed; the situation is disturbing; and now the further delay is, quite apparently, for the purpose of awaiting the action of President Roosevelt in his message to the special session of our Congress which is to meet, it is understood here, on the 9th proximo, and the attitude of that Congress upon receiving the President's message.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,

*Washington, October 22, 1903.*

Referring to your telegram 17th, if you find disposition on the part of Colombia to ask terms more favorable to Colombia than those heretofore negotiated, you may intimate orally, but not in writing, that it will be useless to send a special envoy.

HAY.

*Mr. Beaupré to Mr. Hay.*

No. 188.]

LEGATION OF THE UNITED STATES,

*Bogotá, October 23, 1903.*

SIR: Referring to my No. 160<sup>1</sup> of September 29, 1903, concerning the taxes and charges on shipping at Panama, I have the honor to inclose herewith a copy and translation of a note from the minister for foreign affairs on the subject.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Inclosure with No. 188, October 23, 1903—Translation.]

MINISTRY OF FOREIGN RELATIONS,

*Bogotá, October 19, 1903.*

MR. MINISTER: On account of the presence of an alarming degree of bubonic plague in various points on the Pacific coast it was determined to use a Government ship for a lazaretto in the Bay of Panama, and in accordance with law 106 of 1892, authorizing the organization of the sanitary service in the marine ports of the Republic in time of peace and placing an extraordinary contribution on the boats which arrive in Colombian ports, the governor of the department, using these legal rights, issued the decrees of June 24 and August 4 of this year, by which a tax was temporarily levied on boats of more than 1,000 tons register arriving in the ports of Panama and Colon, proceeds of which were to defray the expenses of that lazaretto. The urgency of the case prevented notice of such police measures being given to the public sooner than their insertion in the official publication.

The ports of Panama and Colon being united by rail, the same measures taken in either of these benefit the other and are taken not only to attend to transit sickness and to avoid contagion, but to favor navigation in both oceans. This shows how fair it is that not only the ships arriving at Panama but also those entering Colon should pay the tax for the plague hospital.

To facilitate foreign commercial relations as those of importation, exportation, and transit, etc., which are or are not permitted to be executed in the ports of the Republic, the law divides these into free and closed ports.

The designation of free ports does not come from any international pact, neither does it signify that the vessels arriving in those ports are exempt from the payment of taxes or contributions. In the binding treaty between Colombia and the United States it is stipulated that the citizens of each of the contracting parties may frequent all the coasts and territories of the other, and reside therein and do business in all classes of productions, manufactured goods, and merchandise; that they will enjoy all the rights, privileges, and exemptions in navigation and commerce which the citizens of that country enjoy or may enjoy in accordance with the laws, decrees, and uses established there, and that no other or higher duties will be levied on the tonnage of the respective ships.

<sup>1</sup> Not printed.

The free transit of the Isthmus of Panama is conceded to the citizens of the United States and the transport of their products, manufactures, or merchandise of lawful commerce without the imposition of other taxes or contributions other than those placed on the natural products of the country (Panama) under similar circumstances.

There are these advantages of an equal treatment, and there is no other in favor of the ships of the United States.

In the polite note of September 29 last your excellency informs me that you have received a protest from the vice consul general of the United States against the taxes and contributions on shipping levied in the port of Panama, and especially against said decree No. 91.

In reference to the different points treated of in said note, in which your excellency is also pleased to express the hope that means will be taken in the matter, I have the honor to inform your excellency, in addition to what I have expressed in this note, that according to the information which has been given me in this matter, it is hoped that in a short time all fears of the invasion of the hubonic plague on the Isthmus will have ceased, and immediately the tax levied for the lazaretto will be rescinded.

I avail myself of this opportunity, etc.,

LUIS CARLOS RICO.

His Excellency A. M. BEAUPRÉ, etc.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, October 23, 1903.*

(Received October 24, 5.23 p. m.)

October 23, 11 a. m. The report of the committee not yet discussed. It appears to me the Congress is playing a waiting game, evidently with the object of ascertaining attitude of the President of the United States in his message to the extra session of Congress and of that body. It is said that Congress will not adjourn until 14th proximo. Minister for foreign affairs gives me private information that at the next meeting the Cabinet will again discuss canal question, it being proposed to send an envoy extraordinary and minister plenipotentiary and also a commission of three prominent men to Washington to renew negotiations.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
*Bogotá, October 27, 1903.* (Received 10.15 p. m. 29.)

October 27, 7 p. m. Report of the committee was discussed to-day in the Senate. Only four Senators spoke. Caro opposed the proposed law authorization as unconstitutional, on the ground that any future action which the Government might take and was free to take was subject to approval of future Congress, and that this Congress has no right to bind the action of the next one. He strongly denounced the treaty itself and the selfish motives of the United States in desiring such a treaty. Senator Groot, one of the authors of the report, spoke in the same tone. Senator Ospina defended the pro-

posed law of authorization. Finally Senator Arango, after pointing out the futility of the proposed law, which was only the treaty with modifications which the Government of the United States has declared unacceptable, proposed that the discussion of the whole matter be postponed indefinitely, as there was no time for the Senate to discuss it. The Senators appeared to agree to the proposal, but the presiding officer closed the debate without vote having been taken. Action may be taken to-morrow or, as is also probable, the matter may be allowed to drop entirely. Congress will adjourn on the 31st instant.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,

*Bogotá, October 29, 1903.*

(Received 6.55 p. m., November 6.)

October 29, 1 p. m. Please give instructions to consul general at Panama; keep me advised by cable matters of consequence. Canal situation unchanged.

BEAUPRÉ.

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,

*Washington, October 30, 1903.*

You may avail yourself of leave of absence under authorization cabled to you July 9.

HAY.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION AT BOGOTÁ,

*October 31, 1903.* (Received November 6, 1903.)

Congress adjourned to-day. No action has been taken upon the last report concerning the canal. Therefore nothing more than the vote of August 12 rejecting treaty done.

The people here in great anxiety over conflicting reports of secession movements in the Cauca and Panama.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,

*Bogotá, November 1, 1903.*

(Received 7.15 p. m., November 8.)

November 1, 10 a. m. The Government issued manifesto to the nation to-day severely criticising acts of Congress and discussing

important questions which have been presented and unsatisfactorily dealt with. With regard to canal, states that Colombian chargé d'affaires has been instructed to inform the Government of the United States that the Colombian Government would consider new negotiations, which it is believed will be accepted by the next session of Congress. Therefore, if the Government of the United States still desires to open canal, which it is presumed that it does, as neither by act nor word has it shown any other intention, it is to be hoped that the great work will be carried out in the end through Colombian territory.

I took the opportunity of informal visit to the President yesterday to inform him of substance your cipher telegram October 22.

BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

No. 199.]

LEGATION OF THE UNITED STATES,  
*Bogotá, November 2, 1903.*

SIR: I have the honor to report that the extraordinary session of the Colombian Congress was adjourned at half past 2 o'clock on Saturday the 31st ultimo.

In so far as the Hay-Herran treaty for the construction of a Panama Canal is concerned, the only definite and recorded action of this Congress is the vote taken on August 12, 1903, rejecting that treaty.

Under article 76 of the Colombian constitution, Congress can exercise its functions in certain cases by the enactment of laws, and in that way only. Thus it is that when such matters are presented, whether by individual members, ministers of the Government, or by committees, they are accompanied by what is termed "projects of law." Under section 20 of said article 76 of the constitution, the Congress, by making a law for that purpose, may "approve or disapprove the treaties entered into by the Government with foreign powers." The vote taken in the Senate on August 12, 1903, rejecting the treaty, is not understood to have been a legal or constitutional disapproval of that pact. It was, in effect, an expression of opinion; but since no other action on this question was taken, and the treaty was not approved within the time fixed for the exchange of ratifications, it has died by limitation rather than by any legal enactment of the Colombian Congress.

It has been understood for some time that in all probability no further action would be taken by Congress in this matter, and when it was finally brought up in the last days before adjournment it was more for the purpose of giving vent to individual opinion than anything else.

On Tuesday, the 27th ultimo, the report of the committee on the project of law authorizing the President to negotiate for the construction of an interoceanic canal was brought before the Senate for discussion. Four senators spoke during the debate.

Senator Caro opposed it on the ground that to grant an authorization to the Government to conclude a treaty, on certain bases, was an absurdity. It was impossible to limit the power of the Executive, who could conclude any treaty it pleased and submit it to the next



Congress. This project of law was, moreover, an unconstitutional one, as this Congress had no right to arrogate to itself the powers and privileges which would legitimately fall to its successor. He then turned to the attitude of the Senate on the canal question. It had been correct on the main point from the beginning. Mistakes there had been, but they were mistakes of which the Government and not the Senate had been guilty. The first great error had been the reading of the correspondence which had passed between the United States minister and the minister for foreign affairs prior to the rejection of the treaty. It had made it appear as if the Senate had rejected the treaty as a protest against the attitude of the United States, and this was tantamount to a reflection on the conduct of President Roosevelt and his Secretary of State, under whose instructions their representative in Bogota had acted. This was how the matter had been viewed in the United States. In support of this statement he quoted various extracts taken from United States newspapers. Among these was an interview by Walter Wellman, who, Senator Caro stated, was well aware of the opinions held by the Department of State. He then emphatically stated that the reading of the American minister's notes had nothing to do with the action taken by the Senate with regard to the Hay-Herran treaty.

The Senate rejected that treaty because its terms were a violation of the constitution and harmful to the interest of the Republic. No reflection could be cast on that body for its action, but the minister for foreign affairs, in causing the notes to be read, had made it appear that the Senate was actuated by motives which did not exist. The second great error committed by the Government was the appointment of Señor Obaldia to the governorship of the Department of Panama. The election of General Reyes to the Presidency of Colombia meant the election of a Congress next year pledged to pass whatever canal treaty the Government should present. Señor Obaldia was therefore a supporter of the candidacy of General Reyes, and it was for this reason that he was appointed governor of the Isthmus. But Señor Obaldia was before all an isthmanian, and he was known to have said that should the department rise in favor of the canal he would be with Panama. Therefore the Government had for electioneering purposes endangered their possession of the Isthmus. He read to the Senate an extract from the New York Herald, containing an interview with Governor Obaldia, in which the above-mentioned facts were stated, and in which Señor Obaldia said that, before leaving Bogotá, he had had several interviews with the American minister, to whom he had communicated these facts, which Mr. Beaupré had doubtless telegraphed to his Government. The reading of this extract caused much excitement. Senator Caro pointed out that whatever the views of President Roosevelt may be, this much was certain, he had no intention of adopting the Nicaragua route. The only possible explanation of the present inactive attitude of the United States Government was that events on the Isthmus were being watched. Senator Caro then, for the first time, openly attacked the policy of the United States Government. Colombia was told that the construction of the canal was essential to the commerce and, therefore, to the progress of the world, and that she should not, therefore, stand in the way of so important an undertaking merely because of

the loss of sovereignty over a small strip of territory. But why, he asked, did the United States wish to deprive Colombia of her sovereignty? It was because the United States wanted the canal for themselves, and not for commerce and civilization.

Senator Rivas Groot, who had reported to the Senate against the granting of authorization to the Government to conclude a canal treaty, then spoke, supporting the views expressed by Senator Caro.

Senator Pedro Nel Ospina's speech was devoted to an explanation and defense of the law of authorization which he had drawn up. Neither of these speeches had any special significance.

The day's debate was, however, closed with an important speech by Senator Arrango, which was the outcome of a tacit understanding with the majority of his colleagues. He pointed out that this project of law, worded in general terms, authorizing the President to conclude a canal treaty with a foreign power or company, was a clumsy attempt to befog the real issue. It was perfectly well known that a canal, if constructed at all, would have to be constructed by the United States Government, and it would, therefore, be more straightforward to frankly own that fact instead of vaguely talking of foreign powers and companies. When the Hay-Herran treaty was brought forward for discussion it was believed that the Senate would be willing to ratify the treaty, with essential modifications. The United States minister had, however, made it clear that his Government would not accept these modifications, and it was, therefore, decided to reject the treaty. Now, this project of law was nothing more or less than the Hay-Herran treaty, with the modifications necessary to have rendered it acceptable to the Senate. If this was the course proposed, it would be a more reasonable policy to reconsider the Hay-Herran treaty, put in the modifications desired by the Senate, and return it, thus amended, to the United States Government for their consideration. An important event had, however, occurred, which rendered any consideration of the canal question useless. The vice president had decided to dissolve Congress on the 31st instant. There remained, therefore, no time for deliberation, and the only possible course for the Senate to adopt was to decide on the indefinite suspension of any further discussion regarding the canal question.

The Senate then adjourned.

On the following day, the 28th ultimo, news of an insurrectionary outbreak in the Department of Panama leaked out, and three members of the cabinet were summoned to the Senate for the purpose of eliciting information on the subject. On the arrival of the minister of war, however, the Senate was declared in secret session.

It was given out that the trouble on the Isthmus consisted merely of an invasion of 70 men from Nicaragua. The president of the Senate, however, informed me that there was much anxiety, both on the part of the Government and Congress, as to the turn events were taking on the Isthmus.

The session of the 29th occupied itself with the passing of laws of minor importance and routine work.

On Friday, the 30th, the Panama Canal question was treated for the last time. The Senate unanimously resolved to adopt the course proposed by Senator Arrango in his speech of the 27th, which was to indefinitely suspend the consideration of the matter.

The Government thus remains with ordinary authority to treat the question afresh, subject to the approval of a future Congress.

Senator Caro spoke with some heat to the effect that the Government had rendered it impossible for the Congress to carry out its work by introducing extra laws which had not been treated of in the message, and then cutting short the deliberations of the legislative body.

Saturday, the 31st ultimo, was the last day of Congress. The members of the Senate met in the forenoon, and the minister of war, who had been specially summoned, was present. He was again questioned, this time publicly, as to the state of affairs in the Department of Panama. The telegram received from Governor Obaldia had, it appeared, been badly transmitted, but he gathered from the message that an invasion of 70 men from Nicaragua and a rising in the frontier province of Veraguas had occurred simultaneously. The secretary of the Senate informed me that in the telegram it was not clear whether the number of invaders was 70 or 700, most probably the latter, and that the feeling of unrest in the Department of Panama was great.

The Senate rose at 11 a. m., and did not return in the afternoon to receive the President's message closing Congress.

The Chamber of Representatives remained sitting until half past 2 o'clock p. m., when Congress was declared officially closed by the Vice President.

Yesterday the Government issued a manifesto to the nation, which has been published and posted on the streets this morning. It severely criticises the action of Congress, and especially that of the Senate, which latter body has wasted its time in attacks on the Executive instead of devoting itself to the consideration of measures necessary to the well-being of the country. As regards the canal, it states that the Government has decided to resume negotiations in the hopes of being able to come to a fresh agreement which shall meet with the approval of the next Congress, and that the Colombian chargé d'affaires at Washington has been instructed to convey this information to the Government of the United States.

I am, sir your obedient servant

A. M. BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

No. 207.]

LEGATION OF THE UNITED STATES,

*Bogotá, November 4, 1903.*

SIR: The manifesto issued by the Government of Colombia to the nation on the 1st instant, the day after the closing of Congress, is interesting as a declaration of attitude and policy.

The Government makes reference, in the first place, to the difficulties it had to encounter on first taking charge of the administration; difficulties with the revolution on one hand and with the administration on the other. By difficulties with the administration was evidently meant, though not actually stated, the equivocal position in which the Government found itself after the coup d'état of the 31st of July, 1900. Moreover, the revolutionary party was in a strong

position, as it could count on many elements and on the material help of friends outside the country.

With the termination of the revolution, the difficulties to be faced by the Government were by no means at an end. The country was suffering from stagnation in its industries, paralyzation of its commerce, the innumerable difficulties created by a depreciated currency, penury of the treasury, and a general demoralization.

In the midst of all these difficulties most governors would have been sorely tempted to dictatorially take matters into their own hands, and, providing themselves with the necessary resources, assume the personal powers required for putting an end to the anarchy reigning. The vice president has chosen rather to abide by the provisions laid down by the constitution. He had, therefore, issued the writs for elections for Congress and declared public order restored.

In calling this extraordinary Congress he had hoped for the loyal cooperation of the legislature in aiding the Executive to restore the state of affairs of the Republic to a normal condition. The legislative body had now terminated its labors and it will be for the country to judge impartially both its work and that of the Executive. No one is ignorant of the causes which have rendered this session of Congress only partially fruitful. The disorder reigning between the two chambers has impeded the carrying out of much necessary work. The Executive, while loyally aided by the majority in the Chamber of Representatives, found its work thwarted by the hostility of the majority of the Senators.

The question of almost unique importance, which decided the calling of a special Congress, was that of the construction of an interoceanic canal, to wit, the Hay-Herran treaty. The Senate, after debates in which too much prominence was given to its feeling of hostility toward the Chief of the Government, rejected that treaty. A committee was then appointed to consider on what bases the aspirations of the Colombian people for the construction of an interoceanic waterway could best be satisfied. As the deliberations of the committee were productive of no result, a project of law was presented to the Senate by its committee, ratifying the rejection of the treaty and granting authorization to the Executive for the opening of this waterway. This project was approved on the first reading, and was then referred to a new committee. The committee reported against this project of law, and suggested the suspension of its consideration and raised the question as to the validity of the extension of time granted to the New Panama Canal Company in 1900. The Senate resolved to adopt part of the suggestions of the committee, and indefinitely suspended consideration of the projected law of authorization. Congress has, therefore, amply discussed and definitely decided upon the question which formed the principal motive of its convocation, that of the treaty respecting the construction of an interoceanic canal.

The opening of a canal is, however, a matter of vital interest to the Republic, and especially to the Department of Panama. The Colombian chargé d'affaires at Washington has, therefore, been instructed to inform the United States Government that new negotiations would be set on foot on bases which it was believed would be acceptable to the next Congress. In that case, if the North American

Government persists in its proposal to open the canal, which it is to be presumed it does, as neither by word nor by act has anything to the contrary been done, it is to be hoped that the great work will finally be carried out through Colombian territory.

The Vice President then refers to the character of the Congress which was convoked. The sessions were extraordinary, not ordinary sessions. He was, therefore, constitutionally in his right in limiting the Congress to the consideration of certain matters of vital importance. He showed, however, a generous latitude in this matter, giving to their consideration even such questions as those concerning the legislative decrees issued by the Government during the war—questions which, strictly speaking, belong to the domain of an ordinary Congress. The Senate, however, chose to take an unconstitutional attitude, and assume the character of a body called together in ordinary session, and treated the questions submitted not from the point of view of the national welfare, but to make political capital of its attitude toward the Chief Executive. Fortunately the patriotic spirit shown by the majority of the Chamber of Representatives, in conjunction with the minority of the Senate, helped to some extent to counteract the evil influence which the systematic opposition of one part of the legislative body was trying to exert.

The Vice President then goes on to deal with the constitutional powers of the Executive in its relations to the legislative body. Since the constitution of 1863 it has been decided that the ordinary Congress has one hundred and twenty days allotted for its sessions; but an extraordinary Congress is called for the consideration of certain special matters, and the duration of its session is at the discretion of the Executive. To support this statement, various precedents are quoted.

The honorable Chamber of Representatives, in its session of October 2, resolved that twenty days more would suffice for it to finish the work entrusted to its consideration. The Executive, so as not to feel that it was restricting the time of the legislature, added eleven days to the specified twenty. If the labor of the present legislative body be carefully compared with that of its predecessors it will be clear that the one hundred and thirty-four days which the legislature has had for its deliberations was not merely time strictly necessary, but more than ample to dispose of the matters submitted to its consideration. Its work would have been more beneficial if it had not wasted a large part of this time in fruitless debates.

The Vice President expresses the hope that the ordinary Congress, which is to unite in a little over eight months, will be able to fitly dispose of the questions which the late Congress has left undone.

The hostile attitude of some members of Congress has raised a certain spirit of unrest and agitation. Nevertheless, peace and the stability of constitutional rule has been maintained. There is, therefore, reason to hope that the forthcoming elections will not be the cause of agitation, and that their result may be the genuine expression of the will of the people, the carrying out of which is assured by the laws, and will be respected by the Government.

The manifesto is signed by the Vice President and all the members of his cabinet.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

BOGOTÁ, *November 4, 1903.*

(Received November 6, 1903, 5 p. m.)

Fourth, 5 p. m. Confidential. I have been shown telegram from reliable source in Panama to the effect that Isthmus is preparing for secession and that proclamation of independence may be expected soon. The particulars carefully guarded. Reliable information hard to obtain. This Government is evidently alarmed and troops are being sent to Isthmus. Repeat telegrams of importance from United States consul general. His telegrams to me may be interfered with.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,

*Bogotá, November 6, 1903.*

(Received November 8, 11.05 p. m.)

November 6, 6 p. m. Knowing that the revolution has already commenced in Panama, \_\_\_\_\_ says that if the Government of the United States will land troops to preserve Colombian sovereignty and the transit, if requested by the Colombian chargé d'affaires, this Government will declare martial law, and by virtue of vested constitutional authority, when public order is disturbed, will approve by decree the ratification of the canal treaty as signed; or, if the Government of the United States prefers, will call extra session of Congress with new and friendly members next May to approve the treaty. General Reyes has the perfect confidence of vice president, he says, and if it becomes necessary will go to the Isthmus or send representatives there to adjust matters along above lines to the satisfaction of the people there. If he goes, he would like to act in harmony with commander of United States forces. This is the personal opinion of Reyes, and he will advise this Government to act accordingly. There is a great reaction of public opinion in favor of the treaty, and it is considered certain that the treaty was not legally rejected by Congress. To-morrow martial law will be declared: 1,000 troops will be sent from the Pacific side; about the same number from the Atlantic side. Please answer by telegraph.

BEAUPRÉ.

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,

*Washington, November 6, 1903.*

The people of Panama having, by an apparently unanimous movement, dissolved their political connection with the Republic of Colombia and resumed their independence, and having adopted a gov-

ernment of their own, republican in form, with which the Government of the United States of America has entered into relations, the President of the United States, in accordance with the ties of friendship which have so long and so happily existed between the respective nations, most earnestly commends to the Governments of Colombia and of Panama the peaceable and equitable settlement of all questions at issue between them. He holds that he is bound, not merely by treaty obligations, but by the interests of civilization, to see that the peaceable traffic of the world across the Isthmus of Panama shall not longer be disturbed by a constant succession of unnecessary and wasteful civil wars.

HAY.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, November 7, 1903.

(Received 7.30 p. m., November 10.)

November 7, 2 p. m. General Reyes leaves next Monday for Panama invested with full powers. He has telegraphed chiefs of the insurrection that his mission is to the interests of Isthmus. He wishes answer from you before leaving to the inquiry in my telegram of yesterday and wishes to know if the American commander will be ordered to cooperate with him and with new Panama Government to arrange peace and approval of the canal treaty, which will be accepted on condition that the integrity of Colombia be preserved. He has telegraphed President of Mexico to ask the Government of the United States and all the countries represented at the Pan American conference to aid Colombia to preserve her integrity. The question of the approval of the treaty mentioned in my telegram of yesterday will be arranged in Panama. He asks that before taking definite action you will await his arrival there, and that the Government of the United States in the meantime preserve the neutrality and transit of the Isthmus and do not recognize the new Government. Great excitement here. Martial law has been declared in the Cauca and Panama. Answer.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, November 7, 1903.

(Received November 10, 7.55 p. m.)

As the Government of the United States has war vessels at Panama and Colon, minister for foreign affairs has requested me to ask will you allow Colombian Government to land troops at those ports—to fight there and on the line of railway? Also if the Government of the United States will take action to maintain Colombian right and

sovereignty on the Isthmus in accordance with article 35, the treaty of 1846, in case the Colombian Government is entirely unable to suppress the secession movement there?

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

Bogotá, *November 9, 1903.*

(Received November 11, 12.30 a. m.)

November 9, 9 a. m. I am desired to inform you by General Reyes that Gen. Bedronel Ospina and Lucas Cabellero, prominent party leaders, accompany him on his mission.

Very great excitement here. Large crowds paraded streets yesterday, crying "Down with Marroquin." Mass meeting denounced him; called for a change of government. Hundreds gathered at the palace, and their orator, a prominent national general, addressed the President, calling for his resignation. Troops dispersed gathering, wounding several. Martial law is declared here, and the city is being guarded by soldiers. Legation of the United States under strong guard, but apparently no indications of hostile demonstration.

The residence of Lorenzo Marroquin attacked with stones.

Referring to the question presented by minister for foreign affairs in my telegram of 7th. I have preserved silence, but bear in mind page 578, Foreign Relations, part 3, 1866, and instructions 134 to minister to the United States of Colombia, 1865.

BEAUPRÉ.

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[NOTE.—For convenience the above-mentioned instruction, No. 134, is reproduced, as follows:]

No. 134.

DEPARTMENT OF STATE.  
*Washington, November 9, 1865.*

To ALLAN A. BURTON, Esq., etc.,

*Bogotá.*

SIR: The question which has recently arisen under the thirty-fifth article of the treaty with New Granada, as to the obligation of this Government to comply with a requisition of the President of the United States of Colombia for a force to protect the Isthmus of Panama from invasion by a body of insurgents of that country has been submitted to the consideration of the Attorney General. His opinion is that neither the text nor the spirit of the stipulation in that article, by which the United States engages to preserve the neutrality of the Isthmus of Panama, imposes an obligation on this Government to comply with a requisition like that referred to. The purpose of the stipulation was to guarantee the Isthmus against seizure or invasion by a foreign power only. It could not have been contemplated that we were to become a party to any civil war in that country by defending the Isthmus against another party. As it may be presumed, however, that our object in entering into such a stipulation was to secure the freedom of transit across the Isthmus, if that freedom should be endangered or obstructed, the employment of force on our part to prevent this would be a question of grave expediency to be determined by circumstances. The department is not aware that there is yet occasion for a decision upon this point.

Your dispatches to No. —, inclusive, have been received.

I am, sir, etc.,

WILLIAM H. SEWARD.



*Mr. Beaupré to Mr. Hay.*

[Telegram.]

LEGATION OF THE UNITED STATES,  
*Bogotá, November 11, 1903.* (Received November 14.)

The situation here under control, but how long this will continue is uncertain, as there is intense feeling against the Government. There is also a bitter feeling against the United States because of the belief that the Government of the United States has encouraged the secession movement, and of the statement of telegram received by the Government to the effect that the United States forces interfered with Colombian troops under General Tobar at Colon, necessitating their surrender.

An army ten thousand strong being raised here, and one of five thousand in the Cauca to operate against Panama, commanded by General Reyes, provided the United States will allow Colombia to land troops.

A meeting was held under the leadership of Senator Caro, and a resolution was passed requesting the Government to call a convention for the purpose of amending the constitution in order to render possible immediate ratification of the treaty. This is opposed by the Government and General Reyes as being inopportune.

BEAUPRÉ.

*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 11, 1903.* (Sent 12.12 p. m.)

Earnestly desiring an amicable solution of matters at issue between Colombia and Panama, we have instructed our consul general at Panama to use good offices to secure for General Reyes a courteous reception and considerate hearing. It is not thought desirable to permit landing of Colombian troops on Isthmus, as such a course would precipitate civil war and disturb for an indefinite period the free transit which we are pledged to protect. I telegraphed you on November 6 that we had entered into relations with the provisional government.

HAY.

*Mr. Beaupré to Mr. Hay.*

[Telegram.]

LEGATION OF THE UNITED STATES,  
*Bogotá, November 12, 1903.* (Received November 14.)

I was invited to the palace last night to confer with the President and his cabinet, and communicated the substance of your telegram of the 6th in the form of a note to the minister of foreign affairs. I was asked if I would officially construe the last clause to mean the United States would not permit the landing of Colombian troops. I replied my opinion is that the language used needs no interpretation;

that I had fulfilled my official duty in delivering the note and had no explanation to make. The President then enjoined secrecy upon those present until direct answer has been received to the two questions of the minister for foreign affairs contained in my telegram of the 7th.

There is consternation in Government circles, and I fear serious trouble when the public is informed of the real situation. I believe there is much danger, not only to the Government, but also to Americans in the interior, especially in Bogota.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, November 14, 1903. (Received November 17.)

In an official note, dated 14th, minister for foreign affairs writes me as follows:

The immediate recognition of the so-called Government of Panama by the Government of the United States entering into relations with it is a circumstance aggravated by the fact that such recognition is a violation of the treaty of 1846, which compels the Government of Colombia to protest, as it does in most solemn and emphatic manner, and to consider that the friendship of this Government with the Government of the United States has reached such a grave point that it is not possible to continue diplomatic relations unless the Government of the United States that it is not its intention to interfere with Colombia in obtaining submission of the Isthmus nor to recognize the rebels as belligerents. I hope you will submit these points to your Government immediately, for the army is already marching to the Isthmus of Panama.

The note is very long, to the effect that this recognition is contrary to all precedents and in violation of the treaty of 1846, offering to submit the latter point to The Hague, with the understanding that in the meantime there shall be no interference with the military operations necessary to reestablish integrity of Colombia.

National council—especially elected to advise the Executive in the present emergency—has decided, by 10 votes to 1, to hand me my passport. The Government understands that such action would be tantamount to a declaration of war, and has advised me such a step will not be taken. Send instructions as a guide in case of severance of diplomatic relations.

BEAUPRÉ.

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*Mr. Beaupré to Mr. Hay.*

[Telegram.]

UNITED STATES LEGATION,  
Bogotá, November 17, 1903. (Received November 19.)

Minister for foreign affairs sends another note, requesting that I transmit by cable an abstract, as follows:

As the Government of the United States does not definitely state that it will oppose landing of Colombian troops, but will secure hearing for General Reyes, it may be supposed its purpose is to bring about peace in Colombia and Panama, to the end that the latter shall

renounce independence and thus avoid armed action otherwise inevitable. If this is the intention of the United States, Colombia will accept, provided territorial rights of Colombia on the Isthmus are not prejudiced. Maintenance of order falls to the power holding sovereignty, which the United States has heretofore recognized. Accordingly, it is an inadmissible theory that the United States should now permit or aid dismemberment of Colombia merely to prevent temporary disturbance of the transit. Colombia has for fifty years maintained free transit, but she can not be asked to carry this to the extent of agreeing to the loss of precious territory simply from fear some interruption of transit may occur. Sovereignty of nations may not be destroyed for the purpose of avoiding transitory prejudice to commerce—an argument as to the effect of the existing treaty, and that civilization will suffer more by the violation of a public treaty than a temporary interruption of traffic. The most efficient means the United States could employ to prevent interruption of transit would be to notify rebels to abstain from obstructing Colombian Government in reestablishing order and constitutional rule. This is demanded of the United States by treaty. If the United States troops have been used to disarm Colombian army it is in subversion of national sovereignty and contrary to the treaty.

BEAUPRÉ.

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*Mr. Hay to Mr. Beaupré.*

[Telegram.]

DEPARTMENT OF STATE.

*Washington, November 18, 1903.*

You will once more inform Colombian Government that we have recognized the Republic of Panama; that our action has been taken in the interest of peace and order on the Isthmus; that we earnestly desire an amicable settlement of questions at issue between Colombia and Panama, and would gladly render what services are in our power to that end.

I repeat that you and the secretary of legation are authorized to take your leave of absence whenever you think best, requesting one of your colleagues to take charge of your legation, if both of you come away.

HAY.

No. 14.

PRESIDENT'S MESSAGE GIVING CORRESPONDENCE SHOWING  
RELATIONS BETWEEN THE UNITED STATES, COLOMBIA, AND  
PANAMA.

[Senate Document No. 95, Fifty-eighth Congress, second session.]

RELATIONS OF THE UNITED STATES WITH COLOMBIA AND THE  
REPUBLIC OF PANAMA.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING A  
REPORT FROM THE SECRETARY OF STATE COVERING COPIES OF ADDITIONAL  
PAPERS BEARING UPON THE RELATIONS OF THE UNITED STATES WITH  
COLOMBIA AND THE REPUBLIC OF PANAMA.

[January 18, 1904: Read; ordered to lie on the table and to be printed.]

*To the Senate and House of Representatives:*

I transmit herewith for the information of the Congress a report from the Secretary of State covering copies of additional papers bearing upon the relations of the United States with Colombia and the Republic of Panama.

THEODORE ROOSEVELT.

WHITE HOUSE, *January 18, 1904.*

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THE PRESIDENT:

In continuation of the papers previously submitted, the undersigned Secretary of State has the honor to lay before the President additional correspondence touching the relations of the United States with Colombia and Panama.

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE,

*Washington, January 16, 1904.*

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*List of papers.*

- General Reyes to Mr. Hay, December 23, 1903.
- Mr. Hay to General Reyes, January 5, 1904.
- General Reyes to Mr. Hay, January 6, 1904.
- Mr. Hay to General Reyes, January 9, 1904.
- General Reyes to Mr. Hay, January 11, 1904.
- Mr. Hay to General Reyes, January 13, 1904.
- Mr. Buchanan to Mr. Hay, No. 4, December 25, 1903.
- Mr. Buchanan to Mr. Hay, No. 6, December 27, 1903.
- Mr. Buchanan to Mr. Hay, No. 7, December 28, 1903.
- Mr. Buchanan to Mr. Hay, No. 9, December 28, 1903. (Translations from Gaceta Oficial of Panama, December 12, 14, and 16, 1903.)
- Mr. Bman-Varilla to Mr. Hay, January 6, 1904.

[Translation.]

*General Reyes to Mr. Hay.*

LEGATION OF COLOMBIA, ON SPECIAL MISSION,  
*Washington, December 23, 1903.*

MOST EXCELLENT SIR: I have the honor to append to this note a statement of grievances that Colombia wishes to submit to the consideration of your excellency. Its presentation was deferred by reason of the condition of your excellency's health, and I beg that you will put off the consideration of this note until your excellency may be able to give your personal attention to its examination.

If, after so doing, your excellency should wish to have an interview with me, I shall have the honor of calling on you at such place and time as your excellency may be pleased to designate.

With sentiments of the highest consideration and regard, I have the honor to subscribe myself your excellency's very obedient and faithful servant,

RAFAEL REYES.

Hon. JOHN HAY,  
*Secretary of State.*

*General Reyes to Mr. Hay.*

LEGATION OF COLOMBIA, ON SPECIAL MISSION,  
*Washington, December 23, 1903.*

MOST EXCELLENT SIR: The Government and people of Colombia consider themselves aggrieved by that of the United States in that they are convinced that the course followed by its administration, in relation to the events that have developed and recently been accomplished at Panama, have worked deep injury to their interests.

If the matter were one of little importance, even though right were wholly on its side, my Government would not hesitate in yielding some of its advantages out of regard for the friendly relations which have happily existed without interruption between the two countries. But as the facts that have taken place affect not only valuable and valued interests, but also the independence and sovereignty of Colombia, my Government deems it its duty to remind that of the United States of the stipulation contained in section 5 of article 35 of the treaty of 1846, in force between the two countries, which reads word for word as follows:

If, unfortunately, any of the articles contained in this treaty should be violated or infringed in any way whatever, it is expressly stipulated that neither of the two contracting parties shall ordain or authorize any acts of reprisal, nor shall declare war against the other in complaints of injuries or damages, until the said party considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied, in violation of the laws and of international right.

On formulating the statement of "injuries and-damages," referred to in the quoted abstract, there is nothing as natural or just as to recall to mind that in the treaty concluded on the 22d of January of

this year between your excellency and the chargé d'affaires of Colombia, Señor Doctor Tomás Herrera, there appears the following stipulation:

The convention when signed by the contracting parties shall be ratified in conformity with the laws of the respective countries, etc.

This condition, which rests at once on a correct conception of the doctrine accepted in such matters by nearly all the constitutional countries in the world, could not be foregone by Mr. Herran, since under our constitution and laws it is for the Congress to approve or disapprove the treaties signed by the Government, so that the said treaties are not valid unless the requirement has been observed, and as it likewise happens that under the law of nations covenants entered into with any authority that may not be competent are null, it is evident that no Colombian representative, in the absence of a pre-existing law conferring such authority could have signed the said convention without the above-quoted reservation. Furthermore, this formality was at the outset admitted by the American Government in the course of the negotiations that preceded the Hay-Herran convention, as shown in articles 25, 26, and 28 of the "Draft of convention" submitted by the American Administration and dated November 28, 1902. Article 25 says, textually, that the convention will be exchanged "after approval by the legislative bodies of both countries."

The Hay-Herran convention did not take in Washington a course different from that it took at Bogotá. The parliamentary debate that took place in the Senate was so full and earnest that it was not approved until the following extraordinary sessions. And if it had been rejected, the disapproval would have involved no grievance for Colombia, for if the mere entering upon negotiations for a convention implied the obligatory approval of the legislative body it would be superfluous to submit it to its decision. Among the precedents of international usage that could be mentioned in this respect there may be cited the case that occurred between the same United States of America and Her Britannic Majesty, when, after the signing of the treaty intended to abrogate the convention known as the Clayton-Bulwer treaty, England, as I understand it, declined to accept the amendment introduced by the Senate, and her refusal delayed for some time the approval and ratification of the treaty.

It follows that the Congress of Colombia, which is vested, according to our laws, with the faculty or power to approve or disapprove the treaties concluded by the Government, exercised a perfect right when it disapproved the Hay-Herran convention. This course did not disqualify the Government for the conclusion of another treaty with the Government of your excellency; and it indeed resolved to make a proposition to that effect, and Mr. Herran, whom our minister for foreign affairs intrusted with that duty by cable, had the honor of bringing this purpose to your excellency's knowledge. Neither did that course imply any slight toward the Government of the United States, and, on the contrary, the Senate, observant of the existing friendly relations, relied on the sentiments of American fraternity, by which it is animated, for the introduction in the new agreement that was to be made of stipulations more consonant with the notion of sovereignty entertained by the people of Colombia.

It is proper to observe that under our constitution the Congress is the principal guardian, defender, and interpreter of our laws. And it can not be denied by anyone, I take it, that the Hay-Herran convention provides for the execution of public works on a vast scale and for the occupancy in perpetuity of a portion of the territory of Colombia, the occupant being not a juridical person whose acts were to be governed by the civil law and the Colombian code, but rather a sovereign political entity, all of which would have given occasion for frequent conflicts, since there would have been a coexistence in Panama of two public powers, the one national, the other foreign.

Hence the earnest efforts evinced by the Senate in ascertaining whether the American Government would agree to accept certain amendments tending especially to avoid as far as practicable any restriction in the treaty of the jurisdiction of the nation within its own territory. There is abundant evidence of the efforts of the Senate in that direction, and I firmly believe that it would have approved the convention with amendments that would probably have been acceptable to the United States had not the American minister at Bogotá repeatedly declared in the most positive manner that his Government would reject any amendment that might be offered.

In a note dated April 24 last he made the following statement to the minister of foreign relations:

With reference to the interview I had with your excellency at which were discussed the negotiations for the annulment of the present concessions of the Panama Canal and railroad companies and other matters I have the honor to inform your excellency that I have received instructions from my Government in that respect.

I am directed to inform your excellency, if the point should be raised, that everything relative to this matter is included in the convention recently signed between Colombia and the United States on the 22d of January last and that, furthermore, any modification would be violative of the Spooner Act, and therefore inadmissible.

The memorandum handed by the same minister to the minister of foreign relations on the 13th of June of this year reads as follows:

I have received instructions from my Government by cable in the sense that the Government of Colombia to all appearances does not appreciate the gravity of the situation. The Panama Canal negotiations were initiated by Colombia and were earnestly solicited of my Government for several years. The propositions presented by Colombia with slight alterations were finally accepted by us. By virtue of this agreement our Congress reconsidered its previous decision and decided in favor of the Panama route. If Colombia now rejects the treaty or unduly delays its ratification the friendly relations between the two countries would be so seriously compromised that our Congress might next winter take steps that every friend of Colombia would regret with sorrow.

In his note of the 5th of August of this year he says this, among other things:

It seems to me that the commission (referring to the Senate commission) has not been sufficiently informed of the contents of my notes of April 24 and June 10 [sic], 1903, or that it has not given them the importance they merit, as being the final expression of the opinion or intentions of my Government. They clearly show that the amendment the commission proposes to introduce in article 1 is, by itself, equivalent to an absolute rejection of the treaty. I deem it my duty to repeat the opinion I already expressed to your excellency that my Government will not consider or discuss such an amendment in any way. There is another important amendment that the commission believes should be introduced in article 3, consisting in the suppression of the tribunals therein dealt with. I consider it my duty again to state my opinion that this will also in no wise be accepted by my Government.

And further, in the same note, he adds:

I avail myself of this opportunity respectfully to repeat that which I already stated to your excellency, that if Colombia truly desires to maintain the friendly relations that at present exist between two countries, and at the same time secure for herself the extraordinary advantages that are to be produced for her by the construction of the canal in her territory, in case of its being backed by so intimate an alliance of national interests as that which would supervene with the United States, the present treaty will have to be ratified exactly in its present form without amendment whatsoever. I say this because I am profoundly convinced that my Government will not in any case accept amendments.

The Congress being unable to accept in its actual wording at least one of the stipulations contained in the treaty, because inhibited from doing so by the constitution, no one will wonder that under the pressure of threats so serious and irritating and in presence of a formal notification from the party which had authority to serve it that no amendment would be accepted, preference was given to disapproval.

The integrity of any nation [said Mr. William H. Seward] is lost, and its fate becomes doubtful, whenever strange hands, and instruments unknown to the constitution, are employed to perform the proper functions of the people, established by the organic law of the State.<sup>1</sup>

Before dismissing this point, it is proper to observe, in accordance with article 4 of the Spooner Act:

SEC. 4. That should the President be unable to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia and the rights mentioned in sections one and two of this act, within a reasonable time and upon reasonable terms, then the President, having first obtained for the United States perpetual control by treaty of the necessary territory from Costa Rica and Nicaragua, upon terms which he may consider reasonable, for the construction, perpetual maintenance, operation, and protection of a canal connecting the Caribbean Sea with the Pacific Ocean by what is commonly known as the Nicaragua route, shall, through the said Isthmian Canal Commission, cause to be excavated and constructed a ship canal and waterway from a point on the shore of the Caribbean Sea, near Greytown, by way of Lake Nicaragua, to a point near Brito, on the Pacific Ocean.

