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COSTA RICA-PANAMA ARBITRATION

DOCUMENTS

ANNEXED TO THE

ARGUMENT OF COSTA RICA

BEFORE THE

ARBITRATOR

HON. EDWARD DOUGLASS WHITE

CHIEF JUSTICE OF THE UNITED STATES

UNDER THE

PROVISIONS OF THE CONVENTION BETWEEN THE REPUBLIC OF COSTA RICA
AND THE REPUBLIC OF PANAMA, CONCLUDED MARCH 17, 1910.

VOLUME II.

1913.

THE COMMONWEALTH CO., PRINTERS,
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Fundamental Law of the Republic of Colombia.

Doc. 241

1819.

The Sovereign Congress of *Venezuela*, whose authority has been voluntarily recognized by the people of *New Granada*, liberated by the arms of the Republic, considering—

1. That the provinces of *Venezuela* and *New Granada*, united in a single Republic, possess all the requisites for attaining the highest degree of power and prosperity;

2. That if formed into distinct republics, and even united by the closest ties, far from profiting by their great advantages, they could with difficulty give stability to, and command respect for, their sovereignty;

3. That these truths, being deeply impressed on the minds of all men of superior talents and sound patriotism, have determined the Governments of the two Republics to agree upon their Union, hitherto obstructed by the vicissitudes of war; actuated by necessity and mutual interest, and conforming to the report of a special committee deputies from *New Granada* and *Venezuela*,

In the name and under the protection of the Almighty they have decreed, and do hereby decree, the following fundamental law of the Republic of Colombia:

ARTICLE 1. The Republics of *Venezuela* and *New Granada* are henceforth united in one, under the glorious title of the Republic of *Colombia*.

2. Its territory shall comprehend the former captain-generalship of *Venezuela* and the viceroyalty of *New Granada*, comprehending an extent of 115,000 square leagues, the precise limits whereof shall be fixed hereafter.

3. The debts contracted separately by the two Republics are hereby consolidated as a national debt of *Colombia*, for the payment of which all the property of the State is pledged and the most productive branches of the public revenue shall be appropriated.

4. The executive power of the Republic shall be vested in a

government of Costa Rica

President and in case of vacancy, in a Vice-President, both to be provisionally appointed by the present Congress.

5. The Republic of *Colombia* shall be (*pro tem*) divided into the three great Departments of *Venezuela*, *Quito*, and *Cundinamarca*, comprising the Provinces of *New Granada*, which denomination is henceforth abolished; and their capitals shall be the cities of *Caracas*, *Quito*, and *Bogotá*, the adjunct *Santa Fé* being annulled.

6. Each Department shall have a superior administration, with a chief, to be appointed for the present by the Congress and entitled a Vice-President.

7. A new city, to be called *Bolívar*, in honor of the assertor of the public liberty, shall be the capital of the Republic of *Colombia*; its plan and situation to be fixed on by the first General Congress upon the principle of adapting it to the exigencies of the three Departments and to the future grandeur to which nature has destined this opulent country.

8. The General Congress of *Colombia* shall assemble, on the 1st day of January, 1821, in the town of *Rosario de Cúcuta*, which from various circumstances is considered the most eligible situation. It shall be convened by the President of the Republic on the 1st day of January, 1820, who shall communicate such regulations concerning elections as may be formed by a special committee and approved by the present Congress.

9. The constitution of the Republic of *Colombia* shall be formed by the General Congress; to which shall be submitted, in the form of a plan, the constitution decreed by the present Congress, which, together with the laws enacted by that body, shall be provisionally carried into execution.

10. The arms and flag of *Colombia* shall be determined on by the General Congress, and in the meantime those of *Venezuela*, being most known, shall continue to be used.

11. The present Congress shall adjourn on the 15th of January, 1820, after which the new elections to the General Congress of *Colombia* shall be made.

12. A committee of six members and a President shall replace the Congress, whose particular powers and duties shall be regulated by a decree.

13. The Republic of *Colombia* shall be solemnly proclaimed throughout the towns and armies, accompanied by public festivals and rejoicings, and this ceremony shall take place in the capital on the 25th of the present month, in commemoration of the birth of the Saviour of the world, through whose especial favor this wished-for union, regenerating the State, has been obtained.

14. The anniversary of this political regeneration shall be perpetually celebrated with the solemnities of a national festival, at which, in imitation of the Olympia, premiums shall be adjudged to citizens distinguished by their virtues and their talents.

The present fundamental law of the Republic of *Colombia* shall be solemnly promulgated throughout the towns and armies, inscribed on all the public records, and deposited in all the archives of societies, municipalities, and corporations, both clerical and secular.

Given at the Palace of the Sovereign Congress of *Venezuela*, in the city of *St. Thomas de Angostura*, on the 11th day of December, in the year of our Lord 1819, ninth of independence.

FRANCISCO ANTONIO ZEA,
President of the Congress.

Juan German Roscio

Manuel Sedeño

Juan Martínez

José España

Luis Tomás Poraza

Antonio M. Briceño

Eusebio Afandor

Francisco Conde

DIEGO DE VALLENILLA,

Deputy and Secretary.

Diego Bautista Urbaneja

Juan Vicente Cardoso

Ignacio Muñoz

Onofre Bazalo

Domingo Alzuru

José Tomás Machado

Ramón García Gádiz

**Fundamental Law of the Union of the People of Colombia, Doc. 242
1820-21.**

1820-21.

We the Representatives of the People of New Granada and Venezuela, in general congress assembled, having carefully considered the fundamental law of the Republic of Colombia, passed by the Congress of Venezuela, at the city of St. Thomas of An-

gostura on the 17th day of December, A. D. 1819, are of opinion—

1. That united in one republic the Provinces of *Venezuela* and *New Granada* possess all the means and faculties necessary to place them in the most elevated state of power and prosperity;

2. That constituted into separate republics, however closely bound by the ties of union, they would find it difficult to give stability or induce respect for their sovereignty;

3. That, deeply penetrated by these advantages, all men of superior intelligence and distinguished patriotism, have declared that the Governments of the two Republics should form a union, which the vicissitudes of war have hitherto prevented;

4. Finally, that the same considerations of reciprocal interest, and a necessity most manifest, had made it obligatory on the Congress of *Venezuela* to anticipate this measure, which has been proclaimed in the most authoritative manner, by the unanimous votes of the people of both countries, in the name and under the auspices of the Supreme Being they have decreed, and do hereby decree, the solemn ratification of the fundamental law of the Republic of *Colombia*, which has been before mentioned, in the following manner:

ARTICLE I. The people of *New Granada* and *Venezuela*, being united in one national body, founded on a compact, which determines that the Government is now, and shall forever be, popular and representative.

ARTICLE II. This new nation shall be known and denominated by the title of the Republic of *Colombia*.

ART. III. The Colombian nation is, and shall forever be, irrevocably free and independent of the Spanish Monarchy, and of every other foreign power or domination; nor shall it ever be the patrimony of any family or person.

ART. IV. The supreme national power shall always be separately exercised, and divided into legislative, executive, and judicial.

ART. V. The territory of the Republic of *Colombia*, shall comprehend all that was within the limits of the ancient captain-generalship of *Venezuela* and the viceroyalty of *New Granada*; but reserving for a more suitable time their precise demarcation

ART. VI. For the advantageous administration of the Repub-

lic, its territory shall for the present be divided into six or more Departments, each bearing a particular name, with a subordinate administration dependant on the National Government.

ART. VII. The present Congress of *Colombia* shall form the constitution of the Republic, in conformity with the principles here expressed, upon those liberal principles which have been consecrated by the wise practice of other free nations.

ART. VIII. They recognize *in solidum*, as the national debt of *Colombia*, all the debts which the two people have separately contracted, and for which they make responsible all the property of the Republic.

ART. IX. The Congress shall, in the mode that may be found convenient, appropriate the branches most productive of the public revenue, the taxes, and shall create a special sinking fund for the redemption of the principal, and paying the interest of the public debt, duly verified and liquidated, according to law.

ART. X. In more favorable circumstances, there shall be erected a new city, with the name of liberator Bolívar, which shall be the capital of the Republic of *Colombia*. Its plan and site shall be determined by Congress, founded on the principle of accomodation to convenience of the different parts of this vast territory and the grandeur to which this country is destined by nature.

ART. XI. Meanwhile, until Congress shall establish the distinctive insignia and the flag of *Colombia*, the actual flags of *New Granada* and *Venezuela* shall be continued in use.

ART. XII. The ratification of the establishment of the Colombian Republic, and the publication of the constitution, shall be celebrated in the towns and in the armies with festivity and public rejoicings, making known in all places the solemnity of the day on which the constitution is promulgated.

ART. XIII. There shall be perpetually a national festival for three days in each year, upon which shall be celebrated the anniversary—

1. Of the emancipation and independence of the people of *Colombia*.

2. The union in one Republic and the establishment of the constitution.

3. To those great triumphs and splendid victories by which we have conquered and secured these blessings.

ART. XIV. This national festival shall be celebrated every year on the 25th, 26th, and 27th of December, consecrating each day to the special remembrance of one of those three glorious causes, and in particular to that of the virtues, the intelligence, and the services rendered to the country.

The present fundamental law of the union of the people of *Colombia* shall be solemnly promulgated in the towns and in the armies, inscribed on the public registers, and deposited in all the archives of the cabildos and corporations, civil and ecclesiastical, and shall be communicated to the Supreme Executive Power by a special deputation.

Done in the Palace of the General Congress of *Colombia*, in the town of *Rosario de Cúcuta*, the 12th of July, A. D. 1820, twelfth year of independence.

JOSÉ IGNACIO MARQUES,
President.

ANTONIO M. BRICEÑO,
Vice-President.

Félix Restrepo, Manuel M. Quijano, Pedro F. Carbajal, José Cornelio Vallacia, Casimiro Calvo, Miguel Ibáñez, Fran. de Orbeagozo, Carlos Alvarez, Diego F. Gómez, Lorenzo Santander, Juan B. Esteves, José Antonio Yáñez, Andrés Rojas, Bernardino Tovar, José Antonio Paredes, Gabriel Briceño, Luis Ignacio Mendoza, Joaquín Plata, José Prudencio Lanz, José Manuel Restrepo, Francisco José Olero, Miguel Tobar, José Joaquín Borrero, Salvador Camacho, José A. Mendoza, Vicente Azuero, Nic. Ballén de Guzmán, Sinforoso Mutis, Domingo B. Briceño, José Félix Blanco, Ildefonso Méndez, José Gabriel de Alcalá Miguel de Zárraga, Vicente Borrero, Francisco Gómez, Pedro Gual, Mariano Escobar, Miguel Peña, Alejandro Osorio, Diego B. Urbaneja, Fernando Peñalver, Policarpo Uricoichea, Francisco Conde, José M. Hinestrosa, Manuel Reniles, Cerbellón Urbina, Ramón Ignacio Méndez, Juan Ronderos, José

Ignacio Balbuena, Joaquín Fernando Soto, Pacífico Jaime.

The Deputy and Secretary,
MIGUEL SANTAMARÍA.

The Deputy and Secretary,
FRANCISCO SOTO.

Manifiesto of General Iturbide.

Doc. 243

IGUALA, February 24, 1821.

ARTICLE 1. The religion of *New Spain* is, and shall be, the Roman Catholic Apostolical, without tolerating any other.

2. *New Spain* is independent of Old Spain, and of every other Power, even on our continent.

3. Its Government shall be a moderate monarchy, according to a constitution peculiarly adapted for the empire.

4. Ferdinand VII. shall be Emperor; and if he does not come in person to *Mexico* to make oath before the Cortes within the time prescribed by them, the most serene Infante Don Carlos, Don Francisco de Paula, the Archduke Charles, or some other branch of the reigning family, shall be appointed in his place by the Congress.

5. Until the meeting of the Cortes, there shall be a Junta which shall have their union for its object, and the compliance with this plan in its whole extent.

6. Said Junta, which shall be styled Governmental, must be composed of the deputies mentioned in the official letter of the viceroy.

7. Until Ferdinand VII's arrival in *Mexico*, and his taking the oath, the Junta will govern in the name of His Majesty, in virtue of the oath of fidelity taken by the nation; but until His Majesty hath sworn, any orders he may give shall be suspended.

8. If Ferdinand VII should not deign to come to *Mexico*, the Junta or Regency shall govern in the name of the nation, until it be resolved who shall be crowned Emperor.

9. This Government shall be sustained by the army of the three guarantees, of which mention shall be made hereafter.

10. The Cortes shall resolve whether the Junta shall continue, or a Regency be substituted in its place, until the arrival of the person who is to be crowned.

11. The Cortes shall immediately establish the constitution of the Mexican empire.

12. All the inhabitants of *New Spain*, without distinction of Africans, Europeans, or Indians, are citizens of this monarchy,

with eligibility to all employments according to their virtues or merits.

13. The persons of every citizen and his property shall be respected and protected by the Government.

14. The clergy, secular and regular, shall preserve all their privileges and pre-eminences.

15. The Junta shall take care that every branch of the state remain without any alteration, and all the officers, political and ecclesiastical, civil and military, on the same footing as at present. They alone shall be removed who decline entering into this plan, substituting in their place those persons who are most distinguished for their virtue and merit.