This act, on account of its having served as the basis of the treaty draft on the part of the United States, as stated in the preamble, which adds that it is accompanied by a copy of the act, had for Colombia exceptional importance. For it is so imperative that it seems to leave no faculty other than that of selecting one of the two routes, Panama or Nicaragua, and therefore it was to be presumed that the action of the American Government could not overstep the limits therein fixed. Whence it follows that the sole evil that could befall Colombia if her Congress should disapprove the treaty was that the route eventually selected would be that of Nicaragua. It may be that we fell in error when we entertained that belief, but it was sincere, and we were led into it by the profound respect with which the American laws inspire us.

All governments being, as is well known, bound to respect the rights born of the independence and sovereignty of nations, the premature recognition by the United States of the province of Panama, rising in arms to detach itself from the country of which it is a part, while it is a matter of public knowledge that the mother country commands sufficient forces to subdue it, constitutes, according to the most

<sup>1</sup> See p. 109, F. R., 1861, Mr. Seward to Mr. Adams.—Translator.



ancient and modern authorities on international law, not only a grave offense to Colombia, but also a formal attack upon her wealth.

For, as the territory forms the most important part of the national wealth, its dismemberment impairs the revenues applied to the discharge of corporate obligations among which are foreign debts and those enterprises entailed on the insurgent province, from which Colombia derives a considerable income.

If there be an end and eternal and immutable principles in right, that right of Colombia has been injured by the United States by an incredible transgression of the limits set by equity and justice.

Before the coup de main which proclaimed the independence of the Isthmus took place at Panama, there were in this very city agents of the authors of that coup in conference with high personages clothed with official character, as is asserted by reputable American newspapers. I have received information to the effect that a bank in New York opened a considerable credit in their favor, with a knowledge of the general use for which it was intended, even though unaware that it was to be applied in part to the bribery of a large part of the garrison at Panama.

Intercourse of any kind [said Mr. Seward] with the so-called "commissioners" is liable to be construed as a recognition of the authority which appointed them. Such intercourse would be none the less hurtful to us for being called unofficial, and it might be even more injurious, because we should have no means of knowing what points might be resolved by it. Moreover, unofficial intercourse is useless and meaningless if it is not expected to ripen into official intercourse and direct recognition.<sup>1</sup>

It will be well to say that before the news was divulged that a revolution was about to break out on the Isthmus, American cruisers which reached their destination precisely on the eve of the movement were plowing the waters of the Atlantic and Pacific Oceans. Cablegrams that are given public circulation in an official document show that two days before the movement the Secretary of the Navy issued orders to those cruisers not to permit the landing of troops of the Government of Colombia on Panama's territory.

A military officer of the Government of the United States stopped the railway from carrying to Panama, as it was under obligations to do, a battalion that had just arrived at Colon from Bogotá at the very time when its arrival in that city would have impeded or suppressed any revolutionary attempt. A few days thereafter, when my Government intrusted me with the duty of leading the army that was to embark at Puerto Colombia to go and restore order on the Isthmus, being unacquainted except in an imperfect manner with the attitude assumed by the American war ships, I had the honor to address a note on the subject to Vice Admiral Coghlan, and in his reply, which was not delayed, he tells me that—

his present orders are to prevent the landing of soldiers with hostile intent within the boundary of the State of Panama.

The Republic of Colombia, with a population of 5,000,000 souls, is divided into nine departments, of which Panama is one of the least populous, as the number of its inhabitants does not exceed 250,000, while there are others in each of which they number over 900,000. The Colombian army at the time consisted of 10,000 men, a force

<sup>1</sup> Mr. Seward to Mr. Adams, No. 10, May 21, 1861.—Translator.

more than sufficient to suppress the Panaman revolution if Your Excellency's Government had not prevented the landing of the troops under my command that were to embark at Puerto Colombia under Generals Ospina, Holguín, and Calballero, who soon thereafter accompanied me to that city, and at Buenaventura, on the Pacific, under Generals Velazco, Dominguez, and others. It is known that there is no overland way to reach Panama with troops from the interior of Colombia.

The gravity of the facts contained in this recital increases as they draw closer to the end.

In the midst of profound peace between the two countries, the United States prevented, by force, the landing of troops where they were necessary to reestablish order, in a few hours, in the insurgent province. Because of this circumstance, and as a coup de main, certain citizens of Panama, without taking into account the consent of the other towns of the department, proclaimed the independence of the Isthmus and organized a government. Two days after effecting that movement they were recognized by the American Government as a sovereign and independent Republic, and fourteen days later the American Government signed a treaty with the Republic of Panama which not only recognized and guaranteed its independence, but agreed to open a canal for the purpose of uniting the waters of the Atlantic with those of the Pacific.

It is well known that the contract which Colombia made with the French company, in the exercise of its perfect right, for the construction of this canal, is in force and will remain in full force and vigor, legally at least, so long as Colombia does not give her consent for its transfer to a foreign government; since, in the aforesaid contract, it is expressly stipulated that a transfer to any foreign government, or any attempt whatever to make a transfer, would be cause for absolute nullification.

The same is true with regard to the Panama Railroad Company; so that without the express consent of Colombia no transfer can have legal effect, because it can not cancel the legal bonds which exist between the Republic of Colombia and those companies—bonds growing out of perfect contracts, which, according to the precepts of universal jurisprudence, can not be disregarded because one of the parties may consider that the strip of land in which the enterprise radiated has been conquered by a foreign country. The lapse of many years is necessary in order that the facts may establish the right, and even without the need of such time elapsing the Colombians feel sure that the justice and equity which control the acts of Your Excellency's Government in its relations with all nations are a sure pledge that our complaints and claims will be heeded.

Nor is it just to expect anything else in view of the constant practice which the United States has established in similar cases. Among many others are set forth in its diplomatic annals the antecedent history relative to the independence of South American States, proclaimed in 1810; that of the new State of Hungary, in the middle of the last century; and that of Ireland, later, in 1866; not to make mention of the practice systematically observed by the powers, of which their procedure when the Netherlands proclaimed independence in the time of the Philips of Spain is an example. In this relation the precedent of Texas, when the United States Senate disap-

proved the treaty signed by the Washington Cabinet with the secessionists of that Mexican province, has an especial significance.

In the note of Mr. Seward, Secretary of State, to Mr. Adams, United States minister, in 1861, this doctrine is found :

We freely admit that a nation may, and even ought, to recognize a new State which has absolutely and beyond question effected its independence, and permanently established its sovereignty; and that a recognition in such a case affords no just cause of offense to the government of the country from which the new State has so detached itself. On the other hand, we insist that a nation that recognizes a revolutionary State, with a view to aid its effecting its sovereignty and independence, commits a great wrong against the nation whose integrity is thus invaded, and makes itself responsible for a just and ample redress. (Foreign Relations, 1861, pp. 76-77.)

At another point in the same note the Secretary says to the minister :

To recognize the independence of a new State, and so favor, possibly determine, its admission into the family of nations, is the highest possible exercise of sovereign power, because it affects in any case the welfare of two nations, and often the peace of the world. In the European system this power is now seldom attempted to be exercised without invoking a consultation or congress of nations. That system has not been extended to this continent. But there is even a greater necessity for prudence in such cases in regard to American States than in regard to the nations of Europe. (Foreign Relations, 1861, p. 79, Mr. Seward to Mr. Adams, No. 2, April 10, 1861.)

Referring to the consideration which nations should mutually observe, he adds :

Seen in the light of this principle, the several nations of the earth constitute one great federal republic. When one of them casts its suffrages for the admission of a new member into that republic, it ought to act under a profound sense of moral obligation, and be governed by considerations as pure, disinterested, and elevated as the general interest of society and the advancement of human nature. (Foreign Relations, 1861, p. 79, Mr. Seward to Mr. Adams, No. 2, April 10, 1861.)

It would seem that nothing could be added to the benevolence of these noble and humanitarian doctrines, written by the great man, who, unhappily for his country and for Colombia, is not living to-day.

If the sovereignty of a nation gives to it especially the power to govern itself; if the right to look after its own interests is an attribute of sovereignty; if upon such right rests the stability and security of international relations, respect for such sovereignty should be the more heeded by one who is obligated, as is the United States, not only by international precepts but also by an existing public treaty from which it has derived indisputable advantages. The pertinent part of the thirty-fifth article of the treaty in force between the United States and Colombia reads as follows :

And in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages and for the favors they have acquired by the fourth, fifth, and sixth articles of this treaty, the United States guarantees, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned Isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guarantees, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

It may be said that the power of the United States is for the time being limitless, not only by reason of its laws and its resources of

every kind, but also on account of the respect with which its greatness inspires the world. But in order to deal justly with a weak country this circumstance should be taken into account—that, in stipulating to guarantee “the perfect neutrality and property of the Isthmus,” it could not be supposed that the words “neutrality” and “property” could be given any other interpretation than the technical one they have. If, by a coup de main, the revolutionists have snatched from Colombia the property of the Isthmus, it seems natural that the United States, in view of the aforesaid stipulation, should return the property to its legitimate owner. It does not seem right to give the word “neutrality” the interpretation that, by its application, the acts of the revolutionists shall be left free, because, among other reasons, the stipulation contained in the thirty-fifth article above quoted excepts no case; nor did it foresee, as it could not have foreseen, that the United States would prevent Colombia from landing her forces in Panama territory in case of secession.

If Colombia had not sufficient force to compel Panama to remain a part of the national unit, it would, without doubt, have asked the mediation of some friendly country in order to reach an understanding with the de facto government which has been established there.

But for it to have been able to subdue it by force it was necessary that Your Excellency's Government should remain neutral in the dispute; in not having done so, your Government, itself, violated “the rights of sovereignty and the property which Colombia has and possesses over the said territory,” not complying, consequently, with the obligation it contracted to guarantee those rights as set forth in the above-cited part of the thirty-fifth article of the treaty. And it may be observed that the United States continues deriving the advantages granted under the treaty, while we lose those which we gave in order to obtain such guarantees.

The true character of the new State of Panama is revealed in the fact that it came into existence by a coup de main, effected by the winning over of troops, valorous without doubt, but who have fought against no one, assaulted no intrenchment, captured no fort—contenting themselves with putting in prison the constituted authorities.

If conserving our national integrity, with a few years of peace we could recover the powers we have lost through unfortunate civil wars and could hope, by reason of the moral and physical capacity of our race, to take a distinguished position in the American continent; but if the Government of the United States, by preventing the military action of Colombia to subject the rebels to loyal obedience, should, in a way, make itself the ally of the Panama revolutionists, that Government will be responsible for any new secession movement that may occur, and also, before history at least, for any anarchy, license, and dissolution which a further dismemberment might occasion. Sad indeed is the fate of my country, condemned at times to suffer calamities from its own revolutions and at others to witness the unexpected attacks of a powerful but friendly State, which for the first time breaks its honored traditions of respect for right—especially the right of the weak—to deliver us pitilessly to the unhappy hazards of fortune.

There shall be a perfect, firm, and inviolable peace [says the first article of the aforesaid treaty], and sincere friendship between the United States of America

and the Republic of New Granada (now Colombia) in all the extent of their possessions and territories, and between their citizens, respectively, without distinction of persons or places.

If the United States repels by force the action of our armies in Panama, is not this a clear violation of this article, since peace in one of the Colombian territorial possessions is broken?

The Panama revolutionists, counseled by speculators from several countries, who had assumed the direction of affairs, did not consult the opinion of the inhabitants of their own territory, for there are good reasons for the belief that there are in that territory thousands of persons who, respecting order and authority, have condemned the separatist movement with a determined will and in most energetic and severe terms.

Colombia, in its internal law, has never recognized the principle of secession, because, among other reasons, the obligations contracted with foreign nations by treaty, or with private parties by contract, rest upon the mass of the assets which the State possessed at the moment when the common authority contracted such obligations.

If the people of Panama, animated by the noble sentiments which induced men of action to seek quicker and more rapid progress, had proclaimed their independence and, without foreign aid, been victorious in battle waged against the armies of the mother country, had organized a government, drawn up laws, and proved to the world that it could govern itself by itself and be responsible to other nations for its conduct, without doubt it would have become entitled to recognition by all the powers.

But none of these things having occurred, and judging by the practice which in similar cases has guided the conduct of the American Government, the belief is warrantable that the recognition that has been given would probably not have been made if there had not existed in Panama the best route for the isthmian canal.

In the former case Colombia would have had no right to complain of the failure to fulfill the existing treaty, nor would it have shunned any legitimate means for seeking an arrangement that should dissolve the civil bonds which unite it with those enterprises radicated on Panama territory by contracts made in the exercise of a perfect right.

But Panama has become independent, has organized a Government, has induced a few powers prematurely to recognize her sovereignty, has usurped rights which do not belong to her in any case, and has ignored the debts, which weigh upon Colombia (debts contracted, many of them, to reestablish order which her sons have often disturbed), because the Government of the United States has desired it; because, with its incomparably superior force, the United States has prevented the landing of Colombian troops destined to reestablish order after our having exhausted every possible means of friendly understanding; because the United States, even before the separatist movement was known in Bogota, had its powerful war vessels at the entrances of our ports, preventing the departure of our battalions; because, without regarding the precedents established by statesmen who have dealt with this matter, the United States has not respected our rights in that strip of land which Colombia considers as a divine bequest for the innocent use of the American family of States; and, finally, because the Government of the United States,

invoking and putting into practice the right of might, has taken from us by bloodless conquest—but by conquest, nevertheless—the most important part of the national territory.

Every nation is responsible to other nations for its conduct, whence it follows that all have among themselves rights and obligations, but these rights and obligations are limited by the right of property. The owner of an estate can not oppose the passage through his land—for example, of a railroad which the community needs—but he may demand that he be indemnified for the damage done him. In the same manner a State should certainly not obstruct the passage through its territory of a canal which the progress of the age and the needs of humanity have made necessary, but it has the right to impose conditions which shall save its sovereignty and to demand indemnification for the use thereof. Reasons based on the needs of humanity are undoubtedly very powerful, but they do not convincingly prove that the legitimate owner shall be deprived of a large part of his territory to satisfy such needs.

It might be said to me that exaggerated demands or obstacles which are intentionally raised are equivalent to a refusal. But this is not our case. Colombia has made divers treaties and contracts with foreign countries for the construction of a Panama Canal, and if they have not been carried into effect, as was the case with the treaty with the United States in 1870 and the contract with the French company later, it was not the fault of Colombia. Our demands have not been exaggerated, inasmuch as the terms of the treaty negotiated with the American representative were more advantageous than those stipulated with the French representative, and the conditions set forth in the Hay-Herran convention were much more disadvantageous than those made with the French company. The fact that the United States demands from us, in order to carry out the enterprise, a part of our sovereignty, which, under our laws, we can not legally concede so long as the constitution is not modified, because the powers that did it would be responsible before the judicial branch, does not mean that we have been opposed nor that we are opposed to the realization of the greatest undertaking of the kind which the past and future centuries have seen or will see.

Civil wars are a calamity from which no nation has ever been able to free itself. This being true, to hold responsible the Government which suffers revolutions because it can not prevent them or because it hastens to remedy them when danger menaces seems a notorious injustice, because, if the principle of foreign intervention in civil conflicts were accepted, there would be few cases that would not be converted in the end into international wars. To refrain from dealing or treating with a State for fear of civil wars might be deemed equivalent to refraining from “constructing ships for fear of shipwrecks or building houses for fear of fire.” Nor is it understood what power there would be that would assume the unhappy task of imposing peace upon the rest, nor under what conditions it would do so, since to take away portions of their territory would be a punishment greater than the fault.

In this crisis of the life of my country, as unlooked for as it is terrible, Colombia rests its most comforting hopes in the sentiments of justice which animate the Government of your excellency, and

confidently trusts that that Government, which has so many times surprised the world by its wisdom, will, on this occasion, astonish it by its example.

In any event, Colombia complies with the duty imposed upon her by the treaty of 1846 in that part of the 35th article which says:

\* \* \* neither of the two contracting parties shall ordain or authorize any acts of reprisal, nor shall declare war against the other on complaints of injuries or damages, until the said party considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied, in violation of the laws and of international right.

Since the aforesaid treaty is the law which governs between the two countries, and now that the weakness and ruin of my country, after three years of civil war scarcely at an end, and in which her bravest sons were lost by thousands, place her in the unhappy position of asking justice of the Government of your excellency, I propose that the claims which I make in the present note on account of the violation of the aforesaid treaty, and all other claims which may hereafter be made in connection with the events of Panama, be submitted to the Arbitration Tribunal of The Hague.

With sentiments of the most distinguished consideration and high esteem, I have the honor to subscribe myself.

Your excellency's very obedient and faithful servant,

RAFAEL REYES.

HON. JOHN HAY,

*Secretary of State of the United States,*

*Washington, D. C.*

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*Mr. Hay to General Reyes.*

DEPARTMENT OF STATE,  
*Washington, January 5, 1904.*

SIR: The Government of the United States has carefully considered the grave complaints so ably set forth in the "statement of grievances" presented on behalf of the Government and people of Colombia, with your note of the 23d ultimo.

The Government and people of the United States have ever entertained toward the Government and people of Colombia the most friendly sentiments, and it is their earnest wish and hope that the bonds of amity that unite the two peoples may forever remain unbroken. In this spirit the Government of the United States, mindful that between even the most friendly nations differences sometimes unhappily arise, has given to your representations the most deliberate and earnest attention, and in the same spirit it will employ every effort consistent with justice and with its duty to itself and to other nations not only to maintain but also to strengthen the good relations between the two countries.

At the present moment the questions which you submit can be viewed only in the light of accomplished facts. The Republic of Panama has become a member of the family of nations. Its independence has been recognized by the Governments of the United States, France, China, Austria-Hungary, Germany, Denmark, Russia, Sweden and Norway, Belgium, Nicaragua, Peru, Cuba, Great

Britain, Italy, Japan, Costa Rica, and Switzerland. These solemn acts of recognition carry with them international obligations which, in peace as in war, are fixed by the law of nations and which can not be disregarded. A due appreciation of this circumstance is shown in your admission, made with a frankness and fairness honorable alike to your Government and to yourself, that "Panama has become independent—has organized a government."

The action not merely, as you observe, of a "few powers," but of all the so-called "great powers" and many of the lesser ones, in recognizing the independence of Panama, leaves no doubt as to the public opinion of the world concerning the propriety of that measure. The law of nations does not undertake to fix the precise time at which recognition shall or may be extended to a new State. This is a question to be determined by each State upon its own just sense of international rights and obligations; and it has rarely happened, where a new State has been formed and recognized within the limits of an existing State, that the parent State has not complained that the recognition was premature. ) And if in the present instance the powers of the world gave their recognition with unwonted promptitude, it is only because they entertained the common conviction that interests of vast importance to the whole civilized world were at stake, which would by any other course be put in peril.

The independence of the Republic of Panama being an admitted fact, the department will proceed to consider the complaints presented by you on behalf of your Government as to the manner in which that independence was established. In performing this task I desire to avoid all appearance of recrimination; and, if I shall not be wholly successful in so doing, it is only because I am under the necessity of vindicating the conduct of this Government against reproaches of the most grave and unusual character. The department is in duty bound to deal with these charges in a spirit of the utmost candor; but in performing this duty it will not seek in unofficial sources material for unjust and groundless aspersions. It is greatly to be regretted that your duty to your Government could not, in your estimation, have been discharged within similar limitations.

With every disposition to advance the purpose of your mission, the department has read with surprise your repetition of gross imputations upon the conduct and motives of this Government, which are said to have appeared in "reputable American newspapers." The press in this country is entirely free, and as a necessary consequence represents substantially every phase of human activity, interest, and disposition. Not only is the course of the Government in all matters subject to daily comment, but the motives of public men are as freely discussed as their acts; and if, as sometimes happens, criticism proceeds to the point of calumny, the evil is left to work its own cure. Diplomatic representatives, however, are not supposed to seek in such sources material for arguments, much less for grave accusations. Any charge that this Government, or any responsible member of it, held intercourse, whether official or unofficial, with agents of revolution in Colombia, is utterly without justification.

Equally so is the insinuation that any action of this Government, prior to the revolution in Panama, was the result of complicity with the plans of the revolutionists. The department sees fit to make these denials, and it makes them finally.



The origin of the Republic of Panama and the reasons for its independent existence may be traced in certain acts of the Government of Colombia, which are matters of official record.

It is a matter of common knowledge that the quest of a way to the westward, across the sea, from Europe to Asia led to the discovery and settlement of the American continents. The process of colonization had, however, scarcely begun when the adventurous spirits of that age, not to be balked in their undertaking by an obstacle that seemed to be removable, began to form projects for a canal to connect the Atlantic and Pacific Oceans. As early as 1528 a proposal was laid before the Emperor Charles V for the opening of such a way across the Isthmus of Panama. From that day to the present the project has continued to occupy a place among the great enterprises yet to be accomplished. It remains unfulfilled only because the experience of four hundred years has demonstrated that private effort is wholly inadequate to the purpose, and that the work must be performed, if at all, under the auspices of a government of the largest resources. There was only one such government in a position to undertake it. By a well settled policy, in which all American nations are understood to concur, the assumption of the task by any of the great governments of Europe was pronounced to be inadmissible. Among American governments there was only one that seemed to be able to assume the burden and that was the Government of the United States.

Such was the precise situation when the United States manifested its determination to construct the great highway across the American isthmus. Its purpose was universally applauded. The circumstance that this Government possibly might, in return for the great expenditures which it was about to hazard, derive from the construction of the canal some special advantage was not thought to be a reason for opposing what was to be of such vast benefit to all mankind. The Clayton-Bulwer treaty was conceived to form an obstacle, and the British Government therefore agreed to abrogate it, the United States only promising in return to protect the canal and keep it open on equal terms to all nations, in accordance with our traditional policy. Nor were indications wanting of appreciation on the part of the American Republics. On January 22, 1902, the second Pan-American conference, sitting at the City of Mexico, adopted the following resolution:

The Republics assembled at the International Conference of Mexico applaud the purpose of the United States Government to construct an interoceanic canal, and acknowledge that this work will not only be worthy of the greatness of the American people, but also in the highest sense a work of civilization and to the greatest degree beneficial to the development of commerce between the American States and the other countries of the world.

Among the delegates who signed this resolution, which was adopted without dissent, was the delegate of Colombia.

At that time the Government of the United States had not formally decided upon the route for the canal, whether by way of Panama or of Nicaragua. Owing to the lack of correct information there had long existed a strong tendency toward the latter route; but, as the result of more thorough investigations, a decided change in opinion had begun to appear. To Colombia this change was understood to be very gratifying. As early as May 15, 1897, the Colombian

chargé d'affaires at Washington, speaking in the name of his Government, represented in a "friendly spirit" that any official assistance extended by the United States to the Nicaraguan Canal Company would work serious injury to Colombia.

In a similar sense Señor Martínez Silva, then Colombian minister at this capital, in a note of December 7, 1901, referring to a press report that the Isthmian Canal Commission had, by reason of the excessive price fixed by the Panama Canal Company, reported in favor of the Nicaraguan route, assured the department that the price was not final, and, after declaring that the matter was one that affected "the interests of the Colombian Government, which is well disposed to facilitate the construction of the proposed interoceanic canal through its territory," said:

It would indeed be unfortunate if, through misunderstandings arising from the absence of timely explanations, the Government of the United States should be forced to select a route for the proposed canal which would be longer, more expensive, both in construction and maintenance, and less adapted to the commerce of the world than the short and half-finished canal available at Panama.

On June 28, 1902, the President of the United States gave his approval to the act now commonly referred to as the Spooner Act, to provide for the construction of the interoceanic canal. Following the report of the Isthmian Canal Commission, which confirmed the opinion expressed by the Colombian Government, it embodied the formal decision of the United States in favor of the Panama route. It accordingly authorized the President to acquire, at a cost not exceeding \$40,000,000, "the rights, privileges, franchises, concessions," and other property of the New Panama Canal Company, including its interest in the Panama Railroad Company, and to obtain from Colombia on such terms as he might deem reasonable perpetual control for the purposes of the canal of a strip of land not less than six miles wide, such control to include jurisdiction to make and, through such tribunals as might be agreed on, to enforce such police and sanitary rules and regulations as should be necessary to the preservation of order and of the public health.

The act also provided, in a clause to which your statement adverts, that, in case the President should "be unable to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia," together with the "rights" mentioned in connection therewith, "within a reasonable time and upon reasonable terms," he should turn to Nicaragua. But this provision, while it indicated that the construction of the canal was not wholly to depend upon the success or failure to make reasonable terms with Colombia and the canal company, by no means implied that the question of routes was a matter of indifference.

In the nature of things it could not be so. Not only was the work to endure for all time, but its prompt construction was felt to be of vast importance; and it could not be a matter of less concern to the United States than to Colombia that this Government might possibly be forced to adopt a route which would, as the Colombian minister had observed—

be longer, more expensive, both in construction and maintenance, and less adapted to the commerce of the world than the short and half-finished canal available at Panama.

Nevertheless, even if the route by Panama had been found to be the only feasible one, it would have been highly imprudent for this Government to expose itself to exorbitant demands.

It possessed, indeed, the gratifying assurance that the Colombian Government was "well disposed to facilitate the construction of the proposed interoceanic canal through its territory," and the department is pleased to add to this your present assurance that Colombia considers the canal strip "as a Divine bequest for the innocent use of the American family;" but it was fully understood that, before the canal was begun, arrangements of a very substantial kind would have to be made; and it was felt that, no matter how generous the views of the Colombian Government might be, the canal company might be indisposed to act in the same liberal spirit.

The Spooner Act, in providing for the acquisition by the United States of a limited control over the canal strip, merely followed the lines of previous negotiations with Nicaragua and Costa Rica. Under any circumstances, the exercise of such control could not have been considered unreasonable, but it was deemed to be altogether essential, in view of the unsettled political and social conditions which had for many years prevailed, and which unhappily still continued to exist, along the canal routes, both in Nicaragua and in Panama. Its necessity was clearly recognized in the Hay-Pauncefote treaty, and it was on all sides fully understood to form a requisite part of any plan for the construction of the canal by the United States. Neither while the Spooner Act was pending before Congress nor at any previous time was it intimated from any quarter that it would form a bar to the carrying out of the great project for which the local sovereigns of the canal routes were then such ardent competitors.

After the Spooner Act was approved, negotiations were duly initiated by Colombia. They resulted on January 22, 1903, in the conclusion of the Hay-Herran convention. By this convention every reasonable desire of the Colombian Government was believed to be gratified. Although the concession to the United States of the right to construct, operate, and protect the canal was understood to be in its nature perpetual, yet, in order that no technical objection might be raised, it was limited to a term of one hundred years, renewable at the option of this Government for periods of a similar duration. The limited control desired by the United States of the canal strip for purposes of sanitation and police, not only in its own interest but also in that of Colombia and all other governments, was duly acquired. But in order that neither this, nor any other right or privilege, granted to the United States, might give rise to misconception as to the purposes of this Government, there was inserted in the convention this explicit declaration:

The United States freely acknowledges and recognizes this sovereignty [of Colombia] and disavows any intention to impair it in any way whatever or to increase its territory at the expense of Colombia or of any of the sister Republics in Central or South America: but, on the contrary, it desires to strengthen the power of the Republics on this continent, and to promote, develop, and maintain their prosperity and independence.

This declaration was, besides, confirmed by the reaffirmation of article 35 of the treaty of 1846, as well as by the stipulations made with reference to the protection of the canal; for it was expressly provided that only in exceptional circumstances, on account of unfore-

seen or imminent danger to the canal, railways, or other works, or to the lives and property of the persons employed upon them, should the United States employ its armed forces without obtaining the previous consent of the Government of Colombia, and that as soon as sufficient Colombian forces should arrive for the purpose those of the United States should retire.

Moreover, in view of the great and to some extent necessarily unforeseen expenses and responsibilities to be incurred by the United States, the pecuniary compensation agreed to be made to Colombia was exceedingly liberal. Upon the exchange of the ratifications of the convention, \$10,000,000 in gold were to be paid, a sum equivalent to two-thirds of what is reputed to be the total amount of the Colombian public debt; and, in addition to this, beginning nine years after the same date, an annual payment of \$250,000 in gold was to be made, a sum equivalent to the interest on \$15,000,000 at the rate at which loans can be obtained by this Government.

Such was the convention. The Department will now consider the manner in which it was dealt with.

In the "statement of grievances," to which I have now the honor to reply, a prominent place is given to the stipulation that the convention when signed should be "ratified according to the laws of the respective countries," and it is said that the course taken in Washington was not different from that at Bogota. In a narrow, technical sense this is true, but in a broader sense no supposition could be more misleading. The convention was submitted to the Senate of the United States on the day following its signature. From first to last it was cordially supported by the Administration, and on the 17th of March it was approved without amendment.

The course taken at Bogota affords a complete antithesis. The department is not disposed to controvert the principle that treaties are not definitely binding till they are ratified; but it is also a familiar rule that treaties, except where they operate on private rights, are, unless it is otherwise provided, binding on the contracting parties from the date of their signature, and that in such case the exchange of ratifications confirms the treaty from that date. This rule necessarily implies that the two Governments, in agreeing to the treaty through their duly authorized representatives, bind themselves, pending its ratification, not only to oppose its consummation but also to do nothing in contravention of its terms.

We have seen that by the Spooner Act, with reference to which the convention was negotiated, the President was authorized to acquire, at a cost not to exceed \$40,000,000, "the rights, privileges, franchises, concessions," and other property of the New Panama Canal Company. It was, of course, well known to both Governments that the company under the terms of the concession of 1878 could not transfer to the United States "its rights, privileges, franchises, and concessions" without the consent of Colombia. Therefore the Government of the United States before entering upon any dealings with the New Panama Canal Company negotiated and concluded the convention with Colombia. The first article of this convention provides:

The Government of Colombia authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties, and concessions, as well as the Panama railroad and all the shares or part of the shares of that company.

The authorization thus given, in clear and unequivocal terms, covers expressly the "rights, privileges, \* \* \* and concessions" of the company, as well as its other property.

Some time after the convention was signed the Government of the United States learned, to its utter surprise, that the Government of Colombia was taking with the canal company the position that a further permission, in addition to that contained in the convention, was necessary to the transfer of its concessions and those of the Panama Railroad Company, respectively, to the United States, and that, as a preliminary to this permission, the companies must enter into agreements with Colombia for the cancellation of all her obligations to either of them under the concession. This proceeding seemed all the more singular in the light of the negotiations between the two Governments. (The terms in which the convention authorized the New Panama Canal Company to sell and transfer its "rights, privileges, properties, and concessions" to the United States were the same as those embodied in the original draft of a treaty presented to this Government by the Colombian minister on March 31, 1902.)

No change in this particular was ever suggested by Colombia, in all the discussions that followed, until November 11, 1902. On that day the Colombian minister presented a memorandum in which it was proposed that the authorization should be so modified that "the permission accorded by Colombia to the canal and the railroad companies to transfer their rights to the United States" should "be regulated by a previous special arrangement entered into by Colombia." To this proposal this department answered that "the United States considers this suggestion wholly inadmissible." The proposition was then abandoned by Colombia, and the convention was nearly three months later signed without any modification of the absolute authorization to sell.

The notices actually sent to the companies went, however, even further than the rejected and abandoned proposal presented by the Colombian minister, since they required the companies to cancel all obligations of Colombia to them, and thus to destroy the rights, privileges, and concessions which she had by the convention solemnly authorized the canal company to sell and transfer to the United States. The whole superstructure so laboriously reared was thus threatened with destruction by the removal of one of its foundation stones.

It was against this act of the Colombian Government itself that the remonstrance made by the American minister, Mr. Beaupré, by instruction of his Government, on the 24th of April last, was presented. Great stress is laid upon this remonstrance in Colombia's "statement of grievances," as the first of a series of three diplomatic representations which, by assuming to deny to the Colombian Congress the exercise of its constitutional functions, affronted that body and led the Colombian Senate to reject the convention. Unfortunately for this supposition, the Colombian Congress was not in session. It had not then been convoked; nor did it meet until the 20th of June. The representation was made solely with a view to recall to the Colombian Government the terms of the agreement which it had itself concluded, but of which it seemed to have become oblivious. The second representation was made, as you state, on the 18th of June, two days before

Congress met, but the cabled instruction under which it was made was sent by this Government on the 9th of June. The third was made on the 5th of August, while the Congress was in session. Its obvious purpose was, if possible, to exhibit the situation in its true light.

The department would here gladly end its recital of the course of the Colombian Government with what has already been exhibited, but the circumstances do not permit it to do so. As the "statement of grievances" presented on behalf of Colombia is founded upon the tacit assumption that her present plight is due solely to wrongs committed by this Government, it is necessary that the facts should be disclosed.

The violation by the Colombian Government, long before the Congress assembled, of its agreement to the sale and transfer to the United States of the rights and concessions of the canal and railway companies was not the only act by which it manifested its purpose to repudiate its own engagements. For some time after the convention was signed, its terms appeared to be as satisfactory to the people of Colombia as they seemingly had been to the Colombian Government.

This state of affairs continued until General Fernandez, in charge of the ministry of finance, issued, more than a month before the Congress was convoked and more than two months before it met, a circular to the Bogota press, which, as Mr. Beaupré reported, "had suddenly sprung into existence," inviting discussion of the convention. The circular in substance stated, according to Mr. Beaupré's report, that the Government "had no preconceived wishes for or against the measure;" that it was "for Congress to decide." and that Congress would be largely guided by "public opinion." In view of what the Government had already done, it is not strange that this invitation to discussion was followed by violent attacks upon the convention, accompanied by the most extravagant speculations as to the gains which Colombia might possibly derive from its rejection. No thought whatever seems to have been taken of the incalculable benefits that would accrue to Colombia as the direct and necessary result of the construction of the canal. Only the immediate possibilities, which the resources of this Government and the situation of the canal company served to suggest, seem to have been taken into account.

It is entirely impossible [said Mr. Beaupré, writing on May 4, 1903] to convince these people that the Nicaragua route was ever seriously considered by the United States; that the negotiations concerning it had any other motive than the squeezing of an advantageous bargain out of Colombia; nor that any other than the Panama route will be selected. \* \* \* Therefore, it is contended, and generally believed, that there is no immediate necessity of confirming the Hay-Herran convention; that the negotiations can be safely prolonged, in the end securing very much better terms for Colombia. The public discussion is largely along the lines of the loss of national honor by the surrender of sovereignty; \* \* \* private discussion, which perhaps more clearly reflects the real situation, is to the effect that the price is inadequate.

That Mr. Beaupré's summary of the situation—a situation which seems logically to have followed from the Government's own measures—was correct is amply demonstrated in the sequel. The department deems it unnecessary to enter into any argument upon the question raised at Bogota as to Colombia's "sovereignty." The convention speaks for itself, and its provisions for the acknowledgment and assurance of Colombia's sovereignty have already been set forth.

The explanations put forward in Colombia's "statement of grievances" merely repeat the pleas devised at the Colombian capital. The sudden discovery that the terms of the convention, as proposed and signed by the Colombian Government, involved a violation of the Colombian constitution, because it required a cession to the United States of the "sovereignty" which is expressly recognized and confirmed, could be received by this Government only with the utmost surprise. Nevertheless, the Colombian Senate unanimously rejected the convention.

This fact was communicated to the department by Doctor Herran on the 22d of August last, by means of a copy of a cablegram from his Government. In that telegram the "impairment" of Colombian "sovereignty" was mentioned as one of the "reasons advanced in debate" for the Senate's action; but joined with it there was another reason, with which the department had long been familiar, namely, the "absence" of a "previous agreement" of the companies with the Colombian Government for the transfer of their privileges. To these reasons there was added a reference to the representations made by Mr. Beaupré; but it was said to be "probable" that the Colombian Congress would "provide bases" for "reopening negotiations."

No such action, however, was taken by the Colombian Congress. On the contrary, by a report of the majority of the Panama Canal committee, read in the Colombian Senate on the 14th of October last, it was recommended that a bill which had been introduced to authorize the Government to enter upon new negotiations should be "indefinitely postponed." The reason for this recommendation is disclosed in the same report. By a treaty concluded April 4, 1893, the original concession granted to the Panama Canal Company was extended until December 31, 1904.

By a legislative act in 1900 a new extension was made till October 31, 1910; but the report, adopting a suggestion which had been put forward in the press, raises a question as to whether this legislative extension was valid, and adds that if it was not valid the aspect of the question would be entirely changed in consequence of the fact that when a year later the Colombian Congress should meet in ordinary session the extension of 1893 would have "expired and every privilege with it." In that case, the report goes on to say, the Republic would become the "possessor and owner, without any need of a previous judicial decision and without any indemnity, of the canal itself and of the adjuncts that belong to it," and would not only be able to "contract \* \* \* without any impediments," but would be in more clear, more definite, and more advantageous possession, both legally and materially.

This programme, if not expressly, was at least tacitly, adopted by the Colombian Congress, which adjourned on the 31st of October without providing any bases for the reopening of negotiations. It was a scheme to which this Government could not possibly have become a party. Of this fact the Colombian Government was duly notified when the first intimation of its purpose was, long anterior to the assembling of the Congress, first disclosed. The Colombian Government was expressly informed that such action on its part, or on that of the companies, would be inconsistent with the agreements already made between the United States and the canal company with the act

of June 28, 1902, under the authority of which the convention was made, and with the express terms of the convention itself. It was, under the circumstances, equivalent to a refusal of all negotiation with this Government.

Under these circumstances it was the intention of the President before further action to submit the matter to Congress, which was then soon to assemble. The situation, however, was presently changed. If the Government at Bogota, as the "statement of grievances" assures us, "fell into error" in supposing that the only consequence of its rejection of the convention would be the abandonment of the Panama route by this Government, its blindness to a situation at home that was attracting the attention of the world can only be imputed to itself. Reports of impending trouble, as the result of what was going on at Bogota, were rife.

Advices came to this Government, not only through the press but also through its own officials, of the existence of dangerous conditions on the Isthmus, as well as in the adjacent States whose interests were menaced. Disorders in that quarter were not new. In the summer of 1902, as well as in that of 1901, this Government had been obliged by its forces to maintain order on the transit route, and its took steps, as it had done on previous occasions, to perform a similar duty should the necessity arise. The form the trouble might take could not be foreseen, but it was important to guard against any destructive effects.

The reasonableness of these precautions soon became evident. The people of Panama rose against an act of the Government at Bogota that threatened their most vital interests with destruction and the interests of the whole world with grave injury. The movement assumed the form of a declaration of independence. The avowed object of this momentous step was to secure the construction of the interoceanic canal. It was inspired by the desire of the people at once to safeguard their own interests and at the same time to assure the dedication of the Isthmus to the use for which Providence seemed to have designed it.

The situation thus suddenly created, as the direct and immediate consequence of the act of the Government at Bogota, was, as has already been observed, one that deeply concerned not only this Government but the whole civilized world; but the interests of the United States were especially implicated by reason of the treaty of 1846 with New Granada. This treaty is frequently cited in Colombia's "statement of grievances," and the United States is repeatedly charged with having violated it. But, while its terms are employed as the basis of every accusation against this Government that they can with any plausibility be made to support, its great and fundamental design, the disregard of which by Colombia produced the revolution on the Isthmus, is wholly passed over and neglected. The department is obliged to remedy this defect.

In speaking of the treaty of 1846 both Governments have in mind the thirty-fifth article, which forms in itself a special and distinctive international engagement. By this article—

the Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be free and open to the Government and citizens of the United States.



In return—

the United States guarantees positively and efficaciously to New Granada \* \* \* the perfect neutrality of the before-mentioned Isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed.

And—

in consequence the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

The circumstances in which these engagements originated are matters of history. For some years exceptional efforts had been put forth to secure the construction of an interoceanic canal, and it was commonly believed that certain European Governments, and particularly that of Great Britain, were seeking to obtain control of the transit routes. That no capitalist could be found to engage in the construction of a canal without some greater security for their investments than the feeble and irregular local governments could afford was universally admitted. But, on the other hand, it was apprehended that the introduction of European monarchical interests would prove to be but the beginning of a process of colonization that would in the end be fatal to the cause of republican government.

In this predicament all eyes were turned to the United States. The first result was the conclusion of the treaty of 1846 with New Granada. Its primary object was to assure the dedication of the Isthmus to purposes of interoceanic transits, and above all to the construction of an interoceanic canal. President Polk, in submitting it to the Senate, assigned as the chief reason for its ratification that a passage through the Isthmus—

would relieve us from a long and dangerous navigation of more than nine thousand miles around Cape Horn, and render our communication with our own possessions on the northwest coast of America comparatively easy and speedy.

It is true that the treaty did not require Colombia to permit such a passage to be constructed; but such an obligation was so obviously implied that it was unnecessary to express it.

Apart from the adaptation of the Isthmus to interoceanic transit, and its use for that purpose, there existed, as between the United States and New Granada, no common reason for the treaty's existence. This has always been well understood by both Governments. In a note of the Colombian chargé d'affaires at Washington, of January 3, 1899, commending the Panama enterprise to the good will of this Government, reference is made to the advantages which the United States "would derive from the Panama Canal, when studied in the light of that international agreement," the treaty of 1848. The same treaty was expressly incorporated into and perpetuated in the Hay-Herran convention. And it may be added that the Panama Canal, so far as it has progressed, was built under the protection of the same engagement.

The guaranty by the United States of the neutrality of the Isthmus, and of the sovereignty and property of New Granada thereover, was given for the conservation of precisely this purpose. To this end the United States undertook to protect the sovereignty of the Isthmus from attacks by foreign powers. The powers primarily in view were

those of Europe, but the treaty made no discriminations. The theory on which the "statement of grievances" proceeds, that the treaty obliged the Government of the United States to protect the Government of New Granada against domestic insurrection or its consequences, finds no support in the record, and is in its nature inadmissible.

Only a few years before the treaty was made the original Republic of Colombia was dissolved into the States of Venezuela, Ecuador, and New Granada, and since the treaty was made the Republic of New Granada has been successively transformed into the United States of Colombia and the present Republic of Colombia. With these internal changes the Government of the United States was not permitted to concern itself, so far as they did not affect its treaty rights and obligations. Indeed, it is not to be imagined that New Granada desired or that the United States would have been willing to take part in the former's internal revolutions.

That the United States has faithfully borne, during the long period since the treaty was concluded, the full burden of its responsibilities does not admit of question.

A principal object of New Granada [said Mr. Fish, in a note to the Colombian minister of May 27, 1871] in entering into the treaty is understood to have been to maintain her sovereignty over the Isthmus of Panama against any attack from abroad. That object has been fully accomplished. No such attack has taken place, though this department has reason to believe that one has upon several occasions been threatened, but has been averted by warning from this Government as to its obligations under the treaty.

In January, 1885, when Colombia appealed to the United States in the hope of averting the hostilities with which she was believed to be threatened on account of the Italian subject, Cerruti, this Government caused an intimation to be made of the serious concern which it—

could not but feel were a European power to resort to force against a sister republic of this hemisphere as to the sovereign and uninterrupted use of a part of whose territory we are guarantors, under the solemn faith of a treaty.

Such is the spirit in which the United States has on various occasions discharged its obligations.

The United States has done more than this. It has assumed and discharged, as if primarily responsible, duties which in the first instance rested on Colombia. According to the language of the treaty, the right of the Government and people of the United States to a free and open transit across the Isthmus was guaranteed by New Granada; but the United States has been able to secure the benefits of it only by its own exertions; and in only one instance, and that as far back as 1857, has it been able to obtain from Colombia any compensation for the injuries and losses resulting from her failure to perform her obligation. The department deems it unnecessary now to enter into particulars, but is abundantly able to furnish them.

Meanwhile, the great design of the treaty of 1846 remained unfulfilled; and in the end it became apparent, as has heretofore been shown, that it could be fulfilled only by the construction of a canal by the Government of the United States. By reason of the action of the Government at Bogota in repudiating the Hay-Herran convention, and of the views and intentions disclosed in connection with that repudiation, the Government was confronted, when the revolution at Panama took place, with the alternative of either abandoning the

chief benefit which it expected and was entitled to derive from the treaty of 1846, or of resorting to measures the necessity of which it could contemplate only with regret.

By the declaration of independence of the Republic of Panama a new situation was created. On the one hand stood the Government of Colombia invoking in the name of the treaty of 1846 the aid of this Government in its efforts to suppress the revolution; on the other hand stood the Republic of Panama that had come into being in order that the great design of that treaty might not be forever frustrated, but might be fulfilled. The Isthmus was threatened with desolation by another civil war, nor were the rights and interests of the United States alone at stake, the interests of the whole civilized world were involved. The Republic of Panama stood for those interests; the Government of Colombia opposed them. Compelled to choose between these two alternatives, the Government of the United States, in no wise responsible for the situation that had arisen, did not hesitate. It recognized the independence of the Republic of Panama, and upon its judgment and action in the emergency the powers of the world have set the seal of their approval.

In recognizing the independence of the Republic of Panama the United States necessarily assumed toward that Republic the obligations of the treaty of 1846. Intended, as the treaty was, to assure the protection of the sovereign of the Isthmus, whether the government of that sovereign ruled from Bogotá or from Panama, the Republic of Panama, as the successor in sovereignty of Colombia, became entitled to the rights and subject to the obligations of the treaty.

The treaty was one which in its nature survived the separation of Panama from Colombia. "Treaties of alliance, of guarantee, or of commerce are not," says Hall, "binding upon a new state formed by separation;" but the new state "is saddled with local obligations, such as that to regulate the channel of a river, or to levy no more than certain dues along its course." (International Law, 4th edition, p. 98.) To the same effect, it is laid down by Rivier "that treaties relating to boundaries, to water courses, and to ways of communication," constitute obligations which are connected with the territory and follow it through the mutations of national ownership. (Principes du Droit des Gens, I, 72-73.) This Government, therefore, does not perceive that, in discharging in favor of the present sovereign of the Isthmus its duties under the treaty of 1846, it is in any way violating or failing in the performance of its legal duties.

Under all the circumstances the department is unable to regard the complaints of Colombia against this Government, set forth in the "Statement of grievances," as having any valid foundation. The responsibility lies at Colombia's own door rather than at that of the United States. This Government, however, recognizes the fact that Colombia has, as she affirms, suffered an appreciable loss. This Government has no desire to increase or accentuate her misfortunes, but is willing to do all that lies in its power to ameliorate her lot. The Government of the United States, in common with the whole civilized world, shares in a sentiment of sorrow over the unfortunate conditions which have long existed in the Republic of Colombia by reason of the factional and fratricidal wars which have desolated her fields, ruined her industries, and impoverished her people.

Entertaining these feelings, the Government of the United States would gladly exercise its good offices with the Republic of Panama, with a view to bring about some arrangement on a fair and equitable basis. For the acceptance of your proposal of a resort to The Hague tribunal, this Government perceives no occasion. Indeed, the questions presented in your "statement of grievances" are of a political nature, such as nations of even the most advanced ideas as to international arbitration have not proposed to deal with by that process. Questions of foreign policy and of the recognition or nonrecognition of foreign states are of a purely political nature, and do not fall within the domain of judicial decision; and upon these questions this Government has in the present paper defined its position.

But there may be, no doubt, other questions which may form a proper subject of negotiation; among them, for instance, the establishment of diplomatic relations between the Republics of Colombia and Panama, the delimitation of their respective boundaries, the possible apportionment of their mutual pecuniary liabilities. If the Government of Colombia will take these matters up, with any others which they think may require discussion, and will put their suggestions in regard to them in a definite and concrete form, they will receive at the hands of this Government the most careful consideration, with a view to bringing them, in the exercise of good offices, to the attention of the Government of Panama.

Accept, sir, the renewed assurances of my highest consideration.

JOHN HAY.

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[Translation.]

*General Reyes to Mr. Hay.*

LEGATION OF COLOMBIA  
ON SPECIAL MISSION,  
*Washington, January 6, 1904.*

MR. SECRETARY: I have received the note which your excellency did me the honor to address to me under date of the 30th of December last, in answer to mine of the 29th of the same month. I transmitted it by cable to my Government and have received from it instructions to make to your excellency's Government the following declarations:

First. That the said note of the 30th of December from your excellency is regarded by my Government as an intimation that the Colombian forces will be attacked by those of the United States on their entering the territory of Panama for the purpose of subduing the rebellion, and that for that reason, and owing to its inability to cope with the powerful American squadron that watches over the coasts of the Isthmus of Panama, it holds the Government of the United States responsible for all damages caused to it by the loss of that national territory.

Second. That since the 3d of November last the revolution of Panama would have yielded, or would not have taken place, if the American sailors and the agents of the Panama Canal had not prevented the Colombian forces from proceeding on their march toward Panama, and that I, as commander in chief of the army of Colombia, would have succeeded in suppressing the revolution of Panama as

early as the 20th of the same month if Admiral Coghlan had not notified me in an official note that he had orders from his Government to prevent the landing of Colombian forces throughout the territory of the Isthmus.

Third. That the charges officially made again the Government and Senate of Colombia that it was opposed to the work of the Panama Canal, and that its purpose was to obtain a greater amount of money from the American Government and to recover the concession of the French company are unfair and groundless, and the proof of this assertion is that the Colombian Senate refused to ratify the Hay-Herran treaty, not because a greater sum of money was demanded, but because the treaty was contrary to the constitution of the country, which prohibits the cession of sovereignty over national territory; but the necessity of the canal is so well recognized in Colombia that it was proposed, in the discussion of the Senate, to amend the constitution in order to remove the constitutional difficulty, and the minister of foreign relations, after the sessions of Congress were closed, directed the *chargé d'affaires*, Doctor Herran, to advise the Government of your excellency that that of Colombia was ready to enter into renewed negotiations for a canal convention, and that it purposed to remove the existing constitutional difficulties. The charge made against the Government of Colombia that it purposed to cancel the concession of the French company vanishes as soon as it be known that under the latest extension granted to it by Colombia the said concession would not lapse until the year 1910.

Fourth. That the failure of the Colombian Senate to ratify the Hay-Herran treaty, for the reasons above stated, can not be regarded as an act of discourtesy or unfriendliness, as the minister of foreign relations of Colombia, Señor Rico, told the minister of the United States, Mr. Beaupré, at Bogota, because a treaty prior to its ratification is nothing but a project which, according to the laws of nations, neither confers rights nor imposes obligations, and therefore its rejection or delay in its ratification gives no ground for the adoption of measures tending to alter the relations of friendship between the two countries. If it were not so, the mere act of preparing a public treaty would be an occasion for serious danger instead of an element of peace and progress, which is the predicament in which Colombia finds herself at present, owing to her weakness.

Fifth. That while the treaty of 1846 gives to the Government of the United States the right to maintain and protect the free transit of the Isthmus at the request of Colombia and when the latter is unable to do so, it places it under the obligation of enforcing the respect of Colombia's sovereignty over the territory of the Isthmus and that the American Government has now not only failed to discharge that duty, but has prevented the Colombian forces from recovering the national sovereignty on the Isthmus, and thus the said treaty of 1846 being in full force, Colombia holds that the Government of the United States has no other reason than that of its own strength and of Colombia's weakness for interpreting and applying it in the manner it has; that is to say, for availing itself of the advantages and rights conferred by the treaty, and refusing to fulfill the obligations imposed thereby.

Sixth. That it is known, from sworn statements, that the garrisons of Panama and Colon were bought with gold brought from the

United States, toward the end of October, by the Panama revolutionists.

Seventh. That if these revolutionists had not relied, and did not now rely, on the armed protection of the United States, whose powerful squadrons on both the Pacific and Atlantic Oceans have prevented, and are preventing, since the 3d of November, the Colombian army from landing its forces, the Panama revolution would have been foiled by Colombia in a few hours.

Eighth. That the Government of Colombia, holding a perfect right that the cession of the compact with the French canal company be not effected without its express consent, has instituted an action against the said company before the French courts and asked that the contract made with the American Government be declared null and void.

Ninth. That on the grounds above stated, the Government of Colombia believes that it has been despoiled by that of the United States of its rights and sovereignty on the Isthmus of Panama, and not being possessed of the material strength sufficient to prevent this by the means of arms (although it does not forego this method, which it will use to the best of its ability), solemnly declares to the Government of the United States:

First. That the Government of the United States is responsible to that of Colombia for the dismemberment that has been made of its territory by the separation of Panama, by reason of the attitude that the said Government assumed there as soon as the revolution of the 3d of November broke out.

Second. That the contract made between the United States and the French canal company is null, since it lacks the consent of Colombia, and the latter has already brought suit against the said canal company before the French courts in the defense of its interests.

Third. That the Government of Colombia does not nor will it ever relinquish the rights it possesses over the territory of the Isthmus of which it is now despoiled by the American forces, and will at all times claim the said rights and try to vindicate them by every means within its reach, and that for that reason the title over the territory of the Isthmus that may be acquired by the United States for the opening of the canal is void, and Colombia reserves to herself the right to claim the said territory at any time.

Fourth. That if the work of the Panama Canal is undertaken and carried to completion in disregard and trespass of the rights of Colombia, the latter puts it on record that she was denied justice by the United States; that she was forcibly despoiled of the territory of the Isthmus in clear violation of the treaty of 1846, and that she does not relinquish the rights she possesses over the said territory, and holds the United States responsible for the damages caused to her.

Fifth. That Colombia, earnestly wishing that the work of the canal be carried into effect, not only because it suits her interest but also those of the commerce of the world, is disposed to enter into arrangements that would secure for the United States the execution and ownership of the said work and be based on respect for her honor and rights.

Sixth. That the United States has never protected Colombia on the Isthmus of Panama against foreign invasion, and that when it has

intervened to prevent the interruption of the traffic it has been in help, or be it at the suggestion of the Government of Colombia. In this one instance it did so on its own initiative, with the obvious purpose of protecting the secession of the Isthmus. The guaranty of neutrality, if it were privileged, would estop the sovereign of the land from maintaining order, which is contrary to the fundamental principles of every Government; and

Seventh. That the course followed by the American Government at Panama at the time when Colombia enjoyed peace, after overcoming a revolution of three years' duration, which left her exhausted, is in favor of any rebellion, but not of the maintenance of order, which is contrary to the principles and antecedents of the policy of this great Nation as established in the war of secession.

As the treaty with Panama, by which the rights of Colombia on the Isthmus are plucked from her, is now under discussion in the American Senate, I respectfully ask of your excellency that my note of December 23 and the present one be submitted to that high body, so that they may be taken into account in the discussion of the rights of Colombia.

Inasmuch as official charges have been made against my country in the documents sent to the Senate, I give notice to your excellency that, in reply to those charges, I will publish my note of the 23d of December and the present one.

I beg that your excellency will answer, as soon as possible, my aforesaid note of 23d of December.

I have the honor to be, with sentiments of the highest consideration,  
Your excellency's obedient servant,

RAFAEL REYES.

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*Mr. Hay to General Reyes.*

DEPARTMENT OF STATE,  
*Washington, January 9, 1904.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's note of the 6th of January, 1904, which I have read with most respectful care.

I find that almost all the propositions brought forward in this communication have been considered and fully answered in advance in the note I had the honor to address you on the 5th day of January. I need, therefore, only briefly refer to a few matters which you have brought forward for the first time in your note of the 6th of January. In the first paragraph of your note you state that your Government regards my note to you of the 30th of December as an intimation that the Colombian forces will be attacked by those of the United States on their entering the territory of Panama. This inference of yours is wholly gratuitous. We have considered it our duty to represent to you the serious responsibility which would have been assumed by Colombia in a hostile demonstration of the character you mention, and, at the same time, you were assured that the United States Government in that event would reserve its liberty of action and be governed by the circumstances of the case.

Your excellency is pleased to assert that if this Government had not intervened to preserve order on the Isthmus you would have been able to put an end to the revolutionary government of Panama in a

few hours. This is hardly consistent with your statement that the late insurrection in Panama lasted three years. No human sagacity can decide with certainty what would have been the duration or result of such a conflict as would have ensued, nor what would have been the amount of bloodshed and devastation which would have afflicted the Isthmus, or the sum of the injury which would have resulted to the world at large if this Government had not taken the action of which you complain.

In the third paragraph of your note you repeat your claim that the action of your Government in respect to the canal treaty was not prompted by any desire for additional compensation, but solely by a regard for your constitutional law. In reply to this I can only refer your excellency to the repeated intimations we received during the discussion of the treaty in Bogota from the highest and most honorable personages in the Republic, that a large increase of the pecuniary consideration would result in the ratification of the convention; to the attempt which was made to induce the French canal company to pay an enormous sum for permission to dispose of their property; and to the report of the canal committee to the Colombian Senate, suggesting the delay of all proceedings until the coming year, when the extension of the concession might be declared invalid and the nation might be in condition to deal with us without regard to the French shareholders. Your reference to the constitutional question I have already answered. The treaty which Colombia made and then rejected contained no cession of sovereignty; but, on the contrary, preserved the sovereignty of Colombia scrupulously intact.

I do not consider that this Government is called upon to take notice of your statement as to the sources from which the revolutionary government obtained its funds. As this Government had no participation in the preparation of the revolution, it has no concern with the details of its history.

I note with regret the continued protest you make in the name of your Government against the events which have taken place in Panama, and the determination of Colombia not to accept the situation to which they have given rise. I am in harmony with the sincere desire of the Government and the people of the United States in hoping that your Government may see its way to conclusions more in accordance with its true interests and those of its sister American Republics, and that it may not reject the friendly assurances I am charged to convey to you.

I will not for a moment accept the imputation of unfriendly motives or sentiments on the part of this country toward Colombia, and, even if Colombia should persist in assuming a hostile attitude toward us, it will only be after the most careful deliberation and with extreme reluctance that this Government would shape its course in accordance with the deplorable conditions thus created.

I am, Mr. Minister, with sentiments of the highest consideration,  
Your obedient servant.

JOHN HAY.

GEN. RAFAEL REYES.

*Envoy Extraordinary and Minister Plenipotentiary  
on Special Mission.*



[Translation.]

*General Reyes to Mr. Hay.*LEGATION OF COLOMBIA, ON SPECIAL MISSION,  
*Washington, January 11, 1904.*

MR. SECRETARY: I have the honor to acknowledge the reception of your excellency's notes of the 5th and 9th of the present month of January. In the first your excellency answers my statement of grievances of the 23d of December last; in the second your excellency makes a reply to my note of the 6th instant, containing various declarations.

I must state that, notwithstanding the respect that I owe to your excellency's efforts, I find in the present case that my arguments have not been refuted by the otherwise forceful papers to which I am referring. I could abide by and even further fortify my arguments, which the very cause they support make unanswerable, but I can see no result for such a course, since, under the circumstances that surround the debate, there is, on the part of your excellency's Government, no opinion to form, but a decision already reached.

I therefore confine myself to submitting a few remarks on your excellency's position in regard to my request that the pending difference be referred to The Hague tribunal.

True, it lies with the several States to recognize a new member of the family of nations; but haste and circumstances may always involve a disregard of international law while profession is made to maintain it.

The recognition of a new State separated from a friendly nation would be a legitimate act on the part of foreign nations, in so far as they observe strict neutrality between the contesting parties; but it is a violation of the principles that govern the relations of the international community when one of the belligerents is hindered from the exercise of his rights and the use of his forces, and much more so when a public treaty is infringed. The treaty of 1846 being in force between the Governments of the United States and of Colombia, the dilemma that confronted the former when the movement occurred at Panama may not have been that which your excellency contemplates, but rather the following: Either to recognize that Panama was an integral part of Colombia or invest it with the character of a separate entity.

In the first case, whatever be the position of your excellency's Government touching neutrality in intestine strifes, it had no cause for preventing Colombia from subduing the rebellion; in the other case the Government of the United States was obligated to enforce the respect of Colombian sovereignty, and, in either event, it is as untenable a proposition in law to hold obligations toward a nation as fulfilled in one of its rebellions or separated provinces as, in mathematics, to insist that the part and the whole are equivalent. And it is fit here to observe that the reason why I asserted to your excellency that if I had not been prevented from landing the forces under my command on the 19th of November, fifteen days after the rebellion had broken out, it would have been immediately smothered, is that the garrison bought off in Panama did not exceed 200 men.

At the close of the first of the notes hereby answered, your excellency, referring to my proposal to refer to the arbitration of The Hague tribunal the claims that my country desires to have settled in an amicable and decorous manner, states that the questions presented in my statement of grievances "are of a political nature such as nations of even the most advanced ideas as to international arbitration have not proposed to deal with by that process." I must point out to your excellency that the infringement of the treaty of 1846 has resulted in civil consequences of the greatest import which do come within the scope of the jurisdiction of courts. Colombia, for instance, has no claim against Germany, France, England, etc., by reason of the recognition of Panama as an independent State, little as the proceeding may be a friendly act, because she had and has no treaty with those countries that made them guarantors of her sovereignty and ownership; but with your excellency's Government the case is very different, for reasons that may be ignored but which will live as long as the sense of justice, slow but sure, shall endure in this world.

The injuries that Colombia has already suffered and will continue to suffer in consequence of the infringement of the treaty are manifest and actual, and the refusal to entertain her claims as well as her lacking the strength to secure redress put her under the painful necessity of asking of the mighty Government and people of the United States that the tribunal called upon to decide her case be one of unquestionable standing and impartiality. I have such a high opinion of your excellency's sound judgment that I still permit myself to hope that it will bring about a reconsideration of your decision or a suggestion to my Government of some other means of doing Colombia justice in a manner compatible with her honor.

I see from the second paragraph of your excellency's note of the 9th instant that the American Government does not and can not consider as a declaration of war on the part of Colombia the fact that the army of my country should enter Colombian territory, as is that of Panama, for the purpose of subduing the rebellion. This makes me confident that there will be no conflict between the Colombian and American forces when the former take the field on the Isthmus. And I have to point out here that, contrary to the statement made in official documents, Panama never was independent or belonged to any nation other than Colombia since the latter gained her independence. All of the royal letters patent issued from 1533 to 1803 incorporated the provinces of Darien, Portobelo, and Veragues, which embraced the whole territory of the Isthmus, into the viceroyalty of the new kingdom of Granada. The declaration of 1821, made by those provinces when New Granada had already cleared the country of the enemy that held the former viceroyalty under its yoke, was nothing more, in fact, than the sanction of the *uti possidetis* of 1810, the main foundation of the rights of all Spanish-American countries.

I profoundly regret, on the failure of the mission which was intrusted to me, that my well-meant efforts to reach a fair and honorable settlement with your excellency's Government have thus far been in vain, and compelled, as I am thereby, to depart, I once more confirm the contents of my previous notes and, in the name of Colombia,

enter a solemn protest against the denial of justice inflicted on my country by one of the most powerful governments in the world, bound by its very power to be equitable, and put on your excellency's Government the responsibility for all evils to come.

Being unable, under existing circumstances, to take personal leave of the most excellent President and of your excellency, I beg you will accept this excuse and the expression of my thanks for the personal attentions I have received at the hands of all the members of the administration.

I am, with sentiments of the highest consideration,

Your excellency's obedient servant,

RAFAEL REYES.

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*Mr. Hay to General Reyes.*

DEPARTMENT OF STATE,  
*Washington, January 13, 1904.*

SIR: I have the honor to acknowledge receipt of your excellency's communication of the 11th of January, 1904, in which you ask that this Government shall reconsider its decision in regard to the submission of the claims of Colombia to the arbitration of The Hague, or, as an alternative to this, you invite a suggestion to your Government of some other means of doing Colombia justice in a manner compatible with her honor.

In reply I beg to inform you that this Government sees no reason to reconsider its attitude in these matters, which has been adopted after mature deliberation and reflection.

Referring to your communication above-mentioned, and also to the conversation which I had the honor to hold with your excellency on the same day, I am now instructed by the President to make the following suggestion. This Government is now, as it always has been, and as I have frequently had the honor to inform your excellency, most desirous to lend its good offices for the establishment of friendly relations between the Republic of Colombia and that of Panama. We think that they might be exercised with a hope of a favorable result if Colombia, as may be inferred from our interchange of views, should consider that the conditions necessary to its recognition of the existing state of things are:

First. To submit to a plebiscite the question whether the people of the Isthmus prefer allegiance to the Republic of Panama or to the Republic of Colombia.

Second. To submit to a special court of arbitration the settlement of those claims of a material order which either Colombia or Panama by mutual agreement may reasonably bring forward against the other, as a consequence of facts preceding or following the declaration of independence of Panama.

I have the honor to be, sir, with sentiments of the highest regard and consideration,

Sincerely, yours,

JOHN HAY.

*Mr. Buchanan to Mr. Hay.*

No. 4]

LEGATION OF THE UNITED STATES,  
(SPECIAL MISSION),  
*Panama, December 25, 1903.*

SIR: I have the honor to advise you of my arrival at Colon on the morning of the 22d. I was met there by Dr. Gonzales Guill, sub-secretary for foreign affairs, and Dr. Juan Mendez, private secretary to the junta. A private car was placed at my disposal and every possible courtesy shown me.

I reached Panama at noon and was met at the station by the minister for foreign affairs and by him escorted to the hotel.

I transmitted the office copy of my credentials to the minister for foreign affairs, with a note, a copy of which I inclose, under "Inclosure 1," dated the 23d, and handed to the minister early on the morning of the 24th, together with a second note containing a confidential copy of the remarks I proposed to make upon presenting my letter to the junta. A copy of this note, together with its inclosures, will be found herein, under "Inclosure 2." \* \* \*

I was notified by the minister for foreign affairs on the 24th that I would be received by the junta to-day (25th) at 3 p. m. At that hour I was conducted to the Government House, our carriage passing through two short streets which were lined on both sides with infantry. At the Government House I was awaited by the junta, the cabinet, the supreme court, and all the military officers of high rank in the Republic. My reception was marked by dignity and modest good taste shown by the Government. A military band played the Star Spangled Banner as I entered and when I retired from the Government House.

In response to my remarks Doctor Arango, for the junta, read a reply; a copy and translation you will find herewith, marked "Inclosure 3."

The entire consular corps was present at the reception, with the exception of the Central American consuls and those from Chile and the Argentine. \* \* \*

My reception to-day was in every way marked by a dignified, grateful respect and regard for our country, and was therefore very gratifying to me.

I have the honor to be, sir,

Very respectfully, your obedient servant,

WM. I. BUCHANAN.

[Inclosure 1.]

*Mr. Buchanan to the minister for foreign affairs.*

PANAMA, December 23, 1903.

SIR: I have the honor to advise your excellency of my designation by the President as envoy extraordinary and minister plenipotentiary of the United States of America on special mission to your excellency's Government and to inclose herewith an office copy of the letter I bear from the President accrediting me in such capacity.

I beg to request your excellency to be good enough to designate a time at which I may have the honor to present the original to their

excellencies the members of the junta of the provisional government of the Republic of Panama.

I have the honor to be, sir,

Very respectfully, your excellency's obedient servant,

WM. I. BUCHANAN.

[Inclosure 2.]

*Mr. Buchanan to the minister for foreign affairs.*

Confidential.]

GRAND HOTEL,

*Panama, December 23, 1903.*

SIR: I beg to inclose for your excellency's information a copy of the remarks I shall have the honor to make to their excellencies the members of the junta of the provisional government upon the occasion of my presenting to their excellencies my letter of credence from the President of the United States.

I have the honor to be, sir, very respectfully, your excellency's obedient servant,

WM. I. BUCHANAN.

[Copy of Mr. Buchanan's remarks upon presenting his credentials.]

I have the honor to present to your excellencies the letter of credence I bear from the President of the United States of America accrediting me as an envoy on special mission to your excellencies' Government.

I am deeply sensible of the honor thus conferred upon me by the President and profoundly grateful for the opportunity I am thus afforded to meet your excellencies' people and to study the conditions and possibilities of the Republic of Panama.

The advent and the future development and life of this new nation is a subject of keen and kindly interest to the American people, who all wish for your excellencies' people and country that wide progress and advancement which peace, quiet, and economy bring to all countries.

I am charged by the President to express to your excellencies his fervent wish that these benefits shall come to the Republic of Panama, and that happiness, contentment, and prosperity may abide with your excellencies' people.

[Inclosure 3.—Translation.]

SIR: The junta of the provisional government of the Republic of Panama receives from your hands with lively satisfaction the letter of His Excellency the President of the United States of America which accredits you before this new nation as special envoy of your Government. By this the greatest Republic of the American Continent dignifies its appreciation of the least as an equal with her sister Republics of the New World, thus clearly manifesting the high spirit of justice which animates the great people of the north, in whose favor our people extend their best wishes and their best intentions.

The junta of the provisional government of the Republic of Panama considers the selection by the United States Government of one who, like yourself, unites in himself such marked personal and public qualities as to enable him to duly appreciate the present conditions of our country as a high mark of deference. Your presence in our midst will be the means, if that be possible, of more closely linking the two nations together in sincere friendship and accord.

Notwithstanding we know that the people of your country are interested in the existence and development of this nation, it has been especially gratifying to this junta to hear the fact repeated by the official representative of that people, as great as they are generous and as free as they are well ordered. We pray the Almighty that, as you have said, the benefits of progress, the advancements from peace, and the emoluments of order—the harvest the people of Panama aspire to—may follow, if possible, along the luminous path set by your country with marked advantage for humanity.

You can assure His Excellency the President of your Nation that the Government and people of Panama thank him for his good wishes for this Republic, and that we in return fervently hope that all good may come to his people and to himself.

No. 6.]

*Mr. Buchanan to Mr. Hay.*

LEGATION OF THE UNITED STATES  
(SPECIAL MISSION),  
*Panama, December 27, 1903.*

SIR: In view of the opinion held by some of our people to the effect that the revolution here had nothing at the base other than the canal question and that no serious dissension has existed in Colombia between the Bogota ruling element and the different Departments (or States), the inclosed clippings will interest you, I am sure.

The first is a translation of a remarkable letter recently written the Colombian minister of war by one of Colombia's best known and most valiant generals—Gen. Leopoldo Triana—now in command of a division (by rank) and actually president of the council of the capital of the Department of Cauca.

The weak hold on the nation exercised by the Bogota Government can be appreciated when one stops to realize that a letter such as the one I inclose can be written by an officer of the army to his Government and the writer escape punishment; it also indicates the extent to which secession from the Bogota Government has grown in the Department of Cauca.

As a most significant evidence of the fact that Bogota fully appreciates the national situation now and is anxious by any means to avert further breaking away from the Central Government, on the part of Departments, the second inclosure herein will most certainly attract your attention.

It is, as you will note, an order from the Bogota Government to all governors to immediately call for an expression from their different municipalities as to the urgency of some constitutional reforms and as to how they believe these shall be brought about. It is of course possible that this course may have been adopted by the Bogota Government in order to gain time to work out some plan, but is more probable a necessary step they were obliged to take to save a critical condition in several of their Departments, notably in Cauca.

I have taken the copy of the order from El Rigoletto, of Barranquilla, under date of December 16. I have made a translation of the order, which I also inclose.

I have the honor to be, very respectfully, your obedient servant.

WM. I. BUCHANAN.

[Inclosure 1.]

[Panama (Republic of Panama) Star and Herald, Friday, December 25, 1903.]

RES NON VERBA.

CALI, November 20, 1903.

Your excellency asks me, in a telegram of the 16th, whether it is true that I and propagating in the Cauca the idea of separation, and I am called upon to state frankly my views in this respect, and, with the characteristic frankness which your excellency acknowledges in me, I make this statement: It is true that I have written something like a dozen letters drafted on the same model as the one that was sent from Buenaventura to General Velasco and sent by him to your excellency.

I have thought and do think, honestly, that the Cauca is in need of exercising in the nation the influence to which it has a right, in order that its legitimate interests be duly respected and cared for and to put a stop to the practice of abusing, as hitherto, the good faith and patriotism of its people, with detriment to its well-being and its hopes of progress. \* \* \*

Watching attentively the march of national affairs, especially after the re-establishment of order in June last, I am persuaded by patriotic considerations that there is need of modifying the ultra central system in order that the Government may not put aside the interests of the Departments, a system which has naturally been a cause for the separation of Panama and has germinated the same idea in the rest of the Departments.

The voice of the Cauca, the great champion in time of war and the most despised at the time of reward, has had no weight at Bogota, where we are treated as a horde of savages or a flock of sheep.

Innumerable are the recent scandalous acts which reveal the corruption of the national metropolis, where a traffic is carried on in which the conscience and everything else is involved, and which makes it abominable for people who anxiously desire peace and tranquility to work with the hope of reaping the benefit of honest labor. The general attention there is given up to absorbing, like a huge sponge, the political combinations, in which, however, no idea tending to the well-being of the public is ever considered, but only such as redound to preserve and acquire influence to be subsequently productive of pecuniary gain to those who dispose of the faith of the country for their own personal benefit.

So long as there is no public administration; so long as the men at the head of the Government do not persuade themselves that they are the agents of a free people, we shall continue sliding down the slippery slope of dissolution, thus shattering the bond of union honestly implanted by the delegates of 1886.

I am in favor of federation as the only means of preserving the national union, as it is only in this way that the different sections can be protected against the political, financial, and electoral trusts of the capital, and the only way of attending to their wants and stimulating the youth of the provinces not yet contaminated by the leprosy of the capital or by the corrupting mercantile spirit.

Public instruction, in a professional sense, has absolutely disappeared in the Cauca; the present generation, according to the opinion of a well-known writer of Antioquia, will not enumber history.

In the new order of things the Government could reserve to itself the political direction of the country; the keeping of foreign affairs on a footing of open and honest friendship with all countries, especially with our neighbors; unification of the metallic coinage, the unity of the civil and penal legislation, and the settlement of the foreign debt, so as to uphold our public credit. Other matters would rest with the different sections, be these denominated States or Departments, including the redemption of the paper currency, which is a political and social evil, greater even than the scheme of separation which is bothering our minds.

Since your excellency desired to know my views I have expressed them openly and frankly, in the same way it is my duty to inform your excellency that the indignation is general in the Cauca in consequence of the blunders in Bogota, and that in spite of information which the Government may have received to the contrary, the idea about separation is almost unanimous; to crush that opinion not a single battalion could be organized, because the outcome would be futile; further, if the Government wishes to keep intact the integrity of Colombia, instead of attempting the task by the use of bayonets it would do well to en-

power commissions to carry out the work diplomatically, offering something that shall be complied with in administrative matters of municipal life which does not exist, and of civil and political liberty.

The events in Panama being accomplished facts, there is, in my opinion, no other recourse left but to convene a national convention to be composed of the leading representatives of all the political parties in order to come to an agreement as to a *modus vivendi* and contrive to heal the wounds inflicted on the nation. In that laudable work we shall second the Government without vacillation and without distinction of opinions.

I beg to request your excellency, in a very special manner, to have this telegram brought to the knowledge of his excellency the Vice President of the Republic and the cabinet, for it conveys the general feelings of the people of Cauca.

I am, your excellency's devoted friend and compatriot,

LEOPOLDO TRIANA C.,  
*General of Division.*

General Triana, author of the telegram to his excellency the minister of war, above quoted, is a native of Cauca, was chief of division of the Colombian army in that Department and is at present occupying the high position of president of the municipal council of Cali, its capital.

[Inclosure 2.]

BARRANQUILLA, *December 16, 1903.*

The DIRECTOR OF THE RIGOLETTO:

I have just received the following circular, marked "urgent," from the civil and military governor of the Department. It is as follows:

CARTAGENA, *December 15, 1903.*

*To all prefects and mayors:*

I have received the following telegram from his excellency the Vice President of the Republic and his cabinet. This is as follows: Circular, official, dated Bogota. To all governors: Competent citizens of various departments think that reforms must be introduced in our institutions which will tend to decentralize the public administration, and thereby develop the individual life of departments and of municipalities. It is their judgment that the integrity of the country can by this means be guaranteed and every motive for discord and lack of tranquillity be removed.

If such reforms are to follow the regular course provided by article 209 of the constitution, they can only be brought about by the vote of two legislatures, as provided therein.

The Government, always respectful and deferential to national opinion, is anxious to know the views of all Colombians with respect to such reforms, and as to whether or not the country desires that they shall be introduced by some other method than that permitted by the constitution. To that end you are urgently requested to direct a communication to the different municipalities in your department, soliciting their opinion concerning the above points.

The vote of each municipality must be properly certified and sent as quickly as possible to the proper branch of each department, and by these immediately transmitted to the Government. God guard you. (Signed) José Manuel Marroquín. (Here follows signatures of cabinet.)

The office enthusiastically participates in these ideas inspired for the country's good and for the tranquillity to you. The situation created by the pernicious example of Panama requires careful study and demands of Colombia's faithful sons that they shall forget past wrongs, errors, and unstableness, that they may enter the new pathway indicated, wherein lies the good and the upbuilding of our country.

For these reason the determination taken by the National Government without reserve deserves the applause of all, since it points to the introduction of reforms in our institutions which will bring about the decentralization of the departments and municipalities and at the same time carry away all motives of discord and guarantee the integrity of the Republic.

The present is an hour calling for concord, patriotism, and for frank and full reconciliation. Colombia is now passing through an exceptional crisis, which



can only safely be solved by the free and genuinely authentic force of public opinion. The imminent gravity of the problem of making the nation, now honeycombed with the dissensions of partisanship, into a stable, solid entity, capable of victoriously taking care of every eventuality of the future, is apparent.

These things counsel us to promptly remedy existing evils, but this will come too late if the reforms desired were to be introduced through the medium provided by article 210 of the constitution, which says: "This constitution may be amended by a legislative act, after discussion and approbation by Congress and by this being transmitted to the Executive power and with that approval returned to the next Congress, wherein it must be debated and approved by two-thirds of the votes of both Houses."

This office desires, therefore, that you will immediately proceed to make the above noble aspirations of the Executive power known to all citizens, making use of all the postal and telegraphic facilities of the nation to this end, and that you will cooperate actively with the municipalities and see that these without delay carry out the important mission thus confided to them on this solemn occasion by the national Government, by giving their conclusion with respect to the necessity and urgency of such reforms and as to whether they desire to have them introduced by methods different from those permitted by the constitution.

I request you to immediately send the results to this office by special messenger.

JOSE FRANCISCO INSINARES.

(Here follow signatures of departmental cabinet.)

(Here follow orders from prefect to all mayors of provinces to see that this order is carried out.)

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*Mr. Buchanan to Mr. Hay.*

No. 7.]

LEGATION OF THE UNITED STATES,  
(SPECIAL MISSION),  
*Panama, December 28, 1903.*

SIR: I beg to inclose herewith two copies of a pamphlet recently issued here and accredited by everyone with whom I have talked as an accurate story of the uprising here, to which I direct your attention. I believe it would be well to have parts of it translated and given to the press, since it tends to strongly show how long the separatist sentiment and the intention to bring it about have lain dormant hereabout. \* \* \*

I have the honor to be, very respectfully, your obedient servant,

WM. I. BUCHANAN.

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REPUBLIC OF PANAMA,  
DEPARTMENT OF FOREIGN RELATIONS,  
*Panama, December 18, 1903.*

Mr. RAMON M. VALDÉS, Present:

The council (junta) of the provisional government of the Republic has received with great satisfaction the pamphlet you have been good enough to publish, concerning the history and causes justifying the secession movement effected November 3 last, which has resulted in the definite establishment of this Republic as a free and independent nation. I therefore take the liberty of manifesting to you the complete approval that such a historic work deserves because of its faithful exposition of the facts, the lofty sentiments which it contains, and the interesting data and official documents collected by you with such perseverance and skill.

I am, sir, your obedient servant.

F. O. DE LA ESPRIELLA.

## THE INDEPENDENCE OF THE ISTHMUS OF PANAMA—ITS HISTORY, CAUSES, AND JUSTIFICATION.

There has been no lack nor will there be a lack of persons who will take upon themselves the task of maintaining that the Isthmus of Panama has been happy under the domination of the Government of Colombia; that the prevailing sentiments of the natives of this beautiful land, which serves as a bridge for the civilized world, have been and are of perpetual adhesion and of cordial gratitude to the Colombian nation for the great benefactions it has given us, in order to conclude with the demonstration that the secession movement, carried to such a successful termination on the 3d of the present month, is not the spontaneous outcome of the popular will, but a momentary aberration skillfully produced by a few bold speculators who sacrifice the purest ideals to the ungovernable desire of making or augmenting their fortunes out of the construction of an interoceanic canal.

Others, or perhaps the same persons, will attempt to prove that the first and only author of the transcendent event is the colossus of the north, who has overcome our loyalty to Colombia for the purpose of revenging itself for the rejection which that nation made of the Hay-Herran treaty, and which the former considers an unpardonable offense.

This must happen as we predict, and for that reason the time is opportune to state the truth, to reveal facts which it concerns the entire world to know, and to infuse even into the minds of the most incredulous or blind the conviction that the act executed on November 3 last is the logical sequence of a situation already unendurable, the solution of a grave and vexatious problem, the sincere, firm, definite, and irrevocable manifestation of the will of the people.

1. It would not be just to censure the heroes who emancipated us from the power of Spain by their determination to annex the Isthmus to the Republic of the Great Colombia, which seemed to rise all powerful and with a future full of promise and prestige out of the epicycle of independence. Under identical circumstances we of to-day would have acted in like manner; but it is well to bear in mind that the question of selecting a South American nation to which the Isthmus should unite was the cause of passionate and continued deliberations of patriotic statesmen. The uncertainty that a small country, sparsely populated, could maintain itself alone without danger to its sovereignty, and the fact of our country being contiguous to that of Colombia—although the vast extent of intervening territory was then, as it is now, a wilderness, without means of communication, and delivered up to the almost absolute dominion of the wildness of nature—were sufficient reasons for our forefathers to resolve to unite the provinces of the Isthmus to the republican State mentioned, contenting themselves with the sole means of maritime communication for the purpose of maintaining intercourse and communication with a government situated in the interior of the continent, hundreds of leagues distant, on a tableland of a chain of the Andes exceedingly difficult of access.

These physical disadvantages to which we have alluded were further complicated with others of a different character and exceptionally grave. Colombia was organized with a central government which boded ill to the Isthmus, inasmuch as that Government, leaving the provinces in a state of abandonment so much the greater because of their distance from the capital, took from them at the same time the means and resources of satisfying their wants and subjected them to a complete state of enervation. Deputies of the two isthmian provinces—Panama and Veraguas—attended the federal congresses, but the isolated action of these deputies could accomplish nothing for the well-being of their provinces, and their functions were reduced to the sharing of political responsibilities due to the operation of the established system.

As a climax of misfortunes the Granadines like the Venezuelans, proved to be men opposed to every system of orderly government, and showed themselves to be a turbulent race with secession tendencies. Soon after independence was obtained the first symptoms of anarchy were noted, internal revolutions flourished, as did also the darkest of machinations, which wrung from the liberator, Simon Bolivar, that memorable expression, "I do not yet discern happiness for my country." The confusion of ideas was inexpressible. Some Colombians began to think, and even proposed the establishment of a monarchy in the country. This scheme had many proselytes, and the liberator (Bolivar), opposed to all monarchial ideas, declared that it was necessary to seek the protection of a foreign power.

The contemplation of that lamentable state of affairs caused a Colombian historian to record this melancholy thought: "Colombia had lived her years of fame and glorious deeds so fast that, child as she is, she has arrived at a premature old age."<sup>1</sup>

The spirit of disgust which was noticeable on the Isthmus was general, and regret at what had been done dominated the thought of our most prominent men. The tendency toward the separation of the Isthmus had its inception at that time on, and in 1830, nine years after the voluntary annexation to Colombia, it was rudely manifested in a popular gathering, convened in this city by Gen. José Domingo Espinar, a Panaman by birth, a distinguished military leader of the epoch of independence, and at the time intendent or governor of Panama, and one of the most enthusiastic partisans of the idea of separation.

The memorable resolution of that patriotic assembly contained the following recommendation: "Separation from the rest of the Republic, especially from the Government of Bogota."

The first sectional impetus did not fail to be recorded in the annals of Colombia, and the same historian whom we have already mentioned describes it as follows:

"The picture of the Republic, which the liberator was already beginning to see between the shadows, was lamentable. The Congress of Venezuela, his country, demanded his expulsion; Montilla came to his support at Cartagena, and his example was followed by Espinar in Panama, and by the sons of the valiant Mompox. From various places in Venezuela he received enthusiastic encouragement to accept the challenge. Río Hacha rose up against Bolívar and asked assistance of Venezuela, and Carujo set out with a force that was soon to give battle to Coronel Blanco at San Juan de Cesar. The Atlantic Provinces went so far as to consider the establishment of a fourth State, and Panama went to the untenable extreme of advocating annexation to Great Britain."