16. A protecting army shall be formed, under the title of the three guarantees, because it takes under its protection, 1st: The preservation of the Catholic religion, co-operating, with all its efforts, that there may not be a mixture of any other sect, and attacking all the enemies who may injure it; 2d: The independence under the system already manifested; 3d: The intimate union of Americans and Europeans, guarantying such fundamental bases of the felicity of *New Spain*. Each individual, from first to last, will prefer sacrificing his life rather than permit the infraction of any of them.

17. The troops of the army shall observe the most strict discipline, according to their regulations, and the chiefs and officers shall remain on the same standing as at present, that is, in their respective classes, with eligibility to such public employments as are vacant, or may vacate in consequence of those who may not wish to follow their career, or any other cause, and those which may be considered as necessary or convenient.

18. The troops of said army shall be considered as of the line.

19. In the same light shall be considered those who may afterwards adopt this plan. Those who do not defer it, those of the former system of independence who shall immediately join said army, and the countrymen who may desire to enlist, shall be considered as troops of national militia; and the form of each for the interior and exterior security of the empire shall be dictated by the Cortes.

20. The employments shall be conceded to true merit, in virtue of references to the chiefs, and in the name of the nation.

21. While the Cortes are assembling, the proceedings against criminals shall be according to the Spanish constitution.

22. For conspiring against the independence, criminals shall be imprisoned until the Cortes decide the greatest punishment next to "lesa Majestad Divina."

23. A strict watch shall be kept over those who may attempt to create disunion, and they shall be reputed conspirators against the independence.

24. As the Cortes which are about to be installed are to be constituent, it is necessary that the deputies should receive sufficient powers to that effect, and, consequently, the electors ought to be informed that their representatives are to be for the Congress of *Mexico* and not of Madrid. The Junta will prescribe just rules for the elections, and will fix the necessary time for them, and the opening of the Congress.

Since the elections cannot take place in March, the term shall be shortened as much as possible.

ITURBIDE.

Iguala, February 24.

Declaration of the Independence of Panama, November 28, 1821. Doc. 244

The general Meeting solemnly declared and it was so entered in the minutes:

1. That *Panama*, spontaneously and in accordance with a general vote of the peoples comprised therein, was declared free and independent of the Spanish Government.

2. That the territory of the Provinces of the *Isthmus* belongs to the republican State of *Colombia*, to the Congress of which their Deputy would duly go to represent them.

3. That the individuals of the troop which garrisoned the station were left absolutely at liberty to join the side they desired; and in case they wished to go back to Spain they would be afforded all the assistance necessary for their transportation to the Island of *Cuba*, and they would be shown the honors of war so that

they might proceed to the ports of *Chagres* or *Portobelo*, as soon as the forts might be taken over by the new Government, all officials, sergeants and soldiers, under due oath, promising to keep the peace, not to commit any extortion, nor to take up arms against the independent States of America, during the war.

4. That the sick who were in the hospital would be assisted by the Government, and as soon as they recovered they would be afforded the means necessary for them to leave the *Isthmus*.

5. That Señor Don José de Fábrega, who was Colonel of the Spanish forces, was recognized as the Superior Chief of the *Isthmus*, leaving on the same footing as they were all the authorities and corporate bodies, both civil and ecclesiastical.

6. That the Superior Chief would take the needful economic measures for the preservation of public order.

7. That the authorities would take part in the proceedings declaring the independence, the following Sunday being designated for its publication to be made with due solemnity.

8. That the Superior Chief, together with the Commanders of the troops, would send official communications to those in the forts of *Chagres* and the Detachment of *Portobelo*, so that they deliver those places in military fashion to the officer presenting the orders.

9. That the *Isthmus*, through its representatives, would prepare suitable economic regulations for its domestic administration, and in the meantime the laws in force in that region should govern when not in contradiction to its new situation.

10. That for the indispensable expenses, the Superior Chief would undertake a loan, which would be recognised as a part of the public debt.

11. That the public debt, recognised by the Treasury, would be paid under the stipulations made when it was incurred.

12. That the preceding Articles would be printed and circulated among the people of the *Isthmus*, so that the disturbances agitating them may cease, encouraging them to afford the assistance which the capital needs in order to carry out the glorious undertaking as it has been begun.

Don José de Fábrega to the Supreme Chief of the Republic of Colombia. Doc. 245

PANAMA, November 29, 1821.¹

MOST EXCELLENT SIR:

I have the great pleasure of communicating to Your Excellency the agreeable notice that the *Isthmus* has decided to make itself independent from Spanish dominion. The town of *Los Santos*, comprised in this Province, was the first one to pronounce with enthusiasm the holy name of "Liberty" and soon after all the others imitated its glorious example; but as this capital deemed that the time for taking a decision had not yet come, it managed so as to be able to arrange things in order that the desired day could be a wholly glorious one. And in fact, I have now the pleasure of having seen that an event which has brought the change of a system maintained by men who could have caused some disaster, has taken place under such good order, and of which hardly another example could be cited. Moderation and sentiments of the highest philanthropy have been the characteristics of the *Isthmus*, to such an extent that they will make it famous in history of free America. Separately and on another opportunity in which I may have more time, I will send to Your Excellency a report of the honorable patriots who have deserved the consideration of their fellow countrymen on account of the services rendered in this important work, forwarding at present to Your Excellency a copy of the bases which have been agreed upon yesterday, when we had the good fortune of establishing ourselves in an integral part of the American independence.

Today certain circumstances oblige me to implore the high protection of Your Excellency in every way so as to be enabled to preserve for the Republic of *Colombia* such an interesting territory; because the misfortune which has overwhelmed the *Isthmus* for the last three years, has left it so exhausted that it cannot afford the necessary expenses to put us in the respectable state that the circumstances so strongly require. The most needed thing above all is at least three hundred disciplined soldiers with

¹ F. de P. Borda—*Límites de Colombia con Costa Rica*, p. 13, Bogotá, 1896.

competent officers for garrisoning the most important places by which we may be invaded.

For my part, Most Excellent Sir, I must say that I am deeply grateful for having had the satisfaction (the only one which can content a human heart) of deserving the public confidence on such critical circumstances for the government of the independent *Isthmus*; and I can only acknowledge such a high distinction by sacrificing myself as I decided to do since I devoted myself, as was my desire, to the Fatherland in which I have been born and to which I owe everything I possess.

Your Excellency will be good enough to make known all the foregoing to the Supreme Congress, in order that it will deign to approve our acts and recognize us as an integral part of the Republic that it represents; and the Deputy for this *Isthmus* will go to represent it therein.

May God guard Your Excellency's important life many years for the glory and prosperity of the Republic.

Panama, November 29, 1821.

Most Excellent Sir.

JOSÉ DE FÁBREGA.

To His Excellency the President of the Republic of *Colombia*.

Don Manuel Torres to the Secretary of State.

PHILADELPHIA, November 30, 1821.¹

* * * * *

The formidable fortress of *Carthagera*, and that of *Cumaná*, also fell successively; so that *Porto Cabello*, in *Venezuela*, and the isthmus of *Panama*, in *New Granada*, are the only two points which the Spaniards for the moment occupy in all the vast territory of *Colombia*; and probably before the termination of the present year both will be incorporated with the republic.

Although the isthmus of *Panama*, from its scanty population, its absolute want of agriculture, and its situation, can contribute little or nothing to the increase or facility of the interior or ex-

¹ American State Papers, Foreign Relations, Vol. IV., Page 834.

terior commerce of the new republic, still its occupation is of great importance to *Colombia*, under the view of its own future security and that of the rest of America, and from the great facility which the river *Chagres* affords for the commerce of *Peru*, and that of the provinces of *New Spain*, which lie along the Pacific, since the distances, the dangers, and expenses of a navigation by Cape Horn are considerably diminished.

But it was enough for the Liberator President to annihilate the formidable legions with which the Spaniards oppressed the country; it was also necessary to preserve good understanding and harmony among the inhabitants of *Colombia*, and to maintain among foreign nations the respect and reputation of the authorities of the republic which the agents of Ferdinand VII. have constantly defamed, by circulating, through the medium of the press, the most infamous falsehoods against them. He had no other means of realizing his object but exposing to the impartial world the perfidious conduct which the Peninsular Government had incessantly observed towards the Americans; and, to the incontrovertible manner in which he did so, by the proclamation which he addressed to the Spaniards on the 25th of April, from the city of *Barinas*, is partly due the success of the republican arms in *Colombia* and in *Peru*.

* * * * *

With respect to the ability and capacity of *Colombia* to maintain its independence, no well-founded doubt can arise upon that point, if we consider on one hand the great population of the republic, which exceeds 3,600,000 souls, the extent of its territory, its natural and artificial resources, and its situations; and, on the other, the great military talent displayed by its generals and officers, and the discipline and valor manifested by its troops on all occasions, but particularly in the celebrated battles of *Boyacá* and *Carabobo*, in the capture of *St. Martin*, defended by seventeen exterior batteries, all taken by assault, and the reduction of the fortresses of *Carthagena* and *Cumaná*.

Some idea may be also formed of the degree of splendor, power, and future prosperity of the new republic, by considering it placed in the centre of the universe, with an extent of coast of twelve hundred miles on the Atlantic, from the *Orinoco* to the

isthmus of *Darién*, and of seven hundred miles on the Pacific ocean, from *Panama* to *Bahía de Túmbez*, and exempt, at all seasons, from any of those dreadful hurricanes which cause such disasters in the Antilles, in the Gulf of *Mexico*, and in other places.

* * * * *

MANUEL TORRES.

Doc. 247 The Supreme Political Chief of the Isthmus of Panama to the Vice President of Colombia.

PANAMA, January 10, 1822.¹

MOST EXCELLENT SIR:

Your Excellency having been authorized by the Constitution of the State, at the time that the Code was being sanctioned, to establish Departments in the places occupied by the armies of Spain and which by their territorial extent and the circumstances of their location must be governed separately, Your Excellency must fix your attention on the *Isthmus of Panama*, which having declared and voluntarily submitted, on account of its ancient importance under the name of *Kingdom of Tierra Firme* and the superior government that it has had at different times, to be considered actually in the new division of the territory of *Colombia* as a separate Department which shall comprise the boundaries fixed for its Audencia by Law 4, Title 15, Book 2 of the Municipal Laws.

This vast territory, although unpopulated to a great extent, is divided into governments and a large *alcaldía mayor*, which comprises several *pueblos*, and both the governors of the Provinces of *Veragua*, *Darién* and *Portobelo*, as well as the *alcaldes mayores* of *Natá*, were subordinated in political and military affairs to the *Comandancia general* and superior government of the capital; and though later the Governors of *Veragua* and *Portobelo* obtained the special favor that the superior government should not try the civil lawsuits involving large amounts decided by them, but that those suits ought to go before the *audiencia*

¹ F. de P. Borda—*Límites de Colombia con Costa Rica*, p. 15, Bogotá, 1896.

of the district, as well as the criminal cases, the superiority of the said government was always recognized for appeals in lawsuits of minor amounts, and by the *cédula* of August 23, 1739, that government was empowered to sue those governors and to separate them from their governments in the cases expressed therein, reporting and sending the preparatory proceedings.

Furthermore, the Chief of this capital has enjoyed, independently of the Viceroy of *Santa Fé*, the privileges of the vice patronate, the superintendency of the Treasury, that of the *Cruzada*, the subdelegation of the post and lastly the prerogatives of superior governments, though sometimes restrained by the Viceroys or restricted by the territorial *audiencia*; but its complaints having been presented to the Court with the documents stating its old possession, it was restored and supported and obtained special favors on account of its first establishment under the title of President and of its location; and although this Government is situated between the two seas, it has lacked an armada or advice-boats to apply in time for assistance to the capital of *Santa Fé* or to the neighboring governments on occasions of need or danger.

For this reason and it being convenient that this territory shall have an Intendant, which office is the one indicated for the Departments, and because it is not possible to state the matter to the present Congress through Deputies, this Government submits the whole of the foregoing to the superior consideration of Your Excellency, to the end that using your high powers you will place it in the rank to which it is entitled, and that you will report to the Congress with the statement that I have the honor to forward to Your Excellency.

Panama, January 10, 1822.

JOSÉ DE FÁBREGA.

To the Most Excellent Señor Vice President of the Republic of
Colombia.

Doc. 248 Political Condition of the Spanish Provinces of South America, Communicated to Congress March 8 and April 26, 1822.

WASHINGTON, March 8, 1822.¹

To the House of Representatives of the United States:

In transmitting to the House of Representatives the documents called for by the resolution of that House of the 30th January, I consider it my duty to invite the attention of Congress to a very important subject, and to communicate the sentiments of the Executive on it, that, should Congress entertain similar sentiments, there may be such co-operation between the two departments of the Government as their respective rights and duties may require.

SEÑOR:

* * * * *

This contest has now reached such a stage, and been attended with such decisive success on the part of the provinces, that it merits the most profound consideration whether their right to the rank of independent nations, with all the advantages incident to it in their intercourse with the United States, is not complete. *Buenos Ayres* assumed that rank by a formal declaration in 1816, and has enjoyed it since 1810, free from invasion by the parent country. The provinces composing the Republic of *Colombia*, after having separately declared their independence, were united by a fundamental law of the 17th of December, 1819. A strong Spanish force occupied at that time certain parts of the territory within their limits, and waged a destructive war; that force has since been repeatedly defeated, and the whole of it either made prisoners or destroyed, or expelled from the country, with the exception of an inconsiderable portion only, which is blocked in two fortresses. The provinces on the Pacific have likewise been very successful. *Chili* declared independence in 1818, and has since enjoyed it undisturbed; and of late, by the assistance of *Chili* and *Buenos Ayres*, the revolution has extended to *Peru*. Of the movement in *Mexico* our information is less

¹ American State Papers, Foreign Relations, Vol. IV, p. 818.

authentic, but it is, nevertheless, distinctly understood that the new Government has declared its independence, and that there is now no opposition to it there, nor a force to make any. For the last three years the Government of Spain has not sent a single corps of troops to any part of that country; nor is there any reason to believe it will send any in future. Thus, it is manifest that all those provinces are not only in the full enjoyment of their independence, but, considering the state of the war and other circumstances, that there is not the most remote prospect of their being deprived of it.