Yielding to the entreaties of the illustrious liberator, the Panamanians assuaged their vehement desire of separation and submitted to the Federal Government, confiding all to the genius and sublime patriotism of their great South American chief.

II. But the sentiment was not and could not be extinguished, inasmuch as the causes producing it not only continued to exist, but were greatly aggravated. In 1840, as soon as a number of the Provinces rebelled against the central Government of New Granada, the people of this capital also rose in rebellion, on November 18 of that year, led by the then Col. Thomas Herrera, for whom the future had in store such a brilliant career, and again proclaimed the independence of the Isthmus, leaving proof of that fact in an authentic popular proclamation. The idea of separation was looked upon with such favor that all the people of the Isthmian Provinces at once supported the proclamation and sent delegates to the convention which met soon thereafter in this city to establish the political bases of the independent State and to organize the Federal Government.

Our countrymen will read to-day with interest and enthusiasm the fundamental law which that admirable convention adopted and which we insert, as follows:

#### FUNDAMENTAL LAW OF THE STATE.

The convention of the State of Panama, considering—

First. That the majority of the Provinces has expressly rebelled against the central Government, separating themselves from it and proclaiming the federation, completely breaking thereby the social compact of 1832.

Second. That while the Republic is being reconstituted in conformity with the vote of the people the Isthmus can not remain indifferent to its lot, but that it must employ, at least provisionally, the proper means for obtaining its security and welfare.

In conformity with article 15 of the popular will of November 18 last, decrees:

ARTICLE 1. The cantons of the ancient Provinces of Panama and Veragua shall compose an independent and sovereign State, which shall be constituted as such by the present convention under the name of "State of the Isthmus."

ART. 2. If the organization given to New Granada be Federal and suitable to the interests of the people of the Isthmus, the latter shall form a State of the federation.

<sup>1</sup> Quijano Otero.

SOLE PARAGRAPH. In no case shall the Isthmus be incorporated into the Republic of New Granada under the central system.

ART. 3. The convention shall accredit two commissioners to the body which duly represents the Provinces that composed the Republic on New Granada in order to negotiate for the incorporation of the State of the Isthmus to the federation which the former comprise. The convention shall issue by a special act the instructions which these commissioners shall follow, and shall arrange everything relating to this matter.

ART. 4. No community which, separating itself from any of the Provinces of the federation and which desire to incorporate itself into the State, shall be received in it. Neither shall any of the communities who up to the present time have belonged to the ancient Provinces of Panama and Veragua be permitted to separate themselves from the State of the Isthmus.

ART. 5. The State of the Isthmus recognizes and offers to pay in proportion to its population the proportion of the internal and external debt due at the present time by the Granadines, and also offers not to divert from their purpose the funds destined to the public treasury.

Given in the hall of sessions of the convention.

Panama, March 18, 1841.

The President;

The vice president, representative of Panama.

The representative of the canton of Alanje,

The representative of Bocas del Toro,

The representative of Bocas del Toro,

The representative of La Chorrera,

The representative of La Chorrera,

The representative of El Darien,

The representative of the canton of Darien,

The representative of Nata.

The representative of Nata,

The representative of Parita,

The representative of Parita,

The representative of Panama,

The representative of Portobelo,

The representative of Portobelo.

The representative of Los Santos,

The representative of the canton de los Santos,

The representative of the canton de Santiago,

The representative of Santiago.

The secretary of the convention.

Panama, 20 of March, 1841.

Let it be published, circulated, and observed.

Por S. E. el Jefe del Estado, el Secretario General.

JOSÉ DE OBALDÍA.

MARIANO AROSEMENA.

JUAN MANUEL LÓPEZ.

JOSÉ PALACIOS.

JOSÉ MARÍA TRIVALDO.

BERNARDO ARZE MATA.

JUAN BAUTISTA FERAUD.

MANUEL JOSÉ BORBÚCA.

MARIANO AROSEMENA QUEZADA.

MARCELINO VEGA.

SATURNINO CASTOR OSPINA.

JOSÉ GARCÍA DE PAREDES.

ANTONIO AMADOR.

JOSÉ MARÍA REMÓN.

RAMÓN VALLARINO.

ANTONIO NICANOR AYARZA.

JOSÉ MARÍA GOITIA.

FRANCISCO ASPRILLA.

JOSÉ FÁBREGA BARRERA.

NICOLAS OROSCO.

JOSÉ ANGEL SANTOS.

TOMAS HERRERA [L. S.]

JOSÉ AGUSTÍN ARANGO.

The convention, which remained five months in session, adopted laws governing all branches of the public service, and legalized the power intrusted to the skill of Col. Thomas Herrera, heart and soul of the movement, and to Dr. Carlos de Icaza, who were accompanied by, as assistant and general secretary, the talented, intrepid, and spirited patriot, Mr. José Augustin Arango.<sup>1</sup> Of those acts the following, which we insert herewith and which seem to receive new life from contact with the exciting events of the present time, are worthy of mention :

DECREE GRANTING A MEDAL OF CIVIC HONOR TO COL. THOMAS HERRERA.

The constituent convention of the State of the Isthmus, considering :

First. That Col. Thomas Herrera is worthy of the gratitude of his fellow citizens because of his able cooperation in the political transformation, proclaimed on that celebrated and memorable day, the 18th of the month of November, 1841, and for the administrative skill with which the provisional government of the State, intrusted at that time to his wisdom and genius, has been conducted :

Second. That these services are worthy of remuneration by the representatives of all the Isthmian people, decrees :

SOLE ARTICLE. Col. Thomas Herrera is granted a gold medal to be worn on his left breast, suspended by a tricolor ribbon. This medal shall be of an elliptical form, 15 by 11 lines in diameter, and shall bear on its obverse side, in raised letters, the following inscription surrounded by a wreath of laurel: "Soldier citizen," and on the reverse, in the same manner, "The convention of the people of the Isthmus in 1841," all in the manner indicated in the description accompanying the decree.

Given in the hall of sessions of the convention.

Panama, April 6, 1841.

The President.

NICOLAS OROSCO.

The Secretary.

JOSÉ ANGEL SANTOS.

Panama, April 20, 1841.

Let it be published and duly observed.

[SEAL.]

CARLOS DE ICAZA.

For his excellency the vice governor of the State in charge of the Government, the general secretary.

JOSÉ AUGUSTÍN ARANGO.

DECREE CONCERNING THE FLAG AND COAT OF ARMS OF THE STATE.

The constituent convention of the State of the Isthmus decrees :

ARTICLE 1. The State of the Isthmus shall continue, for the present, to use the flag and coat of arms of New Granada.

ART. 2. All official acts which formerly read Republic of New Granada shall in future read State of the Isthmus.

Given in the hall of sessions of the convention.

Panama, April 26, 1841.

The President.

MARIANO AROSEMENA.

The Secretary.

JOSÉ ANGEL SANTOS.

Panama, May 4, 1841.

Let it be published and duly observed.

THOMAS HERRERA. [SEAL.]

For his excellency the governor of the State, the general secretary.

JOSÉ AUGUSTIN ARANGO.

The constituent congress of 1841 was, as has already been stated, composed of a brilliant personnel of Isthmians, surpassing all the other delegations in ability and political and social prestige. The Isthmian members of that congress were venerable representatives of distinguished families, and the plan of

<sup>1</sup> His son, of the same name, is one of the members of the present junta of the Republic of Panama.

emancipation which they advocated with such firmness and vigor was to be, as it has been, a moral heritage which their successors have cherished and preserved.

The numerous gaps shown in the history of Colombia concerning the political events which succeeded each other in the second half of the last century have prevented us from discovering the details of the reincorporation of the Isthmus of Panama to the Republic of New Granada, as it was then called. But we know that that reincorporation was the result of diplomatic negotiations, which took place in this city in 1842 between the government of the State of the Isthmus and the Granadine Government, represented by Gen. Thomas C. de Mosquera, in which negotiations the latter, in his official capacity, made liberal promises concerning political and administrative decentralization, in order that the people of the Isthmus might themselves attend to their wants and interests, and expressed a hope for better and more favorable times for New Granada.

III. These promises were fallacious, inasmuch as a new constitution was adopted in 1843 which was nothing more than a copy of the former one, with alterations and modifications even more despotic and centralizing, and in which there was no provisions for creating in Panama a government adequate to its standing and requirements. The civil wars brought only very short periods of truce to the distressed people and devoured with vertiginous fury the private riches in search of public wealth.

But the ceaseless clamor of the Isthmians and their protests, which burst forth at times with relentless fury, convinced the Granadines at last that in order to prevent Panama—wounded to insensibility by a sense of danger—from unyoking herself from the cart which was so stealthily being drawn toward the abyss, it was necessary to grant her a special government, formed and organized by her own people, with partial autonomous powers, committing to her hands the charge of guiding this isolated region to the goal of its destinies.

Our countrymen of a former generation should have exclaimed "better late than never" when the act of February 27, 1855, was promulgated, which act amended the Granadine constitution of 1853, under which the sovereign federal State of Panama was created, while all the other Granadine provinces remained bound to the post of centralism.

The names of the illustrious citizens who filled the executive office in Panama from 1855 to 1860—Justo Arosemena, Francisco de Fábrega, Bartolomé Caívo, Ramón Gamboa, Rafael Núñez, and José de Obaldía—justify the affirmation that the administration of the government in that territory during said period of five years resulted in all the good that could reasonably be expected of it. It proved, nevertheless, insufficient to satisfy the patriotic aspirations of the people and to remedy the evils which oppressed the Isthmus, inasmuch as the sovereignty granted to the State was illusory, since, in fact, it was limited by powerful restrictions, which maintained between the State and the Nation the bond that unites the serf to the lord whose plans he follows and to whom he must give the best he possesses as an inexcusable tribute.

In 1858 the federation of New Granada was established in a general manner, but the following year it was thought necessary to lower the sails for fear that the ship of state would take with too much impetus a direction that many thought dangerous to the power of the central government. In 1859 the national congress passed several laws, among them an election law, which greatly abridged the powers granted to the States and which was in conflict with the federal constitution of 1858.

The State of Cauca, led by General Mosquera, rose in rebellion, disavowing the laws which threatened its liberties and refusing obedience to the Government at Bogota. Immediately thereafter Bolívar, Santander, and other States rebelled, taking for their standard the conquests of the federation, and a desperate and terrible struggle between the political parties of the Granadine Confederation ensued.

During that bloody revolution, which was prolonged even after the triumphant entrance of General Mosquera into Bogota, the State of Panama remained comparatively quiet, inasmuch as there only occurred, on September 27, 1860, the pronunciamiento of Gen. Buenaventura Correo and other companies, directed, not against the president of the State, but against the intendent, Mr. José Marcelino Hurtado, who was acting as agent of the president of the the confederation, Mr. Mariano Ospina, and endeavored to involve the Isthmus in the conflict by assisting the cause of the Government which he served.

Simultaneously with the pronunciamiento of General Correo, a new agitation was commenced among the people of the Isthmus directed toward its separation from the Granadine Confederation. The distinguished citizen and illustrious patriot, Mr. José de Obaldia, from the high position which he occupied, had categorically declared, in a circular which bears his signature, dated June 4, 1860, that the Isthmus, in order to insure its welfare, had no other course than that which he would adopt of freeing itself forever from the disorganized Granadine Confederation.<sup>1</sup> The people were ardently engaged in fomenting a movement which was to give to the Isthmus an autonomous government under the protectorate of the United States of North America, of France, and of England, who found the intent justifiable. This city, that of Sanitago de Veraguas, where the famous Isthmian, Mr. Francisco de Fabrega, exercised a merited influence, and other towns in the interior of the Isthmus, were active centers of the secessionist movement.

There was no lack of Panamans, as discreet as optimistic, who, confiding in the foresight and wisdom of the leaders of the republic, extinguished the ardor of the rebels with the coldness of their counsel.

General Mosquera, having already occupied Bogota, under the title of provisional President of the United States of New Granada, addressed, under date of August 3, 1861, to the governor of Panama, Mr. Santiago de la Guardia, an interesting message, in which he complained of the attitude taken against him by Mr. José de Obaldia, and referring to the latter, said:

"The enunciation of these facts will show to you, Mr. Governor, the degree of responsibility which your predecessor incurred. His policy left the position which the inhabitants of the State have intrusted to you full of difficulties. And while his conduct as an official placed the Isthmus in a difficult predicament, the very same citizen comes now, in his private character and promotes the secession of the State, thus breaking the fraternal bonds which perpetually unite it with all others in the union, and depriving it in this way of the future awaiting it when becoming, if not the capital, the center of a great confederacy in the world of Columbus."

And then added:

"I trust, Mr. Governor, that in reply to the letter you will advise me that the State of Panama is united to the other States, and that you will send the plenipotentiary who is to take a seat in the Congress, the convocation of which I communicate to you."

The great revolution, led by General Mosquera, had almost dissolved the political and social bonds which united the different ethnical portions of the nation. The States of Cauca and Bolivar, for the purpose of mutually assisting each other, had formed a compact by means of a treaty dated September 10, 1860, and adopted the name of United States of New Granada, and there was a tendency in each section to organize itself as it thought fit.

The occasion was favorable for Panama to constitute itself into a free and independent State. The president, Don Santiago de la Guardia, a loyal Isthmian, and an enthusiastic secessionist, realized clearly the advantages of the situation, but he did not resolve to carry out the plan, because he expected to obtain the unanimous consent of all Isthmians without dissent. Yet, realizing the sincere and powerful feeling of the humiliated people by whom he was surrounded, who were inclined to struggle for their freedom, he deemed it his duty to take advantage of that occasion to declare, in the name of the people he governed, that the Isthmus would not again unite itself to the Granadine nation, unless under conditions which would allow it to enjoy the autonomy which its welfare demanded.

Animated by such a spirit, he concluded an agreement in the city of Colon on the 6th day of September, 1861, with Don Manuel Murillo, an eminent public man, sent, for that purpose, by the president of the nation. Such agreement was to be submitted to the legislature of the State, and in it were stated, by way of stipulations, the demands made by the Isthmus in order for it to continue united to the Granadine nation.

The text of said agreement is as follows:

"The undersigned, Santiago de la Guardia, governor of the State of Panama, on the one side, and Manuel Murillo Toro, commissioner of the Government of the United States of New Granada, on the other side, in view of the circumstances under which the territory of the late Granadine confederation finds

<sup>1</sup> Felipe Pérez, *Anales de la Revolucion.*

itself at present, and considering the necessity of putting an end to the anomalous condition of this State, whose best interests require the recognition of a national government and the making of a compact of union wherein the federal principles, properly so called, should be duly acknowledged, have agreed to conclude the following arrangement, the execution of which shall depend upon the approval referred to in the last article of the same.

"ART. 1. The sovereign State of Panama incorporates itself into the new national entity called United States of New Granada, and consequently becomes one of the sovereign federal States composing the aforesaid confederation under the terms of the treaty celebrated at Cartagena on September 10, 1860, between the plenipotentiaries of the States of Bolivar and Cauca, to which the State of Panama adheres, with the sole reservations and conditions stipulated in the following articles:

"ART. 2. In conformity with the decree of the 20th of July last, supplementing that of the 22d of March previous, the State of Panama shall send to the capital of the United States of New Granada a representative to the congress of plenipotentiaries for the purpose of ratifying the compact of union, and calling a national convention to frame the constitution, and shall thereby become a member of the aforesaid United States. But the State, in use of its sovereignty, reserves the right to approve or disapprove the new compact, and the constitution which gives expression to it, if, in its judgment, the principles established in the treaty of Cartagena of September 10, supplemented by the present one, are violated to the detriment of the autonomy of the States, or if the neutrality granted the Isthmus by the treaty with the United States of North America, in cases of international war, is not recognized in case of domestic struggles, civil wars, or revolts which may arise in the rest of the United States.

"Consequently, and in order to more clearly understand the treaty of September 10 between the States of Bolivar and Cauca, it is peremptorily stipulated:

"1. That there shall be in the State of Panama no other public employees with jurisdiction or command except those authorized by the laws of the State, who shall at the same time act as agents of the Government of the United States of New Granada in all matters which are or should come under their jurisdiction.

"2. That the administration of justice shall be independent in the State, and the acts of its judicial officers shall be final and shall never be subject to revision by other officers in so far as said administration and said acts do not relate to affairs appertaining to the National Government.

"3. The Government of the United States shall have no power to militarily occupy any point of the territory of the State without the express consent of the governor thereof, provided the State itself maintains the necessary force for the protection of the transit of either ocean, and

"4. That all the revenues, property, and rights of the Granadine Confederation in the State of Panama shall hereafter belong to the latter under the conditions stated in the eleventh clause of the treaty of September 10, 1860, between Bolivar and Cauca, except in so far as they may be affected by the obligations, debts, and liabilities incurred by the Government of the old Granadine Confederation and now assumed by the United States, on condition that all that the State should have to disburse or fail to perceive for such reason be deducted from the quota which it has to contribute to the general expenses of the Union, less the value of the public lands which may have to be disposed of by virtue of former promises. No deduction shall be made on account of this value.

"ART. 3. The territory of Panama, its inhabitants and government, shall be recognized as perfectly neutral in the civil wars or rebellions that may break out in the remaining portion of the territory of the United States, under the conditions specified in article 35 of the treaty with the United States of North America and in accordance with the neutrality of foreign nations as defined and established by international law.

"ART. 4. It is furthermore agreed that the neutrality mentioned in the preceding article shall, from now on, be scrupulously observed. Therefore the State shall take no part whatever, either in favor of or against the Government of the Union, while the latter is attacked by the adherents of the defunct Confederation and of the Government which represented it. Nor shall the State of Panama be bound to contribute by means of forced loans or special taxes in order to pay expenses made or to be made in the struggle now going on in the other States.



"ART. 5. The Government of the United States of New Granada shall recognize the expenditures made, or ordered to be made, up to the present date in the State of Panama for government purposes, provided that they are duly verified and authorized by the laws which were in force in the Confederation. The Union shall likewise recognize the expenditures which are absolutely essential to discharge and send home the men composing the garrison which, in the name or on account of the late Granadine Confederation, still exists in the city of Panama.

"ART. 6. Persons confined in jail or detained in any other manner, with or without a trial, for causes arising out of the civil war waged in other States, shall be given immediate and complete liberty.

"ART. 7. The vessels, arms, and other elements of war that may have been acquired with the funds of the late Confederation shall be placed at the disposal of the Government of the United States as property of the nation.

"ART. 8. The present agreement shall be submitted for examination and approval to the legislative assembly of the State of Panama at present in session, without which approbation said agreement shall not be put in force.

"In testimony whereof we sign two copies of the present agreement at Colon on the 6th day of September, 1861, which copies shall be attested by the Secretary of State.

"S. de la Guardia,

"M. MURILLO.

"The Secretary of State.

"B. ARZE MATA.

The legislative assembly of the State approved the treaty by a law of October 15 of the same year, which concluded with the following special provision for the purpose of protecting the interests of the Isthmus:

"\* \* \* \* The governor of the State is authorized, upon the reestablishment of the Republic, to incorporate said State into the Republic: *Provided*, That the same concessions made by the agreement of September 6 ultimo are granted to said State."

IV. Peace having been reestablished in the country in 1863, the great national convention to be held and which was held in the city of Rio Negro, State of Antioquia, for the purpose of making a new constitution for the Republic, was called. Messrs. Justo Arosemena, Buenaventura Correo, Gabriel Neira, Guillermo Lynch, José Encarnación Brandao y Guillermo Figueroa attended said constitutional convention as delegates of the Isthmus, and these gentlemen were carried away, willingly or unwillingly, by the wave of enthusiasm which sprung up among the delegates when discussing the draft of constitution, in which the federal organization established in the United States of North America was adopted for the Republic.

Without bearing in mind that the happiness and progress produced in that great country by its institutions are the result of a combination of circumstances quite different from ours, the members of the convention believed that they had discovered the wonderful expression of political perfection, and thought that nothing more was necessary to secure for the different entities of the Republic the calm and prosperity so much desired by them. The engagements entered into by the Republic in favor of Panama in the Guardia-Murrillo agreement were naturally rejected by the convention as undesirable disturbers of the harmony of the union.

The constitution of Rio Negro grew up as a luxuriant tree in the soil of the United States of Colombia, extending its branches over the nine confederated entities. But soon afterwards the Isthmian people discovered that this tree was growing in a stormy atmosphere, that it was nourishing itself with poisonous substances, and throwing an unwholesome shade. They noticed at the same time that one of its roots was extending vigorously and deeply in the territory of the Isthmus, absorbing its rich sap and spreading contagion of a frightful disease which seems to be congenial as well as chronic in the Colombian soil.

According to the constitution the election of the President of the Republic was to be made by the vote of the States, each State having one vote, which was that of the majority of its own electors under its law. The Congress, consisting of senators and representatives elected by the States, was to declare elected as President the citizen who had obtained the absolute majority of the votes of the States.

Such principle established in the supreme law and the authority granted therein to the executive power of the union to organize and maintain public force which was to be at his service in the States, were causes which largely contributed to the great disaster which befell the whole Republic, and especially Panama, but the principal factor, the factor chiefly responsible for all the evils, consisted in the ambition of command, the political fanaticism characterized by a ferocious intolerance, and the revolutionary spirit accustomed to all kinds of violence which, save in marked exceptions, seem to be inherent to the public men of Colombia, whether civil or military.

Inasmuch as the sectional governments exercised an inevitable influence over the result of the popular elections, whenever the time came to replace the presidents of the States, or to appoint a successor to the supreme commander of the nation, or to select, by the vote of the people, the senators and representatives who would contribute by their votes in the Congress to finally declare the election of said commander, the national public force quartered in each State devoted itself with frenzy to the immoral and unlawful task of restraining or violating the suffrage in order that there might be in the States, derisively called sovereign, only humble servants of the controlling political circle at the capital and in order that the final vote of each section might be given in the direction most convenient to the interest of such Bogotanian political machine.

If we add to the above the fact that the presidential election has been unwisely and arbitrarily regulated by short periods of two years, it will be easily explained why the evil with which the Colombian nation was afflicted became still more serious and deep. None other was the origin and cause of the general wars which broke out with fury, the collisions, scandals, headquarter revolts, insurrections, the iniquitous overthrowing of the regional presidents, all that series of tragical and mournful events which developed in the Isthmus of Panama during a quarter of a century and all of which can be traced directly or indirectly to the governors of Colombia, who caused the misfortune and unhappiness of the people of this land.

All the natives of Panama are aware of the accuracy of this statement, and it is only because we fear that outside of our territory our veracity may be doubted that we present the following official and authentic testimonials, taken at random from among a great many other proofs.

Let the first be the famous reply, overflowing with indignation, which Dr. Pablo Arosemena, a distinguished statesman of Panama, who was audaciously overthrown from the presidency of the State because he would not approve and support the electoral schemes of a president of the nation addressed to Gen. Sergio Camargo, who carried out said outrage when the latter made known to the former his (Camargo's) scandalous intimation. Doctor Arosemena's reply is as follows:

UNITED STATES OF COLOMBIA, SOVEREIGN STATE OF PANAMA,

*Panama, October 12, 1875.*

*To the Chief Commander of the Army of the Union:*

\* SIR: I have just received, with your memorandum of this date which bears no number, the resolution which you have dictated to-day, wherein you brand me as an enemy of the General Government, threaten me with arrest, and demand from me the disarming of the force which protects and maintains my Government, and the surrender of all the elements of war.

In spite of all the outrages committed by the Government of the Union and by its agents, I have been surprised by the resolution which you communicated to me, which would cause a public protest even in Turkey, and which has been issued after I had been repeatedly informed by you that you would recognize my Government as legitimate, that you would communicate with it, and that the rebels who might attack would receive no help from you.

This attitude proves to me that you strictly followed the policy of the Government under which service you are, which humiliates when it pretends to promote, interferes barefacedly and impudently when it pretends to yield, breaks into pieces the constitutions when it boasts of defending them, and breaks the bonds of union when it boasts and brags of strengthening them.

I refuse to become a prisoner in my own house, as well as to maintain the arrest that you pretend to impose on me by the authority of the Colombian guard at your command. Having no force to resist you, I have to limit myself to protest against the enormous outrage of which you make yourself respon-

sible, and which is nothing but a new blow struck against the institutions, and which shows the absence of the spirit of justice and affords a new stain to the political title which has already reaped so abundant a harvest of this rare laurel.

I also protest in the name of my country, which is to-day humiliated, and which in happier days was also to resist the liberator of five republics, the man who now lives in history and who honored in Cuaspud the national colors, and against this lost power which has replaced the whole chapter of individual guaranties with the right of war.

The chief commander of the garrison will deliver to your forces all the elements of war at his disposal.

PABLO AROSEMENA.

That audacious act also gave rise to the following protest of the legislative assembly of the State:

"The legislative assembly of the sovereign State of Panama:

"Whereas by the imprisonment imposed on the constitutional president of the State by Gen. Sergio Camargo, general in chief of the Colombian guards, supported by the national forces, said distinguished citizen can not fulfill his function;

"Whereas the same general has substituted a de facto government for the constitutional government, ignoring the alternates;

"Whereas in the absence of the constitutional president the assembly has no one with whom it may communicate constitutionally for the sanction of the laws;

"Whereas the Colombian guard has given earnest aid to the rebels against the legitimate government of the State, in violation of the national law of April 16, 1867, on public order;

"Whereas the attack of the sovereignty of the State and the change of government was effected by the Colombian guard,

*Be it resolved*, To protest, as it does protest, before the nation and as becomes the honor of the State, against the outrage committed by the chief of the Colombian guard by the imprisonment of the constitutional president, changing the government of the latter for a de facto government and destroying the sovereignty of the State, which from this moment is left at the mercy of the chief of said Colombian guard and of the revolutionists whom it has welcomed under its protection, to denounce the outrage to the Federal powers and to the governments of the other States of the Union, and to suspend its ordinary sessions until the constitutional regimen shall prevail again in the country.

"Panama, October 12, 1875.

"J. M. Alzamora, J. M. Casís, Claudio J. Carvajal, Joaquín Arosemena, Waldino Arosemena, Manuel Paulino Ocaña, J. Bracho, Manuel Marcelino, Herrera, Mateo Iturralde, Domingo Díaz, Francisco Olaciregui, B. Vallarino, Alejandro Arce, Carlos Y. Arosemena, C. Arosemena, José E. Braudao, Antonio María Escalona, José Máiques."

In 1882 the president of the State, Señor Dámaso Cervera, in his message to the assembly, briefly described in the following eloquent terms the situation created on the Isthmus:

"\* \* \* As will be readily understood, the result of a frank and friendly policy were necessarily favorable to the order and the stability of the government of the State, which generally was the victim of the improper influence of public officers of the nation who were sometimes purposely and premeditatedly appointed, without due regard to the permanent interests of the country, and, what is still worse, with the deliberate purpose of annoying or attacking the government of the State.

"Many and very frequent have been the scandals by which a Federal policy, different from that recently put in practice, have taken away from this privileged soil even the hope of obtaining a tranquil, peaceful life under the protection of the law. And the worst of it all is that to Panama has almost always been charged before the civilized world the serious sin of the responsibility of these acts, and this in spite of the fact that but for the generally noble nature and character of its sons, the habits of work and activity would have been lost and the most trivial of public good would have been unknown, carrying us surely to barbarism.

"The administration of the State in 1878 has already knowledge of the great irregularities which were the direct cause of the most serious disorders in Panama. \* \* \*

In the following year, in another message, with an optimistic spirit, he said: "I think that the time in which the Colombian guard used to overthrow constitutional government has passed, but so long as the law on public order is subject to capacious interpretations by the officer charged with the enforcement thereof, the national governments, which are exclusively supported on such force, are liable to succumb when least expected, should it be convenient to the political interests of the chief of the union."

Upon the investigation of the general causes of the unfortunate condition of Colombia, Señor Victorina Lastarria, an impartial Chilean writer, in a book published in 1867, expressed his opinion, which was reproduced as a true one in *El Porvenir* of Cartagena in 1886, and of which opinion we will quote here only the following paragraph:

"\* \* \* \* To this should be added the absolute lack of notions and habits of justice and morality in people educated under a regimen in which everything was justified by law or force, and we will have an explanation of the frenzy and cruelty with which parties have been persecuted, and how easily have they thought lawful every means of hostility, every exclusion, every attack on the rights of others, even by men who, because of their personal integrity, would not in their private relations allow such acts. This lack of political integrity and that lack of respect for the opinions and interests of adversaries, constitute two reminiscences of the Spanish civilization which have neutralized the democratic conditions of the Colombian people and which have given to its revolutions an atrocious character and a singular demoralization which deprives the institutions and the reforms of all their value."

And in 1862 Dr. Rafael Núñez, who was about to be elected for the fourth time to the presidency of the Republic, in order to influence the people toward the reform in the institutions which he advocated, summed up the political history of Colombia in the following significant conclusion:

"In the course of nearly forty years of our political life since 1832, the maintenance of public order has been, I regret to say, the exception, and civil war the general rule."

If, in a political sense, the guardianship of Colombia was so fatal to the Isthmus, it was not less so in an economic and fiscal sense. The institutions only left to the State property and revenues of scant importance to meet its most pre-emptory wants, while the nation enjoyed the most valuable receipts and revenues. The Isthmus being most advantageously situated for carrying on the trade of the world, it seemed fair to let it enjoy to a sufficient extent those means of prosperity with which she was bountifully endowed by nature. But it was not without great efforts that the Isthmus obtained the right to receive one-tenth of the revenues derived from the interoceanic railway; and as regards the contracts made for excavating the canal in our territory, the Isthmus was excluded from all participation in the immense profits which said contracts have produced to the Colombian nation.

Under the Federal régime of 1863 to 1885 the secession spirit of the Isthmus was not openly revealed. It was calmed, but this fact should be considered at least until 1878 as one of the rare phenomena of the mad intoxication that the people found at the bottom of the golden cup which was perfidiously offered them under the name of sovereignty of the States, and after that year as a result of the hope which the contract for the opening of the canal made with Mr. N. B. Wyseled the Isthmians to entertain, and the favorable consequences of which to our independence we shall take into consideration hereinafter.

In the fifteen years preceding the celebration of said contract the Isthmians lived an artificial and fallacious life, in which they lost sight of their true interests and their traditional tendencies.

V. While a large immigration of men of all races and countries was flowing into the Isthmus, attracted by the great work of the canal, which was already in progress, and when the well-paid work came to relieve the condition even of the poorest classes, there was initiated in the nation the propaganda of an army of statesmen, at the head of which appeared Dr. Rafael Núñez, advocating with a stentorian voice a fundamental regeneration in order to prevent a political catastrophe, and holding the federation responsible for all the evils which afflicted the country.

There was a tremendous social convulsion in the Republic, followed by a fruitful butchery and a change in the institutions.

We then returned to the régime of centralization which prevailed in 1843. To the political organism of the nation there was again given the contexture of a gigantic octopus, having powerful and innumerable tentacles spread all over the country, of which the monster made use in order to smother the slightest manifestation of autonomous life in the municipalities and to devour their very substance.

There also occurred in this city, in the crisis of 1885 and 1886, serious disturbances which were episodes incident to the bloody national tragedy; but it is obvious that the new order of things found the Isthmians with the black flag of political skepticism raised over all their homes. Thus it found them, undeceived by all the vain promises and pompous theories with which the orators, statesmen, and governors of Colombia had quieted their spirits.

And as the streams of the Pactolus which the canal company brought to this territory flowered incessantly, the Isthmians established themselves on the margin of this marvelous river for the purpose of securing personal prosperity with the material means at their disposal. But few of the Isthmians interested themselves or participated in public affairs, with which the masses were not at all concerned, leaving such matters to the will of the Colombians, who had made of them a lucrative business. Who, then, could believe any longer in either the efficiency of centralism or federalism, in view of the fact that both systems had already been tried, with disastrous results to Panama because of the political incompetency and bad faith of the governors of Colombia? Were they not the same men, and their political successors and disciples those who were to enforce the laws? Why attempt to influence the destinies of the country when the Isthmus, as a political entity, was only a member the health of which depended on the hopelessly diseased body to which it was linked?

There was a novelty in the constitution of 1886, namely, the extraordinary article 201, in conformity with which the Department of Panama was "subjected to the direct authority of the Central Government and governed in accordance with special laws."

It remains to be determined whether the majority of the legislature which established such special laws acted with an honest or dishonest intention toward the Isthmus; but the truth is that the said constitutional article did nothing but oppress Panama, establishing in it a dictatorship of the most odious sort. This Department was then left in a worse condition than the others. Our assemblies, governors, corporations, and employees of all grades only exercised the most urgent functions which the governors of Bogotá had the mercy or the meanness to grant them. The chapter of individual guaranties, like the rights guaranteed by the constitution to Colombians, did not exist for the isthmians. Such a life was unbearable to the people, and in 1894, after a great struggle, we succeeded in obtaining the repeal of such an odious provision.

The generosity which inspired the members of the Congress of Colombia on repealing article 201 of the constitution—which article may be called the Panama article—can be gauged by the text of the law that abolished the same, and which reads as follows:

[Law 41 (November 6), amending article 201 of the constitution, and clause 4 of article 76 of same.]

The Congress of Colombia decrees:

SOLE ARTICLE. Let article 201 of the constitution, and section 4 of article 76 of said constitution, be repealed. Consequently, the general laws of the Republic shall also be applicable to the Department of Panama.

§ In revenue matters, legislative, executive, and special regulations may be issued for the Department of Panama.

Given at Bogota September 3, 1892.

JOSÉ DOMINGO OSPINA C.,  
*President of the Senate.*

ENRIQUE DE NARVAEZ,  
*Clerk of the Senate.*

ADRIANO TRIRÍN,  
*Speaker of the House of Representatives.*

MIGUEL A. PEÑAREDONDA,  
*Clerk of the House of Representatives.*

It was our lot to have a most excruciating experience and to realize the profound truth contained in this principle of constitutional law, taught by the most eminent jurists of the world; that all systems of government, even those which

are intrinsically the best, are bad if they are to be put in practice by men who have not at heart the public welfare, who are not familiar with the character of the people or with their instincts, and who do not take into consideration their wants and ambitions.

The only possible salvation in sight for this territory was the opening of the canal, because this work, which was destined to satisfy the industrial wants of the people of the whole world, would place us under the vigilance of powerful and civilized nations which, in the logical course of events, would eventually exercise on us a collective and beneficial protectorate; would rescue us more or less from the power of the multitude of aliens in whose hands we foolishly placed ourselves in 1821; or they would cure the evils of said adventurers by the most advanced, scientific, and governmental processes.

That solution was considered as an equivalent of a virtual emancipation from the Colombian metropolis, and for that reason the spirit of secession was not again revealed frankly and openly, as had been shown on previous occasions, while there was hope of obtaining such a natural and peaceful termination.

The interoceanic canal was to be our redemption. Whether they acted by instinct, by presentiment, by conviction, or by the clearest evidence of the future blessings to which we have referred, the fact is that there has been not a single sensible Isthmian who had not based his hopes of peace and prosperity on the opening of the prodigious interoceanic canal, and who did not consider himself bound to do all that was possible for him to do in order that the great work should be carried to a successful termination.

Hence the clamorous petitions, the earnest propaganda, the plebiscites, the delegations of prominent men sent to Bogota, all those manifestations by means of which the Isthmus signified to the Government of Colombia its desire that the French canal company requested the extension of time which it asked in order to meet its obligations and which the great bankruptcy of 1889 had rendered necessary.

At last it was discovered that the said French company did not have at its disposal sufficient means to open said route, but the feeling of stupor that such discovery might have produced on the Isthmus was neutralized by the announcement that the Government of the United States of North America, realizing at last the advantage of our route over that of Nicaragua, by reason of the foreign protection of said great nation, and by reason also of the necessity of developing its great wealth, consented to take charge of the execution of the great work, provided that suitable and fair agreements be made with the company holding the concession and the Government of Colombia.

The stockholders of the French company overcame the difficulties and an agreement was made, subject only to the consent of the Republic of Colombia.

Inasmuch as in the Salgar-Wyse contract it had been stipulated that the concession could not be transferred to any foreign government, and since, on the other hand, the written law of Colombia declares that said governments are judicially incapable of acquiring real estate in the territory of the Republic, the permission to make the transfer had to be granted exclusively by the Congress in which lies the power to repeal or amend the laws.

The will of that sovereign body could not be sounded on so important a matter except by means of an agreement ad referendum made between the governors of the two contracting nations, which agreement, after being ratified by the legislators of both countries, would assume the character of a solemn public treaty.

The Hay-Herran treaty was made and the Senate of the United States of North America immediately approved it; but not so the Senate of Colombia, which, against all reasonable expectation, disregarding the immense benefits which the treaty would bring to the Republic, without any regard for the great interests of the United States of North America and those of France, guided by a foolish pride and an antiquated notion of patriotism, vetoed it in an indignant and emphatic manner which was equivalent to a foolish challenge to the civilization and progress of the world.

Quicquid delirant reges, plectuntur Achivi: "When kings blunder, the people are the victims."

The opposition to said treaty resounded throughout the isthmian territory like the awful announcement of an imminent cataclysm, because it was known that the rival route via Nicaragua had in North America bold and earnest friends for whom the attitude of the Colombian Senate has just helped to win the game,

and because, simultaneously with the decision of said body of legislators came the election of the President of the Republic, and there were heard sinister voices announcing a new conflict, and all eyes were turned with fear to the former prosperous villages and luxuriant fields of the Isthmus, which were converted by the last war into the devastated department of a vast necropolis.

The hour had come. The people of the Isthmus, after suffering the agonies of eighty years, received from their masters the death sentence.

But desperation works wonders. It, like faith, moves mountains, and at times, also, by a tremendous effort, breaks them to pieces. The longing for liberty, a long time suppressed and silent, though it was noticeable in the feelings of the masses like those fire streams which burn the very depths of the planets, finally bursting to the surface with indomitable force to blow to a distance the power which weighed with overwhelming heaviness on this virile and generous people.

VI. Suspicious and wicked men will perhaps accuse the United States of North America of having stimulated the insurrection on the Isthmus; but such a false and vile charge shall not stain the immaculate glory of this blissful moment and sacred hour in which the nations of the world salute with gladness the advent of the new Republic, and praise the wonderful civic valor of its founders.

Whoever reads this long statement of facts will realize that the secession tendency has been transmitted with the strength of an almost secular tradition from generation to generation in this Central American region, and that to it the most notable Isthmians of all times have offered enthusiastic devotion. Whoever calmly studies the great political transformation which has just been effected on the Isthmus of Panama, and examines the causes which produced it, will clearly see that an act of such magnitude and of such great social consequences can have no other origin than spontaneous and unanimous feeling of the people, who with a wise instinct seek their own welfare, and that such act and the way that it has been accomplished excludes all idea of foreign intervention.

Showing the qualities of statesmanship that had not been suspected in Colombia, the Isthmians have done nothing but follow in the critical moment the signs of the time; to estimate with a sound judgment the quality, the number, and the power of the elements that might favor their independence; to foresee the emergencies and to act with the faith and resolution which a lofty purpose inspires without hesitating before the tremendous consequences of a possible failure. The decisive step was taken, without reckoning with the guarantees of the promises or obligations of any foreign power, because it was obvious that such step would deserve the applause and favor not only of the great North American Republic, which was about to break its relations with Colombia, and which is the natural and remarkable protector of all the oppressed peoples of this continent, but also of the other nations, all of which have such great interests in our territory and which have just been so rashly slighted by the Government of Colombia.

Those interests, which are also ours, should be and have been the main reason for an alliance, which is none the less effective because it is not written, and which shall secure in a permanent way the independence and prosperity of our Republic.

All praise to the men who wisely conducted the movement and carried it out with such great success! All praise to the people who, in order to obtain their political liberty, did not resort to a process of extermination, nor even spilled a single drop of blood!

In order to corroborate the long enumeration that we have made of the internal causes which were the origin and which justify the final separation of the Isthmus from the nation to which it has belonged, we will quote here the following impressive words which we invite the world to ponder, and which we, from a chair of the Colombian Congress, clearly and distinctly heard pronounced by Don José Manuel Marroquín, the present President of that Republic, on the 7th of August, 1898, in the solemn act of taking the oath of office:

" \* \* \* Hatred, envy, and greed cause men to differ in their opinions. In the political sphere where we struggle with earnestness not so much in order to obtain a triumph of principles as we do for sinking or raising men and parties, public tranquillity, so essential in order that every citizen may enjoy in contentment the welfare which it has been his lot to secure, or which is the result of his labor, is becoming unknown among us. We live a sickly life;

political crises are our normal condition; commerce and industry lack the peaceful condition which they require in order to advance. Poverty is knocking at all doors."

\* \* \* \* \*

"Our political disturbances have caused the conception of country to be annulled or mistaken. The idea which we have of country is associated in such manner to political revolts and with the fears and distrust engendered thereby, that it is not an uncommon thing to hear from one of our countrymen what we would not hear from a native of any other country, viz, 'I should like to have been born somewhere else.'

"Are there many among us who pride themselves in saying, 'I am a Colombian,' as a Frenchman prides himself in saying, 'I am a Frenchman?'"<sup>1</sup>

Those were the honest words of the Chief Magistrate of Colombia, inasmuch as they were the exact picture of a general sentiment subject to the analysis, the candid revelation of the condition of the feelings predominating in the majority of Colombians. Those clear-cut sentences, which sound almost biblical, have a particularly deep meaning for the inhabitants of Panama, and constitute the best, most complete, and eloquent vindication of the present attitude of the Isthmians and of those who not having been born in our territory, came to it, built happy homes, identified their interests with ours as well as their ambitions and hopes; suffered by our side by virtue of the awful outrages of the Government of Colombia, and in the supreme moment helped us to make a better country, being magnanimously willing to sacrifice for her sake with us wakefulness, tranquillity, and even life itself if necessary.

Those evils of which, like its predecessors, the present President of Colombia made a brief and gloomy enumeration of, no longer shall produce on the Isthmus their fatal effects, thanks to the glorious independence which destroyed forever their roots. The minds of men recovered their calmness; the mortal enemies of yesterday over the dry fields of the young Republic stripped themselves as they would of a burning garment of the political hatred kindled in their bosoms by the parties of Colombia now come forward with firm and steady step and extend the hand of peace and friendship.

Blessed be the work which commences by accomplishing such a noble need.  
Panama, November 18, 1903.

RAMON M. VALDES.

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*Mr. Buchanan to Mr. Hay.*

No. 9.]

LEGATION OF THE UNITED STATES,

SPECIAL MISSION,

*Panama, December 28, 1903.*

SIR: I beg to inclose at the request of his excellency, the minister for foreign affairs, a certified document showing the action had by certain municipalities of this Republic in the matter of the ratification of the action of the junta of the provisional government in making the treaty with our Government known as the Hay-Varilla treaty. This method of ratification, as the department knows, is that which has been followed in Colombia during many occasions, and especially when any matter of importance has been before the country.

In this connection I beg to refer the department to a portion of my note of the 27th instant.

I have the honor to be, sir, very respectfully, your obedient servant,

WM. BUCHANAN.

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<sup>1</sup> Inaugural address of the President of the Republic, Don José Manuel Marroquín. Diario Oficial of Colombia, No. 10724, of August 7, 1898.



[Official Gazette, extraordinary number. Panama, December 12, 1903.]

ACT OF THE MUNICIPAL COUNCIL OF CALOBRE.

At the capital of the municipal district of Calobre, at 2 in the afternoon of the 2d day of December, 1903, in the hall of the municipal house, the district council constituted itself in solemn session with the attendance of its members, Messrs. Cristobal Castillo, president; Belisario Cocio, Salvador Vasquez, and Genarino Castillo; acting as secretary of the same, Mr. Juan Bautista.

There were also present, by special invitation, Mr. Demetrio Vasquez, mayor of the district; Pedro E. Vasquez, municipal attorney, and a large number of citizens.

At the opening of the session the president made known to the corporation the object of the call, and thereupon Salvador Vasquez, voting member, made the following motion:

The municipal council of the district of Calobre, voicing the sentiments of the community it represents, freely and spontaneously resolves—

To signify to the junta of government that represents our Republic of Panama that, animated by the absolute confidence we place in it, we give our vote of approval to any action it may take in regard to the canal contract.

This motion being submitted to debate was approved by a unanimous vote. The council directed these presents be sent to the prefect of this Province in order that it may be transmitted through him to the junta of government of Panama.

The present act is written out for record and signed by all the officers present at the session.

CRISTOBAL CASTILLO,  
*President.*

P. URRIOLO,  
*Vice President.*

SALVADOR VASQUEZ,  
GENARINO CASTILLO,  
BELISARIO COCIO.

*Voting Members.*  
DEMETRIO VASQUEZ.  
*Mayor.*

*Resolution unanimously approved at the special session of the 3d of December, 1903.*

The municipal council of Panama, considering:

That on the 2d day of this month the treaty concluded in Washington between Mr. Philippe Bunau-Varilla, envoy extraordinary and minister plenipotentiary of the Republic of Panama, and His Excellency Mr. John Hay, Secretary of State of the United States of North America, on the 18th of November last, for the excavation of a ship canal across the territory of our Isthmus, was ratified in this city by the junta of provisional government;

That the said treaty maintains and guarantees on the part of the Government of the United States the independence of the Republic of Panama;

That the municipal council of this district, with full knowledge of its high mission and also considering itself in the full enjoyment of popular sympathy and support, solemnly demonstrated on the 4th of November when the independence of the Isthmus was proclaimed in public meeting, adheres to its firm purpose to give expression to all that it feels ought to be done for the permanent safety of the Republic of Panama, its practicable and immediate advancement;

That it appreciates and applauds the inestimable benefit the Republic of Panama derives from the assurance of its protection given by the power of the American people;

That the Republic of Panama, under the mighty influence of the nation as preeminent as is that of the United States, will shine with splendor among all the other Republics of America;

That the redeeming work of the interoceanic canal means material and moral progress, for it opens a wide field to commerce, to agriculture, to the progress of science, arts, and universal navigation, resolves:

To signify its complete approval of the Hay-Bunau-Varilla treaty and give public testimonial of applause to the junta of government and to every one of the ministers of the department.

To send a copy of this resolution to the junta of government through the regular channel, and to make it known to the public by means of handbills and through the press.

DEMETRIO H. BRID,  
*President.*  
R. AIZPURU,  
*Vice President.*  
JOSÈ MARIA CHIARI R.  
A. ARIAS F.  
S. LEWIS.  
RICARDO M. ARANGO.  
DARIO VALLARINO.  
JOSÈ B. VILLAREAL.  
FABIO AROSEMENA.  
MANUEL J. CUCALÓN.  
J. FRANCISCO DE LA OSSA,  
*Municipal Mayor.*  
LEOPOLDO GUILLÉN,  
*Municipal Attorney.*

*Resolution unanimously approved by the municipal council of Aguadulce in special session on the 2d of December, 1903.*

The municipal council of Aguadulce, faithful interpreter of the sentiments of the community it represents, having heard that the most excellent junta of government of the Republic this day approved the treaty concluded with the Government of the United States for the construction of the canal, a measure of salvation and of transcendent importance for the interests of the Isthmus, resolves:

To signify its concurrence in the approbation given to the said treaty to the most excellent junta of government.

This resolution shall be transmitted by telegraph and published in the official bulletin of this city.

JOAQUIN MENDEZ,  
*President of the Council.*  
JOSE M. GALVO,  
*Vice President.*  
JULIO VARGAS C.,  
*Voting Member.*  
LADISLAO SOSA,  
*Acting Secretary.*

*Resolution unanimously approved by the municipal council of Natá.*

The municipal council of Natá, in the exercise of its legal powers, and faithfully interpreting the tacit will of the people it represents, and considering that the action of the most excellent gentlemen who constitute the junta of the government is in every way identical with the opinion of the communities of this Republic of Panama, resolves:

To give a vote of confidence and applause to the honorable junta of government for its final approval of the canal treaty, concluded between the plenipotentiary ministers of the United States of North America and of our Republic, which vote of confidence and applause for this so successful course we give to include its worthy ministers.

Given in the council hall on the 3d day of the month of December, 1903.

RAIMUNDO GONZALEZ,  
*President.*  
JUAN B. URRIOLA O.,  
JOSÈ G. BARRAGÁN,  
MANUEL SANDOVAL,  
BERNARDO MACIAS,  
*Voting Members.*  
GREGORIA PORRAS,  
*Secretary.*

*Note of the president of the municipal council at Santiago de Veragua.*

No. 8.]

REPUBLIC OF PANAMA,  
OFFICE OF THE PRESIDENT OF THE MUNICIPAL  
COUNCIL OF THE DISTRICT,  
December 2, 1903.

The PREFECT OF THE PROVINCE, *Present*:

The municipal council of this district at its session of this date has just approved by a unanimous vote the following resolution:

The municipal council of Santiago de Veragua, having learned that the convention concluded with the North American Government for the opening of the interoceanic canal across the Isthmus has been signed and has been already approved by the most excellent junta of government of the Republic of Panama and by its ministry, resolves:

Declare its approval of the said treaty and give a vote of confidence to all the members of the Government of the Republic for the patriotic interest they have evinced on behalf of the community of this Republic.

Let it be communicated to the most excellent junta of government to the prefect of this province.

Which I communicate to you for all necessary purposes.

May God have you in His keeping.

ELIZARDO SANCHEZ.

*Resolution No. 4, approved by the municipal council of Sona.*

The municipal council of Sona, animated by the most generous feelings of patriotism, and as ever consistent with the acts of this corporation, and considering—

1. That the separation of the Isthmus of Panama from the remainder of the Republic, an act solemnly achieved in the city of Panama of the 4th of November, 1903, and in the sight of the civilized world is a fact beyond controversy.

2. That this political evolution and the recognition of the new Republic by the greater powers of the world have in fact cut asunder the ties that united the Isthmus to Colombia and forever sealed the independence of the Isthmus; and

3. That in virtue thereof Colombia has no longer any more right to interfere in the matters concerning Panama than it would in those of Africa or any other region far distant from us, resolves:

To adhere once more and in spontaneous manner to the declaration of the independence of the Isthmus of Panama, signed in the city of that name on the 4th of November last, and to approve and ratify in all its parts the treaty for the interoceanic canal across the Isthmus of Panama, whatever be the terms or clauses that constitute the essence of this treaty, as well as all the acts that have emanated or may hereafter emanate from the most excellent junta of government of the Republic of Panama.

Given in the hall of meetings of the municipal council of Sona December 2, 1903.

JOSÉ F. CALVINO,  
*President.*

A. GRAJALES,  
JOSÉ MARIA DUTARI,  
ANIBAL AROSEMENA,  
*Voting Members.*

MANUEL H. AROSEMENA,  
*Mayor.*

DIONISIO SOSA,  
*Municipal Attorney.*

MANUEL S. REYES,  
*Treasurer.*

JOSÉ F. CALVIÑO B.,  
*Secretary.*

*Resolution No. 2, approved by the municipal council of El Montijo at its extraordinary session of the 3d day of December, 1903.*

The municipal council of El Montijo, in the exercise of its legal powers, and considering that the eminent citizens and distinguished patriots who have conducted and brought to a success the glorious act of the independence of the Isthmus are called upon to continue to have charge of its general interests, and that at the present critical time they need the encouraging words of all the communities that are benefited thereby, resolves:

That the spontaneous vote of approval and confidence be given the honorable junta of Government of the Republic of Panama, in order that in the name of the people of the Isthmus, its constituents, they may approve the negotiations entered into with the Government of the United States of America in regard to the grand work of the interoceanic canal.

A copy of this resolution shall be transmitted by special delivery to the prefect of Veraguas in order to be transmitted by him to the proper department with as little delay as possible.

JOSÉ M. TRUJILLO,  
*President.*

GREGORIO URRIOLA,  
VALENTIN RIVAS,  
CLARO REYES,  
*Voting Members.*

RAÚL AROSEMENA,  
*Secretary.*

[Official telegrams.]

PESÉ, 4, SANTIAGO, December 7, 1903.

*Junta of Government and Ministers of the Department, Panama:*

Take pleasure in informing you that municipalities of Pesé, Los Santos, Las Minas y Océni have enthusiastically approved treaty canal concluded by our Republic and the United States.

Resolutions will follow shortly.

JULIO ARJONA Q.

SANTIAGO, December 2, 1903.

*The MINISTER OF GOVERNMENT, Panama:*

The honorable council of this district authorizes me to inform the most excellent junta of government, through the most worthy channel of your excellency, that at the session of to-day it has given its approval to the canal treaty and passed a vote of confidence in the members of the Government of the Republic for their patriotic interest in the great work of the salvation of the Isthmus.

I will send original by mail.

OSVALDO LOPEZ, *Prefect.*

CHORRERA, December 7, 1903.

*The MINISTER OF GOVERNMENT, Panama:*

Resolution unanimously approved by the municipal council of the district at the session of to-day, December 6, 1903.

The municipal council of La Chorrera, considering—

That the treaty concluded in Washington on the 18th of November last, for the opening of the Interoceanic Canal on the Isthmus, was approved by the provisional junta of the Republic of Panama, in the city of same name, on the 2d day of the present month;

That by the said treaty the independence of the Republic of Panama is assured and guaranteed by the Government of the United States of America;

That the municipal corporation of this district realizes the urgent necessity of proceeding promptly with the approval of the said document on grounds of external safety, though no official notice of any kind has yet been received;

That by virtue of the treaty in consideration the communities of the Isthmus will acquire the realization of the wishes of its sons and residents, inasmuch as the opening of the canal on their own territory is for the benefit of commerce and to the advantage of the world, resolves:

Unanimously to approve the treaty concluded between His Excellency Mr. Bunau-Varilla, envoy extraordinary and minister plenipotentiary of the Republic of Panama, and His Excellency Mr. John Hay, Secretary of State of the United States.

Let a copy of these presents be sent to the honorable junta of government through the regular channels.

JOSÉ DEL C. SANCHEZ,  
*Vice President.*

EUSEBIO DIAZ.

JOSÉ NEVERA.

I. NEVERA.

J. JIMÉNEZ.

LEOPOLDO ESCALA.

DANIEL AGUILAR.

D. DESEDAS, *Secretary.*

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA,  
REPUBLIC OF PANAMA,  
*Panama, December 14, 1903.*

I, H. A. Gudger, consul-general of the United States of America for Panama and the dependencies thereof do hereby certify that I have examined carefully the original documents in the office of the General Government at Panama, sent in by the various municipalities throughout the Republic, approving the action of the Provisional Government, or junta, in ratifying the canal treaty with the United States of America, and that I have compared these original documents with those set forth in the printed sheet of the *Gaceta Oficial*, Numero Extraordinario, dated December 12, 1903, set forth above, and to which this certificate is attached, and that the publications therein set forth, in printed form, from the municipalities of Calobre, Panama, Aguadulce, Nata, Santiago de Veraguas, Sona, Montijo, Pese, Los Santos, Las Minas, Ocu, and La Chorrera are a true, correct, and perfect copy of the originals on file in the office of the Government of the Republic of Panama.

In testimony whereof I hereunto set my hand and affix the seal of this consulate general, this, the 14th day of December, 1903.

H. A. GUDGER,  
*United States Consul-General.*

[Official Gazette, Extraordinary Number.]

PANAMA, *December 16, 1903.*

*Advice No. 17 (of December 6, 1903), by which ratification is given.*

The municipal council of the district of Buena Vista, considering—

That on the 2d instant the treaty signed at Washington on the 18th of November last for the excavation of an interoceanic canal was approved by the junta of the provisional government;

That in this agreement the independence of the Republic of Panama is guaranteed by the Government of the United States.

That for reasons of external security it is indispensable to proceed with celerity to the approval of the treaty;

That, by the treaty, the aspiration of the people of the Isthmus of Panama is realized that the canal be excavated for its own service and for the benefit of universal commerce;

It is agreed:

SOLE ARTICLE. To give its approbation to the treaty solemnized between His Excellency Mr. Felipe Bunau-Varilla, envoy extraordinary and minister plenipotentiary of the Republic of Panama, and His Excellency Mr. John Hay, Secretary of State of the Republic of the United States of America.

Given at Bohío, December 6, 1903.

The president,

MATEO GUARDIA.

The secretary,

CELEDONIO ISAZA.

BOHIO, December 7, 1903.

At the office of the mayor of the district of Buena Vista.

Approved. Let it be published.

The mayor,

ABEL HORMECHEA.

The secretary,

CELEDONIO ISAZA.

BOHIO, December 7, 1903.

The secretary of the mayor's office,

CELDONIA ISAZA.

*Advice No. 16 (December 4, 1903), by which approval is given.*

The municipal council of Portobelo, considering:

That on the 2d instant the treaty negotiated at Washington the 18th of last November for the construction of the interoceanic canal was approved by the junta of the provisional Government of Panama;

There were also present Mr. José Manuel de Adames, the municipal mayor, and a number of private citizens.

The session being opened, the vice president enthusiastically set forth the purpose of the meeting, and the member Julián Martínez made the following motion:

The municipal council of Las Palmas, expressing the views of the free people, resolves:

To give, as is now given, a vote of approval of the interoceanic canal treaty, seconding the act of the Government junta and ministers.

Let this resolution be communicated to whom it may concern.

Upon the above resolution being submitted to discussion, it was unanimously approved.

For record, the resolution is signed by the members and officers present.

The vice president,

ULADISLAO CASTRELLÓN.

Members,

SALVADOR GORDILLO,  
JULIAN MARTINEZ,  
JOSÉ F. BENAVIDES.

Mayor,

J. M. DE ADAMES.

The secretary,

R. S. CASTRELLON.

At the capital of the municipality of La Mesa, at 9 a. m. on the 5th of December, 1903, in the customary place, the municipal council of the district met with the attendance of all its members, Messrs. Pedro Tristán, presiding, Eulogio Solís, Narciso Barrio, Lorenzo Chamiso, and Avelino J. del Barrio, the last acting as secretary. The session being opened, the president set forth the object of the meeting and read the telegram addressed by the minister of justice to the prefect of the province stating the approval that the Government junta and ministers had given to the canal treaty, whereupon the member Narciso Barrio made the following motion:

"The municipal council of the district of La Mesa, expressing the views of the constituent people, free and voluntarily resolves:

"To advise the Government junta of its assent to the approval given by it to the canal treaty, and to tender to it every aid.

Second. That the aforesaid treaty has merited the approval of the Provisional Government of Panama, as is shown by the specific ratification which the members of said junta made of such agreement;

Third. That the Panama Canal means for the Isthmus, among other things, consecration of labor and security in the well-being of the country.

It is agreed—

To give public assent to the Hay-Bunau-Varilla treaty, so that as soon as possible a beginning may be given to the work of excavation of the canal across the Isthmus of Panama;

To recognize the action taken by the members of the junta of the Provisional Government in having approved, with the celerity which the case demanded, the Hay-Bunau-Varilla treaty, and to extend to them a vote of approval for their conscientious zeal of the interests of the Republic of Panama which were intrusted to their care;

To send a copy of this resolution to the Provisional Government junta, and to publish it in separate sheets for the information of the public.

Given at David, in the conference hall, the 11th of December, 1903.

The president,

HORACIO BENITEZ.

The vice president,

LUIS M. CLEMENT.  
 JOSÉ DE OBALDÍA JOVANÉ.  
 JOSÉ P. PALMA.  
 CARLOS BAYÓ.  
 JOSÉ MODESTO MOLINA.

The secretary,

L. BARRAZA P.

At the capital in the municipal district of Las Palmas, on the 3d day of the month of December, 1903, in the Municipal Hall, the council of the district met in solemn session with the attendance of its members, Uladislao Castellón, vice president; Salvador Gordillo, José F. Benavides, and Julian Martinez, and the secretary, Mr. Rodolfo L. Castellón.

That in that treaty the independence of the Republic of Panama is guaranteed by the Government of the United States;

That for reasons of external security it is indispensable to proceed with dispatch in the approval of the treaty;

That the treaty fulfills the aspirations of the people of the Isthmus of Panama that the canal be built for its own benefit and for the benefit of universal commerce.

It is agreed:

**SOLE ARTICLE.** To approve the treaty entered into between his excellency Mr. Felipe Bunau-Varilla, envoy extraordinary and minister plenipotentiary of the Republic of Panama, and his excellency Mr. John Hay, Secretary of State of the Republic of the United States of America.

Given at Portobelo, the 4th of December, 1903.

The president,

CELSE N. RODRIGUEZ.

The secretary,

JOSÉ R. ARROYO.

Republic of Panama, Province of Colon.

Municipal mayorship of the District Portobelo, December 7, 1903.

Let this be carried into effect and published.

The mayor,

SEBASTIÁN DE LEÓN.

The secretary,

MODESTO MARK B.

True copy of the original. The secretary,

MODESTO MARK B.

*Resolution approved by the municipal council of David in special session December 11, 1903.*

The municipal council of David, considering:

First. That on the 3d of this month the municipal council of Panama, as the principal guardian of the public interests of the Republic of Panama, and at whose initiation the proclamation of independence of the Republic was made, has issued a resolution approving the treaty negotiated at Washington, the 18th of November last, between Señor Philippe Bunau-Varilla, envoy extraordinary and minister plenipotentiary of the Republic of Panama, and his excellency Mr. John Hay, Secretary of State of the United States of North America, concerning the excavation of an interoceanic canal across the Isthmus of Panama:

"Let this be communicated to whom it may concern, and let it be published."

Being submitted to debate, the resolution was approved unanimously. For record, the resolution is signed by all the members of the corporation, copies being made for transmission to the mayor, to be by him sent to its destination.

The secretary,

PEDRO TRISTAN.

Member,

EULOGIO SOLÍS.

Member,

NARCISO BARRIO.

Member,

LORENZO CHAMISO.

The president,

AVELINO J. DEL BARRIO.

We, the undersigned residents of the municipality of La Mesa, comply with a just duty in announcing to the Government junta of the Republic of Panama our recognition and approval of its act approving the canal treaty negotiated between our minister and the Government of the United States. That act makes secure our future and our peace.

La Mesa, December 3, 1903.

José J. Alvarado, Alejandro Méndez, Nicolás Alcedo, Manuel María Alcedo, Octavio E. Ríos, José J. Tristán, Pedro Tristán, Manuel Medina, Lorenzo Chamiso, Manuel Medina, Valerio Medina, Darío Castillo, Eulogio Solís, Manuel S. Escudero, Moisés Vásquez, P. J. Alvarado, José Bolívar Castillo, José Dolores Barrio, Jerónimo Portugal, José J. Tristán M., Manuel S. Vargas, Efraín Castillo, José A. Castillo.

*GENTLEMEN—Members of the Government Junta, Panama:*

With the liveliest satisfaction we have learned of the approval which, in the exercise of your august faculties, you have given to the treaty negotiated by the United States and the commissioners of our Republic in Washington for the opening of an interoceanic canal. That act guarantees the interests of the isthmian nation and consolidates our Republic.

We therefore respectfully present to you our cordial recognition.

San Francisco, December 3, 1903.

Ladislao Rodríguez, Pastor Paredes, T. A. Adames, Juan Bautista González G., Mateo Gonzáles Nicolás González H., Gonzalo M. González, Sebastián Paniza R., Juan Bonilla, Francisco González, Jacinto G. Rodríguez, Julio Rodríguez, Miguel Robles, Adolfo Bonilla, Eufrasio Montero, Jeremías Jaén, D. Rodríguez, Eulogio J. González E., Valerio Manila, Manuel de J. Palma, Wenceslao Aguilar H., Manuel Salvador Sanchez, José de la E. Mérida.

Resolution unanimously adopted by the municipal council of Taboga in the session of the 3d of December, 1903.

The municipal council of Taboga having learned that the treaty negotiated between the representative of the Republic of Panama in Washington and the Secretary of State of the United States, of the Government of the United States of America, for the opening of an interoceanic canal across our isthmus, was ratified yesterday by the honorable junta of the provisional Government of the Republic, resolves:

To advise that honorable body that the municipal council of Taboga, faithfully interpreting the aspirations of the people it represents, has noted with satisfaction that the aforesaid treaty has been ratified, a fact which meets a universal need, and it presents to the honorable junta for this reason its most cordial congratulations.

Let a copy of this resolution be transmitted to the honorable junta, and let it be published.

Taboga, December 3, 1903.

The vice president,

PROSPERO BELUCHE.

The president of the council,

FELIPE SALINAS.

Member,

JOSÉ A RIVERA.

Member,

JOSÉ MERCEDES CASAL.

Member,

MELCHOR RIVERA E.

The acting secretary,

JUAN N. RIVERA P.



*Advice No. 2 (December 5, 1903), by which approval is given.*

The municipal council of Gatun, considering:

That on the 2d instant the treaty negotiated at Washington on the 18th of November last for the construction of an interoceanic canal was approved by the junta of the provisional government of Panama;

That in this contract the independence of the Republic of Panama is guaranteed by the Government of the United States;

That for reasons of external security it is indispensable to proceed with dispatch in the approval of the treaty;

That by virtue of the treaty the aspiration of the people of the Isthmus of Panama is realized that the canal shall be built for its own benefit and for the advancement of universal commerce, it is agreed:

SOLE ARTICLE. To approve the treaty entered into between His Excellency Mr. Felipe Bunau-Varilla, envoy extraordinary and minister plenipotentiary of the Republic of Panama, and His Excellency Mr. John Hay, Secretary of State of the Republic of the United States of America.

Given at Gatun the 5th of December, 1903.

The President of the council,

H. HERRERA R.

The secretary,

U. SANGUILLÉN A.

OFFICE OF THE MAYOR,  
*District of Gatun, December 5, 1903.*

Approved.

The mayor,

JOSÉ G. SALAZAR.

The secretary,

U. SANGUILLÉN A.

At the capital of the municipal district of Rio Jesus, 3d day of December, 1903, at 3 p. m., in the municipal hall, the municipal council met with an attendance of all its principal members: Messrs. Santos Guevara, president; José C. Cruz, vice president; Diego Lopez, Santiago Bernal, and José D. Mendoza, acting secretary.

The session being called to order, the president advised the board of the object of the meeting and placed before them the telegram from the minister of justice. Whereupon the member, Diego Lopez, had the floor and proposed the following motion:

"The municipal council of the district of Rio Jesus, interpreting the desires of the constituent people, freely and voluntarily

"*Resolves*, To give its vote of approval to the government junta of the approval it has given of the canal treaty, and to extend to it every aid.

"Let this be communicated to whom it may concern, and let it be published."

Being submitted to discussion the resolution was unanimously adopted.

In conformity with the custom the present act is copied and is signed by all the members.

The president,

SANTOS GUEVARA.

The vice president,

JOSÉ C. CRUZ.

Members,

DIEGO LÓPEZ.  
S. BERNAL.

Secretary,

JOSÉ D. MENDOZA.

*To the Government Junta, Panama:*

The undersigned, residents of Soná, notwithstanding the fact that it does not clearly comprehend the difficulties and dangers between Colombia and Panama relative to the construction of an interoceanic canal across the Isthmus of that name, because the former country has no right to treat of a matter which does not pertain to it, since the Isthmus has separated itself from Colombia with the consent of all its citizens, and has proclaimed itself an independent Republic under the protection of the United States of the north, and now recognized as such by the greater part of the European powers; and notwithstanding that, by our adhesion to the act of independence of the Isthmus, signed in the city of Panama the 4th of November last, we gave tacit approval to all acts which in

the future, and until a regular government is formed, should be effected by the most excellent government junta which to-day so ably watches over the destinies of this Republic, we certify anew by this present act our most ample and unconditional approval of the treaty for the opening of an interoceanic canal across the Isthmus of Panama, signed at Washington by the Governments of the United States of the north and of Panama, the only Governments having any right to deal with the subject.

Soná, December 2, 1903.

E. Abadía, A. Grajales, José F. Calviño, Demetrio Dutari, Dionisio Sosa, José María Dutari, Casimiro Bal, Milciades Calviño, Julio M. Ramírez, José F. Calviño B., Luis Romero G., Modesto Dutari F. Ortiz, Arcesio Grajales, Alcides Grajales, Anibal Grajales, Anibal Arosemena, J. M. Dutari A., Rogelio García, M. H. Arosemena, Ezequiel Calviño, Rodolfo L. Castellón, L. Castellón, U. Tristán Roberto Dutari, Gustavo Bal, J. F. Palacios, Belisario Sosa, José N. Ortiz, Daniel Abrego, C. Arosemena A., Andrónico Benavides, José F. Sánchez, Carlos B. Ortiz, F. Ortiz A., Balbino Alvarado, Manuel S. Benavides, Baltazar Abrego, Ezequiel Sánchez, Fidel Sánchez Q., Norberto Mérida, Eusebio Escarreola, Benedicto Pinilla, José del C. Alvarado, Modesto Escartin, Arquímedes Arosemena, Armando Rosa, Blas F. Araúz, Bernardo Arosemena, Manuel Robles G., Manuel H. Arosemena C., José Félix Sosa, Manuel del C. Benavides, Manuel S. Reyes, Enrique Urdaneta, Francisco Arosemena, Miguel Amores, Francisco Adames, Tiburcio Adames, Alberta Abrego, Liborio Abrego, Antonio Quintero, Baldomero Botacio, Manuel María Arosemena, Samuel Arosemena, Tiverio Ortiz, Juan C. Berguido.

The municipal council of the district of San Francisco, in representation of the constituent people, being informed of the ratification of the treaty with the United States of North America concerning the opening of the canal in the zone of the Isthmus of Panama,

*Resolves*, To extend its most sincere congratulations and applause to the Government junta and commissioners in Washington for the happy and speedy way in which that treaty has been consummated, as it will assure the existence of the Republic of Panama.

San Francisco, December 3, 1903.

The President,

D. RODRIGUEZ.

Members,

VALERIO BARRERA.  
MANUEL DE J. PALMA.  
JOSÉ DE LA E. MÉRIDA.

Secretary,

LADISLAO RODRÍGUEZ.

#### RESOLUTION.

Being highly interested in the definitive consummation of the canal treaty which has been negotiated between the Governments of Panama and the United States of North America, we, the undersigned residents of the district of Rio Jesus, hasten to inform the most excellent Government junta of our Republic and its honorable ministers that we approve the most important act of ratification given in Panama to this treaty, day before yesterday, of which we have been advised by telegraph.

ADOLFO HERRERA.  
SANTOS CRUZ M.  
JOSÉ CRUZ.  
MANUEL DOBLAS.  
TOMÁS ESCARTÍN.  
JOSÉ E. BUSTAMANTE.  
BERNARDINO ESCARTÍN.  
EMILIO ESCARTÍN.  
AQUILINO GUEVARA.  
JOSÉ D. MENDA.  
SACRAMENTO CASTILLO C.  
DELFIN HERRERA.  
CELEDONIO MONROY.

[SEAL.]

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA.

[SEAL.]

REPUBLIC OF PANAMA,  
Panama, December 24, 1903.

I, H. A. Gudger, consul general of the United States of America for Panama and the dependencies thereof, do hereby certify that I have examined carefully the original documents in the office of the General Government of Panama, sent in by the municipalities of Buenavista, Portobelo, David, Las Palmas, La Mesa, Toboga, Gatun, Rio Jesus, San Francisco, and citizens of La Mesa, Sona, and Rio Jesus, approving the action of the provisional government or junta in ratifying the canal treaty with the United States of America, and that I have compared these original documents with those set forth in the printed sheet of the Gaceta Oficial, Numero Extraordinario, dated December 16, 1903, and to which this certificate is attached, and that the publications therein set forth in printed form from the above municipalities and citizens are true, correct, and perfect copies of the original documents on file in the office of the Government of the Republic of Panama.

In testimony whereof, I hereunto set my hand and affix the seal of this consulate general this the 24th day of December, 1903.

[SEAL.]

H. A. GUDGER,  
United States Consul General.

*Mr. Bunau-Varilla to Mr. Hay.*

WASHINGTON, D. C., January 6, 1914.

SIR: I have the honor of informing you that I have received from my Government an extract of the Gaceta Oficial of December 16, duly certified by H. A. Gudger, consul general of the United States, in which the municipalities of Buenavista, Portobelo, David, Las Palmas, La Mesa, Toboga, Gatun, Rio Jesus, San Francisco, and the citizens of La Mesa, Sona, and Rio Jesus give in the warmest terms the expression of their satisfaction of the signature of the convention of 18th of November last, referring to the Panama Canal.

This completes the list of the elective bodies of the Republic, which have all expressed their unconditional approval of the treaty and of its ratification by the Panama Government. I must say that this expression of opinion is in harmony with the satisfaction of the whole country which was made conspicuous at the recent election, where, for the first time in the history of the State of Panama, every citizen has been at liberty to perform his duty according to his conscience. To adopt the formula employed in a private letter directed to me by an eminent person of the Isthmus, "The liberty of suffrage has been absolute and pure and every citizen has made use of this precious right, observing admirable order."

I am, sir, with great respect, your very obedient servant.

P. BUNAU-VARILLA.

[Official Gazette, extraordinary number, Panama, December 14, 1903.]

*Decree No. 25, 1903 (December 12), concerning the holding of the national constitutional convention and manner of electing the delegates who are to compose the same.*

The junta of the Provisional Government of the Republic, in the use of its powers,

Whereas:

1. The country is now in a state of absolute peace and no fears of any kind exist as to interior disturbance; and

2. It is the imperative duty of the Provisional Government to proceed to the constitution and organization of the country by means of a national convention elected by the people;

It is decreed:

#### CHAPTER I.—*General orders.*

ARTICLE 1. A national constitutional convention is called for the 15th day of January, 1904, with the object of forming the constitution or fundamental law of the Republic.

ART. 2. The national constitutional convention shall be composed of 32 delegates, at the rate of four for each one of the Provinces of Bocas del Toro, Coclé, Chiriquí, Colon, Los Santos, and Veraguas, and eight for the Province of Panama.

There shall be as many alternates as there are delegates for each Province. These alternates will be named first, second, third, and fourth in all the Provinces with the exception of Panama, in which there shall be also the fifth, sixth, seventh, and eighth, and they will be summoned in their order to substitute the principals in case of complete or temporary absence.

ART. 3. The delegates and alternates to the national constitutional convention shall be elected by direct and secret vote on a separate ballot for each Province.

ART. 4. All men of 21 years of age, born in and at this time residents of the territory of the Isthmus of Panama, who have not lost their political rights according to the law, natives of Colombia who may have manifested their desire to become citizens of the Republic and who have taken oath of allegiance or who may take the same before the day of the elections, and those who are found in the service of the country on the said date have the right to vote in the elections for delegates.

ART. 5. All individuals [men] born in the territory of the Isthmus of Panama who have attained the age of 21 years, in the full enjoyment of their political rights, and natives of Colombia who may have sworn fidelity to the Republic or signed the articles of independence or manifested their desire to become citizens of the same previous to the publication of this decree may be eligible for election as delegates to the national constitutional convention.

Individuals who have formed part of the junta of the Provisional Government, the ministers of state, the magistrates of the court of justice, the attorney general and the treasurer general of the Republic, the commander in chief and the chief of staff of the national army, and in general any public officer throughout the entire Republic, and the magistrates of Provinces in the Provinces under their jurisdiction, who may have discharged such duties ten days previous to the elections, can not be eligible for election as delegates.

ART. 6. The ministers of the cabinet shall have seat in the national constitutional convention and voice in its discussions.

#### CHAPTER II.—*Electoral boards.*

ART. 7. In the capital of each Province there shall be an electoral board composed of four members named by the junta of the provisional government; there will be also four alternates named in the same manner to substitute the principals in case of complete or temporary absence.

The members of the electoral boards shall assume charge of their duties in the presence of the magistrates of the respective Provinces on the same day the appointment is received by them.

ART. 8. The electoral boards shall be unable to transact their business without the attendance of the majority of their members. The day of their installation they shall name a president, a vice president, and a secretary who may or may not be from their membership. Their sessions shall be public, they shall make authentic reports of them, which each body will enter in a book, their votes when not unanimous shall be recorded by name, and appointments shall be made in secret.

ART. 9. When any member or members of the electoral board are wholly or temporarily absent it is the duty of the same body to summon the respective substitutes and under penalty of a fine of \$50 or less to compel those who decline to attend or delay their appearance.

The day upon which the board is to be installed or reassembled and is prevented from so doing by the failure of a majority of its members to attend, those present, in any number whatever, can compel them under the fine already expressed and call the respective substitutes.

CHAPTER III.—*Elections.*

ART. 10. The voting shall take place in the presence of the municipal council of each district, the respective quorum being present as in its ordinary session whether those acting be its principals or the alternates.

In those districts in which the number of citizens exceeds 400, the said municipal council, with due deliberation, shall choose from among the persons with a knowledge of reading and writing five persons to receive the votes, with the character of judges of election, selecting as many of these as required by the number of voters, calculated at the rate of 400 for each body of judges, and where there is a number exceeding 100 another set of judges will be designated to receive the votes from them, but if the number be less, the voting of these will be in the presence of the first body named by the council, who thus will receive a number greater than 400.

ART. 11. The judges of election can not be installed nor act with a less number present than three of their members, and can impose a fine of \$50 upon those who refuse to assist or delay their attendance. These fines will be made effective by the first political authority of the district.

ART. 12. For the act of voting, some fit location of easy access shall be designated in order that citizens may attend and deposit their votes.

ART. 13. Each body of judges of election on being installed shall name a president and a vice president from among its members, and a secretary, who may or may not be a member of the same.

ART. 14. The municipal council, or the judges in its place, shall give the proper orders that the voting may begin promptly and be carried out with absolute freedom. In this respect, if necessary, it shall demand the cooperation of the alcalde (mayor) and the inspectors of police, who will be obliged to give him aid.

ART. 15. The municipal council or the judges of election shall so dispose that the voting may begin precisely at 8 o'clock on the morning of the 27th day of this month of December, the opening of the same being announced by means of the long roll of a drum at the street door of the place assigned for the voting. The voting shall cease at 4 o'clock in the afternoon, which will be announced by another long roll of the drum.

ART. 16. Every citizen has the right to cast his vote in the election herein named, and the municipal council or the judges of election can not refuse this right unless three citizens affirm under oath that he has not the said right, concerning which they will submit testimony for the purposes which are expressed in the following article.

ART. 17. If it happen that any person not a citizen attempts to vote, for this act alone he shall be sentenced to ninety days of imprisonment, after ascertaining the facts, by the judge of the respective circuit; also those individuals who falsely testify before the municipal council or the judges of election that a citizen does not possess the proper qualifications to vote shall suffer six months imprisonment.

ART. 18. No citizen may cast more than one vote in the election. He who deposits more than one vote, be it in one voting place or another, shall suffer the punishment hereinafter to be expressed.

ART. 19. In order to prevent any citizen from casting more than one vote the name of each voter shall be inscribed in a register in regular order, which register shall be placed upon the voting table in view of the public, and at the close of the voting all the judges shall sign at the foot of the register and as many as four citizens who may desire to do so, and copy will be given of said registers to whomsoever solicits it.

ART. 20. The ballots for the election of delegates to the national constitutional convention shall state separately the names of the individuals to be voted for as principals and the names of those for whom a vote is to be cast for alternates.

Those who obtain the greater number of votes as principals shall be declared elected with that character, and those obtaining a majority of votes as alternates shall be declared elected alternates according to the order of the number of votes cast for each. In case of a tie the order shall be decided by lot.

ART. 21. The ballots shall not contain the name of the same person twice; they shall state under the heads of principals and alternates, properly separated, the names of the candidates; they shall be placed within an envelope or cover that they may be examined without reading their contents, and shall measure in length no more than a decimeter in order that they may easily be placed in the ballot box.

ART. 22. The judges of election shall be installed for the act of the elections and to superintend the same in such manner that they will be in view of the public, but separated from it by means of gratings.

ART. 23. A table shall be placed near the judges, around which they will place themselves, the voters having access to the table at one side. On the top of the table there will be an urn, which shall be a box of wood with an opening of a decimeter in length and a centimeter in breadth.

ART. 24. Immediately before the opening of the voting the box shall be opened and the public will be permitted to examine it, that it may be convinced that it is empty and that it does not contain a double bottom or other secret means for committing fraud.

ART. 25. The vote shall be taken in a single day in public and continuous session during the hours set forth by this decree. The hour having arrived for the termination of the voting, the same signal that announced the beginning of the same shall be given in the hearing of the judges.

ART. 26. Immediately after the closing of the voting the judges shall read aloud the list of the citizens who have voted; they shall state in the same manner the total number of the voters and will place at the bottom of said list the following note: "We, the undersigned, members of the judges of election, number —, do hereby certify that this day (giving number) citizens have voted for the election of delegates to the national constitutional convention, the names of whom are above noted." The date and signatures of the judges and the secretary shall then be attached.

ART. 27. The direction given in the foregoing article having been carried out, the urn in which the ballots were deposited shall be publicly opened. The secretary shall count them one by one. If there be a greater number than those of the individuals voting all of the ballots shall be replaced, and after moving them to change the location as many ballots as are excessive shall be drawn out by lot and without opening shall be immediately burned.

ART. 28. The ballots having been counted and collected, they shall then be examined, which shall be done by two of the judges, who shall keep the register of the number of votes cast in favor of each candidate. Another of the judges shall open and read the ballots aloud, one by one, and shall show them to those who are noting the result.

ART. 29. A vote that does not express in an intelligible manner the name and surname of the person in whose favor it is cast shall be considered a blank.

In like manner the votes cast in favor of women, other ineligible persons, and foreigners shall be considered as blanks.

ART. 30. Should an envelope contain two or more ballots, neither of them shall be counted and the vote shall be considered null.

ART. 31. The examination having been concluded, the result shall be read aloud, and a copy of the summary of it, signed by all the members of the municipal council or of the judges present, will be furnished to anyone desiring the same. Then the ballots shall be inclosed in a package, upon the cover of which shall be placed a certificate of its contents, and it shall be directed to the president of the electoral board of the respective province.

ART. 32. The result of the examination shall be set forth in a register, in which shall be stated the number of votes obtained by each candidate and other circumstances concerning the matter. Three copies of this register shall be made, which shall be directed respectively to the convention, to the junta of the provisional government, and to the president of the electoral board of the province, sending to this last named the package that contains the ballots of the election and the list of the voters.

ART. 33. Each copy of the register shall be signed by all the members of the municipal council and judges and by those attending up to the number of ten who may wish to do so. The envelopes containing the other documents forwarded by the judges of election shall be signed in like manner.

ART. 34. The duties of members of the electoral boards or of the judges of election are obligatory.

#### CHAPTER IV.—*Examinations.*

ART. 35. It is the duty of the electoral boards to make the examination of the votes cast in the municipal districts before the municipal councils and the judges of election.

ART. 36. On the 3d day of January, 1904, at 10 o'clock in the morning, in a public place, and after having been announced by three rolls of the drum, the

electoral board shall meet for the examination of the vote cast before the municipal councils or judges of election of the entire province.

ART. 37. The president shall allow for reading the register of the documents received by him up to one hour before the installation of that body and shall exhibit them to the other members.

Then shall be opened, one by one, the registers of the votes, but no package shall be opened until the votes in the previous one have been counted, nor will such registers be computed when they have been received after the hour indicated in this article.

ART. 38. The registers shall be read aloud by the secretary of the board and shall be shown to those spectators who desire the same, and to the examiners at the time of announcing the votes cast in favor of each candidate.

ART. 39. The reading of the registers concluded, and the count having been made of the total number of votes cast in each district, a general count shall be made of all the votes cast for each candidate in every province, and the result shall be entered in a register.

ART. 40. The electoral board, having completed the general count to which the preceding article refers, shall declare elected as delegates and alternates to the national constitutional convention by the respective electoral districts those citizens who have received the majority of the votes lawfully deposited, and in the descending order of the same.

The president of the board shall give information of their election to those chosen and to the junta of the Provisional Government, through the cabinet of the Government.

ART. 41. Three copies of the register shall be prepared and be forwarded as follows: One to the junta of the Provisional Government, another to the national constitutional convention, and the third, which will be forwarded with the other documents of the board, to the president of the municipal council of the capital of the province, that they may be preserved in the archives.

ART. 42. The electoral board, on making the examination, has the duty of declaring as null and void the votes cast in favor of persons who may (not?) be eligible according to this decree.

ART. 43. The regulations established for the examination of elections are applicable to the examinations made by the electoral boards, provided they be not contrary to those given in this chapter.