* * * * *

JAMES MONROE.

Note Presented by Mr. Zea to the French Minister for Foreign Affairs, and the Ambassadors and Foreign Ministers at Paris. Doc. 249

PARIS, April 8, 1822.¹

The undersigned Envoy Extraordinary and Minister Plenipotentiary of the Republic of *Colombia*, to establish political and commercial relations with the Powers of Europe, has the honour to address, in pursuance of the orders of his Government, to his Excellency the Minister for Foreign Affairs, the following communication:

The report of the struggle which America has just maintained against Spain has resounded throughout the world. If it be admitted that ignorance may still exist respecting its marvellous details, no doubt can arise upon the immense results obtained by force of battles and victories. Oppressed America, enslaved for three centuries, has shaken off the yoke of the mother-country. Spain is no longer anything beyond the seas which wash the shores of the Peninsula.

In short, America has attained her majority; the increase of her population, the progress of intellect, a thousand new wants which the mother-country could not supply, rendered the crisis inevitable. Spain, depopulated, without a navy, without in-

¹ *Colombia: Being a Geographical, Statistical, Agricultural, Commercial and Political Account of that country.* London, 1822.

dustry—could she have retained longer under laws an entire continent, separated from her by the vast ocean? This independence then has done nothing but re-establish natural order, and has put a period to those infinite evils that such an ill-matched connection necessarily produced.

Spain, driven forever from the shores of America, has no means of returning there. Divided in its interior, destitute of influence without, deprived of the mines of *Mexico* and *Peru*, where could she obtain soldiers for distant expeditions? How could she meet the expenses of armaments necessary to reconquer what she has lost?

The ports, the harbours, and the fortified places, are in the power of the Americans; all the emblems of European supremacy have disappeared. The lions and the towers of Castile have given place to the colours of independence and liberty. In these vast countries, which were so long the source of Spanish greatness, and the theatre of foreign domination, there remains nothing but the scattered bones of the warriors who were sent to oppose themselves to our destinies. On every hand nascent states are forming, founded upon the same bases, equally favoured by nature, powerful in resources, confident in a future which cannot deceive them. The climate alone would protect them against rash invasions, if the tried courage of the inhabitants did not offer the best of all guarantees.

Amongst these states rises that of *Colombia*: twelve years of an implacable war could not subdue her, nor even slacken her march. *Colombia* has gathered the fruit of her noble exertions—she is free, sovereign and independent. Very soon all these new states will form a complete solemn association, and will fix with common accord the basis of that grand confederation, against which every foreign attack would be more absurd than dangerous. The coalition of the rest of the civilized world would, if it were possible, miscarry before this barrier.

Thus arrived at the point where she finds herself assimilated in fact and in right to all existing nations, wishing to live amicably with all people, America has only to obtain her recognition by the great family of which she forms a part, and to which her association cannot fail to offer many advantages.

It is with this view that the undersigned Minister Plenipotentiary of the Republic of *Colombia* has the honour to address his Excellency the Minister for Foreign Affairs, to communicate to him the intentions of his Government.

The Republic of *Colombia* is established, and its Government is in full activity. Spain no longer possesses anything upon its territory; and an army of 60,000 men, supported by an army of reserve of the same force, secures the existence of *Colombia*.

The Republic has every characteristic of all the recognized Governments upon earth; she does not ask of any of them by what means, or by what right, they have become what they are—they exist: this is all that concerns her to know. *Colombia* respects all that exists; she has a right to reciprocity; she demands it; and this demand is dictated neither by interest nor by fear; either one motive or the other is unworthy of a generous and free nation.

Who could make an attack upon her? Who could either add to her wealth or diminish it? Of whom has she need? And among all the nations known, where is there one that does not aspire to establish commercial relations with her? *Colombia* has an intimate consciousness of her strength. If she invites all nations to share the treasures which nature has lavished upon her, it is rather from a sentiment of generosity than a spirit of calculation.

Whoever will approach *Colombia* with pacific and benevolent intentions, may draw in full security from the common source of our riches. Such is the single basis of the relation which we are desirous to have with all the people of the earth—cordiality, liberty, reciprocity. The jealousies, the distrust which formerly separated the various nations, and armed them one against another, are banished from the legislation, as well as from the spirit of our fellow-citizens. We will never falsify the philanthropic principles for which blood has flowed in such abundance upon the field of battle and the scaffold.

But after having thus fulfilled all her duties with regard to other nations, *Colombia* owes it to herself to require that her own rights be equally recognized. *Colombia* holds her possessions from no person: she has originated herself, and reckons upon

her own means of support. Independent, strong, free, and invulnerable, she obeys no sentiment but that of general benevolence; she aspires to render the relations of all those who will treat with her easy, amicable, and useful.

An extensive and rich continent, inhabited by civilized people, cannot remain foreign to the rest of the world; it would always be difficult to conceive relations durable, advantageous, and such as the interest of commerce requires, between states of which the governments do not recognize each other reciprocally.

These unequivocal principles, these powerful considerations, impose upon the undersigned the obligation of communicating to his Excellency the Minister for Foreign Affairs the intentions of his Government, which are as under:—

1st, That the Government of *Colombia* acknowledges all existing Governments, whatever may have been their origin, or whatever their form.

2d, That it will not have communication except with such Governments as acknowledge *Colombia*.

3d, That commerce, admission to the harbours, and remaining in the country, with liberty and protection, are assured to the people who belong to any country that has acknowledged *Colombia*.

4th, That the same ports are shut, and privileges refused, to the people of nations that do not acknowledge *Colombia*.

5th, That there shall be a delay of admission to the ports of *Colombia* proportioned to the delay of acknowledgement.

6th, That measures will be taken to exclude merchandise from all countries that shall refuse to acknowledge, or delay acknowledging, the Republic of *Colombia*.

The undersigned, in communicating to his Excellency the sentiments and principles of his government urges the necessity of a prompt reply. His Excellency is too enlightened not to perceive the motives of such a demand on the part of a Government whose seat is at so great a distance; and which being occupied at the same moment with its interior organization, and the establishment of its foreign relations cannot admit either the delays or the minutae of proceeding, of which it believes that, according to ancient usage, it might avail itself in these new circum-

stances, and of which the novelty even is an additional motive for desiring the prompt solution, which *Colombia* looks for with equal confidence in the enlightened views of the Government of * * * and its own strength.

The undersigned eagerly embraces this opportunity of representing to his Excellency the Minister of Foreign Affairs the assurance of his highest consideration.

F. A. ZEA.

The Government of Costa Rica Levies Imposts Upon the Commerce of Matina. Doc. 250

SAN JOSÉ, June 4, 1823.¹

The citizen, José María Peralta, the superior Political Chief (*Jefe Politico Superior*) of *Costa Rica*, legally appointed for that province.

Whereas, the Most Excellent Superior Government, in the official communication of the 31st ultimo, advises me as follows:

"At the Special Session No. 15, Art. 4, this Superior Government decreed as follows:

"There having been taken into consideration the increased expense caused to the Treasury by the maintenance of a Military Commander and soldiers as coast-guards at the Port of *Matina* and the free traffic enjoyed by the inhabitants of this province with the *Moscós* (*Mosquitos* Indians) and the English, without up to the present time paying any duty in order to indemnify the province in any way for such expenses, it has been resolved, in accordance with Art. 26 of the statute, that a tariff shall be established under which collections shall be made from all merchants and travellers who trade in that Valley, in the following manner:

"Silver coin which is taken out of this province shall pay six percent., but if it is in bullion or manufactured three percent.

"Gold coin four percent; but if it is in bullion two percent.

"All goods imported shall pay according to the appraisement, which must be made in the Custom House in this city, three percent., except guns, which shall be free of any duty.

¹ National Archives of Costa Rica.

"A commissioner of probity, at the discretion of the Intendant, shall be placed in the house of *Reventazón* to take charge of the boatmen, with a salary of fifteen pesos monthly, being required to seize the money that may go without registry and to forward to the Custom House each month a report, besides paying there and keeping a separate account and registry of the passage of the muleteers and other persons, at the rate of a half-real per person for coming and the same for returning.

"Each *tercio* (bale) of cacao, clothing, steel or iron and other effects shall pay one real.

"Each bottle of spirits exported shall pay one real.

"And it is communicated to Your Worship in order that it may be published and circulated in the principal localities of the province for the information of all."

Hall of Sessions; San José, May 31, 1823.

MANUEL ALVARADO, President.

JOSÉ TOMÁS GÓMEZ, acting Secretary.

To the Señor Jefe Político.

Therefore, in order that it may be promptly and duly carried out, let it be published by public proclamation upon holidays and with the usual formalities in the town of *Heredia*, village of *Barba*, town of *Alajuela* and village of *Escasú*, making a record of its having thus been done and returning a certificate thereof.

Dated at *San José*, capital of *Costa Rica*, on the 4th day of the month of June, 1823, before me the undersigned Secretary, to which I certify.

JOSÉ MARÍA DE PERALTA.

BERNARDO CALVO, Secretary.

Law Concerning the Territorial Division of the Republic of Colombia. Doc 251

BOGOTÁ, June 25, 1824.

The Senate and House of Representatives of the Republic of *Colombia* in Congress.

Considering:

1. That the territory of the Republic ought to have a regular division in its departments and provinces, with respect to their extent and population, as that is desirable both for the easy and prompt administration of public affairs in all their branches, from which the welfare of the people springs:

2. That the division be convenient and suitable to the local circumstances, facilitating communication with the chiefs and those sworn for the constitutional meetings in the primary elections and electoral assemblies, for recourse to the Superior Authorities and for the success of prompt and good administration, governmental, economical and judicial:

3. That, finally, as the territorial division of the Republic must conform in all respects to the provisions of Articles 8, 20, 26 and 29 of the Constitution; therefore,

THEY DECREE:

ART. 1. The whole territory of *Colombia* is divided into twelve departments, which with their capitals are the following:

1. *Orinoco*, its capital is *Cumaná*.
2. *Venezuela*, its capital is *Caracas*.
3. *Apure*, its capital is *Barinas*.
4. *Zulia*, its capital is *Maracaibo*.
5. *Boyacá*, its capital is *Tunja*.
6. *Cundinamarca*, its capital is *Bogotá*.
7. *Magdalena*, its capital is *Cartagena*.
8. *Cauca*, its capital is *Popayán*.
9. *The Isthmus*, its capital is *Panama*.
10. *Ecuador*, its capital is *Quito*.
11. *Asuai*, its capital is *Cuenca*.
12. *Guayaquil*, its capital is *Guayaquil*.

These twelve departments shall embrace the provinces and cantons following:

* * * * *
 ART. 10. The department of the *Isthmus* embraces the provinces, 1, of *Panama* its capital *Panama*; and 2, *Veragua*, its capital *Veragua*.

SEC. 1. The cantons of the Province of *Panama* are: 1, *Panama*; 2, *Portobello*; 3, *Chorreras*; 4, *Natá*; 5, *Los Santos*, and 6, *Yavisa*.

SEC. 2. The cantons of the Province of *Veragua* and their capital towns are: 1. *Santiago de Veragua*; 2. *Mesa*; 3. *Alanje*; 4. *Gaimí*¹; and its capital town is *Remedios*.

* * * * *
 ART. 17. The Executive Power shall fix provisionally the boundaries of the cantons created by this law. Those of the provinces and departments shall be those at present known or which may be designated by it. The Executive Power, however, shall prepare the maps and obtain the information and knowledge, so that the same being forwarded to Congress, the legislature may designate definitively the limits of the departments, provinces and cantons.

* * * * *
 Given in Bogota, June 23, 1824.

The President of the Senate, José María del Real.

The Vice-President of the House of Representatives, José Rafael Mosquera.

The Secretary of the Senate, Antonio José Caro.

The Deputy Secretary of the House of Representatives, José Joaquín Suárez.

Palace of the Government at Bogota, June 25, 1824.

Let it be executed: Francisco de Paula Santander. By H. E. the Vice-President of the Republic in charge of the Executive Power.

The Secretary of State of the Department of Interior, José Manuel Restrepo.

¹ The original text says *Gaimí* instead of *Guaimí*.

Decree of the Government of Colombia, July 5, 1824, Arrogating to Itself Rights over the Central American Territory of the Coasts of Mosquitos. Doc. 252

BOGOTÁ, July 5, 1824.

Francisco de Paula Santander, General of Division of the Armies of *Colombia*, Vice-President of the Republic, etc.

Whereas it has come to the notice of the Government of the Republic of *Colombia* that various persons resident in foreign countries have planned to make settlements in a certain territory known as *Poyais*, situated on the *Coast of Mosquitos*; and considering that such undertakings by unauthorized adventures may be prejudicial to the interests of the Republic and to themselves, it has therefore been determined to decree, under the provisions of Article 5 of the Fundamental Law and it is decreed, as follows:

ART. 1. There is declared illegal every enterprise which is undertaken to colonize any point of that portion of the *Coast of Mosquitos* from *Cape Gracias á Dios*, inclusive, toward the *River Chagres*, which belongs in dominion and property to the Republic of *Colombia*, in virtue of the formal declaration made at San Lorenzo on November 3, 1803, by which there was definitively added said portion of the *Coast of Mosquitos* to the old Viceroyalty of *New Granada*, separating it from the jurisdiction of the Captaincy-General of *Guatemala*, to which it previously belonged.

ART. 2. It is likewise declared that all persons who, in contravention of the foregoing Article, shall attempt to found colonies or foreign settlements on the said *Coast of Mosquitos*, as far as the *Cape Gracias á Dios*, inclusive, shall be subject to the penalties incurred by those who usurp by force the national property and disturb its interior peace and quiet, provided there shall have been no previous approval and consent by the Government in conformity to the laws.

ART. 3. It is also declared that there not having been granted to any person, within or without the Republic, the approval and consent necessary to colonize the *Coast of Mosquitos*, which is under its immediate jurisdiction, or part of it, any person or persons, citizens or foreigners, who shall undertake to do so, shall

be thereby subject to the consequences to which their arbitrary and unauthorized conduct exposes them.

ART. 4. The Secretary of State of the Department of Foreign Affairs shall be charged with the execution of this decree.

Done, signed, sealed with the seal of the Republic and countersigned by the Secretary of State of Foreign Affairs, in the capital of Bogota, July 5, 1824.

FRANCISCO DE PAULA SANTANDER.

The Secretary of State
of Foreign Affairs,
PEDRO GUAL.

The Chief of the State of Costa Rica to the Minister of the Republic of Central America in Colombia, Protesting Against the Usurpatory Decree of the Colombian Government of July 5, 1824. Doc. 253

SAN JOSÉ, November 17, 1824.¹

HEADSHIP OF COSTA RICA.

To the citizen Pedro Molina, Minister Plenipotentiary in the Southern Republics.

In No. 4 of "El Patriotismo," a public paper of *Guayaquil*, of the 25th of September of the present year, appears on back of folio 15 the following notable statement :

"By a decree of the Government of July 5, the territory of *Poyais* in the *Mosquito Coast*, from *Gracias á Dios* inclusive to the *River Chagres*, has been declared an integral part of *Colombia* in virtue of the formal declaration made at San Lorenzo in 1803, by which the said part was added to the ancient Viceroyalty of *New Granada* separating it from *Guatemala*. Consequently there has been declared as illegal every enterprise directed to colonize any part of that coast and those who might attempt to do it as having incurred the penalties edicted against usurpers of national property and perturbers of interior peace."

Besides, that paper gives the information that this (*Poyais*) is the country in which, it is asserted, MacGregor has established a kingdom and proclaimed himself king of *Mosquitos*.

The context of the said decree is very doubtful and odd, because the territory to which it refers comprises, besides the *Coast of Mosquitos* to the north, the river of the port of *San Juan* in the State of *Nicaragua* and those of *Matina* and *Bocatoro* or *Estrella* in this State (*Costa Rica*). Therefore, it must be observed that whether at sometime the Spanish Government declared that coast dependent on the Government of *New Granada*, such a measure must be considered as being as null and as violent as that by which *New Granada* was depending on Spain, both because the said coast AS FAR AS THE ESCUDO DE VERAGUA, according to its

¹ National Archives of Costa Rica. Copy-book of the orders of the first Chief of the State, year 1824.

topographical situation and natural geography, belongs to the part of the Continent or territory of our Republic of the Centre (of America), and for the reason that the *Coast of Mosquitos* has remained independent in fact. The coast of the port and river of *San Juan* has depended on the State of *Nicaragua* since immemorial time, as it is indicated by nature, the same as the ports of *Matina* and *Estrella* have depended on this of *Costa Rica*, the former being the one that has been constantly used in this part of the Republic on the north and wherein the inhabitants of this State have their establishments and cacao plantations, and finally the same that by the years 1812 and 1813 was opened by the Cortes as a port of this province.

Respecting the islands I have no data save that of *San Andrés* was subjected to the Government of *Guatemala* and lately to that of *Santa Fé*; but whatever the case may be it is clear that the supposed decree of that Government (of *Colombia*) as far as the continental spots of the coast are concerned, attacks the integrality of this territory and indirectly the independence of the Republic. Hereby and whilst the Supreme Executive Power, being informed of the case give the desirable orders to you, I have been pleased to communicate these observations so as you may use them as you deem best in the exercise of the high office of which you are in charge.

God, Union, Liberty.

San José, November 17, 1824.

JUAN MORA.

**Doc. 254 Constitution of the Federal Republic of Central America,
November 22, 1824.**

TITLE I.

Sec 2. Of the Territory.

* * * * *

SEC. 5. The territory of the Republic is the same that was formerly embraced in the old *Kingdom of Guatemala*, with the exception, at present, of the Province of *Chiapas*.

ART. 6. The Federation is now composed of five States, which

are: *Costa Rica, Nicaragua, Honduras, Salvador, and Guatemala*. The Province of *Chiapas* will be held as a State in the Federation when it freely joins.

ART. 7. The demarcation of the territory of the States shall be made by a constitutional law, using the requisite data.

* * * * *

Limits of Costa Rica, According to the Fundamental Law Doc. 255 of the State, of January 21, 1825.

Chapter 2. Of the State.

ART. 11. The State of *Costa Rica* is composed of all its inhabitants.

ART. 12. It is and shall always be free and independent of Spain, *Mexico* and any other power or foreign government and it shall never be the patrimony of any family or person.

ART. 13. It is and shall be one of those that form the Federation of the *Centre of America*.

ART. 14. The Sovereignty of the State is essentially in itself, in everything which relates to its Government and interior administration.

ART. 15. The territory of the State is now extended from West to East, from the River *Salto*, which divides it from *Nicaragua*, to the River *Chiriquí*, the end of the Republic of *Colombia*; and North-South from one Sea to the other, its limits on the North being at the mouth of the River *San Juan* and the *Escudo de Veragua*, and on the South at the outlet of the River *Alvarado* and that of *Chiriquí*.

ART. 16. The territory of the State is divided into Departments: each Department into Districts and the Districts into Villages: a special Law will regulate the division.

* * * * *

Doc. 256 **Extract from the Minutes of a Verbal Conference with the Minister of the United Provinces of Central America, on the 4th Day of March, 1825, in Pursuance of a Prior Invitation.**

BOGOTÁ, March 4, 1825.

Señor Molina having arrived at the hour appointed, in company with his secretary, Señor Gual said to him that in order to shorten the negotiations which it was desired to undertake and take advantage of the short time left for the conclusion of the present legislative sessions, he had taken the liberty of inviting him to a verbal conference.

"Your note of yesterday," said Señor Gual, "required quite a long answer on account of the variety of matters which it contained."

Señor Molina replied that the way proposed seemed to him a very advantageous one in order to avoid delays. In this fashion they took up an analysis of the points referred to in the note of the second day.

"The treaty which was contained in it," said Señor Gual, "has no definite character, for sometimes it would appear there were two belligerents who were fighting against the same enemy, and very often it would seem as if it were desired on behalf of the *United Provinces* to preserve a neutral position toward *Colombia*, considered as a Power at war. This is clearly shown in Art. I, in which there is only proposed a defensive alliance, simply, without stating against whom; and by Article 15, while contracting an offensive alliance, the *casus foederis* is established in case it should be necessary to make war against Powers beyond the seas. Why, then, is this case made a conditional one, as you have said to me yourself (Señor Molina to Señor Gual), in your reply of the 5th of January last, that the *United Provinces* were at war with Spain?"

Señor Molina said that his Government so considered it, but that, as Spain was not actually making war upon its territory, he thought that the defensive alliance would be sufficient. After some observations on one side and the other, Señor Molina agreed that the treaty they were about to celebrate should bear the

character of having been made between two Powers at war against a common enemy, and that moreover the same principles would be adhered to of union, league and confederation, as had already been adopted by *Colombia, Mexico, Chile and Peru*.

Articles 3 and 4 were read and it was agreed that they were of no value, because from the very fact of being in negotiation with a Minister already recognised, it was clearly to be deduced that each of the parties had recognised the rank that they actually had.

Article 5 was read and Señor Gual objected to its adoption as being contrary to the legitimate titles of *Colombia*, and in proof of this he showed to Señor Molina the original *Cédula* of November 30, 1803, by which the *Coast of Mosquitos* as far as Cape *Gracias á Dios* was added to the Viceroyalty of *New Granada*, and also the Executive Decree of July 5, 1824, against the enterprises of unauthorized adventurers upon said coast, without taking into account many other acts by which trade with the barbarians living in it were regulated. He added also that the Government of *Colombia* had resolved not to give up its rights, except in case of mutual concessions being made by a special boundary treaty, and that if Señor Molina had instructions from his Government to take up such negotiations, he would not hesitate to at once say that it is very possible that *Colombia* would agree to the establishment of its division line on that side, from the mouth of the *River San Juan* running into the Lake of *Nicaragua*, where a point would be selected toward the South to which to continue tracing the boundaries until the Gulf of *Dulce* was reached in the Pacific Ocean. In this way, he said, there would be left to *Guatemala* the larger and the most populous part of the Province of *Costa Rica* on the South, and the whole portion of the *Coast of Mosquitos*, from the North bank of the *River San Juan* up-stream, it being then stipulated that the navigation of said river and Lake of *Nicaragua* should be common to both parties. *Colombia* would obtain only the advantage of this navigation to the North, the parcel of territory embraced between the interior division line, from the lake toward the Gulf of *Dulce*, and that of having some natural boundaries

for the most part, which is its principal interest in order to avoid all dispute in the future.

Señor Molina answered that he did not have instructions for this negotiation.

"Well, then," responded Señor Gual, "as to boundaries it is necessary to hold to the *uti possidetis* of 1810 or 1820, as may be desired."

Señor Molina having acquiesced, Señor Gual was charged with preparing the proper articles for the time of making the project.

This matter being arranged, it was agreed that Articles 7 and 8 were inopportune, in consequence of the discarding of the 5th which had already been done.

This is a faithful transcript.

L.LERAS.

Doc. 257 Treaty of Perpetual Union, League, and Confederation, Between the Republic of Colombia and the United Provinces of Central America.

BOGOTA, March 15, 1825.¹

In the name of God, Author and Legislator of the Universe:

The Republic of *Colombia*, and the *United Provinces of Central America*, desirous of putting a speedy termination to the calamitous war in which they are engaged with the King of Spain; and both contracting Powers being disposed to unite all their resources, with their naval and land forces, and to indentify their principles and interests in peace and war, have resolved to form a treaty of perpetual union, league, and confederation, which shall forever secure to them the advantages of liberty and independence.

For this desirable object, PEDRO GUAL, Minister of Foreign Relations of the Republic of *Colombia*, and PEDRO MOLINA, Plenipotenciary of the *United Provinces of Central America*, being respectively furnished with full powers, and in due form, have agreed to the following articles:

1. The Republic of *Colombia*, and the *United Provinces of*

¹ Extract from Appendix of Congressional Debates, Vol. II, p. 50.

Central America, bind themselves to a perpetual union, league, and confederation, in peace and war, to defend their independence of the Spanish nation, and every other, by naval and land forces, and thus to secure their mutual prosperity, to promote harmony and good intelligence with each other, and with other nations.

2. The Republic of *Colombia*, and the *Provinces of Central America*, therefore, promise, and freely contract, a firm and constant friendship, and a permanent alliance, which shall be intimate and binding for their common defence, the security of their independence and liberty, and for their reciprocal and general good, they obliged themselves mutually to aid in repelling every attack or invasion from the enemies of either, that may in any wise affect their political existence.

3. That the objects contemplated by the preceding articles may be carried into effect, the Republic of *Colombia* engages to aid the *United Provinces of Central America* with that amount of its disposable naval and land forces, which shall be determined by the Congress of Plenipotentiaries, to be mentioned hereafter.

4. The *United Provinces of Central America* shall, in like manner, aid the Republic of *Colombia* with their disposable naval and land forces, or its equivalent, which shall be fixed by the aforesaid Congress.

5. The contracting parties guaranty, mutually, *the integrity of their respective territories*, as they *existed* prior to the present war of independence, against the designs and invasions of the subjects of the King of Spain and his adherents.

6. In case, therefore, of sudden invasion, each party shall be at liberty to act against the enemy, within the territory of the other, whenever circumstances will not allow of a communication with the Government to which the sovereignty of the country invaded *belongs*. But the party so acting shall observe, and cause to be observed, the *status, ordinances, and laws, of the State*, as far as circumstances may permit; and cause its Government to be *respected and obeyed*. The expenses of these operations, and whatever *may be* incurred in consequence of articles third and fourth, shall be settled by separated conventions, and paid one year after the conclusion of the present war.

7. The Republic of *Colombia*, and the *United Provinces of Central America*, promise, and oblige themselves, formally, to

respect the limits of each other as they now exist; and agree, as soon as circumstances will permit, to settle, in a friendly manner, by a special convention, *the line of demarcation between the two States*, or whenever one of the parties shall be disposed to enter on this negotiation.