#### CHAPTER V.—Nullities.

ART. 44. The popular elections discussed in this decree are null and of no value or effect in the following cases:

1. When they have taken place on any other day than that assigned in this decree;

2. When the voting and the examinations respectively have not been carried out in the presence of at least a full majority of the members of the body of judges or the council;

3. When violence has been used against the examiners, or the ballots of the election have been mixed with others or they have been lost or destroyed through violence;

4. When the voting has not continued throughout the hours assigned in this decree;

5. When a register has not been made of the names of the voters or it is proved that it has been falsified or altered; and

6. When the examination of the votes has been interrupted to be continued afterward.

ART. 45. The registers are of no value:

1. When it is proved that there has been substantial alteration in the writing, after having been signed by the members of the body;

2. When there appear corrections, erasures, or interlineations in the names or surnames of the candidates or in the number of votes each one may have obtained;

3. When they are found to be without the signatures of all the members of the municipal council or of the judges present at the examination, with exception of the case when it is known that a person or persons have refused to sign, and the cause of the refusal;

4. When the number of voters multiplied by the number of individuals to be voted for gives a result greater than appears in the register, counting the votes that have been declared null or blank; and

5. When it results that the register is falsified or doubtful.

ART. 46. The nullities stated under the numbers 1, 2, 3, 4, and 5 of article 44 include also those registers made by the municipal councils or judges of election.

#### CHAPTER VI.—*Penalties.*

ART. 47. The members of the electoral bodies described in this decree who, without the gravest cause, fail to attend the installation, shall pay a fine of from twenty-five to fifty dollars; and if for this reason the installation be not accomplished, the fine shall be doubled. This fine will be imposed by the members assembled.

If any individual fail to attend any other session whatever, without justifiable cause for the absence, the fine shall be from twenty-five to one hundred dollars; but should this prevent the session from being held, the fine will be from one hundred to two hundred dollars.

The same applies to those who attend the session in any one of the said cases whatever and do not sign the record of proceedings.

ART. 48. He who commits any act with the purpose of examining the ballot of another against the latter's will, and of violating the right of suffrage, employing force or fraud, any artifice or deceit to that end, shall be punished with a fine of from one hundred to five hundred dollars and from thirty to sixty days of arrest.

ART. 49. The members of the electoral bodies described in this decree who, in the discharge of their duties, exercise, or try to exercise, influence upon the result of the voting or the examination, shall suffer a punishment of from two to six months of imprisonment.

ART. 50. The individual who hinders, or endeavors to hinder, another who votes, or who changes his ballot without consent, or removes it, or attempts to remove it, or in any other manner restrains him in his right to vote for the candidates of his choice or of his desires, shall suffer the same punishment expressed in the foregoing article.

ART. 51. He who votes or attempts to vote under a name not his own, or attempts to place in the urn two or more envelopes, shall suffer an imprisonment of from one to two years.

ART. 52. The individual who, being suspended or deprived of political rights by virtue of judicial sentence, attempts to vote or votes in the election for delegates, shall suffer a year of imprisonment, after which he suffers the first sentence.

ART. 53. He who knowingly hinders the meeting of the electoral bodies, in order that the voting or examinations may not take place with due punctuality, shall suffer an imprisonment of from one to two years.

ART. 54. He who takes away the urn or exercises violence against the officials charged with receiving the ballots or of making the examination, or seizes the ballots or the records of the examinations, shall be tried as guilty of using force and violence.

ART. 55. The members of the electoral bodies who maliciously give place to what for any reason causes nullity or vitiates the voting or examination, shall suffer an imprisonment of from six months to one year. If the act were committed inadvertently or through ignorance the penalty shall be a fine of from \$100 to \$200.

ART. 56. He who abstracts, changes, destroys, or delays any record of examination shall suffer an arrest of from six to nine months. If he who committed the act be a member of some electoral body or public official, the punishment will be doubled.

ART. 57. The prefects of provinces, the mayors of districts, the inspectors of police who do not give protection to citizens on the day of the elections, or who do not give their cooperation in order that the judges of election, municipal councils, and electoral boards lack nothing at the time of complying with their obligations, and the members of such bodies who do not fulfill the duties that correspond to them, so that the elections and the examinations may be carried out promptly, shall pay a fine of from \$50 to \$200, which will be imposed by the Junta of the Provisional Government; but if on account of the above reasons the elections or examinations are not carried out the penalty will be doubled.

ART. 58. The members of the municipal councils or of the judges of election who, after having received votes freely deposited, compute or count them in



favor of persons other than those named in the same, or who cause to appear a greater number of votes than the number of persons who have actually voted, or who in any manner commit fraud, alteration, or omissions, with the purpose of favoring certain candidates shall be considered as guilty of falsifying public documents and judged accordingly.

ART. 59. The penalties of which the foregoing articles treat shall be imposed upon those accountable by the judges competent according to the laws of criminal procedure, in case that power has not been attributed to another authority by the present decree. Those articles shall be published in loose sheets and will be fixed in the most conspicuous places in all public offices.

ART. 60. The member of the municipal council or of an electoral body who withdraws from the session without leaving a majority, or without having finished the examination, or without the registers being made and signed and the covers that contain them sealed and directed, shall pay a fine of from \$25 to \$400, which will be imposed by the highest political authority of the province if it concerns one of the council and judges of election, and by the junta of the government if it concerns one of the electoral boards.

ART. 61. The bearers of the documents of the elections who do not arrive at their destination in the time which has been fixed for them, if it be not on account of physical impossibility, duly proved, shall suffer imprisonment of fifteen days.

ART. 62. If he who is sentenced to payment of a fine does not pay it promptly, he will be placed under arrest, at the rate of one day for each dollar of the fine; but even after the change has been ordered the individual sentenced can pay the fine or the respective proportional part and free himself from arrest.

ART. 63. The fines which are imposed in conformity with this decree shall be turned into the treasury of the Republic.

ART. 64. In the elections which are to take place the electoral bodies by a relative majority of the members shall decide every case of a tie by lot.

ART. 65. The electoral boards shall be installed the 30th day of December of the present year, and for the making of the examination which is their duty, the 3rd day of January, 1904, is designated.

Publish.

Given in Panama, on the 12th day of December, 1903.

The Minister of Government,

The Minister of Foreign Relations,

For the Minister of Justice, the Subsecretary.

The Minister of the Treasury,

The Minister of War and Marine,

The Minister of Public Instruction,

J. A. ARANGO.  
TOMAS ARIAS.  
FEDERICO BOYD.

EUSEBIO A. MORALES.

F. V. DE LA ESPRIELLA.

DANIEL BALEN.

MANUEL E. AMADOR.

NICANOR A. DE OBRARIO.

JULIO J. FABREGA.

**HAY-CONCHA PROTOCOL AND CORRESPONDENCE BETWEEN THE  
UNITED STATES AND COLOMBIA.**

[House Document No. 611, Fifty-seventh Congress, first session.]

LETTERS FROM THE COLOMBIAN MINISTER, ETC.

[May 16, 1902: Ordered to be printed.]

DEPARTMENT OF STATE,

*Washington, May 15, 1902.*

SIR: I have the honor to inclose copies of letters from the Colombian minister, dated the 31st of March and the 18th and 23d of April, accompanied by the letter of exposition and the letter of William Nelson Cromwell, both dated the 31st of March, referred to in the minister's letter of that date; and also a memorandum of a convention which the Government of Colombia is ready to sign with that of the United States of America, respecting the completion, maintenance, control, and protection of an interoceanic canal over the Isthmus of Panama.

I also inclose a copy of a letter which I addressed to the minister of Colombia on the 21st of April, announcing that I am directed by the President to inform him that I shall be ready to sign with him the proposed convention as soon as the Congress of the United States shall have authorized the President to enter into such an arrangement and the law officers of this Government shall have decided upon the question of the title which the New Panama Canal Company is able to give of all the properties and rights claimed by it and pertaining to a canal across the Isthmus and covered by the pending proposal. I inclose also a project of a treaty presented to me this day by the minister of Nicaragua in behalf of his Government. I have not yet received a definite proposition from the Government of Costa Rica, but am informed by the Costa Rican minister that his Government is ready to enter into satisfactory arrangement with that of the United States on the basis of the protocol of December 1, 1900; but that, as set forth in the recent message of President Iglesias, an extract from which I inclose, it will be necessary that the Government of Costa Rica should, before entering into positive negotiations with that of the United States of America, adopt a constitutional amendment authorizing the necessary concessions for the construction of an interoceanic canal, or to have the matter referred to public opinion in some other way by calling a constituent assembly for the purpose. I am assured by the Costa Rican Government that these steps will be taken as soon as the Congress of the United States shall decide the question of the route of the canal. I also inclose, in accordance with the request of the Nicaraguan minister, a copy of the protocol entered into between this Government and those of Nicaragua and Costa Rica December 1, 1900.

I have the honor to submit all these documents to your committee, with the hope that this definite information as to the purposes and

intentions of the Nicaraguan, Colombian, and Costa Rican Governments may be of service to you in determining the question of the route of the proposed interoceanic canal.

In view of the great interests involved, the President wishes me to express to you and to the committee of which you are chairman, his earnest hope that there may be as little delay as possible in the legislation which will authorize the beginning of this work, which he regards as so important and so beneficent to this country and the world.

I am, sir, very truly, your obedient servant.

JOHN HAY.

HON. WILLIAM P. HEPBURN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives.*

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LEGACION DE COLOMBIA,  
*Washington, D. C., March 31, 1902.*

HON. JOHN HAY,  
*Secretary of State of the United States:*

I have the honor to hand your excellency the proposal of the Republic of Colombia for a concessionary convention or treaty between the Republic of Colombia and the United States of America, respecting the completion, maintenance, operation, control, and protection of the interoceanic canal over the Isthmus of Panama.

I soon shall hand you a letter of exposition, and also have requested Mr. William Nelson Cromwell, general counsel of the New Panama Canal Company, to present you a statement which I have approved.

Please accept these additional communications in connection with the proposed treaty.

I avail myself of this opportunity to renew to your excellency the assurance of my high consideration.

JOSÉ VICENTE CONCHA.

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[Translation.]

LEGATION OF COLOMBIA,  
*Washington, D. C., March 31, 1902.*

HON. JOHN HAY,  
*Secretary of State of the United States:*

The undersigned envoy extraordinary and minister plenipotentiary of the Republic of Colombia has the honor to supplement the note which he had the honor to hand to the honorable Secretary of State, together with the memorandum setting forth the bases of a treaty between Colombia and the United States for the purpose of securing the authorization of Colombia for the New Panama Canal Company to transfer its rights and privileges to the American Government and of regulating the relations between the contracting parties in respect of this enterprise.

The bases have been formulated after a serious and mature consideration of those which were submitted to the legation on the subject by the president of the Isthmian Canal Commission, which had been

intrusted by the honorable Secretary of State with the discussion of the question. The intent of these bases has been to condense the most liberal terms that could be granted by Colombia in the matter.

The Republic that I represent realizes the importance of the contemplated interoceanic waterway for the civilization and progress of the world, and since nature has placed the shortest and most expeditious route within the territory of the Republic, Colombia widely and generously opens her doors so that the grand work may be achieved within the shortest possible time.

If the people of the United States evince an earnest desire that their Government apply its energies and treasure to the completion of the canal, Colombia not only will not place any obstacle whatever in the way of such a purpose or keep her concessions within the bounds of those previously conceded to private enterprise, but will enlarge those concessions to such an extent as to renounce a demand for the ownership after the lapse of a number of years of operation, as stipulated in the French company's contract; she will grant the use of a much more extensive zone than that originally conceded for the execution of the work; extend facilities in all the ports of the Republic for cooperation in the work of the enterprise, relinquish her proprietary and usufructuary rights in the Panama Railway, and lastly, foregoes a fixed participation in the proceeds of the canal, confining her demands to a fee or annuity for the price of the zone, the revenues of the railway, and the heavier expenses put upon the public administration in the Isthmus by the increase of population and the traffic consequent to the work on the canal itself.

Thus does Colombia give fresh evidence of her long standing and cordial sentiments of friendship toward the United States and evinces in a clear and sincere manner the gratification with which she will receive the industrious and intelligent citizens of your Republic in her territory.

Colombia has no lust of unjust gain through the construction of the canal in her territory, and a final convention on this subject will not be hampered by pecuniary considerations. Her pride in the matter is bent on having the neutral waterway between the two oceans, that idea of universal peace and progress, become a reality on her territory and under the protection of her sovereignty. The compensations asked by Colombia have special importance only in that they will imply a practical and constant recognition of her sovereignty.

The undersigned has no doubt that the mere perusal of the memorandum will bring forward the justice and equity of the propositions which, if accepted, would be perfected in the same spirit.

The undersigned embraces this opportunity to reiterate to the honorable Secretary the assurances of his highest and most distinguished consideration.

JOSE VICENTE CONCHA.

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SULLIVAN & CROMWELL,

*New York, March 31, 1902.*

SIR: In connection with the presentation by Señor Jose Vicenté Concha, minister plenipotentiary and envoy extraordinary from the Republic of Colombia, of a proposed concessionary convention or

treaty between the United States and Colombia, to further the completion, operation, control, and protection of the Panama Canal by the United States, I have been requested by the minister, in view of my relation to the subject as general counsel of the Panama Canal Company, and of my knowledge of the minister's views derived from our daily conferences in the preparation of the treaty, to submit the following reflections:

Colombia welcomes the United States to its territory, and will facilitate in every way reasonable within its power the consummation of the desires and needs of the United States for the completion, operation, maintenance, control, and protection of the interoceanic canal across its domain, subject, of course, to the sovereignty of Colombia, and a reasonable and just convention between the two nations,

Colombia views with admiration, as does the rest of the world, the splendid magnanimity, the far-seeing statesmanship, the virile and comprehensive policy which moves this people to construct the greatest undertaking which ever has engaged the attention of mankind, not for its own benefit alone, nor with selfish preference to its own commerce, but for the common benefit, upon equal terms and under universal neutrality in times of peace for all the peoples of the earth.

History does not furnish another instance of such national generosity, patriotism, and wisdom.

This could not but call out from Colombia the warmest response; and that nation takes pride in associating herself with an affair conducted upon such an elevated plane of national and international duty and concern.

The Isthmian Canal Commission, a most distinguished and able body, selected with such care by President McKinley to consider all possible isthmian canal routes and to determine which of them it is most to the interest of the United States to acquire, has reported unanimously that the Panama route is the most practicable and feasible route for an isthmian canal to be under the control, management, and ownership of the United States. Therefore the solution of the problem only involves two other conditions:

1. The sale by the New Panama Canal Company to the United States of the concession, property, and rights of the canal, with the shares of the Panama Railroad Company; and

2. A new concessionary convention or treaty with Colombia.

3. The first of these two conditions already has been made easy of fulfillment in the formal acceptance by the New Panama Canal Company of the valuation fixed by the Isthmian Canal Commission—\$40,000,000—and by its duly authorized proposal to the United States for a sale of the property at that price (subject, of course, to a satisfactory convention being arrived at between the United States and Colombia).

The sole remaining condition, then, is the determination of the concessionary and treaty relations of the United States to a zone of territory across the Isthmus of Panama necessary for the consummation of the undertaking.

There has not been a moment in which Colombia has not entertained the keenest desire to further the designs of the United States, and this sentiment has prevailed under each succeeding administration in Colombia and alike in both of the great national parties who alternately have ruled in that country.

This sentiment is neither new born nor inspired by hope of pecuniary gain. The two nations are old friends, and this feeling assumed practical form in 1846, when the treaty of that year was made, which expressly provided for the construction of this canal; in furtherance of which Colombia guaranteed to the United States the free transit of the Isthmus, and granted extraordinary concessions to the people and commerce of the United States, upon terms of perfect equality with its own citizens, while the United States in turn guaranteed the neutrality of the Isthmus and of the canal to be constructed upon it, as well as the sovereignty of Colombia over that territory.

It is a significant fact that this treaty of 1846-1848, assuring to the United States especial rights and privileges upon the Isthmus of Panama in connection with any interoceanic canal or railroad across the Isthmus of Panama, antedates the Clayton-Bulwer treaty. The treaty of 1846-1848 is in full force, as it has continued to be without change from the date of its execution.

Colombia has never made a treaty with any other nation upon the subject of an isthmian canal, although it was at liberty to do so.

These treaty ties cementing their joint design for the construction of a new highway for the world have held the two nations together in common interests and unbroken friendship for more than a half century.

By granting the concessions now owned by the New Panama Canal Company, and by furthering the construction of the canal to its present advanced stage of completion by the old and new Panama Canal companies, Colombia initiated the great work which now, happily, the United States may consummate.

While the minister of Colombia was in Washington for more than a year waiting for the moment when the subject could be seriously and attentively discussed, it is only since January 4, 1902, that anything could be definitely said or done, since then, and then only, was a definite proposal of sale made by the canal company. Immediately thereupon, however, the Government of Colombia, requiring the service of its then minister in other important fields, designated its minister of war, Señor Concha, as minister plenipotentiary and envoy extraordinary, to come at once from Bogota to Washington, charged with its ripest views and amplest instructions, to confer with the Executive authorities of the United States, and, after exchange of information and opinions, to reach a satisfactory convention.

Minister Concha has devoted himself, since his arrival a few weeks ago, absorbingly to this task and is prepared to reach a conclusion with the Executive officers of the Government.

He is fully empowered to negotiate and sign a treaty, subject only to the ratification of the Colombian Congress, as in like cases with all nations.

But Colombia is in the dark as to the precise desires and needs of the United States upon the subject, and Minister Concha can not, of course, anticipate in his first statement all the reasonable requirements of this Government. He wishes, however, to manifest in the most hearty manner the desire of his Government to facilitate the purposes of the United States, and this disposition is manifested by the comprehensive convention which he has this day submitted to you, but

not as an ultimatum. The establishment of a canal convention involves, as you are so well aware, besides the utilization of a canal zone for the construction, operation, maintenance, control, and protection of a canal, railroad, and auxiliary works, as well as a grant renewable perpetually and a consent to the sale by the New Panama Canal Company (all of which Colombia concedes in the convention submitted), but also numerous other grave questions relating to judicial procedure, punishment of crimes, the capture of criminals, sanitary and police regulations of Panama and Colon, proper regard to the vested interests upon the Isthmus, exemption of the United States from all forms of taxes, port charges, or other dues, etc. Quite aside from pecuniary matters, these are subjects which only can be examined and negotiated directly with you in person, and are impossible of negotiation with the Houses of Congress.

Permit me to call attention to the facts that a canal convention in respect of the Isthmus of Panama necessarily involves considerations which do not relate to a section where there is but a wilderness, uninhabited by man, and producing no income to the nation. The convention respecting the Panama route covers a zone which has been the pathway of commerce across the continent for four hundred years, with important cities at its termini, with villages along the route, with a settled population, with considerable property, and with important vested interests to be taken into consideration.

All this represents an increment of value in civilizing influences, in means of protection, in expenditures of national funds for improvement and development, as well as in certitude of engineering plans, of all which the United States now may derive the benefit.

It would be neither in order nor fitting for the canal company or myself to express any views, one way or the other, upon any of the provisions of the proposed treaty, and our reserve in that regard will be noted. However, I beg to refer, by special request of the minister, to Article XXV of his proposed treaty, and which article relates to the pecuniary terms. Colombia is prepared to discuss, negotiate, and decide upon the precise sum or sums which may be reasonable for the United States to pay and for Colombia to ask, but as the subject is in the hands of Congress, and it seems impracticable at the moment to secure a definite expression of the views of the United States upon the subject, Colombia manifests its good faith and reasonableness by proposing that the annuity shall be only such sum as mutually may be agreed upon between the nations, or, failing in such agreement, such fair and reasonable amount as may be determined by a high commission presided over by the president of the international peace tribunal of The Hague, the remaining members being nominated in equal number by the two nations. Such annuity would only be fixed once in a hundred years.

The national requirements of Colombia make a payment of \$7,000,000 desirable, and you will note the provisions on that head; but I also ask you to note that Colombia waives the annuity for the first fourteen years. This method insures to the United States the concessionary rights which it requires and which can not be affected or interrupted by any difference or delay respecting the ascertainment of the annuity. The United States is only required to pay such sum as it may agree upon or as so may be determined to be fair and reasonable. Colombia

does not ask more than what may be determined to be fair and reasonable, and surely the United States does not wish to do less than that.

I have the honor to be, Mr. Secretary,

Your obedient servant,

WM. NELSON CROMWELL,

*General Counsel, New Panama Canal Company.*

HON. JOHN HAY,

*Secretary of State, Washington, D. C.*

LEGACION DE COLOMBIA,

*Washington, D. C., April 18, 1902.*

SIR: Confirming the conclusions reached as the result of the conference held between yourself and Mr. Cromwell, and adopting, as far as practicable, your valuable suggestions, I beg leave to hand you the concessionary convention or treaty (in Spanish and in English) embodying the amendments agreed upon in the conference referred to.

My previous communication of March 31, 1902, proposing the concessionary convention or treaty in behalf of my Government, and the expository communications of myself and Mr. Cromwell under the same date, apply equally to the inclosures.

Awaiting the pleasure of your excellency, I have the honor to renew the assurances of my high consideration.

J. V. CONCHA.

HON. JOHN HAY,

*Secretary of State of the United States,*

*Department of State.*

*Memorandum of points to be embodied in a convention between the Republic of Colombia and the United States of America for the construction of an interoceanic canal by the Panama route and the management of the railroad over said Isthmus, in furtherance of article 35 of the treaty of 1845-1848 existing between said nations.*

[Presented by the envoy extraordinary and minister plenipotentiary of the Republic of Colombia.]

#### ARTICLE I.

The Government of Colombia authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties, and concessions, as well as the Panama Railroad and all the shares or part of the shares of that company, with the exception of the public lands situated outside of the zone hereinafter specified, now corresponding to the concessions to both said enterprises, which public lands shall revert to the Republic of Colombia.

But it is understood that Colombia reserves all its rights to the special shares in the capital of the New Panama Canal Company to which reference is made in Article IV of the contract of December 10, 1890, which shares shall be paid their full nominal value at least.



The railroad company (and the United States as owner of the enterprise) shall be free from the obligations imposed by the railroad concession, excepting as to the payment at maturity by the railroad company of the outstanding bonds issued by said railroad company.

#### ARTICLE II.

The United States shall have the exclusive right to excavate, construct, maintain, operate, control, and protect a maritime canal from the Atlantic to the Pacific Ocean, to and across the territory of Colombia, such canal to be of sufficient depth and capacity for vessels of the largest tonnage and greatest draft now engaged in commerce, and also the same rights for the construction, maintenance, operation, control, and protection of railway, telegraph and telephone lines, canals, dikes, dams, reservoirs, and such other auxiliary works as may be necessary and convenient for the construction, maintenance, protection, and operation of the canal.

#### ARTICLE III.

To enable the United States to exercise the rights and privileges granted by the foregoing articles, the Republic of Colombia grants to that Government the use of a zone of territory along the route of the canal to be opened 5 kilometers in width on either side thereof measured from its center line, excluding the cities of Panama and Colon. So far as necessary for the construction, maintenance, and operation of the canal, the United States shall have the use and occupation of the group of small islands in the Bay of Panama, named Perico, Naos, and Flamenco, together with 10 fathoms of water in the Bay of Limon in extension of the canal; but the same shall not be construed as being within the zone herein defined nor governed by the special provisions applicable to the zone. This concession shall be for the term of one hundred years, renewable at the option of the United States for periods of similar durations and subject to the payment of the amount hereinafter expressed.

This grant shall in no manner invalidate the titles of rights of private landholders in the said zone of territory, nor shall it interfere with the rights of way over the public roads of the department.

All the stipulations contained in article 35 of the treaty of 1846-1848 between the contracting parties shall continue and apply in full force to the cities of Panama and Colon and to the accessory community lands within the said zone, and the territory thereon shall be neutral territory, and the United States shall continue to guarantee the neutrality thereof and the sovereignty of Colombia thereover in conformity with the above-mentioned article 35 of said treaty.

In furtherance of this provision there shall be created a joint commission by the Governments of Colombia and the United States that shall establish and enforce sanitary and police regulations.

#### ARTICLE IV.

The rights and privileges granted to the United States by the terms of this convention shall not affect the sovereignty of the Republic of

Colombia over the territory within whose boundaries such rights and privileges are to be exercised.

The United States freely acknowledges and recognizes this sovereignty and disavows any intention to impair it in any way whatever or to increase its territory at the expense of Colombia or of any of the sister Republics in Central or South America, but, on the contrary, it desires to strengthen the power of the republics on this continent and to promote, develop, and maintain their prosperity and independence.

#### ARTICLE V.

The Republic of Colombia authorizes the United States to construct and maintain at each entrance and terminus of the proposed canal a port for vessels using the same, with suitable lighthouses and other aids to navigation, and the United States is authorized to use and occupy, within the limits of the zone fixed by this convention, such parts of the coast line and of the lands and islands adjacent thereto as are necessary for this purpose, including the construction and maintenance of breakwaters, dikes, jetties, embankments, coaling stations, docks, and other appropriate works. And the United States undertakes the construction and maintenance of such works and will bear all the expense thereof. The ports when established shall be declared free, and their demarcations shall be clearly and definitely defined.

To give effect to this article the United States will give special attention and care to the maintenance of works for drainage, sanitary, and healthful purposes along the line of the canal and its dependencies, in order to prevent the invasion of epidemics, or of securing their prompt suppression should they appear. With this end in view the United States will organize hospitals along the line of the canal, and will suitably supply the towns of Panama and Colon with the necessary aqueducts and drainage works, in order to prevent their becoming centers of infection on account of their proximity to the canal.

The Government of Colombia will secure the possession of the land that may be required in the towns of Panama and Colon to effect the improvements above referred to, and the Government of the United States shall be authorized to impose and collect equitable water rates, previously agreed upon with the Government of Colombia, during fifty years for the service rendered: but on the expiration of said term the use of the water shall be free for the inhabitants of Panama and Colon, except to the extent that may be necessary for the maintenance of said aqueducts.

#### ARTICLE VI.

The Republic of Colombia agrees that it will not cede or lease to any foreign government any of its islands or harbors within or adjacent to the Bay of Panama; nor on the Atlantic coast of Colombia, between the Atrato River and the western boundary of the department of Panama, for the purpose of establishing fortifications, naval or coaling stations, military posts, docks, or other works that might interfere with the construction, maintenance, operation, protection,

safety, and free use of the canal and auxiliary works. In order to enable Colombia to comply with this stipulation, the Government of the United States agrees to give Colombia the material support that may be required in order to prevent the occupation of said islands and ports, guaranteeing there the sovereignty, independence, and integrity of Colombia.

#### ARTICLE VII.

The Republic of Colombia includes in the foregoing grant the right, without obstacle, cost, or impediment, to the free navigation and use of the waters of the Chagres River and other streams, lakes, and lagoons, and of all waterways, natural and artificial, within the jurisdiction and under the dominion of the Republic of Colombia in the department of Panama that may be necessary or desirable for the construction, maintenance, and operation of the canal and its auxiliary works, including the right to raise and lower the levels of the waters and to deflect them, and to rectify and navigate any and all streams, lakes, and lagoons. All damages caused to private land-owners by inundation, or by the deviation of water course, or in other ways, arising out of the construction or operation of the canal, shall in each case be appraised and settled by a joint commission appointed by the Governments of Colombia and the United States, but the cost of the indemnities so agreed upon shall be borne solely by the United States.

#### ARTICLE VIII.

The Government of Colombia declares free for all time the ports at either entrance of the canal and the waters thereof in such manner that there shall not be collected by the Government of Colombia custom-house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues, nor any other charges or taxes of any kind shall be levied or imposed by the Government of Colombia upon any vessel using or passing through the canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, and operation of the main work or its auxiliaries or upon the cargo, officers, crew, or passengers of any such vessel; it being the intent of this convention that all vessels and their cargoes, crews, and passengers shall be permitted to use and pass through the canal and the ports leading thereto, subject to no other demands or impositions than such tolls and charges as may be imposed by the United States for the use of the canal and other works. It being understood that such tolls and charges shall be equal for vessels of all nations.

The ports leading to the canal also shall be free to the commerce of the world, and no duties or taxes shall be imposed, except upon merchandise destined to be introduced for the consumption of the rest of the Republic of Colombia, or the Department of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the canal. Though the said ports shall be free and open to all, the Government of Colombia may establish in them such customhouses and guards as Colombia may deem necessary to collect duties on importations destined to other portions of Colombia and to prevent contraband trade. The United States shall have the right

to make use of the ports at the two extremities of the canal as places of anchorage, in order to make repairs for loading, unloading, depositing, or transshipping cargoes either in transit or destined for the service of the canal.

#### ARTICLE IX.

There shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the canal, the vessels that may use it, tugs and other vessels employed in the service of the canal, the railways and auxiliary works, storehouses, workshops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the canal or railroad or that may be necessary for the service of the canal or railroad and their dependencies, whether situated within the cities of Panama and Colon or any other place authorized by the provisions of this convention.

Nor shall there be imposed contributions or charges of a personal character of whatever species upon officers, employees, laborers, and other individuals in the service of the canal and its dependencies.

#### ARTICLE X.

It is agreed that telegraph and telephone lines, when established for canal purposes, may also, under suitable regulations, be used for public and private business in connection with the systems of Colombia and the other American Republics and with the lines of cable companies authorized to enter the ports and territory of these Republics; but the official dispatches of the Government of Colombia and the authorities of the Department of Panama shall not pay for such service higher tolls than those required from the officials in the service of the United States.

#### ARTICLE XI.

The Government of Colombia shall permit the immigration and free access to the lands and workshops of the canal enterprises of all employees and workmen of whatever nationality under contract to work upon the said canal and its dependencies, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Colombia.

#### ARTICLE XII.

The United States may import at any time into the said zone, free of customs duties, imposts, taxes, or other charges, and without any restriction, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, and operation of the canal and auxiliary works; also all provisions, medicines, clothing, supplies, and other things necessary and convenient for the officers, employees, workmen, and laborers in the service and employ of the United States within the said zone and for their families. If any such articles are disposed of for use without the zone and within the

territory of the Republic, they shall be subject to the same import or other duties as like articles under the laws of Colombia or the ordinances of the Department of Panama.

#### ARTICLE XIII.

The United States shall have authority within the said zone to protect and make secure the canal, as well as railways and other auxiliary works, and to preserve order and discipline among the laborers and other persons who may congregate in that region in consequence of the proposed work.

The Governments of Colombia and the United States shall agree upon the regulations necessary for said purpose, as well as to the capture and delivery of criminals to the respective authorities. Special regulations also shall be agreed upon, in the manner aforesaid, for the establishment of laws and jurisdiction to decide controversies that may arise respecting contracts relative to the construction and management of the canal and its dependencies, as well as to the trial and punishment of crimes that may be committed within the said zone of the canal.

#### ARTICLE XIV.

The works of the canal, the railways, and their auxiliaries shall be declared of public utility, and in consequence all areas of land and water necessary for the construction, maintenance, and operation of the canal and the other specified works may be expropriated in conformity with the laws of Colombia, except that the indemnity shall be conclusively determined, without appeal, by a joint commission appointed by the Governments of Colombia and the United States.

The indemnities awarded by the commission for such expropriation shall be borne by the United States, but the appraisal of said lands and the assessment of damages shall be based upon their value before the commencement of the work upon the canal.

#### ARTICLE XV.

The Republic of Colombia grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the canal enterprise, and for all vessels in distress having the right to pass through the canal and wishing to anchor in said ports. Such vessels shall be exempt from anchorage and tonnage dues on the part of Colombia.

#### ARTICLE XVI.

The canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon equal terms to the vessels of all nations at uniform tonnage and other rates that may be imposed in virtue of the stipulations of this convention, and in conformity with the stipulations of the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901, and known as the Hay-Pauncefote treaty.

## ARTICLE XVII.

The Government of Colombia shall have the right to transport over the canal its vessels, troops, and munitions of war at all times without paying charges of any kind. This exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Colombia or of the Department of Panama, or of the police force charged with the preservation of public order, as well as to their baggage, munitions of war, and supplies.

## ARTICLE XVIII.

The United States shall have full power and authority to establish and enforce regulations for the use of the canal, railways, and the entering ports and auxiliary works, and to fix rates of tolls and charges thereof, subject to the limitations stated in Article XVI.

## ARTICLE XIX.

The rights and privileges granted to the United States by this convention shall not affect the sovereignty of the Republic of Colombia over the real estate that may be acquired by the United States by reason of the transfer of the rights of the New Panama Canal Company and the Panama Railroad Company lying outside of the said canal zone.

## ARTICLE XX.

If, by virtue of any existing treaty between the Republic of Colombia and any third power, there may be privileges or concessions relative to an interoceanic means of communication which especially favors such third power, and which in any of its terms may be incompatible with the terms of the present convention, the Republic of Colombia agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting their involuntary annulment, the Republic of Colombia agrees to procure its modification or annulment in such form that there shall not exist any conflicts with the stipulations of the present convention.

## ARTICLE XXI.

The rights and privileges granted by the Republic of Colombia to the United States in the preceding articles are understood to be free of all anterior concessions or privileges to other governments, corporations, syndicates, or individuals, and consequently, if there should arise any claims on account of the present concessions and privileges, the claimants shall resort to the Government of Colombia and not to the United States for any indemnity or compromise which may be required.

## ARTICLE XXII.

The Government of Colombia renounces the participation to which it might be entitled in the future earnings of the canal under Article XV of the contract with the "Universal Panama Canal Company,"

and it likewise renounces now and hereafter all the rights reserved in the said concession which shall belong to Colombia at the expiration of the term of ninety-nine years of the concession granted to the above-mentioned company.

#### ARTICLE XXIII.

If it should become necessary at any time to employ armed forces for the safety or protection of the canal, or of the ships that make use of the same, or the railways and other works, the Republic of Colombia agrees to provide the forces necessary for such purpose, according to the circumstances of the case, but if the Government of Colombia can not effectively comply with this obligation, then, with the consent of or at the request of Colombia, or of her minister at Washington, or of the local authorities, civil or military, the United States shall employ such force as may be necessary for that sole purpose; and as soon as the necessity shall have ceased will withdraw the forces so employed. Under exceptional circumstances, however, on account of unforeseen or imminent danger to said canal, railways, and other works, or to the lives and property of the persons employed upon the canal, railways, and other works, the Government of the United States is authorized to act in the interest of their protection, without the necessity of obtaining the consent beforehand of the Government of Colombia; and it shall give immediate advice of the measures adopted for the purpose stated; and as soon as sufficient Colombian forces shall arrive to attend to the indicated purpose, those of the United States shall retire.

#### ARTICLE XXIV.

The Government of the United States agrees to complete the construction of the preliminary works necessary, together with all the auxiliary works, in the shortest time possible; and within two years from the date of the exchange of ratification of this convention the main works of this canal proper shall be commenced, and it shall be opened to the traffic between the two oceans within twelve years after such period of two years. In case, however, that any difficulties or obstacles should arise in the construction of the canal which are at present impossible to foresee, in consideration of the good faith with which the Government of the United States shall have proceeded, and the large amount of money expended so far on the works and the nature of the difficulties which may have arisen, the Government of Colombia will prolong the terms stipulated in this article up to twelve years more for the completion of the work of the canal.

#### ARTICLE XXV.

As the price or compensation for the right to use the zone granted in this convention by Colombia to the United States for the construction of a canal, together with the proprietary right over the Panama Railroad, and for the annuity of \$250,000 gold, which Colombia ceases to receive from the said railroad, as well as in compensation for other rights, privileges, and exemptions granted to the United States, and in consideration of the increase in the administrative expenses of the department of Panama consequent upon the construction of the

said canal, the Government of the United States binds itself to pay Colombia the amount of \$7,000,000 in American gold on the exchange of the ratification of this convention after its approval by the legislative bodies of both countries, and fourteen years after the date aforesaid a fair and reasonable annuity, that shall be agreed upon by the contracting Governments three years before the expiration of the above-mentioned term of fourteen years.

In fixing this fair and reasonable annuity there shall be taken into consideration the present price of the usufruct of the railway as well as the compensation that is to be stipulated for the use of the zone and for the additional administrative expenses that the construction of the canal will impose upon Colombia; and also the advanced payment of \$7,000,000 and the comparative cost and conditions upon which the United States reasonably could have expected to acquire concessions satisfactory to it in respect of any other canal route.

Three years before the expiration of each term of one hundred years the annuity for the following term shall be fixed in a similar manner.

But in the event that the parties are unable to come to an understanding within the periods above referred to as to such fair and reasonable annuity, then before the second year prior to the termination of the periods above referred to, the contracting parties shall proceed to constitute a high commission, to be composed of five members, of whom two shall be appointed by Colombia, two by the United States, and the fifth (who shall be the president of such high commission) shall be the president, for the time being, of the International Peace Tribunal of The Hague; and the determination reached by said commission, by a majority vote, concerning such fair and reasonable annuity that is to be paid to Colombia by the United States in conformity with this article, shall be binding upon the contracting parties.

But no delay nor difference of opinion in fixing such amount shall affect nor interrupt the full operation and effect of this convention in all other respects.

#### ARTICLE XXVI.

If after the lapse of five years from the date of this convention the necessary works for the opening of the canal should not have been commenced by the United States, or if after the expiration of the twelve years stipulated for the completion of the work, and the extension of twelve years referred to in Article XXIV, the canal should not be opened to commerce, all the concessions granted by this convention shall be forfeited and all the works, principal and accessory, machinery and properties of the canal, shall become the property of the Republic of Colombia, and the same Republic shall recover its actual rights over the Panama Railway, without any obligation to return any of the sums that it may have received in conformity with this convention.

#### ARTICLE XXVII.

This convention, when signed by the contracting parties, shall be submitted for legislative approval, and shall be exchanged within a term of eight months from this date.



DEPARTMENT OF STATE,  
Washington, April 21, 1902.

SIR: I have the honor to acknowledge receipt at your hands of a communication dated the 31st of March, 1902, and another of the 18th of April, inclosing a proposal of the Republic of Colombia for a concessionary convention or treaty between the Republic of Colombia and that of the United States of America respecting the completion, maintenance, operation, control, and protection of an inter-oceanic canal over the Isthmus of Panama.

I am directed by the President to inform you that I shall be ready to sign with you the proposed convention as soon as—

First. The Congress of the United States shall have authorized the President to enter into such an arrangement: and

Second. As soon as the law officers of this Government shall have decided upon the question of the title which the New Panama Canal Company is able to give of all the properties and rights claimed by it and pertaining to a canal across the Isthmus and covered by the pending proposal.

Accept, sir, the renewed assurances of my highest consideration.

JOHN HAY.

SEÑOR DON JOSÉ VICENTE CONCHA.

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[Translation.]

LEGATION OF COLOMBIA,  
Washington, D. C., April 23, 1902.

SIR: I have the honor to acknowledge the reception of your excellency's communication of the 21st instant, by which you are pleased to inform me that you are authorized by the President of the United States to sign with the Republic of Colombia the treaty relative to the opening of the Panama Canal, and the other details connected with the said work, in accordance with the draft I submitted to the Government of the United States on the 18th instant, and that you will proceed to do so as soon as permission shall have been given by the Congress of this Republic, and as the official lawyers shall have given their opinion regarding the title of the new canal company for the transfer of its rights.

When the occasion to sign the above-mentioned treaty shall arise I will present, according to usage, the full powers authorizing me to do so.

Accept, excellency, the sentiments of my high consideration.

JOSÉ VICENTE CONCHA.

HON. JOHN HAY,  
*Secretary of State of the United States,*  
*Department of State.*

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[Translation.]

*Mr. Corea to Mr. Hay, May 14, 1902.*

In pursuance of the offer made orally and in my personal note of the 12th instant to your excellency, I have the honor to transmit here-

with a draft of a treaty embodying the proposal of my Government touching the interoceanic canal through Nicaragua. This draft, save a few changes which I had to make in obedience to superior orders, is the same as that which your excellency prepared on February 12 and was pleased to amend on March 11 and 25 and on April 26 last in deference to observations presented by me.

If your excellency will, as you said to me you would, lay this proposal before the proper committees of Congress, I should be pleased if it were accompanied by the protocol on the same subject which I had the honor to sign with your excellency on December 1, 1900. These papers will show that Nicaragua has been and is still disposed to enter into direct negotiations with the United States as soon as provision therefor shall have been made by Congress, and at the same time make it clear that, since no decision has yet been reached by that body in the matter, the present proposal is not to be taken as final, but remains subject to amendments by which the conclusion of a perfected and more suitable agreement between the contracting parties may be facilitated.

Please accept, Mr. Secretary, the assurances of my most distinguished consideration.

DRAFT.

The United States of America and the Republic of Nicaragua, being desirous to assure the construction of a ship canal to connect the Atlantic and Pacific Oceans, have for that purpose resolved to conclude a convention, and have accordingly appointed as their plenipotentiaries:

The President of the United States, \_\_\_\_\_,

The President of the Republic of Nicaragua, \_\_\_\_\_,

Who, after communicating to each other their full powers, which were found to be in due form, have agreed upon the following articles:

ARTICLE I.

The Republic of Nicaragua leases in perpetuity to the United States the exclusive right to construct, own, and operate a ship canal through the territory of Nicaragua, to connect the Atlantic and Pacific Oceans.

The United States guarantees in perpetuity the sovereignty, independence, and territorial integrity of the Republic of Nicaragua.

No change either in the Government or in the laws or treaties of Nicaragua shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries (that now exist or that may hereafter exist) touching the subject matter of this convention.

If Nicaragua shall hereafter enter as a constituent into any other Government, or into any union of confederation of States so as to merge her sovereignty or independence in such Government, union, or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired; and the United States will thereupon be released for the time being from all obligation to guarantee the sovereignty, independence, or territorial integrity of the Republic of Nicaragua.

## ARTICLE II.

The United States, after the adoption by Congress of legislation to carry this convention into effect, will proceed without delay, at its own cost and without expense to Nicaragua, to construct the canal on the route which it shall determine to be the most practicable; and it shall have the right to use, without cost, any water, stone, clay, earth, or other material belonging to Nicaragua, on the public domain, that may be needed.

The canal is hereby declared to be a work of public utility.

Neither the Government of Nicaragua or any of its authority shall obstruct or interfere with the United States either in its preliminary exploration and surveys, or in the work of construction, or in the management, control, and preservation of the canal when completed.

## ARTICLE III.

The United States shall have the right to make excavations to such depths, and to raise embankments and dam streams to such height, as shall, in its opinion, be necessary for the proper and safe construction, improvement, operation, repair, and maintenance of the canal and the control of the waters appurtenant to it.