8. To facilitate the progress and happy termination of the negotiation *about limits*, as in the preceding article, both parties shall be at liberty to appoint Commissioners, who shall survey the *whole frontier*, for the purpose of *fixing* the boundary *line*. The local authorities shall not offer them the least obstruction, but shall, on the contrary, furnish every protection and aid for the proper execution of their object, provided they exhibit the passport of their Governments, authorizing their operations.

9. The contracting parties, desirous, in the mean time, of providing against the evils that may arise *to both*, from unauthorized colonies of adventurers, on *that part of the Mosquito shore*, between *Cape Gracias á Dios* and the *River Chagres*, promise, and oblige themselves to employ their naval and land forces against any individual or individuals, who shall attempt to form establishments on the *above coast*, without having previously obtained permission from the Government to which *it may belong*.

10. To make the union and alliance contracted by the present convention more intimate and close, it is moreover stipulated and agreed, that citizens and inhabitants of each State shall have free entrance to, and departure from, the ports and territories of the other, and shall enjoy therein all the civil rights and privileges of traffic and commerce; but they shall be subject to the same duties, imposts, and restrictions, as the citizens and inhabitants of the State themselves.

11. In consequence of this, their vessels and cargoes, composed of productions or merchandise, domestic or foreign, and registered at the Custom-houses of either of the contracting parties, shall not pay, in the ports of the other, greater duties of importation, exportation, anchorage, or tonnage, than those already established, or which may be established for its own vessels and cargoes; that is to say, vessels and cargoes from *Colombia* shall pay the same duty of importation, exportation, anchorage, and tonnage, in the ports of the *United Provinces of Central America*, as if they belong to these United Provinces; and those from the

United Provinces of Central America, shall pay, in the ports of *Colombia*, the same duty as *colombians*.

12. The contracting parties oblige themselves to afford every aid in their power to the merchant and national vessels of each other that may go into port to repair any damages they may have received. They shall there be at liberty to refit, increase their armaments and crews, so as to be able to continue their voyage or cruise. The expense of these repairs shall be sustained by the State or individuals to whom they *may belong*.

13. To suppress the shameful abuses that may be committed on high seas, by armed privateers, upon neutral and the national commerce, the contracting parties agree to extend the jurisdiction of their maritime courts to the privateers, and their prizes of each other indiscriminately, whenever they shall not be able to reach the port of their departure, or suspicions *may be* excited of their having committed abuses against the commerce of neutral nations, with whom both States desire to cultivate lasting harmony and good intelligence.

14. To prevent all disorder in the army and navy of each other, the contracting parties moreover agree, that, if any soldiers or sailors shall desert from the service of one to the territory of the other, even if the latter belong to merchant vessels, they shall be immediately restored by the tribunal or authority within whose jurisdiction they *may be found*; provided, the reclamation of the commander, or of the Captain of the vessel, as the case *may be*, shall previously be made, giving a description of the individual or individuals, with their names, and that of the corps or vessel from which they *may have* deserted. Until the demand be made, in form, they shall be confined in the public prisons.

15. To cement the bonds of future union between the two States, and remove every difficulty that *may occur*, to interrupt their good correspondence and harmony, there shall be formed a Congress composed of two Plenipotentiaries from each contracting party, who shall be appointed with the same formalities as are required by established usages in the commission of Ministers of equal character among other nations.

16. The contracting parties oblige themselves to interpose their good offices with the other *ci-devant* Spanish States of America,

to induce them to unite in this compact of perpetual union, league, and confederation.

17. As soon as the great and important object shall be accomplished, a general Congress shall be assembled, composed of Plenipotentiaries from the American States, for the purpose of establishing, on a more solid basis, the intimate relations which should exist between them all, individually and collectively, and that it *may serve* as a council in great events, as a point of union in common danger, as faithful interpreter of public treaties when difficulties *may arise*, and as an arbitrator and conciliator in their disputes and differences.

18. The compact of union, league, and confederation, shall not affect, in any manner, the exercise of the national sovereignty of the contracting parties, in regard to their laws and the establishment and form of their respective Governments, nor in regard to their relation with other nations; but they bind themselves, irrevocably, not to accede to any demands of indemnity or tribute from the Spanish Government, or any other in its name, for the loss of its supremacy over these countries. They also bind themselves not to enter into any treaty with Spain, or any other nation, that shall in the least prejudice their independence, but to maintain their mutual interests on all occasions, with the dignity and energy of free, independent, friendly, and confederate nations.

19. As the Isthmus of *Panama* is an integral part of *Colombia*, and the point best suited for this august assembly, this Republic freely engages to afford to the Plenipotentiaries of the American States composing it all the attentions which are required by hospitality among sister States, and by the sacred and inviolable character of their persons.

20. The *United Provinces of Central America* oblige themselves, in like manner, whenever the events of war, or by the voice of a majority of the American States, the Congress shall assemble within their territory, at the Isthmus of *Panama*, or any point of their territory which, from its central position, between the States from North and South America, *may be fixed* on as best suited for this most interesting object.

21. The Republic of *Colombia* and the *United Provinces of*

Central America, desirous of avoiding all interpretation contrary to their intentions, declare, that any advantages which either Power *may gain* from the preceding stipulations, are, and shall be, considered as compensation for the obligations they contract in the present compact of perpetual union, league, and confederation.

22. The present perpetual treaty of union, league and confederation, shall be ratified by the President or Vice-President of the Republic of *Colombia*, charged with the Executive power, with the consent and approbation of the Congress, within thirty days; and by the Government of the *United Provinces of Central America*, as early as possible, regarding the distance; and the ratifications shall be exchanged in the City of *Guatemala*, within six months from the date hereof, or sooner, if possible.

In faith of which, we, the Plenipotentiaries of the Republic of *Colombia*, and of the *United Provinces of Central America*, have signed and sealed the present, in the City of *Bogota*, on this fifteenth day of March, in the year of our Lord 1825, fifteenth of Colombian Independence, and fifth of that of the United Provinces of *Central America*.

(L. S.)

PEDRO GUAL.

(L. S.)

PEDRO MOLINA.

Ratified by the Vice-President of *Colombia*, Francisco De P. Santander, on the twelfth day of April, 1825, and fifteenth of Independence, with the previous consent and approbation of the Congress.

Doc. 258 Decree of the Federal Congress of Central America in 1825, Approving the Annexation of Nicoya to Costa Rica.

GUATEMALA, December 9, 1825.

The Federal Congress of the Republic of *Central America*, taking into consideration, firstly, the reiterated petitions of the authorities and municipal bodies of the towns of the district of *Nicoya*, asking for their separation from *Nicaragua* and their annexation to *Costa Rica*; and secondly, that the said towns and people actually annexed themselves to *Costa Rica* at the time in which the political troubles of *Nicaragua* took place; and thirdly, the topographical situation of the same district, has been pleased to decree, and does hereby DECREE:

ART. 1. For the time being, and until the demarcation of the territory of each State provided by Art. VII of the Constitution is made, the district of *Nicoya* shall continue to be separated from *Nicaragua* and annexed to *Costa Rica*.

ART. 2. In consequence thereof, the district of *Nicoya* shall recognize its dependence upon the authorities of *Costa Rica*, and shall have, in the Legislature of the latter, such representation as corresponds to it.

ART. 3. This decree shall be communicated to the Assemblies of *Nicaragua* and *Costa Rica*.

Let it pass to the Senate.

Given at *Guatemala* December 9, 1825.

From the General Secretary of the State of Costa Rica to the Minister of Foreign Relations of the Federal Republic of Central America, Concerning the Divisional Line with the Republic of Colombia. Doc. 259

SAN JOSÉ, June 18, 1826.¹

As soon as the Government of this State received the order from your Ministry of May of the preceding year, in which a report was asked for concerning the frontier boundaries of *Costa Rica* with the Republic of Colombia and its divisional line with *Veraguas*, suggesting that in the State Assembly there should be found data concerning this matter, on account of it having been treated in the Fundamental Law, I forwarded it to the same with petition from that date; but as there appears to have been no result, nor can any be sought for at present as it is not in session, the Chief of State has given some of the possible explanations, which are doubtless those which led to the Art. 15 in our Fundamental Law, in which the boundaries assigned with *Colombia* are the River *Chiriquí* on the land,—in the Ocean the outlet of the same river, which is at the Point called *Burica*; and in the Atlantic the *Escudo de Veraguas*.

Those boundaries, having had in their favor a constant tradition, were designated with the support of the opinion of Don Domingo Juarros, who in Chapter 1 of his work the "History of Guatemala," gives them as the same, and also Dr. José Mariano Méndez, who in the Memorial which he presented to the Spanish Cortes in the year 1821 expresses himself in the same manner.

In the Archives of this Government there do not exist any documents which settle this matter in a conclusive way; but it is unquestionable that the first city of this State was located at the Port of *Estrella*, on the North Sea, known at that time by the name of *Boca del Toro*; which is well proved by the closeness of this point to the *Escudo de Veraguas*, which has always been recognized as the division between *Guatemala* and *Colombia*. So far as regards the boundary which has been designated in the River *Chiriquí*, it has been held as such until it emptied into the South Sea, without dispute, and the inhabitants of *Chiriquí* have

¹ Archives of the Ministry of Foreign Relations of Costa Rica.

even testified to it, one instance being a resident of that locality who sought to establish a cattle farm in the region named *Cañas Gordas*, which is on this side of the river mentioned, on its banks, and who came to this Government asking that it be sold to him.

All this I have the honor to state to you by order of the head of this State, in compliance with the order of the Ministry of the 22nd of the last month.

May God, etc.

San José, June 18, 1826.

MANUEL AGUILAR.

To the Minister of Foreign Relations.

Doc. 260 **The Minister Plenipotentiary of Colombia to the Secretary of State of the Republic of Central America Concerning the Natural Limits of the Two Americas.**¹

REPUBLIC OF COLOMBIA.

Legation of the Republic of Colombia near the Government of the United Provinces of Central America. No. 24.

GUATEMALA, September 4, 1826.

To the Secretary of State and of the Department of Foreign Relations.

SIR:

Desirous of having an exact knowledge of the line that divides the territory of the Republic of *Central America* from that of *Colombia*, for the special boundary convention of which I have charge, I beg Your Excellency to be good enough to advise me what the natural limits are between the two Republics which have been so reputed until the present time.

With sentiments of perfect consideration and respect, I repeat that I am of Y. E. the very obedient servant,

A. MORALES.

¹ Archives of the Ministry of Foreign Relations of Guatemala.

The Secretary of State of Central America to the Minister of Colombia. Doc. 261

GUATEMALA, September 9, 1826.

To the Honorable Señor Antonio Morales, Envoy, etc.

I had the honor to receive the very esteemed note of Y. E. of the 4th instant, in which you asked for information concerning the limits which have been so reputed up to the present as natural ones between the Republic of *Colombia* and that of *Central America*.

I began to gather the data to be had in the office under my charge when there occurred the matters that are notorious to Y. E., imperatively demanding the attention of this Government, which have required of me double labor to take care of the incidents of this kind.

This is the reason, Mr. Minister, why I have been prevented from giving due attention to the note of Y. E., but I shall do so as soon as I am able to conclude the urgent matters which now press upon me.

Permit me to conclude this statement with sincere assurances of appreciation and respect by which I am animated toward Y. E.

Your obedient humble servant,

(A flourish.)

The Secretary of State of Central America to the Honorable Sr. Antonio Morales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Colombia. Doc 262

GUATAMALA, January 8, 1827.¹

SIR:

In compliance with the wishes of Y. E. communicated to me in your esteemed favor No. 24, to obtain information as to the natural boundaries which separate the territory of the Republic of *Central America* from that of *Colombia*, I have the honor to inform Y. E. that the *Escudo de Veraguas* in the North Sea, the mouth of the River *Boruca* in the Province of *Costa Rica* in

¹ Archives of the Ministry of Foreign Relations of Guatemala.

that of the South, and the district of *Chiriquí* in that of *Veraguas* on the land, are the points which bound on the South-east the territory of *Central America*; in such a way that the line which crosses these three points, is the divisional one of the territory of the two Republics.

I have the honor to reiterate the assurances of the high consideration and profound respect with which I am of Y. E. the obedient and humble servant,

(A flourish.)

Doc. 263 Resolution of the President of the Republic of Central America.

NATIONAL PALACE OF GUATEMALA, January 8, 1827.¹

The President of the Republic, in view of this communication, after having examined all the data that could afford information as to what are the limits of the territory of the Republic on the side that borders with that of *Colombia*; having before him the geographical chart and the laws contained in Book 2, Title 15, of the *Recopilación de Indias*, and finally the *Compendio de la historia de la ciudad de Guatemala*, (Compendium of the History of the City of Guatemala), by the Br. D. Domingo Juarros, a work written having in view all the data there was concerning the matter, resolves:

That the Minister Plenipotentiary of *Colombia* be answered, stating to him: that the *Escudo de Veraguas* in the North Sea, the mouth of the River *Boruca*² in the Province of *Costa Rica* in that of the South, and the district of *Chiriquí* in that of *Veraguas* on the land, are the points that bound on the South-east the territory of *Central America*, in such a manner that the line which crosses these three points is the division between its territory and that of *Colombia*. These are the boundaries fixed by the said historian Juarros in the compendium mentioned.

(A flourish.)

The Secretary of State, Juan Fco. de Sosa.

¹ *Supra*.

² *Boruca* for *Burica*.

Decree of the Government of the Republic of Central America Closing Several Ports of the Republic, Among These the Port of San Juan de Nicaragua. Doc. 264

GUATEMALA, September 26, 1827.¹

Ministry of War and Marine:

THE VICE PRESIDENT OF THE REPUBLIC, invested with the Supreme Executive Power, has addressed to me the following decree:

CONSIDERING,

That at the port of *San Juan del Norte*, of this Republic, and at those of *Union*, (a) *Conchagua* and *Libertad*, in the South of the same, vessels arrive that carry away products belonging to the Nation without the consent of the Government, and introduce arms and munitions of war into the opposing State of *Salvador* and some *pueblos* of *Nicaragua*, which acts hinder the re-establishment of constitutional order, lending aid to the internal dissensions of the Republic;

That it is the undisputed right of independent governments to regulate their commerce as may be required by the circumstances as to the security and tranquillity of their territory at home and abroad;

DECREES:

1. The ports of *Union*, (a) *Conchagua* and *Libertad*, in the State of *Salvador*, until that State lays down arms and is subordinated to the authority of the National Government, are closed to foreign commerce and to coasting trade.

2. The vessels that sail toward the port of *Realejo* must stop before that of *Acajutla*, satisfy the duties there and ask for permit to their destination, which will be issued by the military commandant, if they do not carry arms or munitions of war on board.

3. While the internal dissensions of the State of *Nicaragua* continue the port of *S. Juan del Norte* shall likewise be closed.

¹ Archives of the Ministry of Foreign Relations of Costa Rica.

4. Those who infringe this provision, after being notified by the commandants of coastguard vessels or by any official or employee of the Republic, shall be subject to the penalties established by the general marine ordinance, the coastguard regulations and laws in force.

5. Without prejudice to its prompt and effectual execution, this Decree is subject to the consideration of the legislative body.

Done in the National Palace in *Guatemala*, September 26, 1827.

MARIANO DE BELTRANENA.

To the Secretary of State and Department of War and Marine.
And by order of the Vice President of the Republic I communicate it to you for your information and fulfillment.

God, Union and Liberty.

National Palace of *Guatemala*, September 26, 1827.

MANUEL ZEA.

To the Citizen Chief of the State of *Costa Rica*.

SECRETARYSHIP OF FOREIGN RELATIONS,

The Secretary General of State of Costa Rica to Colonel Juan Galindo, Concerning a Map of Central America and the Port of Bocas del Toro.¹ Doc. 265

SAN JOSÉ, November 18, 1834.

I brought to the knowledge of my Government your note of the 7th of October last, in order to arouse interest in furnishing you with approximate data as to this State, which might be used by you in the project for the preparation and engraving of a General Map of *Central America*. In view of this, I have been notified to let you know that at present it is not possible to forward any other data concerning this matter than that which is embraced in the addition to the printed work, "*Lecciones de Geografía*" (Geographical Lessons), published from his own knowledge by a native of the country; but that as soon as it can gather together further data or it shall be found practicable to commission some intelligent person to make observations in this territory, the new information which may be acquired will be sent to you, concerning which the Government will duly take the measures that may be within its reach.

My Government has noted with especial appreciation the report concerning the Port called "*Bocas del Toro*," and it deems your effort very praiseworthy to give to the civilized world a complete idea of beautiful *Central America*, so that it may appear among the nations in that character.

I have been desired to advise you in this way in answer to your note mentioned, sending to you at the same time the printed work referred to, and with the assurances of my distinguished consideration and respect * * *

May God, etc.

November 18, 1834.

JOAQUÍN BERNARDO CALVO.

¹ Archives of the Ministry of Foreign Relations of Costa Rica.

Doc. 266 The Secretary General of State of Costa Rica, to the Governor of the Province of Veragua, Concerning the Boundaries of the Two Countries.

ALAJUELA, March 17, 1835.

The undersigned, in charge of the Secretaryship General of this State, has the honor to advise Your Excellency of the receipt of your esteemed note of the 12th of January last, and annexed documents, relating to the question which has been raised concerning the boundaries between this and your Republic, by reason of the establishment which the citizen Joaquín Chaves, a subject of this Government, has undertaken to locate upon the coast of *Burica* * * *

The Government of the undersigned has devoted to the affair the consideration which it deserves and in consequence thereof it has provided that a report be made with the documents referred to and by the next post to the Supreme Executive Power of the Republic, so that, it being within its cognizance, it may be pleased to arrange in a manner which shall leave no uncertainty as to the boundaries of the territory of *Central America* adjoining that of *New Granada*. And in giving you this information in response to your note referred to, the Government of the undersigned has deemed it proper to state, that in its opinion there has been on the part of Your Excellency a mistake in the division line between the territories of the two Republics; since the boundaries of the ancient Captaincy-General of *Guatemala* and the Viceroyalty of *New Granada* were: on the South the *Punta de Burica*, and on the North the *Escudo de Veragua*, which points were recognized by the Government of *Colombia* about the year 1821,¹ from which it follows that the coast referred to belongs to the territory of this Republic.

This opinion is not a definitive one, nor on account of it can the ties which bind the two sister and friendly nations be disregarded, but with the object of its settlement the Government of *Central America* will take up the matter in due course and will be ter-

¹ This reference should be to the year 1825 and to the negotiations for the Molina-Gual Treaty of March 25 in that year, between Central America and Colombia.

minated by a friendly arrangement, as soon as circumstances may permit. * * *

God, Union, Liberty.

Alajuela, March 17, 1835.

JOAQUÍN BERNARDO CALVO.

Decree of the Government of New Granada, Organizing Provisionally the Political Administration of Bocas del Toro. Doc. 267

MAY 30, 1836.

The Senate and House of Representatives of *New Granada*, in Congress assembled:

Having seen the reports transmitted to Congress by the Executive Power concerning the existence of numerous foreign settlers in the Islands known as "*Bocas del Toro*" and on the coast of the Province of *Veragua*, which belongs to the dominion of the Republic, and

Considering:

1. The urgent necessity that there is of undertaking to develop the establishments for agriculture, fishery and commerce, the foundation of which has already been begun in those islands, affording to their settlers the advantages of a regulated civil administration and assuring at the same time the proprietorship of the Republic over this territory.

2. That it not being possible to issue as to this subject a complete and definitive provision for the erection of a new Canton in that territory, in accordance with the requirements of the Constitution, it is desirable and proper now to adopt the provisional measures that are most opportune.

DECREE.

ART. 1. Until the political organization is determined, with the constitutional formalities which must legislatively be given to the territory of "*Bocas del Toro*," bounded, on the North by the coast which runs from the River *Concepción* to that of *Culebras*, in the Province of *Veraguas*; on the North-west by the frontier line which separates on that side the Republic of *New Granada*

from that of *Central America*; on the South by the crest of the Cordillera of *Chiriquí*, following its direction as far as the place called *Guayabo*; and from there by a line which proceeds by the banks of the River *Concepción*, and continuing down-stream to its mouth,—there is established provisionally on the Island called "*Boca del Toro*," upon the channel of the *Dragón*, an official with the title of Political Chief (*Jefe Político*) who shall have his residence there, who shall be subject to the authority of the Governor and whose jurisdiction shall extend to all the territory included within the boundaries stated.

ART. 2. The settlement of the place called "*Mineral*," included within the boundaries mentioned in the preceding Article is erected into a parish district, where a parish priest shall be located, who shall have a revenue of Four hundred pesos, which for the present shall be paid from the national revenues.

Given at *Bogota*, May 29, 1836.

The President of the Senate, Valentín Troez.

The Secretary of the Senate, Francisco de Paula Torres.

The President of the House of Representatives, Juan Clímaco Ordóñez.

The Deputy Secretary of the House of Representatives, Pastor Ospina.

Bogota, May 30, 1836.

Let it be executed and published.

FRANCISCO DE PAULA SANTANDER. (L. S.)

For H. E. the President of the Republic, the Secretary of Interior and of Foreign Affairs,

LINO DE POMBO.

**Decree Authorizing the Executive Power of Costa Rica to Doc. 268¹
Undertake the Opening of a Road to the Bay of Boca-Toro (Almirante).**

AUGUST 31, 1836.¹

The Supreme Head of the Free State of Costa Rica:

Whereas, the Assembly has decreed and the Council has sanctioned the following order:

The Legislature at its session this day resolved to authorize the Supreme Head to promote and assist in such a way as the means of the State may permit, the opening of roads towards the River *Sarapiquí* and the harbor of *Boca-Toro*.

And you are informed thereof by order of the same, for the advice of the Executive and the purposes that may be desirable.
D. U. L. Heredia, August 31, 1836.

Manuel Antonio Bonilla, Secretary.

Manuel José Palma, Secretary.

Hall of the Council, Heredia, September 9, 1836.

Let it be sent to the Executive Power.

JOAQUÍN FLORES, *President*.

JOSÉ MARÍA ECHAVARRÍA, *Secretary*.

Therefore: Let it be executed: San José, Sept. 9, 1836.

BRAULLO CARRILLO.

To the General Minister of the Department.

**Note of the Governor of Veragua to the Government of Doc. 269
Costa Rica.**

SANTIAGO, September 23, 1836.

The undersigned citizen, Governor of the Province of *Veragua* in the Republic of *New Granada*, has the honor to address himself to the Governor of the State of *Costa Rica* in the Republic of *Central America*, in compliance with the express orders which have been transmitted to him by the National Executive Authority.

The object of the present communication is to inform Your

¹ Collection of Laws of Costa Rica, Vol. IV, p. 364.

Excellency, the Governor of the State of *Costa Rica*, that there has arrived at the Island of *Boca del Toro* on the North Coast of this Province of *Veragua*, a citizen of *Central America*, accompanied by a troop of several persons, who says that he is commissioned by the authorities of your Republic to take possession of the adjoining territory and to exercise over it governmental functions, as emanating from the Supreme action of that same State in reference to dominion over that territory.

If these were actual facts, they would constitute an act of aggression against the territory of *New Granada*, within its limits, which are the same that separated the ancient Viceroyalty from the Captaincy-General of *Guatemala* in 1810, according to the Royal *cédula* of November 30, 1803, which were recognized by Art. 7 of the Treaty signed March 15, 1825, between *Colombia* and *Central America*, and of which *Colombia* has been in full possession without any contradiction both before and after the Executive Decree issued July 5, 1824, against the enterprise of colonization and contraband trade on the *Coast of Mosquitos*, and on that which runs from the River *Chagres* as far as that of *Culebras* there is found the territory of *Bocas del Toro*, the political administration of which the Congress of *New Granada* provisionally regulated by legislative decree dated May 30 last, of which the undersigned encloses two printed copies.

As the Executive Power has already adopted the necessary measures for the immediate execution of the legislative action cited, a force will very soon arrive at the Island of *Bocas del Toro* to re-establish on that coast the dominion and Lordship of *New Granada*. For this reason the undersigned Governor has been advised to address himself to the State of *Costa Rica*, making a statement of the facts and requesting that, if the Central-American individuals who are now on the Island of *Boca del Toro* in the character of persons charged with keeping the possession thereof have come by order of the Government of your State, it may be pleased to direct them to immediately withdraw, respecting the rights of proprietorship of the Republic of *New Granada* and leaving to its authorities the exercise of the jurisdiction that belongs to them over said island and adjacent territory; unless they may desire to remain here as settlers, subject to the Granadian law and authorities, enjoying the many and important privi-

leges legislatively granted, which would be very agreeable for this Government and for the Executive Power upon which it is dependent.

The undersigned confidently expects that the friendly action which has already been taken, in the name and by the express order of the National Executive Power, will receive due attention by the Governor of the State of *Costa Rica*; and that in pursuance thereof orders will be duly issued as already indicated for the return of the Central-American citizens now in the character of commissioners in the Island of *Boca del Toro*, or for their peaceful submission to the laws and authorities of the Republic.

I take this opportunity, etc.

MANUEL DE AYALA.

Circular of the Minister General of the Government of Costa Rica to the Political Chiefs, Concerning the Opening of a Road to Boca Toro. Doc. 270

SAN JOSÉ, September 26, 1836.¹

In virtue of the authorization to the Supreme Chief by the Decree of the 31st of August last past, to promote and assist the opening of a road to the bay of *Boca Toro*, he has been pleased to allow to any contractor who shall explore a route for transportation to that point the sum of 1,500 pesos in money and 1,000 in vacant lands where he shall designate them; assisting him also in the expenses caused by such exploration, certified or estimated by experts; and for this purpose the person who shall undertake such exploration will be assisted, under proper security, with the money and other things he may need.

Let it be noted, that if at the same time two or more routes for transportation shall be found, the best and the shortest shall be preferred in making the allowance, without prejudice to undertaking to indemnify the others for expenses.

I notify you of this, in order that this disposition may be given publicity.

God, Union and Liberty.

San José, September 26, 1836.

J. ANSELMO SANCHO.

¹ National archives of Costa Rica.

Doc. 271 The Minister of State of Costa Rica to the Governor of Veragua.

SAN JOSÉ, November 30, 1836.

The undersigned, Minister General of the Supreme Government of the State of *Costa Rica* in the Federation of *Central America*, has the honor to inform the Governor of the Province of *Veragua* in the Republic of *New Granada*, that he has brought to the knowledge of the Supreme Head of the State the esteemed favor of Your Excellency, No. 495, of September 23rd last past, and has received directions to respond to it with all the attention which the Señor Governor merits to whom it is addressed.