If, in the construction or operation of the canal, or of any works in connection therewith, any lands within Nicaraguan territory belonging to the Republic, or to private persons, should be overflowed, no claim shall be made against the United States on account of these belonging to Nicaragua; nor shall the claims of any private person, on account of the overflow of lands, be permitted in any manner to hinder or delay the United States in the construction or operation of the canal or of any work in connection therewith, but the United States engages to make compensation in proceeding to condemn such lands for the intended public uses, had as provided in Article V of this convention.

## ARTICLE IV.

When the route of the canal shall have been determined, the entire area of land and water to the distance of five miles on each side of the center line thereof, during the construction period, and of three miles on each side of the center line thereof as soon as the canal shall have been completed and in operation, shall constitute a district to be called the "canal district." This district shall extend to the distance of one marine league from low-water mark into the Caribbean Sea and the Pacific Ocean, and shall comprehend such part of the San Juan River and of Lake Nicaragua and of the adjacent territory of Nicaragua as may be included within the above-mentioned limits. The concession hereby made to the United States includes the right to construct and operate between the terminal ports, and on lands within or adjacent to the canal district, and around the southeast shore of Lake Nicaragua, such railways, telegraphs, telephones, and other auxiliary works, and to erect and use such buildings, workshops, and other structures, as may be necessary to secure continuity of communication along the line of the canal and between the said terminal ports, and be useful in the construction, improvement, operation, repair, and maintenance of the canal.

If by reason of topographical conditions, according to the judgment of the contracting parties, said railways, telegraphs, telephones, and other auxiliary works should at any place require unavoidably to be carried or lie at a greater distance than five miles from the center line of the canal during the construction period, or be found at a greater distance than three miles from the center line after the canal shall have been completed and put into operation, there, as well as around the southeastern shore of Lake Nicaragua, shall be included an area of five hundred feet wide on each side of said railways, telegraphs, telephones or other auxiliary works, and the said areas, as well as the railways, telegraphs, telephone buildings, workshops, and other structures and the lands on which they are situated, shall be considered as a part of the canal and within the canal district for the purposes of this convention.

#### ARTICLE V.

When the canal district is established, the Government of the United States will furnish the Government of Nicaragua with a map showing the limits thereof, as established by this convention; and thereupon the right of entry, occupation, possession, use, and control of all the lands and waters of Nicaragua comprised in such district shall be considered as granted by a lease in perpetuity to the United States for the purpose of the canal.

Areas of land and water so comprised that form part of the public domain of Nicaragua shall pass into the possession, use, and control of the United States without any cost or charges. If any areas of land or water so taken, or any right, title, estate, use, or interest therein, are claimed at the date of this convention as the property, legal or equitable, of private persons or corporations, the United States may acquire such rights, titles, estates, use, or interests, by purchase from the owners, or, failing in that, may proceed to condemn them, as stated further on in this convention.

For the purpose of fixing the compensation to be paid by the United States in the condemnation proceedings contemplated in Articles III and V; a mixed commission of four jurists of repute, two to be appointed by each of the contracting parties, shall assess and award the damages to be paid by the United States. The procedure and regulations to be observed by said commission for the taking of evidence, and in the trial of cases to condemn and award damages, shall be in accordance with the laws of Nicaragua not in conflict with this convention. The damages awarded shall be compensatory only and fixed without reference to appreciation of values by the contemplated or actual construction of the canal. In case of disagreement of the commission on the amount of damages to be awarded in any case, an umpire shall be appointed by the two Governments who shall render the decision, and in case the Governments do not agree in the appointment, this umpire shall be selected by lot from four candidates, two presented by each party. In the event of death, absence, or incapacity of any such commissioner or umpire, or of his omitting, declining, or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated.

All decisions by a majority of the commission or by the umpire shall be final. They shall keep a record of their proceedings, of

which they shall furnish each Government a copy. They shall maintain an office at Managua, and shall exercise their functions there or at such other points in Nicaragua as they may find convenient.

#### ARTICLE VI.

Condemnation proceedings may be begun by the United States by filing in the office of the commission at Managua an instrument declaring its intention to appropriate any or all titles, estates, rights, uses, and interests of every description, legal or equitable, of persons, societies, and corporations in and to land and water areas within the canal district, and it may in like manner institute proceedings to condemn and appropriate such titles, estates, rights, uses, and interests in land and water areas outside of and adjacent to said canal district to enable said Government to construct, repair, and operate said canal.

Said instrument of appropriation shall contain a general description of said land and water areas and of the title, estate, right, use, or interest therein intended to be appropriated, which shall belong to the Government of the United States on making payment therefor as hereinafter provided. Said Government may purchase any such title, estate, right, use, or interest of the owner thereof, or, if the latter is under legal disabilities, of his guardian or other representative or person competent to contract in his behalf, and the deed therefor when made and delivered shall vest the property purchased in the United States.

Or said Government may at its option proceed, upon filing said act of appropriation, by giving ten days' notice by personal service on said owner or by publication for the term of three weeks to all whom it may concern, in some newspaper to be designated by standing order of the commission of an advertisement, said notice or advertisement reciting the substance of such instrument of appropriation; and upon completed service of said notice, either personally or by publication, said Government may deposit for the use of the owners, in American gold, with a bank or other fiscal agent to be designated by standing order of the commission, a sum which said Government is willing to pay for the title, estate, rights, uses, or interests appropriated, and the same shall thereupon belong to the United States.

If the owner or owners refuse or fail to accept as sufficient compensation the moneys so deposited for their use as aforesaid, the commission or umpire, as the case may be, shall proceed to assess and award the damages, and shall in like manner also determine in all cases the person or persons justly entitled to receive said moneys deposited and awarded, and order equitable distribution thereof. Said proceedings before the commission or umpire shall only affect the amount or compensation to be awarded and the distribution thereof. Any sum awarded in addition to that already deposited shall be deposited in like manner as the original for the use of the persons entitled thereto.

#### ARTICLE VII.

The sovereignty of Nicaragua and the laws of the Republic not inconsistent with this convention shall be in full force in the Nicaraguan territory comprised in the canal district. But the United

States, for the protection of said district and of its rights therein, and in order to make effective its guarantee of the sovereignty, independence, and territorial integrity of Nicaragua and Costa Rica, shall use its civil police forces and shall have at all times the free and unobstructed right to enter to the canal district with its land and naval forces and to adopt therein such measures as may be necessary for the accomplishment of those purposes, as well as for the protection of life, liberty, and property, and for the preservation of peace and good order; and shall also have the right to unite its forces with the forces of Nicaragua and Costa Rica for said purposes.

#### ARTICLE VIII.

A free port shall be established for the transit at each of the entrances of the canal, on the Caribbean Sea and the Pacific Ocean, under the protection of the United States and subject to harbor and other regulations as to anchorage, lights, and pilotage that shall be adopted by the United States. At these ports the United States shall have the right to establish, construct, and maintain lighthouses and other aids to navigation, breakwaters, dikes, jetties, embankments, docks, wharves, coaling stations, and other appropriate works, and the United States will undertake the construction and maintenance of such works and will bear all the expense thereof.

Nicaragua may establish customhouses at such ports and at any convenient points along the route of the canal for the collection of duties on goods intended for importation into or exportation from the canal district and the rest of the Republic. If said points happen to be within said leased territory they should be selected by agreement of the contracting parties at the request of Nicaragua. The United States shall have the right to introduce into the canal district directly through the free ports or by way of any Nicaraguan port and exempt from all taxes and custom duties all machinery, equipment, material stores, and supplies of any kind which may be necessary for the construction, improvement, operation, repair, and maintenance of the canal, and for the exclusive use of the officials, workmen, and other dependent of the United States employed in the canal district.

Vessels of commerce and men-of-war of all nations shall pass freely into and through the canal without any discrimination as to tolls or other charges, subject to the laws and regulations established by the United States to secure that object.

Vessels owned by the United States or its citizens and vessels owned by Nicaragua or its citizens may navigate freely any part of Lake Nicaragua within the leased district, and the commanders may enter or moor their vessels therein, it being understood that the laws of Nicaragua regarding coasting trade are not to be infringed, and that the ordinary port due shall be paid. Should any vessel in transit be forced to diverge from the leased district in Lake Nicaragua on account of injury or distress, it shall be permitted to navigate the waters of the lake, but without entering or mooring in a port thereof except in case of necessity in order to land and forward passengers and mail in transit and to procure supplies and make indispensable repairs, to which latter end the discharge and reshipment or transfer of cargo shall be permitted when needful; and such vessels shall

return to the canal district as soon as the causes that may have forced it to diverge therefrom shall have ceased.

The preceding stipulation does not comprehend the vessels of war belonging to the United States, which may at any time navigate the Lake Nicaragua and moor in its ports on official visit or for the purposes stipulated in this convention.

#### ARTICLE IX.

The United States and Nicaragua agree that, subject to the stipulations of the present convention, the provisions of the treaty of Constantinople of October 29th, 1888, relating to the Suez Canal, as herein stated, shall form the basis on which the navigation of the canal and the neutrality of the canal district shall rest, viz :

1. The canal shall be free and open to the vessels of commerce and war of all nations observing these rules on terms of entire equality so that there shall be no discrimination against any such nation or its citizens or subjects in respect to the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded nor shall any right of war be exercised nor any act of hostility committed within it.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force and with only such intermission as may result from the necessities of the services.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerent.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal within three marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof for the purposes of this convention, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as a part of the canal.

#### ARTICLE X.

Nicaragua covenants with the United States and guarantees that no concession, grant, or license for the purpose of trade, commerce, transportation, navigation, or for the construction of a ship canal in

or through Nicaraguan territory has been made to any other Government, corporation, syndicate, or person, natural or juridical, which in any manner encumbers or conflicts with the lease and the rights and privileges hereby granted.

#### ARTICLE XI.

Although maintaining that upon principles of justice no valid claims of citizens of the United States exist against Nicaragua, the latter accepts the engagement of the United States to pay and to discharge Nicaragua from all liability on account of claims of citizens of the United States which may have arisen prior to the date of the signing of this convention.

#### ARTICLE XII.

Within ninety days after the exchange of ratifications of this convention the United States will pay to the Government of Nicaragua, at Washington, the sum of six million dollars in the gold coin of the United States as a compensation for the concessions and privileges herein granted; and an annual rent of twenty-five thousand dollars in the gold coin of the United States shall be paid by the United States to the Government of Nicaragua for the possession of the territory leased for the purposes aforesaid.

#### ARTICLE XIII.

This convention shall take effect immediately upon the exchange of ratifications, and, except as amended or abrogated by mutual consent of the contracting parties, shall be perpetual.

The ratifications shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed this convention and affixed thereto their seals.

Done in duplicate at the city of Washington this — day of —, nineteen hundred and —.

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#### *Protocol of an agreement between the Governments of the United States and of Nicaragua in regard to future negotiations for the construction of an interoceanic canal by way of Lake Nicaragua.*

It is agreed between the two Governments that when the President of the United States is authorized by law to acquire control of such portion of the territory now belonging to Nicaragua as may be desirable and necessary on which to construct and protect a canal of depth and capacity sufficient for the passage of vessels of the greatest tonnage and draft now in use, from a point near San Juan del Norte on the Caribbean Sea, via Lake Nicaragua to Brito on the Pacific Ocean, they mutually engage to enter into negotiations with each other to settle the plan and the agreements, in detail, found necessary to accomplish the construction and to provide for the ownership and control of the proposed canal.



As preliminary to such future negotiations it is forthwith agreed that the course of said canal and the terminals thereof shall be the same that were stated in a treaty signed by the plenipotentiaries of the United States and Great Britain on February 5, 1900, and now pending in the Senate of the United States for confirmation, and that the provisions of the same shall be adhered to by the United States and Nicaragua.

In witness whereof, the undersigned have signed this protocol and have hereunto affixed their seals.

Done in duplicate at Washington, this first day of December, 1900.

[SEAL.]  
[SEAL.]

JOHN HAY.  
LOUIS F. COREA.

*Protocol of an agreement between the Governments of the United States and of Costa Rica in regard to future negotiations for the construction of an interoceanic canal by way of Lake Nicaragua.*

It is agreed between the two Governments that when the President of the United States is authorized by law to acquire control of such portion of the territory now belonging to Costa Rica as may be desirable and necessary on which to construct and protect a canal of depth and capacity sufficient for the passage of vessels of the greatest tonnage and draft now in use, from a point near San Juan del Norte, on the Caribbean Sea, via Lake Nicaragua to Brito, on the Pacific Ocean, they mutually engage to enter into negotiations with each other to settle the plan and the agreements, in detail, found necessary to accomplish the construction and to provide for the ownership and control of the proposed canal.

As preliminary to such future negotiations it is forthwith agreed that the course of said canal and the terminals thereof shall be the same that were stated in a treaty signed by the plenipotentiaries of the United States and Great Britain on February 5, 1900, and now pending in the Senate of the United States for confirmation, and that the provisions of the same shall be adhered to by the United States and Costa Rica.

In witness whereof the undersigned have signed this protocol and have hereunto affixed their seals.

Done in duplicate at Washington this first day of December, 1900.

[SEAL.]  
[SEAL.]

JOHN HAY.  
J. B. CALVO.

[Extract from the message of Señor Rafael Iglesias, President of Costa Rica, to the Constitutional Congress.]

There are better prospects at this than at any other time that the project of construction, by and under the control of the United States of America, of an interoceanic canal across the Central American Isthmus will be carried out.

Costa Rica being directly interested in the construction of that great work, by reason of a portion of her territory that may have to be occupied, the Government of the United States has opened with that Government negotiations looking to the conclusion of a treaty

whose fundamental terms are that the United States will be authorized to occupy, under the head of a perpetual lease, a certain belt of territory for the construction, administration, and operation of the canal, and to exercise therein the jurisdiction which properly belongs to our sovereignty.

In return for these and other minor concessions we are offered the guaranty of the independence and sovereignty of Costa Rica and of the integrity of her territory and the payment to the Government of a million and a half dollars. In view of the great and paramount importance of this matter, I deemed it expedient to call an advisory board consisting of persons of well-known ability and patriotism in order to enlighten me in so delicate and grave a question. A committee under the chairmanship of the secretary of state for the department of foreign relations was appointed among the members of that board. This committee has discharged its duties in a satisfactory manner touching all the points which in its opinion do not contravene the spirit of our political institutions, in conformity to the provisions of the fundamental code as regards the integrity of the territory and the exercise of sovereignty. In consequence thereof the Government is powerless to enter into positive negotiations with that of the United States of America unless there should be previously passed a constitutional amendment by which such concessions for the construction of the interoceanic canal may be authorized, or the matter referred to public opinion in some other way by calling a constituent assembly for the purpose.

**PRESIDENT'S MESSAGE GIVING CORRESPONDENCE SHOWING  
RELATIONS OF THE UNITED STATES WITH COLOMBIA AND  
PANAMA.**

[Senate Document No. 542, Sixtieth Congress, second session.]

**CORRESPONDENCE IN REGARD TO THE RELATIONS OF THE UNITED  
STATES WITH COLOMBIA AND PANAMA.**

**MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING  
CORRESPONDENCE BETWEEN THE UNITED STATES AND THE REPUBLIC  
OF COLOMBIA, GROWING OUT OF THE SECESSION OF PANAMA.**

[December 8, 1908: Read; referred to the Committee on Foreign Relations and ordered to be printed.]

*To the Senate:*

I transmit herewith the accompanying papers in response to the resolution of the Senate of May 5, 1908, requesting the President, "if not in his judgment incompatible with the interests of the public service, to communicate to the Senate all correspondence since January eighteenth, nineteen hundred and four, relative to any further request by Colombia for arbitration, if such request was made, and any response of this Government thereto."

THEODORE ROOSEVELT.

THE WHITE HOUSE, *December 8, 1908.*

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The PRESIDENT:

The undersigned Secretary of State to whom was referred the resolution of the Senate of May 5, 1908, requesting the President, "if not in his judgment incompatible with the interests of the public service, to communicate to the Senate all correspondence since January eighteenth, nineteen hundred and four, relative to any further request by Colombia for arbitration, if such request was made, and any response of this Government thereto," has the honor to lay before the President copies of the papers listed below.

Respectfully submitted.

ELIHU ROOT.

DEPARTMENT OF STATE,  
*Washington, June 1, 1908.*

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LIST OF PAPERS.

- Colombian minister to the Secretary of State, October 21, 1905.
- The Secretary of State to the Colombian minister, February 10, 1906.
- The Colombian minister to the Secretary of State, April 6, 1906.
- American minister at Bogota to the Secretary of State, telegram, May 26, 1906, extract.
- Secretary of State to the American minister at Bogota, telegram, June 2, 1906, extract.
- American minister at Bogota to the Secretary of State, telegram, June 7, 1906, extract.
- American legation at Bogota to the Secretary of State, August 20, 1906.

*The Colombian minister to the Secretary of State.*

[Translation.]

LEGATION OF COLOMBIA,  
*Washington, D. C., October 21, 1905.*

SIR: The undersigned, representative of the weak Republic of Colombia, deems this an opportune moment to turn to you, as representative of the most powerful Republic of modern times, with the request for a just, equitable, and complete diplomatic adjustment of the differences which have arisen between the two nations; or, if this should not be practicable, or if, once brought about, it should fail to produce satisfactory results for both or either of the parties, the undersigned would request that a convention be signed which should submit such differences to some form of arbitration honorable for both countries. The undersigned has all the more reason to hope for a favorable response to his proposition because the questions pending between Colombia and the United States are of exactly the same nature as those to which the numerous arbitration treaties relate which have been concluded by your Government with many other nations, both great and small, within less than a year. These said treaties, as you know very well, were submitted by the President to the Senate on December 14, 1904, and, with slight amendments which do not affect in the least the propositions of the undersigned, were all ratified almost unanimously by the Senate of the United States: so that the branches of your Government which have the authority to conclude treaties were in happy accord concerning the suitability of settling by arbitration the controversies mentioned in those treaties. The text of these treaties embraces "the differences of a legal nature which may arise, or which relate to the interpretation of the treaties existing between the contracting parties, and which it has been impossible to settle through diplomacy"; the only exceptions are those which may "affect the vital interests, the independence, or the honor of the nation, or which may compromise the rights of third parties."

The request which the undersigned hereby makes for the conclusion of an arbitration convention between your country and his—in case the proposed diplomatic adjustment should fail—is exactly comprised within the provisions cited. The differences which have arisen, as he will have the honor to explain further on, are of a legal character; refer to the interpretation of a treaty in force between the two contracting parties; do not in anywise affect the vital interests, the independence, or the honor of the United States, and do not compromise the interests of third parties. Inasmuch as all the reclamations against the United States which the Republic of Colombia desires to have submitted to an impartial court of arbitration for settlement are differences of a legal nature between the two countries, involving, on the one hand, the correct meaning of the law of nations, and, on the other, the exact interpretation of the treaty of 1846 existing between the two countries, it can not be claimed on any grounds that they affect the vital interests, or the independence, or the honor of the United States, and much less can it be claimed that they impair the rights of third parties.

The request of the undersigned being clearly and precisely within the very course of the international policy of the United States, both as regards direct diplomatic adjustments, of which several cases could be cited, and as regards arbitration, which latter is palpably demonstrated in the various treaties presented recently by the President to the Senate (December 14, 1904), and in these respects ratified by that body, the undersigned can not bring himself to believe that it is really necessary to adduce any more arguments in asking you to accede to his proposition. If other reasons were necessary, they could be found in the long and honorable history of the United States, which has so persistently advocated and fostered the peaceful and honorable adjustment of difficulties through direct diplomacy and arbitration as the best means of deciding controversies between nations. The upholding of this great and noble cause originated, in fact, as you know, with the creation of the Government of your country and found its most recent confirmation in the treaty submitted to the Senate last year, and to which reference has already been made. The undersigned takes the liberty, nevertheless, of calling your attention to the following memorable words of President Roosevelt in his inaugural address:

Much has been conceded to us, and much, therefore, is justly expected of us. We have duties to fulfill toward others, as well as toward ourselves, and we can not neglect either. We have come to be a great nation, obliged from the very fact of our greatness to maintain relations with the other nations of the earth, and we must conduct ourselves as becomes a people with such great responsibilities. Toward all other nations, both great and small, our duty must be to cherish cordial and sincere friendship. We must prove, not only by our words but also by our actions, that we are ardently desirous of winning their good will by acting toward them with a spirit of just and generous respect for all their rights. But justice and generosity in nations, just as in individuals, have greater significance when exercised, not by the weak but by the powerful.

A just and generous respect for her right to have the questions pending between Colombia and the United States equitably adjusted by diplomatic means, or, failing the latter, submitted to the decision of an impartial court, is exactly what Colombia, the weak State, demands to-day of the United States, the powerful nation; and, cherishing the assurance that such a diplomatic arrangement or such arbitration will be granted, the undersigned takes the liberty of setting forth, as clearly and succinctly as possible, the nature of the differences between the two nations. The undersigned feels no need of stating that his words will be guided by a spirit of the greatest moderation.

The general treaty of peace, amity, navigation, and commerce of 1846 between New Granada, now the Republic of Colombia, and the United States established the rights and the obligations of the two contracting parties. The undersigned will not tire you now with an analysis of the principal stipulations of the treaty, but will confine himself to saying that certain concessions which were then considered of great value to your nation were granted in exchange for what was deemed valuable protection for Colombia. This protection, for the purposes of this note, may be said to be comprised in article 35 of the treaty, and especially in the following clause: "And in order to secure to themselves the tranquil and constant enjoyment of these advantages and as an especial compensation for the said advantages

and for the favors they have acquired by the fourth, fifth, and sixth articles of this treaty, the United States guarantee positively and efficaciously to New Granada"—now the Republic of Colombia—"by the present stipulation, the perfect neutrality of the beforementioned isthmus, with a view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists: and in consequence the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada"—now the Republic of Colombia—"has and possesses over said territory."

During the full vigor of this treaty between the United States and Colombia the following facts occurred, as Colombia believes, although you may refute them or view them in a different light:

1. In September and October, 1903, the Government of the United States promised certain interests located on the Isthmus of Panama, as well as persons interested in the French Canal Company, that the United States would prevent the Republic of Colombia from combating any disturbance which might arise on the Isthmus.

2. In fulfillment of these promises, war vessels of the United States were sent both to Panama and to Colon in October and during the first days of November, 1903.

3. On November 2, 1903, the commanders of said war vessels received the following telegrams, sent by the Department of State through the Navy Department, as is believed:

(a) Keep the transit free and uninterrupted. Should there be a threat of interruption by armed force, occupy the railroad line; prevent the landing of any armed force having hostile intentions, whether of the Government or insurgent, at Colon, Portobelo, or any other point. Prevent landing if in your judgment it might precipitate a conflict.

(b) In case of doubt regarding the intentions of any armed force, occupy Ancon Hill and fortify it with artillery.

4. At 3.40 p. m. of November 3, 1903, Mr. Loomis, Assistant Secretary of State, acting, sent the following telegram to the person in charge of the United States consulate in Panama: "We are informed that there has been an uprising on the Isthmus; keep this department informed of everything without delay." The consul of the United States answered on the same day: "The uprising has not occurred yet; it is announced that it will take place this evening. The situation is critical."

5. At 8.45 p. m. of the same day, November 3, 1903, the following telegram, signed "Loomis, Acting," was delivered to the person in charge of the United States consulate in Panama: "The troops which landed from Cartagena must not continue to Panama;" and by virtue of this telegram, the officer commanding the American war ship *Nashville* gave orders to the Panama Railroad Company not to transport troops of the Colombian Government to the city of Panama.

6. At 10.30 p. m. of the same day, November 3, 1903, another telegraphic dispatch from the State Department was sent to the American consul in Panama, reading as follows: "If the cablegram to the *Nashville*"—one of the said war vessels—"has not been delivered, inform her captain immediately that he must prevent the Government troops from continuing on to Panama or from assuming an attitude which might result in bloodshed, and that he must make every effort to maintain order on the Isthmus."

7. On the same day, November 3, 1903, the following telegram was transmitted from Colon to the Secretary of the Navy by the commander of one of the aforementioned war vessels stationed there: "I acknowledge the receipt of your telegram of November 2. Before receiving it, there were landed here this morning by the Colombian Government about four hundred men from Cartagena. There is no revolution on the Isthmus, nor any disturbance. The railroad company has refused to transport these troops unless the governor of Panama requires it. The demand has not been made. It is possible that the movement to proclaim independence may take place in Panama this evening. \* \* \*" (Here there is missing a part of the dispatch as printed.)

8. At 9.50 p. m. of the same date, November 3, 1903, the Department of State received from the vice consul of the United States in Panama the following telegram: "The revolt took place this evening at 6; there has been no bloodshed. The officers of the army and navy have been reduced to prison. The government will be organized this evening and will be composed of three consuls and a cabinet. The soldiers have been exchanged. It is believed that a similar movement will take place in Colon. Up to the present order has prevailed. The situation is serious. Four hundred soldiers landed in Colon to-day from Barranquilla."

On the same day, November 3, 1903, General Tovar arrived at Colon with the battalion of sharpshooters of the Colombian army, a force more than sufficient to repress the aforementioned uprising.

9. At 11.18 p. m. of the same day, November 3, 1903, Mr. Loomis, Assistant Secretary of State, acting, telegraphed to the vice consul of the United States in Panama: "The telegraphic dispatch sent to the *Nashville* at Colon may not have been delivered. See, therefore, that the following dispatch is transmitted to the *Nashville* immediately: '*Nashville*, Colon: In the interest of peace make every effort in order to prevent the troops of the Government at Colon from continuing to Panama. Transit on the Isthmus must be kept open and order maintained. Acknowledge receipt. (Signed) Darling, Acting.' Obtain a special train if it should be necessary. Act with speed."

10. On the following day, November 4, 1903, Hubbard, commander of one of the war vessels stationed at the time at Colon, addressed the Secretary of the Navy as follows: "Government troops now at Colon. I have prohibited the movement of troops in either direction. There has been no interruption of transit yet. I shall make every effort to preserve peace and order."

11. On the same day, November 4, 1903, the American consul in Panama received the following communication: "We have the honor to inform you, for your own knowledge and that of the government which you represent, that on this very date there has taken place a movement by which the old Department of Panama has separated from the Republic of Colombia, with the object of constituting a new State by the name of 'Republic of Panama'; and that the undersigned have had the honor of being designated to form the committee of the Provisional Government of the Republic."

12. Two days later—that is, November 6, 1903—the Secretary of State telegraphed to the vice consul in Panama in the following terms: "The people of Panama by an apparently unanimous move-

ment, have severed their political bonds with the Republic of Colombia and have resumed their independence. As soon as you are convinced that a de facto government, republican in form and without substantial opposition on the part of its own people, has been established on the Isthmus of Panama, you will enter into relations with it as the responsible government of the territory, and you will address to it a request that it take the measures necessary for the protection of the persons and the property of citizens of the United States, and that it keep open the transit on the Isthmus in accordance with the obligations of the existing treaties which govern the relations of the United States with that territory."

13. On the same date, November 6, 1903, the commander of one of the war vessels communicated as follows to the Secretary of the Navy: "I arrived yesterday afternoon; I landed forces. The situation is as follows: A little before landing, the Colombian troops had departed on the steamer *Orinoco* for Cartagena. The independent party is in possession of Colon, of Panama, and of the railroad line. The *Nashville* withdrew her forces."

14. On the following day, November 7, 1903, the vice consul of the United States sent the following note to the so-called committee which represented the would-be revolution: "Inasmuch as the people of Panama, by a unanimous movement, have broken their political bonds with the Republic of Colombia and resumed their independence, and as there is no opposition to the provisional government in the State of Panama, I hereby inform you that the provisional government will be held responsible for the protection of the persons and property of the citizens of the United States, as well as for the maintenance of free transit on the Isthmus, in accordance with the stipulations of the treaties in force regarding the territory of the said Isthmus."

15. On the following day, November 8, 1903, a telegram was sent to the Secretary of the Navy by the commander of one of the American war vessels, as follows: "Everything quiet; traffic uninterrupted; the telegram in which I was ordered to interfere was received." On that same day the vice consul of the United States in Panama stated, in a telegram to the Secretary of State, as follows: "The Colombian troops were reembarked for Cartagena by the *Royal Mail*. It is believed that the *Bogáto* is at Buenaventura. Peace reigns."

16. Four days later, on November 11, 1903, the minister of the United States in Bogota informed the Colombian Republic that the Government of the United States had entered into relations with the so-called new Republic of Panama.

17. Two days afterwards, on November 13, 1903, the Government of the United States officially received Mr. Bunau-Varilla, a French citizen interested in the French Canal Company, as minister plenipotentiary of Panama.

18. On the following day, November 14, 1903, the minister of the United States in Bogota notified the Colombian Republic as follows: "I have just received instructions from my Government by cable to notify you that it does not deem it suitable to permit Colombian troops to land on the Isthmus, because this would precipitate civil war and would indefinitely interrupt the free transit which my Government is obligated to protect."



19. General Reyes, commander at that time of the Colombian forces sent to repress the so-called rebellion on the Isthmus—which troops were more than sufficient for the purpose—had announced to Vice Admiral Coghlan, commander of one of the United States war vessels, his intention to embark his troops and to proceed to Panama in order to restore order there; and the vice admiral, in reply, notified him that his orders were to prevent the landing of troops with hostile designs within the limits of the State of Panama.

20. On November 18, 1903, the Secretary of State of the United States and the said Bunau-Varilla signed a treaty the purpose of which was to arrange a compact between the United States and the so-called Republic of Panama. By article 1 of this treaty the United States expressly and positively guarantee and obligate themselves to uphold the independence of the so-called Republic of Panama.

The foregoing recital, taken principally from the official records as they were transmitted by the President to the Senate when the treaty between the United States and the so-called Republic of Panama was being discussed in that body, amply justifies, in the opinion of the undersigned, the following conclusions, in which you may not perhaps agree with him.

(a) The well-known favorable attitude of the United States toward a rebellious uprising in the Department of Panama was the determining cause of the revolt, and to this extent it was a violation of the express stipulations of the treaty of 1846.

(b) The United States, by means of their armed forces, prevented the Republic of Colombia from repressing the aforesaid rebellion and so preserving the integrity of her national territory, this being also in violation of the positive stipulations of the treaty.

(c) The United States recognized with undue haste the so-called Republic of Panama, to the detriment of the rights and interests of the Republic of Colombia, and this recognition annulled the express stipulations of the treaty of 1846 and disregarded the principles established by the law of nations.

(d) The United States guaranteed to maintain by force the separation of Panama from the Republic of Colombia, not only against the explicit stipulations of the treaty of 1846, but also, and in view of the time at which this obligation was contracted, in violation of the duties of neutrals under the law of nations.

I therefore take the liberty of again calling your attention to the fact that each of these injuries which Colombia maintains was inflicted on her by the United States assumes the character of a controversy of a legal nature, or of a difference regarding the correct interpretation of the treaty existing between the two contracting parties. In the opinion of the Government of the undersigned, these acts of the United States were the sole and only cause of the dismemberment of the Republic of Colombia, of the loss to her of the valuable and important Department of Panama, and of the loss of her rights in contracts, one referring to the Isthmian Canal, in course of construction, and the other to the Panama Railroad, already constructed across that Department.

The undersigned does not flatter himself that you will be disposed to admit the justice of these reclamations. On the contrary, he supposes that they will be denied by you. If this should be the case, it

appears to be clear that the only practicable means of adjustment, honorable for both countries, would be to submit them to the decision of an impartial court of arbitration. On the other hand, if your Government were disposed to admit the justice of Columbia's reclamations [complaints], a path would be happily opened toward a prompt and satisfactory adjustment by direct diplomacy.

The undersigned is aware that it is not his place to point out the manner in which this court should be constituted before knowing your views on the matter; however, as a mere hint at the facility with which it might be formed, he ventures to respectfully suggest that each country should without delay appoint a distinguished jurist of its own nationality to represent it, and that the selection of the umpire be made by the chief magistrate of an absolutely disinterested nation.

It does not appear necessary to remind you that if such a court is constituted and the United States have committed no injury against the Republic of Colombia, their conduct will be fully vindicated. At all events, the worst that could happen to the United States would be a decision that they had inflicted an injury on a weak sister Republic while seeking what they thought to be of universal benefit and the exaction from the United States of the appropriate indemnity. In either case the result would be a settlement of all controversies between the two Republics and a resumption of the cordial and friendly relations which always existed between them before the occurrences on the Isthmus above enumerated.

To conclude, the refusal of so great and powerful a nation as the United States to consent to enter into negotiations, of one nature or another, with a weak nation unable to obtain reparation by arms would, as its only result, convince the weaker nation that the United States do not wish to give her the justice due her or to submit their conduct to a judicial investigation and to arbitration. This refusal would certainly have only the most unfortunate influence on the citizens of the weak nation, denied justice because too weak to have any hope of sustaining its claim by force; and, inversely, if your Government maintains its uninterrupted tradition of doing justice to others, regardless of their lack of strength, as your Chief Magistrate so emphatically expressed it recently in the following terms: "We must be scrupulous in our respect for the rights of the weak." then the consequences will undoubtedly be highly salutary, not only as an efficacious means of allaying all resentment in the Colombian mind, but of removing all apprehension in the minds of the weak peoples who inhabit the Western Hemisphere.

For all of the reasons hereinbefore set forth, the undersigned earnestly entreats you to consider favorably the petition he makes to you for a direct adjustment or for the constitution of a court of arbitration to decide the differences between the two countries, and in either manner you will add one more to the illustrious cases in which your great Nation has favored the cause of justice and of international arbitration.

The undersigned embraces this opportunity to express to the honorable Mr. Elihu Root, Secretary of State, the assurances of his highest consideration.

DIEGO MENDOZA.

*The Secretary of State to the Colombian Minister.*

No. 10.]

DEPARTMENT OF STATE,  
*Washington, February 10, 1906.*

SIR: I had the honor to receive, by personal delivery, the note which you addressed to me under date of the 21st of October last, proposing that the United States shall join with Colombia, in the event of diplomatic adjustment failing, in submitting to international arbitration the questions presented by your Government growing out of the separation of Panama from the Republic of Colombia.

The nature of this proposition, which has been made and answered before, and the allegations and arguments now put forward in its support, have demanded renewed careful and protracted consideration on the part of the President and his constitutional advisers, in order that the reply should conform to the spirit of perfect amity which has ever controlled and should control the relationship of the United States to the Republic of Colombia.

Your note renews the proposal of arbitration as an alternative resort if a prompt and satisfactory adjustment by direct diplomacy be not attainable; but I do not find therein any clear indication of the nature of the contemplated diplomatic settlement. You present an elaborate recital of the grievances which Colombia believes to have been inflicted upon her by the alleged conduct and acts of the United States in regard to Isthmian affairs, and you sum up the twenty enumerated specifications of injuries under four conclusions without suggesting the diplomatic remedy which, in the judgment of your Government, would be appropriate. You merely intimate that if the Government of the United States were disposed to admit the justice of your complaints a path would be happily opened toward a prompt and satisfactory settlement by diplomacy, and in the same breath you assume that their justice will be denied, in which event you declare that it appears to be clear that the only practicable means of adjustment, honorable for both countries, would be to submit their differences to the decision of an impartial court of arbitration. It may not have been your intention to exclude legitimate discussion touching the merits of the alleged complaints, but the language and tenor of your note seem to require either the complete admission of their justice as a condition to seeking a diplomatic adjustment or the appearance of the United States as a defendant before the bar of an arbitral court to meet the grave charges formulated by Colombia.

It gives me pleasure to assure you of my entire agreement with the sentiments which you express so eloquently in favor of the settlement of international disputes by arbitration. I hope the time will never come—I do not believe that it will ever come—when the United States is not in accord with these sentiments and does not respond to them in its action. Beyond the very able expression of these views, however, I find in your note no statement of grievance or of reasons why there should now be an arbitration between Colombia and the United States which were not in substance and with great ability presented by General Reyes in his letters of December 23, 1903,<sup>1</sup> January 6, 1904,<sup>1</sup> and January 11, 1904,<sup>1</sup> and finally and conclusively answered by Mr. Hay on the 5th,<sup>1</sup> 9th,<sup>1</sup>

and 13th<sup>1</sup> days of January, 1904. Upon the most painstaking review of the facts and of the positions then taken by my predecessor, I find no just ground for departing from the conclusions which he reached. It is needless to repeat the views then expressed.

There is one consideration, however, which Mr. Hay was not at liberty to present at that time because the treaty between the United States and Panama had not then received the approval of the Senate of the United States and had not been ratified, although it had been signed by the plenipotentiaries of the two Governments. That treaty has since been ratified by the consent of the Senate, and both Houses of Congress have concurred in appropriating the money necessary to give the treaty effect: upon its ratification, the force of the treaty related back to the 18th of the preceding November, when it was signed. The executive and legislative branches of our Government have thus united to create, in the most solemn and binding form, a guaranty by the people of the United States of the independence of the people of Panama.

The real gravamen of your complaint is this espousal of the cause of Panama by the people of the United States. No arbitration could deal with the real rights and wrongs of the parties concerned unless it were to pass upon the question whether the cause thus espoused was just—whether the people of Panama were exercising their just rights in declaring and maintaining their independence of Colombian rule. We assert and maintain the affirmative upon that question. We assert that the ancient State of Panama, independent in its origin and by nature and history a separate political community, was confederated with the other States of Colombia upon terms which preserved and continued its separate sovereignty; that it never surrendered that sovereignty: that in the year 1885 the compact which bound it to the other States of Colombia was broken and terminated by Colombia, and the Isthmus was subjugated by force; that it was held under foreign domination to which it had never consented; and that it was justly entitled to assert its sovereignty and demand its independence from a rule which was unlawful, oppressive, and tyrannical. We can not ask the people of Panama to consent that this right of theirs, which is vital to their political existence, shall be submitted to the decision of any arbitrator. Nor are we willing to permit any arbitrator to determine the political policy of the United States in following its sense of right and justice by espousing the cause of this weak people against the stronger Government of Colombia, which had so long held them in unlawful subjection.

There is one other subject contained in your note which I can not permit to pass without notice. You repeat the charge that the Government of the United States took a collusive part in fomenting or inciting the uprising upon the Isthmus of Panama which ultimately resulted in the revolution. I regret that you should see fit to thus renew an aspersion upon the honor and good faith of the United States in the face of the positive and final denial of the fact contained in Mr. Hay's letter of January 5, 1904. You must be well aware that the universally recognized limitations upon the subjects proper for arbitration forbid that the United States should submit such a question to arbitration. In view of your own recognition of this

<sup>1</sup> Printed in S. Doc. No. 95, 58th Cong., 2d sess.

established limitation, I have been unable to discover any justification for the renewal of this unfounded assertion.

Accept, Mr. Minister, the renewed assurances of my highest consideration.

ELIHU ROOT.

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*The Colombian Minister to the Secretary of State.*

THE ROCHAMBEAU,  
Washington, April 6, 1906.

SIR: Both your favor of the 10th of last February and the note of the 12th, correcting mistakes as to dates made in the former and signed by Mr. Adee, were received at this legation in due time.

The nature and importance of the matter dealt with in this correspondence compel me once again to draw your kind attention, and through you that of the President and his advisers, to the pending difficulty between my country and the United States. I do so the more gladly because your communication contains new points which seem to open the way for an honorable settlement of my country's claim. I dare to hope, therefore, that my present communication will accomplish this happy result, following, as it does, the line of your suggestion, and removing, as I feel confident, certain misconceptions which apparently still exist, notwithstanding the "careful and protracted consideration" which you inform me was given to my former one by the President and his constitutional advisers and by yourself.

At the outset, allow me to say I am sorry to learn that the President and his advisers have concluded from my note that I meant to cast aspersions upon the honor and good faith of the United States. An honorable settlement of a controversy, such as I suggested, can not with reason be proposed to one considered as lacking in honor and good faith. My purpose was to state—and I thought I had made it perfectly plain—that the honor and good faith of the United States could not possibly be impaired by accepting either of the propositions suggested by me.

It is my purpose to consider in this communication only facts about which there is no question and to leave out of thought entirely all matters about which there may be an erroneous opinion, either in the United States or in Colombia. There can in this case be no possible ground for supposing that I mean to cast aspersions upon the honor of the United States.

The particular claim of Colombia has been stated several times in the various communications from my country, but not so definitely perhaps as might be desired. The very nature of the claim itself prevents this. I am availing myself, however, of the wise suggestion contained in your communication; and before proceeding to a consideration of the facts on which the claim of Colombia is based and of the possible methods of its adjustment in a way honorable to both our countries, I will now make as definite and distinct a statement of Colombia's claim as the nature of the damage inflicted on her will permit.

As a result of certain acts admitted to have been done by the United States, and which have heretofore been made a part of the public rec-

ords of the United States, one of Colombia's members—the Department of Panama—has been cut off or severed from her body and erected into what the United States calls, and has recognized as, an independent nation. The circumstances under which this was done, in view of the treaty of 1846 between the United States and Colombia, and in view of certain principles of international law to which the United States has assented, obligate the United States to compensate Colombia for this loss in so far as money can compensate for such a loss.

To facilitate our arriving at an agreement as to the justice of this my country's claim, I wish to review with the President and his constitutional advisers the events leading up thereto—events which are well known, but which must be carefully and connectedly considered in order that we may see clearly what justice demands.

As has been well said in the correspondence issuing from the Department of State of the United States, Providence seems to have designed the Isthmus of Panama as a highway for mankind between the two great oceans which lave the eastern and western shores of our continent.

During the great upheaval which freed the American continent from the political errors which had fastened themselves on Europe, the people of the United States introduced into human government the true political principles. Almost immediately thereafter Colombia founded her nationality, and the territory of Panama became a part of Colombia's body. It was but natural that Colombia and the United States should desire to carry out the designs of Providence as respects Panama, and that an agreement should be concluded between them, with a view (1) to insure the use of the Isthmus of Panama as a highway, open at all times to the people of the United States, and (2) to preserve and maintain forever the possession of this Isthmus by Colombia.