The Federal Republic of *Central America*, by Art. 5 of its Constitution, embraces all the territory which composed the ancient Kingdom of *Guatemala*. *Costa Rica*, one of the States of which the Federation was formed, bordering with the Republic of *New Granada*, in its fundamental instrument speaking of the extent of its territory, fixed for its limits upon the coasts of the North Sea the mouth of the *River San Juan* and the *Escudo de Veragua*, which were those anciently known.

This being understood, Señor Governor, and it being a fact that the Bay of *Boca del Toro* and the islands situated therein, are found between the mouth of the *San Juan* and the *Escudo de Veragua*, it also appears unquestionable that they belong to *Central America*, and that no aggression is committed by the latter in making surveys over those points, which even if they were disputed is authorized to be done by Art. 8 of the treaty which exists between the two nations.

The Government of which the undersigned is the instrument, does not have a full and perfect knowledge of the kind of commission which may have been conferred by the National Supreme Head upon Colonel Galindo, who is the subject who without any hostile or suspicious articles, formed in London a company for colonization, and for that purpose sent an agent to the Bay of *Boca Toro*, which incident is the object of the claim of Your Excellency; but there are the strongest reasons for believing that the views of the Federal Executive, in directing this reconnaissance, were not such as to interfere in the slightest degree with *New Granada*,

with which it is much honored to be at peace and is careful to preserve the greatest harmony, as is proper between two nations which are bound by so many ties.

The considerations justly due to your Government, Señor Governor, are those which inspire this response and those which moved the head of this State in directing the person who subscribes it. The affair does not belong to him, but to the Federal Executive Power, to whom the Constitution of this Republic gives the exclusive direction of Foreign Affairs, and therefore the first duty in the conduct of the Government of this State is to give to him a statement with the esteemed letter of Your Excellency, which will immediately be done.

While the two Republics are coming to an understanding and settling their boundaries, the particular Government of *Costa Rica* can offer the assurance that that of *Central America*, on its part, will not do anything that will prejudicially affect the good understanding which has continued and ought to continue between the two nations.

Such are, Señor Governor, the sentiments with which the Supreme Head of the State of *Costa Rica* is animated, and in advising Your Excellency of them the one who speaks takes great satisfaction in subscribing himself of the Señor Governor of *Veragua* the cordial and obedient servant.

JOSÉ ANSELMO SANCHO.

Doc. 272 The Secretary of Foreign Relations of New Granada to
That of Central America.

BOGOTÁ, March 2, 1837.

SIR:

The Governor of the Province of *Veragua* addressed on September 23 of last year to the Governor of the State of *Costa Rica* in the Central American Confederation a dispatch relating to the news that had been received of the arrival to the Islands of *Bocas del Toro* of some individuals commissioned by the said Government to colonize that territory and rule it in its name, and this at the very time that, according to a legislative decree of the Congress of *New Granada* by which the administrative régime of that territory was provisionally organized, a Granadian authority was going to be established therein, since nobody has ever disputed the lordship of the Republic over the said territory, which has been an integral part of the Province of *Veragua* from time immemorial. The Governor communicated in his dispatch that very soon the Political Chief appointed over that place would arrive with forces, and he begged, consequently, that any obstruction that might be made to him by some official or Central American citizens upon his arrival therein, should be removed in due time.

The General Minister of the Supreme Government of *Costa Rica* replied to the said dispatch, on November 30, stating that the fundamental Chart of that State fixes as its limits on the coast of the North Sea, the mouth of the *San Juan River* and the *Escudo de Veragua*; that, therefore, the Islands of *Bocas del Toro* belong to it; that no aggression was committed by making surveys, because, even if the dominion might be disputed they were authorized by Article 8 of the existing treaty between the two nations; that his Government had not a full knowledge of the kind of commission that might have been conferred by the Executive Power to Colonel Galindo, who was the subject who had formed, in London, a company for the colonization of *Bocas del Toro*; but that he supposed that there was no idea of interfering with the rights of *New Granada*; and, lastly that he was giving a statement of the whole matter to your Worship's Government, and that he hoped that the good under-

standing existing between the two Republics would not be altered in a harmful manner.

This unexpected reply has caused a surprise to my Government, because it proves that in both countries there are some doubts relating to their boundary line, notwithstanding that by Article 7 of the treaty of March 15, 1825, they bound themselves to respect the limits existing at that time, which were the same that separated the Viceroyalty from the Captaincy-General of *Guatemala*; because *Costa Rica* establishes the strange principle of resolving by a law of the country, a question which is essentially of an international character and which can only be decided by a treaty, even according to Article 7, already cited, of the treaty of 1825; and lastly because Article 8 of the same is interpreted in an evident wrong way, inferring from it that any of the two Governments can send officials or citizens depending on it to establish colonies in the territory of the other, giving, furthermore, the name of surveys to such colonial undertakings.

For this reason, and on account of the special circumstance that since December 18 there has been already established in the territory of *Bocas del Toro* the Granadan authorities created by the law to administer and preserve therein the lordship of the Republic, which authority is charged with the duty of maintaining in every circumstance that lordship, I have been ordered to make known to the Federal Government of *Central America* the foregoing facts and considerations, to the end that, by interposing its authority, it will cut short any claim or attempt from the State of *Costa Rica* to disturb the legitimate possession held by *New Granada* and the jurisdiction exercised by its Government in the territory of *Bocas del Toro*, AS IT HAS BEEN MARKED OUT BY THE LEGISLATIVE DECREE OF MAY 30, 1836, FIXING THE EXTREMITY OF ITS LITTORAL AT THE RIVER CULEBRAS, WHICH IS, AND HAS ALWAYS BEEN, THE END OF THE COAST OF VERAGUA.

It will be easy to settle, by means of negotiations, any point of controversy existing or that may exist between the two Republics relating to boundaries. My Government will be pleased to make an agreement on this matter at any time, and even desires that the boundary line of the two countries shall be fixed in a clear and specific manner. You are aware that by a Royal Order delivered at San Lorenzo on November 30, 1803, and

which was in force when *New Granada* and *Guatemala* became independent from Spain, *the islands of San Andrés and the part of the Coast of Mosquitos from Cape Gracias á Dios, inclusive, toward the River Chagres, were segregated from the Captaincy-General of Guatemala and became dependent upon the Viceroyalty of Santa Fé.* The treaty of 1825 followed the said Royal Order, and, by its Articles 7, 8 and 9, the rights then existing were confirmed and recognized. The very Constitution of the Federal Republic of *Central America* states, in its Article 5, that the territory of the Republic is the same that was embraced by the Old Kingdom of *Guatemala*, with the exception of the Province of *Chiapas*. Nevertheless, *New Granada* would not have difficulty in ceding to *Central America* its rights OVER THE COAST OF MOSQUITOS, in exchange for another territory not so large, but which could be more easily governed. In the time of the Government of *Colombia* a negotiation relating to this matter was rather far advanced, but it had no result whatever, and now the necessity of renewing it is suggested by reason and politics.

With expression of my distinguished consideration, I have the honor to be your courteous and obedient servant,

LINO DE POMBO.

To the Secretaryship of Foreign Relations of the Government of
Central America.

Doc. 273

The Minister General of State of Costa Rica to the Political Chief (Intrusive) of the Canton of Bocas del Toro. Concerning the Intrusion into that Region.

SAN JOSÉ, March 21, 1837.¹

To the Political Chief of the Canton of *Bocas del Toro*:

* * *

* * * My Government is duly informed by your note dated the 21st of January last as to the commission you obtained from the Government of *New Granada*, under which you have occupied by force the locality of *Boca Toro*, notifying the one who represented the Supreme Government of this Republic as its dependent

¹ National Archives of Costa Rica.

to withdraw; and it having been preceded by another letter concerning the matter by the Señor Governor of *Veragua*, of which—as well as your communication—an account has been given to the Supreme Executive Power who has charge of the matter, it is my understanding that nothing more can be done about it,—pending the action of the President of the Republic,—except to refer to the considerations and sentiments submitted to the Government of *Veraguas* in the response of which I annex a copy herewith. * * *

God, Union, Liberty.

San José, March 21, 1837.

JOSÉ ANSELMO SANCHO.

Decree X.—Grant to the Colonel Juan Galindo and His Successors of the Dominion and Ownership of the Mines of Tisingal. Doc. 274

HEREDIA, May 3, 1837.¹

The Supreme Chief of the Free State of *Costa Rica*.

Whereas, the Assembly has decreed and the Council has approved the following:

The National Assembly of the Free State of *Costa Rica*, having taken cognizance of the proposal made by Colonel Juan Galindo to work the mines of *Tisingal*, and considering that this enterprise will in different ways be advantageous to the State and in all its aspects an active impulse to agriculture, industry and commerce, decrees:

ART. 1. The absolute dominion and ownership is granted to the aforesaid Colonel Juan Galindo, for himself and his general and special successors, of the mines of *Tisingal*, which are found in the hill of that name, in the neighborhood of the Port of *Estrella*² on the coast of the Caribbean Sea, with an area of thirty-two *caballerías* of ground about it; and the use of the waters, coal and wood adjacent and necessary for the work and operations; with a road for transit from the mines to the sea; and with the power of alienation to citizens or foreigners as he may desire. All under the conditions of the following articles:

¹ Collection of Laws of Costa Rica. Year 1837, Vol. 5.

² Changuinola River.

ART. 2. Within the term of four years Colonel Galindo must begin work at the mines, but this may be carried on in the way he deems best.

ART. 3. He shall give to the State one percentum of the metals produced by the aforesaid mines.

ART. 4. Upon an abandonment voluntarily by the owner or his representative for the period of four months, the mines shall return to the dominion of the State.

To the Representative Council.

Given in the City of *Heredia*, May 11, 1837.

JOSÉ JULIÁN BLANCO, *President*.

Félix Sancho, D. Secretary.

Juan B. Bonilla, D. Secretary.

Council Hall. *Heredia*, May 2, 1837.

Let it be passed to the Executive Power:

JUAN MORA, *President*.

José M. Echavarría, Secretary.

As set forth: let it be executed: San José, May 3, 1837.

MANUEL AGUILAR.

To the Minister General of the Department.

Doc. 275 Decree of the Government of New Granada Creating the Canton of "Bocas del Toro" in Veragua.

BOGOTÁ, May 26, 1837.

The Senate and House of Representatives of New Granada in Congress assembled:

Having seen the report of the Executive Power, approving the request of the Chamber of the Province of *Veragua*, and acting under provision 18, which is conferred upon them by Art. 74 of the Constitution:

THEY DECREE

SOLE ARTICLE: The parochial districts of *Mineral* and *Bocas del Toro*, in the Province of *Veragua*, shall form a Canton, the headquarters of which shall be the parochial district of "*Bocas*

del Toro;" and the boundaries of this Canton shall be those designated in Art. I of the Decree of May 30, 1836, which continues in force.

Given at *Bogota*, May 22, 1837.

The President of the Senate: J. J. Gore.

The President of the House of Representatives: Judas T. Landínez.

The Secretary of the Senate: Francisco de Paula Torres.

The Delegate Secretary of the House of Representatives. Pastor Ospina.

Bogota, June 13, 1837.

Let it be executed and published:

JOSÉ IGNACIO MÁRQUEZ. (L. S.)

For H. E. the President of the Republic.

The Secretary of Interior and Foreign Relations: Lino de Pombo.

Dissolution of the Federal Pact of Central-America, by the Doc. 276 Congress of Costa Rica, 1838.

The Constituent Congress of the Sovereign State of *Costa Rica*, considering:—

1. That upon the severing of the ties which bound *Costa Rica* to the Government of Spain, at the time of its independence, it regained its natural rights of absolute sovereignty and liberty; and consequently it became a party to the Pact of 1824 in the capacity of a political, sovereign and independent body;

2. That the National Constituent Assembly had no power to annul those sacred ordinances by a system opposed to the ends which had been proposed and in contradiction to their very principles;

3. That the said Pact has been considered void, as being clearly opposed to the wishes of the States and to their welfare:

4. That energetic claims have been made, not only as to the nullity of the Pact, but that it will put an end to the cause of the evils endured;

5. That having exhausted the resources possible, inasmuch as the National Representation oppose the destruction of that system

of union, no other means remained to *Costa Rica* for its protection except to use the right it unquestionably has to provide for its own welfare and development;

6. Being desirous of putting an end to the existence of that system, which is causing the ruin, not only of *Costa Rica*, but of the whole of the Republic;

7. That before the issuance of the Decree of May 30th, which restored to the States the liberty to undertake obligations, *Costa Rica* had already made a strong declaration of its rights; and that for such noble purpose its Constitutional Assembly met, in order that a Constituent Congress be convoked.

The latter, in the fulfillment of its first duty, and in conformity to the will of the people whom it represents, has resolved to and does decree:—

ART. 1. The people of *Costa Rica* assembled together through their representatives, assume their full sovereignty, they form a free and independent State, and in the capacity of a political body will meet through their delegates to enter into a federal compact, one of league or union, with other States that may desire in the same capacity to do so.

ART. 2. They declare that they belong to the great *Central American* family and that they are desirous that the bonds of association with it shall always continue to exist.

ART. 3. That they will agree to bear their proportional part of the national debt, for which purpose they will pledge their revenues.

ART. 4. That they will appoint, by means of a constituent assembly and by a separate decree, the persons who are to represent *Costa Rica* in the convention of the States.

ART. 5. The Executive is empowered to use all the means at his disposal to encourage those appointed by the other States to gather at the place and time indicated for the holding of the meeting of the popular delegates.