This having been accomplished by the treaty of 1846, various efforts were made by Colombia to improve the method of transit across the Isthmus, such as granting to an American company a franchise for the construction of the Panama Railroad. When this communication was deemed insufficient, Colombia negotiated several contracts for the construction of the Panama Canal, and later granted extensions of time to the concessionaires of the work. Among these efforts to improve the transit across the Isthmus must be mentioned the negotiations which Colombia entered into with the United States in 1869 for the conclusion of a treaty under which the United States should construct there a ship canal. The Senate of the United States failed and refused to ratify this treaty, signed by the Presidents of Colombia and of the United States and duly ratified by the Colombian Congress.

The hope of my country, and indeed of the whole world, was thus disappointed by the act of the United States Senate; but this hope was by no means destroyed. It was inevitable that in the course of time the Isthmus of Panama should be devoted "to the use for which Providence seemed to have designed it," and in the presence of difficulties encountered by the French company in completing this work, negotiations were renewed with a view to placing the United States in a position to carry out the great enterprise.

After much effort the treaty of the 22d January, 1903, known as the Herrán-Hay treaty, was agreed upon by the Presidents of the two countries, and then ratified by the United States Senate; but it failed to obtain the approval of the Colombian Congress, thus meeting with the same fate which befell the treaty of 1869, with a reversal of the situation, however, in that the Colombian Congress, instead of the United States Senate, caused the failure at this time.

It is necessary that I should allude here to some of the causes which contributed to the failure or defeat of the treaty of January 22, 1903.

The United States, by an act commonly called the "Spooner Act," greatly increased the difficulties inherent in the negotiation of treaties by governments whose constitutions require legislative approval of every treaty negotiated by the executive department. This Spooner Act instructed the President of the United States to proceed with the construction of an Isthmian Canal by the Nicaragua route, unless he could secure from Colombia within defined time the right to construct the canal through the Isthmus of Panama upon terms satisfactory to the United States.

Perhaps it is not proper for me to inquire into the underlying reasons of this act, so I only say incidentally that after its passage the United States received from the Panama Canal Company, at the price of \$40,000,000, property for which that company had previously demanded \$150,000,000. But whatever its motives, this act necessitated the approval of the Herrán-Hay treaty by the Colombian Congress without the least amendment and within a specified time or this new attempt to provide for the construction of the canal by the United States would be abortive, unless, indeed, the Spooner Act should be amended or repealed by the United States.

The minister of the United States resident at Bogota was not unmindful of this effect of the Spooner Act, for he notifies the Government of Colombia that the Herrán-Hay treaty had to be approved by the Colombian Congress immediately and without the least amendment. If the Spooner Act had not been on the statute books of the United States, the minister of the United States at Bogota would have had no ground on which to stand while making this declaration, even had it been made in the most friendly and judicious manner, because the constitution of Colombia, as well as that of the United States, contemplates the amendment, by the legislative branch of the Government, of any treaty previously negotiated by the executive department before it can become operative, in case an amendment seems desirable in the judgment of the legislature. While it is true that the Spooner Act did not, and could not, abrogate the constitution of Colombia in any particular, still, in its practical operation, this act of the United States prevented the proper exercise of the constitutional right and duty of every member of the Colombian Congress to propose any amendment which might seem to him advisable, in order that the interests and welfare of Colombia might be perfectly protected in the treaty granting this important concession. This arose from the fact that the date fixed by the Spooner Act for proceeding to construct the canal by the way of Nicaragua was so near at hand when the Herrán-Hay treaty came up for discussion in the Colombian Congress that there was no possibility of bringing the

United States Senate and the Colombian Congress into agreement upon any amendment to that treaty which might be suggested by the Colombian Congress, even if the Presidents of Colombia and of the United States should have given assent to the same.

It is manifest, therefore, that the Spooner Act greatly increased the difficulties necessarily involved in the negotiation of a treaty between Governments constituted as are those of Colombia and the United States in a matter of such magnitude, large even for so great a Nation as the United States.

Here, then, was the situation in August, 1903. After half a century of desire by Colombia that there should be a canal through the Isthmus of Panama, constructed by the United States under a concession from Colombia, the United States was still without authority to accomplish this great work.

First, because the constitution of Colombia and that of the United States alike require legislative approval of treaties negotiated by the executive departments of the Government. But for this difficulty the efforts of our two countries would before now have resulted in the construction of the canal through Panama by the United States under a concession from Colombia.

Second, because of the refusal of the United States Senate to ratify the treaty of 1869.

Third, because the Colombian Congress did not ratify the Herran-Hay treaty, under conditions whose difficulties were increased by the act of the United States necessitating ratification of this treaty without the least amendment as soon as it came before the Colombian Congress.

The adjournment of the Colombian Congress, after its refusal to ratify the Herran-Hay treaty, brought the Executive of the United States face to face with the Spooner Act, and seemed to necessitate the construction of the canal through Nicaragua, which was considered the wrong route, or else the securing of an amendment to this act in order that the United States might continue negotiations with Colombia.

Confronted by this situation, the President of the United States was formulating in a message to Congress the thought that there did or should exist some means whereby the United States could dedicate the Isthmus of Panama to the use most necessary for the general welfare of the people of all nations—that is, for an interoceanic canal—a sort of international eminent domain, perhaps.

Colombia does not profess this doctrine, and does not see how it can be practiced in international affairs prior to the establishment of an authority superior to the sovereign nations in whose name it could be invoked. The mere fact, however, that the President of the United States was formulating the thought of finding some way to dedicate the Isthmus to canal purposes, other than by agreement upon the terms and price of concession with the sovereign having title to the same, seems to call for a pause in this recital of events long enough to remark that what subsequently happened was very like a concrete application of this doctrine to Colombia, but without compensation for the territory taken—a so-called “new nation,” which was preserved from the day of its birth, and guaranteed permanently in its life by the powerful arm of the United States, serving as the



means, in the absence of an international body having proper authority.

While the President of the United States was at work upon this thought of some means of "dedicating the Isthmus of Panama to the use for which Providence seems to have designed it," other than by treaty with Colombia, the independence of Panama was declared. The executive department of the United States Government immediately issued orders to the United States Navy to prevent the landing of any Colombian troops in Panama—Colombia's own territory—with a view to the reduction of Panama to submission. The United States Navy obeyed the instructions thus given by the executive department of the United States Government. The only possible way for a Colombian army to reach Panama was by water, owing to the topography of Panama. All the waterway between Colombia and Panama was occupied by warships of the United States Navy. It was impossible, therefore, for Colombia to reach Panama with an armed force, because of the presence and action of the war vessels of the United States. Consequently the effect of this lifting up of the powerful hand of the United States was to prevent Colombia from maintaining her sovereignty over Panama, and thus Panama was severed from the body of Colombia.

The action which brought about this result was taken by the executive department of the United States Government, on the supposition that it was not in violation of any principles of international law by which the United States had bound itself to act, and was not contrary to the provisions of the treaty of 1846, then in force between Colombia and the United States. On the contrary, it was asserted by the United States that this action was lawful and necessary for the faithful performance of the duties imposed upon the United States by the treaty of 1846, and, indeed, was demanded in order to promote the general welfare not only of the people of both North and South America, but of all civilized nations.

Colombia does not for a moment lose sight of the fact that, during a long period, the United States has shared with her in the desire to see a canal constructed through Panama for the promotion of the general welfare of all nations, nor does she overlook the fact that there were special reasons why it would be of particular value to the United States to have this canal constructed and operated by the United States. Disregarding the particular interests of the United States for constructing and operating the canal, and looking solely to the promotion of the general welfare of all nations by the timely construction of the canal, at the proper place and in the proper way, it is apparent that the rights of Colombia—the sovereign of Panama—should be carefully respected in securing the concession for the canal; for only in this way could the canal be constructed so as to promote the general interest of all nations without doing an injury to any nation. Without in any way reflecting upon the motives of the United States in the course which was pursued when the independence of Panama was declared, it is proper to inquire whether the Executive Department of the United States Government was correct in its belief that it had a right to take the action which it is admitted was taken, after the declaration of the independence of Panama, and which prevented Colombia from maintaining her sov-

ereignty over the Isthmus; also whether the acts performed by the United States were contrary to the obligations which the United States was under by reason of the provisions in the treaty of 1846, or by reason of certain principles of international law which the United States has declared as binding upon nations and to the observation of which it has held other nations.

When the independence of Panama was declared, the treaty of 1846 between Colombia and the United States was in full force, and our two countries are and ever have been in perfect accord upon this point, namely: That this treaty bound the United States to preserve Colombia's sovereignty over Panama against menace or destruction from foreign nations.

Upon the declaration of independence of Panama, a grave question arose, namely: Did the treaty of 1846 bind the United States to preserve Colombia's sovereignty over Panama against menace from every danger whatsoever, regardless of its origin, even from internal violence, rebellion, or revolution, or at least to take no action that would hinder Colombia in such case? Colombia, in the face of the Panama crisis, called upon the United States, as an obligation imposed by the treaty of 1846, to take no steps that would embarrass her suppressing the rebellion and maintaining her sovereignty over the Isthmus. The United States, on the other hand, without an exchange of one word with Colombia on this subject, announced an interpretation of the treaty of 1846 not theretofore formulated—that is, that Colombia, in whose behalf the protection clause in this treaty was inserted, had granted to the United States the right to take steps which would prevent Colombia from suppressing within her own territory a rebellion which, if successful, would destroy her sovereignty over the Isthmus of Panama.

Colombia declares that the United States has, in this respect, misinterpreted the treaty of 1846.

It is an admitted fact that, under this construction of the treaty of 1846, the United States has so acted as to cause the loss of Panama to Colombia. Thus, by the admitted acts of the United States, Colombia has been deprived of that very member of her body which the United States had agreed to preserve to her forever.

If the acts of the United States were lawful and right, this loss must fall upon Colombia. If, on the other hand, this loss was wrongfully occasioned by acts of the United States done in violation of the provisions of the treaty by which the United States has obligated itself, or in violation of principles of international law to which the United States has assented, then the United States is lawfully bound to compensate Colombia for the damage thus done to her.

The United States formulated the construction of the treaty of 1846, by which this loss was occasioned to Colombia in the face of a great emergency, when it appeared to the United States that any other course would cause the permanent loss of all hope of locating the Isthmian Canal at the proper place, and would "frustrate forever" the policy in regard to the Isthmus of Panama to which both of our countries had long adhered, and which was for the welfare of the people of all nations. Without emphasizing the fact, I desire to state in passing that the Government of the United States took too

gloomy a view of the situation. There is higher authority than Abraham Lincoln, one of the great Presidents of the United States, for believing that "nothing is settled till it is settled right," and therefore both Colombia and the United States could have rested in the conviction that a firm adherence to the principles involved in due time would have brought our Governments into agreement upon the terms of a treaty for the construction of a canal through Panama, despite any appearance to the contrary. The very secession of Panama altered the conditions in Colombia to such an extent that the United States would have received the canal concession from Colombia if the United States had only remained inactive while Colombia was reducing Panama to submission. But leaving this entirely out of view, as not being a matter of accomplished fact, the condition to-day is this: The canal concession has been secured by the United States, and that member of my country's body which the United States had agreed to preserve to Colombia forever has been lost, and this by the act of the United States, done under a construction of the treaty of 1846 not heretofore announced, and formulated by the United States in the face of this emergency. In the clear light of the present day, and freed from fear of losing the canal concession, the United States can be expected to see that the people and the Government of Colombia never agreed by the treaty of 1846 that the United States, while complying with its terms, might lawfully cause the loss to Colombia of the very thing for which Colombia entered into that treaty.

The treaty could not possibly give the United States any such right unless the mind of Colombia and of the United States came into agreement upon that point. Is it possible to believe that any national entity would ever enter into an agreement with another for the preservation of a member of its own body and by the very terms of the agreement authorize the severance of that member by the act of the party that was binding itself to preserve said member?

Certainly the United States, on reconsideration of this matter in the light of these facts, can see that Colombia never agreed by the treaty of 1846 that the United States might lawfully commit such acts, under the provisions of that treaty, as to cause the loss to Colombia of her sovereignty over the Isthmus of Panama. When the United States does see this, it will recognize its duty to compensate Colombia for the loss occasioned by its admitted acts done under a misconception of the rights supposed—in an emergency—to have arisen from the treaty of 1846.

The damage done to Colombia by admitted and published acts of the United States is the value of the Department of Panama. The amount of damage thus caused to Colombia, and for which the United States is lawfully responsible, has not been stated in exact figures, for the reason that the exact amount can not easily be stated. The lost member was very valuable, being the strategic point of the whole Western Hemisphere. Liability for this loss being conceded by the United States, the estimation of the amount of damage could be either by direct negotiation or by a committee of experts appointed by our two Governments.

If the United States desires, I can submit an amount as approximating the value of the lost member of Colombia, upon the payment

of which my country would feel compensated, in so far as money can compensate for such a loss. Or we can now proceed to the appointment of a joint commission, charged with the duty of determining, in justice and in equity, the amount of compensation to which Colombia is entitled from the United States by virtue of this loss; that is to say, the value of Panama, including not only the value of territory but that of the railroad, of the contract with the French company, and so forth.

Though the acts of the United States which severed Panama from the body of Colombia were done by the executive department of the United States Government, the Senate of the United States, as you inform me, subsequently ratified a treaty which the President and the Department of State had negotiated with Panama, whereby the independence of Panama was guaranteed by the United States, and whereby the United States received from Panama a concession to construct a canal through Panama; and, still later, the House of Representatives of the United States joined with the Senate of the United States in making an appropriation of money to be expended in Panama under a canal concession granted to the United States by Panama as an independent nation. By the act of the Senate the severance of Panama from Colombia is made permanent, to the extent that the United States can by its act accomplish this, and the state of things thus created has been accepted by joint action of the Senate and House of Representatives of the United States. The Panama incident may seem, therefore, to be closed, but this is not true, at least so far as Colombia is concerned, and can not be closed until Colombia is compensated or has an opportunity to plead her cause before an impartial court of arbitration.

Having acted in an emergency, when it appeared to the United States that a work most necessary for the general welfare of the whole world was in jeopardy, and in such a way as to insure the execution of this work without delay and at a place and upon terms entirely satisfactory to the Government of the United States, it is but natural that the executive department of the United States Government and all the Members of the Congress of the United States who were called upon to take part in this action should consider carefully, in the light of all the facts which bear upon the history of the relations of our two Governments in regard to Panama, whether in this emergency any damage was done which the United States ought to repair, according to the highest sense of justice and right.

As the question of impairing the honor of the United States has been brought into discussion, I may be permitted to remark that the honor of every act is coeval with the act itself. It is, therefore, impossible for the honor of an individual or of a nation to be tarnished by an agreement to do what is eventually recognized to be right, independently of the question as to whether an act previously done was either right or wrong. Indeed, the enlightened opinion of the whole world is agreed upon this, that even when a wrong action has been taken, consciously or unconsciously, that which will most redound to the honor of any party thereto is to correct the same. Therefore, whether the acts of the United States done in the Panama emergency were right or wrong, whether they were in accordance with the provisions of the treaty of 1846 and of recognized principles of international law or contrary thereto, the honor of the United States

would be enhanced by consenting to arbitrate the claim of Colombia, in the event that the United States can not see, in the light of the facts set forth in this communication, that it is in duty bound to compensate Colombia.

In this connection, I feel sure that the United States will not forget that the Government of Great Britain refused at first to arbitrate the claim of the United States for damages done by the *Alabama*, asserting that to arbitrate that claim would impair the honor of the British Government. Throughout the whole world, and particularly in the United States, it is now recognized that the arbitration of the *Alabama* claims by Great Britain and the United States set the tide of the past century in favor of the arbitration of disputes between nations and that the reconsideration of this decision by the Government of Great Britain and the reference of the *Alabama* claims to arbitration is one of the greatest honors achieved by the British Government, although the decision of the arbitrators was against Great Britain. A similar honor can now be achieved by the consent of the United States to arbitrate the claim of my Government during that administration of the United States under which this claim arose.

And, in order to facilitate so happy a decision by the Government of the United States, in case it can not yet see that it is lawfully bound to compensate Colombia, I propose on behalf of Colombia that the United States and Colombia forthwith enter into a convention for the purpose of securing an impartial judgment upon the following strictly legal questions:

1. Did the treaty of 1846 obligate the United States to maintain the sovereignty of Colombia over the Isthmus of Panama against menace or attack from any foreign power and against internal disturbances that might jeopardize said sovereignty?

2. Did the treaty of 1846 obligate the United States to refrain from taking steps which would hinder Colombia in maintaining her sovereignty over Panama by suppressing rebellion, revolution, secession, or internal disorder?

3. Did the treaty of 1846 grant to the United States the right to take those steps which it is admitted were taken by the United States to prevent the landing of troops in Panama and the suppression of the rebellion?

4. Did the treaty of 1846 leave the United States free lawfully to take the steps which it is admitted by the United States were taken as regards Panama?

5. Did these acts of the United States, which it is admitted were taken, prevent Colombia from taking the steps necessary to suppress the rebellion and maintain her sovereignty over the Isthmus?

6. Were the admitted acts of the United States in respect to Panama in violation of principles of international law which have been recognized by the United States as binding upon nations in their dealings with each other?

7. What damage, if any, has been occasioned in Colombia by acts of the United States which are admitted by the United States, and which may be adjudged as having been in violation of obligations imposed upon the United States by the treaty of 1846 or by principles of international law to which the United States has assented?

The foregoing questions are all of a purely legal character, arising upon the proper interpretation of a treaty and the proper application to undisputed facts of well-recognized principles of international law. They are therefore identical in kind with the questions included in the treaties recently negotiated by the United States with nine governments and almost unanimously ratified by the Senate of the United States as to said questions which are recognized the world over as eminently suitable for judicial determination. Nevertheless, to provide against all possible misconception of the scope of the arbitration proposed, Colombia will gladly add to the convention, if the United States so desires, a clause providing that the jurisdiction of the arbitrators shall not be construed as extending to the point of passing upon the political policy of the United States, further than to determine whether the policy pursued by the United States as respects Panama was outside of the limits within which the United States had bound itself to remain, either by the treaty of 1846 or by principles of international law to which the United States has assented.

I am led to suggest this because it appears from your communication that my proposition was supposed to imply the reference of the political policy of the United States to the judgment of arbitrators, for you say: "Nor are we willing to permit any arbitrator to determine the political policy of the United States in following its sense of right and justice by espousing the cause of this weak people (Panama) against the stronger Government of Colombia, which has so long held them in unlawful subjection."

The erroneous supposition that I propose permitting an arbitrator to determine the political policy of the United States has been removed by my suggestion that the arbitral convention expressly forbids this by limiting the jurisdiction of the arbitrators to deciding whether the acts of the United States in 1903 were contrary to provisions of the treaty concluded in 1846 or contrary to the principles of international law for violation of which the United States has held other nations accountable.

I need make no further allusion, therefore, to the question of the public policy of the United States: but I am compelled to reply to the charge contained in this paragraph of your communication, and to another clause where you say: "That the ancient State of Panama, independent in its origin, and by nature and history a separate political community, was confederated with the other States of Colombia upon terms which preserved and continued its separate sovereignty; that in the year 1885 the compact which bound it to the other States of Colombia was broken and terminated by Colombia and the Isthmus was subjugated by force; that it was held under foreign domination to which it had never consented, and that it was justly entitled to assert its sovereignty and demand its independence from a rule which was unlawful, oppressive, and tyrannical."

I must say in reply that the question between Colombia and the United States is not whether Panama was justly entitled to assert independence, but whether the United States was under obligation, by treaty or by principles of international law, not to do the things which it is admitted were done by the United States after the declaration of Panama's independence was made.

Permit me to say further that these allegations come as a surprise to my country, in view of certain public records of the United States, which I must now recall to your attention on account of these allegations.

In regard to the alleged "separate sovereignty" of Panama, it seems to me that you can hardly mean what the language would seem to imply, remembering that in 1846 the United States bound itself to preserve the sovereignty of Colombia over the Isthmus of Panama forever, and in view of the further facts that in 1869, and again in 1903, the United States negotiated with Colombia, as sovereign of Panama, for valuable concessions, in order to construct an isthmian canal through Panama.

These acts could not have occurred if Panama had been a separate sovereignty, or had been so regarded by the United States.

As for the allegation of oppressive or tyrannical conduct toward Panama by the Government of Colombia, permit me to call to your attention the fact that not once since the United States bound itself to maintain forever the sovereignty of Colombia over Panama has the United States intimated to Colombia that her rule in Panama was oppressive, tyrannical, or unlawful; nor has the United States or any other government ever made representations to Colombia on account of injuries to its interests, or the interests of its citizens in Panama, caused by unlawful, oppressive, or tyrannical conduct toward Panama by the Government of Colombia.

Were it proper for us to disclose the political relation between Colombia and Panama prior to the 2d of November, 1903, or the internal affairs of Colombia, I could set forth many facts, capable of easy proof, which would show that the allegations into which you have been led are contrary to the facts of the history of my country.

In addition to the foregoing allusion to facts of record in the United States I may say that, owing to the nature of republican institutions, under which Colombia has lived ever since she achieved her independence, through her own efforts, Colombia has been governed by the vote of the people. There has been no disparity in the rights enjoyed by any of the several members of Colombia's body. All the States or departments constituting the nation have always had equal rights. It is true that political struggles have occurred in Colombia which resulted in civil strife, even as in all other nations with whose history Colombia is acquainted; but never has Panama or any other State or Department of Colombia endeavored to sever its relations with the rest of Colombia, or even protested against any act of the Government as being against its welfare and designed for the special interest of other parts of the national body. Such civil wars as have occurred in Colombia came from struggles between parties having representatives in all parts of the nation. The sacrifices imposed upon the nation by these struggles and the efforts made to work our way through them have been undergone and shared alike by all parts of the nation.

The citizens of Colombia in Panama took part in the struggles on both sides, and in the outcome Panama shared equally in the benefits with all the other parts of the nation, but, in several particulars of an economical, political, and vital character, was burdened less with the evil consequences than were the others. For instance,

Colombia generally had to suffer the evils of a paper currency, whereas the people of Panama, throughout the whole crisis and afterwards, continued by the act of Colombia to enjoy the benefit of specie currency, though paper currency was made, by the act of the Colombian Congress, the only lawful currency in all other parts of the Republic.

Taking the most unfavorable view possible of the refusal of the Colombian Congress to sanction the Herran-Hay treaty, it was only a repetition of the act done in 1869 by the United States Senate. During almost every session of every double-chambered national legislature measures most necessary to the national welfare fail for want of agreement by the two bodies whose assent must be secured, and consequently go over until unity of action can be obtained. The thing which so imperiled the vital interests of the people of Panama was not the refusal of the Colombian Congress to ratify the Herran-Hay treaty without amendment, but the existence of the Spooner Act of the United States, which operated to prevent free and full discussion of and final agreement upon a treaty for the construction of the canal, after the exercise of their constitutional rights by all parties charged by law with a responsibility in regard thereto. But for this act the people of Panama could have counted upon the conclusion of a treaty during subsequent sessions of the Congresses of the two countries. Otherwise, republican government must be admitted to be a failure. Moreover, what was there to prevent the United States from amending or repealing this act if actual conditions called for this, in the interest of the United States, of Panama, of Colombia, and of other nations?

I can not escape, however, from the feeling that consideration of the internal government of Colombia and of the relation of Panama to Colombia prior to the 2d of November, 1903, can only serve to confuse the issue, for the arbitrators in the case which Colombia proposes to submit could not inquire into the internal government or the foreign policy of either Colombia or the United States, but only into the questions submitted, questions which are purely of law, upon acts all of which are admitted. The accuracy or the inaccuracy of the statements made by us, in this discussion of the history of Colombia, could not be passed upon in the arbitration which I propose and does not have to be decided by us in making a direct settlement, for the sole question is: Did the United States act contrary to the treaty of 1846 or to principles of international law assented to by the United States?

I beg of you, therefore, to assure the President and his constitutional advisers that I have not intended to propose that the United States submit its public policy to the decision of any arbitrator, and that you will put out of mind all matters which do not affect the claim which is made by my country or the method proposed for its honorable settlement, either by compensation of Colombia or the arbitration of her claim.

Having endeavored to confine myself in this communication to facts about which there is no dispute and which must be considered first by ourselves in arriving at a direct settlement of Colombia's claim, and then by any court of arbitration to which this claim may



be referred, if a direct settlement is not made, I trust that you will assist me to clear away all other questions and to bring to the attention of the President and his constitutional advisers only such questions as will promote an honorable settlement of this unhappy contention at the earliest possible moment.

In former communications received from the Department of State of the United States, it was stated that the actions of the United States sprang from motives of the friendliest kind toward Colombia, and were taken in order faithfully to perform the duties imposed upon the United States by the treaty of 1846.

I note the fact that in your communication it is stated for the first time, on behalf of your Government, that the United States espoused the cause of Panama, the language being:

Now, are we willing to permit any arbitrator to determine the political policy of the United States in following its sense of right and justice by espousing the cause of this weak people against the stronger government of Colombia, which had so long held them in unlawful subjection?

As my country must suffer a continuous injury until the United States determines either to compensate Colombia or to arbitrate this claim, and as a considerable time has already elapsed since the events complained of, I take the liberty of expressing the hope that the President and his constitutional advisers will give the earliest possible reconsideration to my country's claim, in the light of the facts and arguments thereon set forth in this communication, and will submit the same to the Senate and to the House of Representatives of the United States in order that the Members of these two honorable bodies may determine the course which it is proper for them to take under existing conditions.

After the most painstaking review of the situation I find myself convinced that considerations not only of absolute but of practical justice, as well as of honor and of the general welfare of our two countries, our two continents, and, indeed, of the whole world, call for the compensation of Colombia for her loss or the arbitration of her claim, and I feel confident that the Government of the United States will be glad to accede to one or the other of these honorable proposals, now that all question of casting aspersions upon the honor of the United States has been removed from this correspondence.

If the United States does not feel called upon to compensate Colombia without recourse to arbitration, I propose that the questions herein stated be referred to an impartial court of arbitration constituted in accordance with the provisions of the treaty of The Hague, adopted by the United States and by 25 other nations after most careful consideration. But, if for any reason the United States would prefer a court of arbitration constituted in any other way, Colombia will consent to any method suggested by the United States which will assure the selection of competent and impartial arbitrators to determine this unhappy contention.

With assurances of high personal regard and of liveliest hopes for the success of our mutual efforts for a settlement of this controversy which will be honorable to all parties, I beg to remain,

Your excellency's obedient servant,

DIEGO MENDOZA.

*American Minister at Bogota to the Secretary of State.*

[Telegram.]

BOGOTA, *May 26, 1906.*

The President of Colombia, inviting me in a private conference, submitted the following, recognizing impracticability any further discussion of arbitration and indemnity over the Panama question, and desiring to take practical steps to settle differences. He proposes \* \* \*.

[Here follow suggestions which are still the subject of pending negotiations and no part of which has any relation to the subject matter of the Senate resolution.]

*Secretary of State to the American Minister at Bogota.*

[Telegram.]

WASHINGTON, *June 2, 1906.*

Say to President Reyes that I am most favorably impressed by his proposals and shall be glad to undertake negotiation on general lines suggested by him. \* \* \*

*American Minister at Bogota to the Secretary of State.*

[Telegram.]

BOGOTA, *June 7, 1906.*

The President of Colombia in a private conference says the following:

"First, he is much pleased with your answer and says that now begins a new era in friendly relations.

"Second, to-day has telegraphed to minister of Colombia at Washington, 'return at once ostensibly on leave of absence, and will send, on your return, a new minister in sympathy with proposed negotiations.'"

\* \* \* \* \*

*American Legation at Bogota to the Secretary of State.*

No. 1.]

AMERICAN LEGATION,  
*Bogota, 20 August, 1906.*

SIR: I have the honor to inclose herewith printed copy of a circular dated 11 August, 1906, informing the governors of the departments about a resolution passed by the council of ministers with regard to a printed letter signed by the Colombian ex-minister at Washington, Señor Diego Mendoza Perez, published in New York and bearing date of 2 July, 1906.

According to this resolution, Señor Mendoza Perez has been declared traitor to his country; and by Resolution 64 of 17 August, 1906,

copy of which I also inclose, he has been summoned to appear before the Colombian Government in this city to answer the charges that have caused him to be declared traitor to the country, otherwise his extradition is to be requested.

Owing to pressure of time I am unable to send a translation of these articles, and I will not delay them, as they may be of importance to the Department of State.

I have, etc.,

SAM B. KOPPEL,  
*In charge.*

[Inclosure 1.—Translation.]

URGENT CIRCULAR.

WAR DEPARTMENT,  
*Bogota, August 11, 1906.*

Governor of——

Prefects of Cali, Buga, Cuesta, Ocaña, Palmira, Santander (Cauca), Velez, Sogamoso, Honda, Magangue, Riohacha, Buenaventura, Tumaco, Pereira, Girardot, Mompos, Corozal, Quibdo, Marinilla, Sonson, Alcaldes Puerto Berfo, Gamarra, Calamar.

I transcribe the following declaration of the cabinet of ministers, unanimously approved in full meeting August 10, 1906:

The cabinet of ministers, in view of the statement which His Excellency the President of the Republic has just presented to you and the letter printed in New York, dated July 2, 1906, signed by the ex-minister of Colombia in Washington, Señor Diego Mendoza Perez, and considering that by the numerous documents which are in the archives of the presidency of the Republic these things have been confirmed:

1. That about the middle of last year the head of the Government had complete knowledge through repeated warnings that he was to be assassinated, a design which he had reason to believe was conceived by individuals whose interests were being injured by the Government actively following up the falsification of notes, the smuggling of emeralds, licentious acts, and other deeds highly prejudicial to public morality and social order, about all which His Excellency the President opportunely made a private report to the judges of the supreme court of justice and to the attorney general of the nation.

2. That these treasonable designs continued to develop in the succeeding months up to the 19th of December of last year, when the Government, by means of the judicious vigilance which it had exercised, was able to break up with rapidity and without disturbance the conspiracy which was being hatched to overthrow it.

3. That after the frustration of that crime the assassination of the President was again insisted on, and this was carried so far that a band of malefactors was organized to carry it out, as it did on February 10 of the present year, an attempt which put in imminent danger the life of His Excellency the President of the Republic and that of his daughter.

4. That after the conspirators and the authors of the homicidal offense had been delivered to justice and punished for their respective crimes in conformity with the sentences pronounced by competent courts, tranquillity was restored and the Government continued to occupy itself actively with the economic and political fiscal reconstruction of the country, destroyed and discredited by the three years' war just over.

5. That things being in this condition, the Government had certain information that two or three disloyal sons of Colombia, without considering the opinion of the people, were trying to start a separatist movement, like that of Panama, which, if successful, would involve the total dissolution of Colombia, for which the traitors were soliciting the support of some foreign power and of Panama. In order to avert such great evils the Government took excessive measures involving energy and prudence both within and without the country, and succeeded in averting the very great danger which was threatening it,

without neglecting internal matters of vital importance for the development of the nation. To-day that grave danger has entirely disappeared, owing to the attitude which the Government of the United States has assumed.

6. That the settlement of the questions pending with the United States and Panama being urgent, in order to avoid greater ills, the Government decided to send a special mission to the American Government to negotiate it, and which, at the same time that it saved the national honor, omitting pecuniary profits, would put an end to the difficulties of the country, and especially of those districts on the coast of the Atlantic and the Pacific which had arisen from the separation of Panama. That mission was faithfully confided to the citizen who was retiring as minister for foreign affairs, Don Enrique Cortes, who found himself obliged to resign his post, and to Señor Diego Mendoza Perez, in whose loyalty and enlightenment the President of the Republic trusted.

7. That the Government having had certain information that its representative in Washington, Señor Mendoza Perez, through lack of judgment and discretion, was not carrying out the instructions received, decided to recall him to this capital, and again to entrust Señor Cortes with the diplomatic negotiations, being convinced of his learning and efficiency, who accepted that mission.

8. That this proceeding, adopted by the Government according to the right given by the laws and in the endeavor to avert the great ills which were threatening the country, led Dr. Diego Mendoza Perez, instead of conforming to the instructions which had been given him by the minister for foreign affairs to return to this city, as he was ordered, to abuse his diplomatic character by making public in a foreign country and with injury to the interests of Colombia, acts, by their nature confidential in accordance with the practice of public international law, and slanderous charges.

9. That in accordance with ordinal 4 of article 20 of the Colombian penal code "diplomatic agents of Colombia who commit any crime in a foreign country, and any other employees of the Government in a foreign country who commit any act of disobedience or disloyalty to the same Government, or any crime during the exercise of their functions, shall be punished according to this code.

10. That in accordance with article 159 of the said code, acts, counsels, or machinations contributing to cause any injury to the nation shall be qualified as treason to the country.

11. That in the publication previously mentioned, which has circulated widely throughout the country, not only is rebellion instigated, but even the assassination of the President of the Republic.

The cabinet of ministers declares that in its opinion Señor Diego Mendoza Perez, ex-diplomatic minister of Colombia in the United States, by making the publication as a letter of what has before been mentioned, has been included in the denomination of traitor to the country, described by article 159 of the penal code.

That in its opinion both Señor Diego Mendoza and the other persons who appear answerable as accomplices in the grave crime which has been committed are punishable in accordance with ordinal 4 of article 20 of the penal code.

That ex-Minister Señor Mendoza has expressly violated sentence 11 of article 8 of law 23 of 1866, which says literally: "To preserve secrecy in negotiations and to publish nothing without the authorization of the Government;" and article 13 of decree 1039 of 1901, by which the diplomatic service of Colombia is regulated, which binds diplomatic agents, even after they have retired from a post, not to publish, nor to permit the publication, of anything without the previous authorization of the Government, under which Señor Mendoza Perez was found answerable through the gravity of the oath which he took on taking possession of his office.

That consequently the Government, in accordance with the laws, orders that those who are found to be responsible for the crime mentioned—viz. treason to the country—shall be brought to justice, for which it shall be reported to the competent authority in order to further the matter.

The President,

R. REYES.

Minister of the interior, Dionisio Arango; minister of foreign affairs, A. Vasquez Cobo; minister of the treasury, Tobias Valenzuela; minister of war, Manuel M. Sanclemente; minister of public instruction, J. M. Rivas Groot; minister of public works, F. de P. Manotas.

Secretary of the cabinet,

CAMILO TORRES ELICEHEA.

As the publication of Señor Mendoza Perez, which the declaration of the cabinet of ministers discusses, is subversive of order, and as the cabinet decided that the laws on public order shall be applied to the accomplices of Señor Mendoza Perez, you will ascertain if there are any accomplices in that locality who have received the publication mentioned and who are distributing it.

The whole country is perfectly calm, and in order to give greater stability to the peacefulness it is necessary to be extremely zealous in avoiding and suppressing everything which might disturb it.

The minister of war,

SANCLEMENTE.

[Inclosure 2.—Translation.]

[Resolution No. 64.]

REPUBLIC OF COLOMBIA—WAR DEPARTMENT.

The minister of war, in compliance with the laws on police and preservation of public order, and considering—

1. That the Government, in accordance with the declaration of the cabinet of ministers of the 10th instant, referring to Señor Diego Mendoza Perez, ex-minister of Colombia at Washington, has ordered that a case of treason to the country be brought against that individual, and that he be summoned to voluntarily present himself to answer the charges made against him, or to request his extradition if he should refuse to obey the call which is to be made.

2. That they have proofs that the agents and accomplices of Señor Diego Mendoza Perez have reproduced in the press of a foreign country the letter of this gentleman which is the cause of the present resolution, adding comments to it which dishonor the country.

3. That in this city slanderous anonymous letters are sent to peaceful and honest citizens and to public employees in which they are threatened with death, and although the authors of such anonymous letters are professional agitators and slanderers, insignificant in number and without any social or political standing, it is necessary to prevent their continuing to disturb society.

4. That the governors of the departments must prevent the slanderers and agitators by all the means in their power from doing the mischief in the territory of their respective jurisdictions which they propose to do in this capital, spreading the story that they have supporters in their campaign of defamation and threats against the life and honor of the citizens and public employees, and which may produce civil war.

5. That peace and tranquillity existing, as they do exist, in the whole Republic, with the exception of a few persons only in this capital who are trying to keep its inhabitants agitated and alarmed, it is indispensable that this unpatriotic work be prevented from continuing and the evil from extending beyond the capital.

*It is resolved:*

1. To summon Senor Diego Mendoza Perez, ex-minister of Colombia in Washington, to appear before the Government in this city to answer to the charges which have been made, by which he is declared a traitor to the country, it being understood that if he does not voluntarily present himself within a period of sixty days his extradition shall be requested through the department of foreign affairs.

2. To solicit the attorney general of the nation to indict Senor Diego Mendoza Perez for treason to the country through the judicial division of the national police, taking the depositions of those persons who appear to be accomplices of Mendoza Perez or his agents for developing the destructive design advised in his letter of July 2 of the present year, published in New York, which has been extensively distributed in Colombia and the other Spanish-American countries. The indictment shall be prepared under the supervision of the attorney general of the nation, and when found it shall be decided what court shall try Senor Mendoza Perez and his accomplices.

3. To specially charge the governor of the capital district and those of the departments, the chief of the garrison at Bogota, the gendarmerie, and the national police:

(a) To ascertain through their subordinate agents who the few persons are that are occupied in directing the anonymous circulars mentioned and in keeping the city disturbed, and who are the accomplices of Senor Diego Mendoza

Perez or his agents in the furtherance of the anarchistic and destructive design counseled by him in his letter before mentioned. To this end the governor of the capital district shall specially make use of the alcaldes of the barrio (wards).

(b) That on the discovery of the person or persons previously referred to, notice shall immediately be sent to the war department in order to try them according to the law of the high national police, and to confine them at a military post where they shall be educated, by means of work, in the cause of peace and order, and to be useful both to themselves and to society.

4. To charge the governors to proceed with great zeal and energy to carry out this resolution, and in case it is abused owing to personal grudges, the decree referring to those who make accusations falsely or through anger shall be applied to the responsible parties.

5. To charge Colombian ministers and consuls abroad to ascertain who the accomplices or agents of Senor Mendoza Perez are, and to immediately advise this department what they may learn in this connection.

6. To rouse all citizens, and especially public employees, in order that they shall aid the police and the national gendarmes to carry out this resolution, whose principal object is to protect the honor and the tranquillity of the citizens and to finally put an end to false alarms, professional agitators and slanderers, and also to those who make accusations falsely or through anger. All public employees must be reminded that although they do not belong to the police, the gendarmes, or the army, their duty is to aid them to preserve order as well as to make known to their superiors whether there is in the public administration any incorrect act to be corrected.

Let it be published on posters and communicated by telegraph to the governors, in order that they may make it known to all inhabitants of the department under their control.

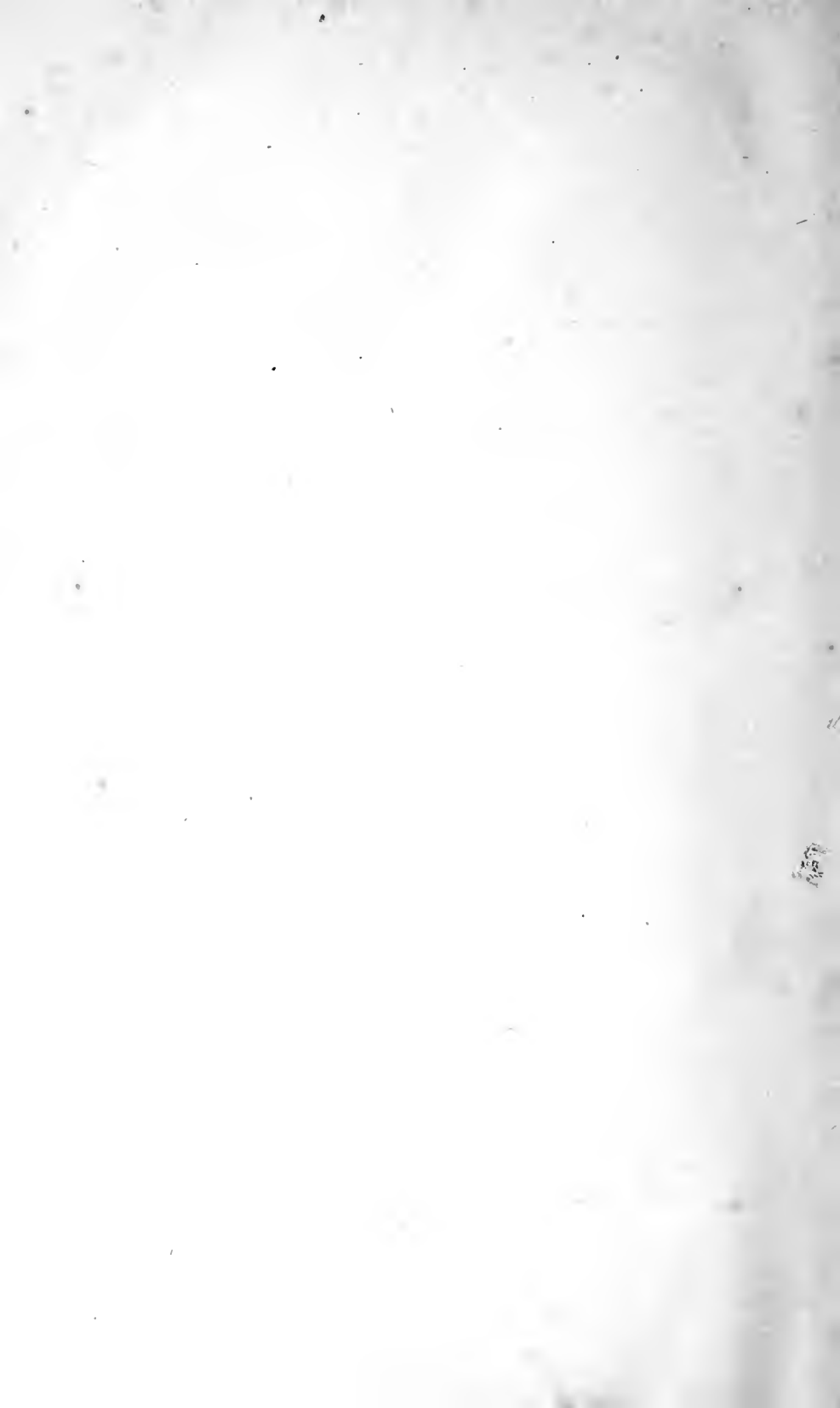
Issued at Bogota, August 16, 1906.

The minister of war.

MANUEL M. SANCLEMENTE.

















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**STORAGE**

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