ART. 6. The Federal laws shall continue in force in so far as not in contravention of the present Decree.

The Escudo de Veragua and the River Chiriquí, Boundaries of Costa Rica in 1841. Doc. 277

DECREE II.—BASES AND GUARANTIES.

MARCH 8, 1841.¹

ARTICLE I. * * *

SEC. 2. The territory of the State is embraced within the following limits: upon the West the River *La Flor*, the line continuing by the littoral of Lake *Nicaragua* and the River *San Juan*, to the outlet of the latter into the Atlantic Ocean; upon the North, the same Ocean, from the mouth of the River *San Juan* to the ESCUDO DE VERAGUA; upon the East, from said point to the River *Chiriquí*; and upon the South from this River, following the coast of the Pacific Ocean, to that of *La Flor*.

SEC. 3. The territory is divided into five Departments, the headquarters of which are *Cartago*, *San José*, *Heredia*, *Alajuela* and *Guanacaste*. To the first belong the settlements lying between *Matina* and the River *Fierro*; to the second, from the latter River to that of *Virilla*, including the villages of *Térraba* and *Boruca*; to the third, from the said *Virilla* to the River *Segundo*; to the 4th from there to the River *Chomes*; and to the fifth, from there to that of *La Flor*. They are divided into *Villas*, and these into districts and wards; keeping however the designations acquired down to the present time of City or Town, but hereafter these shall only be granted for great services to the State. When the increase of population requires another demarcation of its Departments, this shall be made upon the basis of not less than 30,000 inhabitants in each one.

¹ Collection of Laws, Decrees, etc., of Costa Rica; Vol. VII, p. 16.

Doc. 278 Decree XL.—Directs the Observance of the Treaty Celebrated with the State of the Isthmus (Panama) and Reserves the Right of Costa Rica to the Region of Bocas del Toro.

SAN JOSÉ, September 22, 1841.¹

The Supreme Chief of the State of *Costa Rica*:

H. E. the President of the State of the *Isthmus* having ratified, within the period of the extension which was requested for that purpose, a treaty of friendship and commerce concluded and signed between that State and that of *Costa Rica*, in the city of *San José*, on the 23rd of September of the past year of 1841, after the formality prescribed in Clause 2, Sec. 1, Art. 5 of the Decree of bases and guaranties, decrees:

SOLE ARTICLE: The following treaty shall be kept and complied with from this day forth as a law of the State:

“The Licentiate Braulio Carrillo, Supreme Chief of the State of *Costa Rica*, and Pedro de Obarrio, specially authorized by the Government of the State of the *Isthmus*, in order to inaugurate the relations of friendship and commerce that well cultivated ought in the future to promote the happiness of the two States, which by their proximity and geographical position upon the globe are destined to figure among cultured peoples, have agreed upon the following points:

“1. The State of *Costa Rica* recognises the independence of the *Isthmus* from the Republic of *New Granada*; and will undertake and maintain with it those relations of friendship and commerce which are due to a sovereign State ruling itself.

“2. Therefore, a land post shall be established, which will run monthly between the two countries; and it shall go from the capital of *Costa Rica* on the 10th and arrive at the village of *David*, the first frontier place of the State of the *Isthmus*; it shall be paid for by the two Governments.

“3. Both the Governments of *Costa Rica* and that of the *Isthmus*, when it suits their commerce respectively, may authorize a Consul General, reciprocally.

“4. The State of *Costa Rica* reserves its right to claim from the

¹ Collection of Laws of Costa Rica; Vol. VII, p. 234.

State of the *Isthmus* the possession of *Bocatoro* upon the Atlantic Ocean, which the Government of *New Granada* had occupied, going beyond the division line located at the ESCUDO DE VERAGUAS.

"5. The present agreement will only take effect upon the day that the acceptance and ratification of the Government of the *Isthmus* are received at the Department of (Foreign) Relations of the Government of *Costa Rica*; for which purpose sixty days are stipulated, counting from this day, which must be communicated by an express going to the village of *Térraba*, the first frontier place of the State of *Costa Rica*.

"The undersigned sign two of one tenor, authorized by the Minister of Foreign Relations of *Costa Rica*, and sealed with the seal of this State, in the city of *San José*, on the 22nd of September, 1841.

"BRAULIO CARRILLO.

"PEDRO DE OBARRIO."

The Secretary General: Manuel A. Bonilla.

The Secretary of State of Costa Rica to the Governor of Belize, Rejecting the Pretensions of the Mosquito King to the Coast of Matina.

Doc. 279

SAN JOSÉ, April 20, 1841.¹

SIR:

There was received in the Department under my charge the communication of Your Worship, dated the 5th of February of the present year, stating that news had come to your notice of the intention of this Government to take possession of *Salt Creek* and *Moin*, the coasts of which you consider belong to the King of the *Moscós* (Mosquitos Indians), who being an ally of His Britannic Majesty will not permit the usurpation of his territory.

The aforesaid having been brought to the knowledge of the

¹ National Archives of Costa Rica.

Supreme Chief of the State, he was pleased to direct me to give his answer in the following terms:

1. That *Costa Rica* does not claim to appropriate to itself nor to occupy another's country, but to keep its own, which belongs to it by its nature, by possession for long years and by the recognition which has been accorded thereto by all the Nations of the New and Old World, not only under the rule of the Spaniards but since the epoch of the political separation of this part of the continent from its Mother Country.

2. That this is the first positive information which he has had of the alliance of H. B. M. with the King of the *Moscós*; for although it has been stated by some interested persons upon the said coasts, it was considered as a boastful expression to awe the weaker by the power of the stronger; inasmuch as it could not really be conceived that the dignity of Great Britain would go to the extent of contracting with a people without political relations, without prestige or power.

Far from this, there may be read in the "Atlas," of London, of the 26th of September of the past year an article which says: "We have made enquiries concerning the matter and we are authorized to say that the Commission sent out by the Superintendent of *Honduras* has not received the sanction of the Government, and that the same Government in no way makes itself responsible as regards the situation in which British subjects may find themselves who are persuaded to emigrate to the *Mosquito Coast*;" and this public statement by an accredited periodical could only strengthen the view expressed that the name of the British Nation had been misused.

3. That the *Mosquito* people, located between the 13th and 15th degrees of North latitude, and the 85th and 88th of West longitude, border on the South upon the State of *Nicaragua*, upon the West upon that of *Honduras*, and upon the North and East upon the Atlantic Ocean; in such a manner that between their possessions and those of *Costa Rica* the territory of *Nicaragua* is interposed, because our boundary upon the West being the River *San Juan* and its bay, and upon the East the *Bocas del Toro*, there is no contact between *Costa Rica* and the *Mosquitos*.

4. That although said coasts, since the war of 1740,² when the English destroyed the castle which existed thereon, only continued to be settled at *Matina*, this did not transfer nor could it transfer dominion to the *Mosquitos*; and although they received presents from the residents of *Matina* in exchange for other things, it neither is nor can be considered as a payment of tribute by them, which pretext is now brought forward by them to support their purposes; but it ought rather to be said that they recognized the authority and came to pay homage to it. It is not the intention of the Government of *Costa Rica* on this account to reduce them to vassalage, nor to undertake the conquest of the territory in which they live; it desires rather that they should become civilized and to contribute in some way to this end.

Perhaps the British Government may have taken them under its protection in order to save them from barbarism and make them useful in the world to themselves and to others, but not in order to despoil *Costa Rica*, nor any of the other neighboring States, of their possessions and rights; for if that object be a worthy one for a great and dignified Nation, such a purpose would lessen its credit and the Royal magnanimity of its sovereign.

When the pretensions of the *Moscós* were brought to the notice of the Supreme Chief of this State, inspired by a company formed in *Belize*, addressed to its Government, under date of September 29th of the past year, that claim was answered in the same *Belize* on the 14th of January of the present year, and in view of that he prepared a protest which he has published and addressed to it on the 23rd of February last in duplicate, which he supposes must have gone to *Belize* for its answer.

Thereupon the Señor Vice Consul resident at *Belize*, as the only British employee with whom *Costa Rica* has relations, sent the communication of which I enclose a copy to Your Worship.

Now he presents the statement of these antecedents to H. M

²The castle of San Fernando de *Matina* was taken and destroyed by the English and the *Mosquitos* on the 13th of August, 1747. In 1740 the castle had not yet been constructed. The error of Señor Guevara arose from that of ALCEDO, in his "Geographical Dictionary of the West Indies." M. M. P.

under the conviction that, allied with and protector of the *Moscós*, he will compel the latter to do justice and respect the rights of *Costa Rica*.

I have the honor, Señor Governor, to forward to you the views of the Supreme Chief of this State, in response to the contents of yours dated February 25th last, subscribing myself your obedient servant.

MODESTO GUEVARA.

Doc. 280 Limits of Costa Rica, According to the Political Constitution of the State, Issued April 9, 1844.¹

TITLE II.

ART. 47. The State recognizes as the limits of its territory on the West, from the outlet of the River of *La Flor* on the Pacific, and continuing the line by the littoral of Lake *Nicaragua* and River *San Juan* to the outlet of the latter in the Atlantic; on the North, the same Sea from the mouth of the *San Juan* to the ESCUDO DE VERAGUAS; on the East, from this point to the River *Ciriquí*, and on the South from the mouth of this river to that of *La Flor*; moreover the frontier line on the side of the State of *Nicaragua* will be definitely fixed when *Costa Rica* is heard in the national representation, or in default of the latter the matter is submitted to the impartial judgment of one or more States of the Republic.

ART. 48. The State shall be designated, "Free State of Costa Rica."

¹ Collection of Laws of Costa Rica, Vol. VIII.

Treaty Between the United States and New Granada of Doc. 281
December 12, 1846.¹

(Extract.)

ARTICLE XXXV.

The United States of America and the Republic of *New Granada*, desiring to make as durable as possible the relations which are to be established between the two parties by virtue of this treaty, have declared solemnly and do agree to the following points:

1st. For the better understanding of the preceding articles, it is and has been stipulated between the high contracting parties that the citizens, vessels, and merchandise of the United States shall enjoy in the ports of *New Granada*, including those of the part of the Granadian territory generally denominated *Isthmus of Panama*, from its southernmost extremity until the boundary of *Costa Rica*, all the exemptions, privileges, and immunities concerning commerce and navigation which are now or may hereafter be enjoyed by Granadian citizens, their vessels and merchandise; and that this equality of favors shall be made to extend to the passengers, correspondence, and merchandise of the United States in their transit across the said territory from one sea to the other. 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 open and free to the government and citizens of the United States, and for the transportation of any articles of produce, manufactures, or merchandise, of lawful commerce, belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandise thus passing over any road or canal that may be made by the government of *New Granada*, or by the authority of the same, than is, under like circumstances, levied upon and collected from the Granadian citizens; that, any lawful

¹ Senate Ex. Doc. No. 194, 47th Congress, 1st Session, p. 186.

produce, manufactures, or merchandise belonging to citizens of the United States thus passing from one sea to the other, in either direction, for the purpose of exportation to any other foreign country, shall not be liable to any import duties whatever; or, having paid such duties, they shall be entitled to drawback upon their exportation; nor shall the citizens of the United States be liable to any duties, tolls, or charges of any kind to which native citizens are not subjected for thus passing the said isthmus. 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 4th, 5th, and 6th articles of this treaty, the *United States* guarantee 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 guarantee, in the same manner, the rights of sovereignty and property which *New Granada* has and possesses over the said territory.

DOCUMENTS RELATING TO THE COAST OF
MOSQUITOS.

Doc. 282

I. Viscount Palmerston, Secretary of State, to Mr. Chatfield, Consul General of H. B. M. in Central America.

FOREIGN OFFICE, January 30, 1847.¹

I am desirous of obtaining the most authentic information that can be procured as to the boundary claimed by the King of *Mosquito*, and for this purpose I have instructed you to transmit to this office all the information which it may be in your power to obtain as the exact line of boundary claimed by the King of *Mosquito*, as dividing his territory from the State of *New Granada* and from the States of *Central America*.

In your report you will state the grounds upon which any and each particular line of boundary can on the one hand be claimed by the King of *Mosquito*, or may, on the other hand, be rejected by *New Granada* or *Central America*.

You will accompany your report by lines drawn on a map for convenience of reference.

You will also report what, in your opinion, is the line of boundary which Her Majesty's Government should insist upon as absolutely essential for the security and well-being of the *Mosquito* State.

II. Mr. Chatfield, Consul General of H. B. M. in Central America.—(Received July 8)—(Extract). Doc. 283

GUATEMALA, April 15, 1847.

I had the honour of receiving your Lordship's despatch of the 30th January last, instructing me to report—

1st. Upon the exact line of boundary claimed by the *Mosquito* King as dividing his territory from the State of *New Granada* and from the States of *Central America*;

2nd. Upon what, in my opinion, is the line of boundary which

¹Correspondence respecting the Mosquito Territory presented to the House of Commons, July 3, 1848, etc.—London. A similar despatch was addressed to Mr. Walker, January 30, 1847, and to Mr. O'Leary, February 16, 1847.

Her Majesty's Government should insist upon as absolutely essential to the security and well-being of the *Mosquito State*.

In replying to the first question I have to observe that nothing has reached me officially to enable me to state positively what is the line of boundary claimed by the King of *Mosquito*; nevertheless the subject has sufficiently attracted my attention to cause me to take pains to collect information upon it; and in giving the result of my inquiries, I shall be gratified if it should prove acceptable to your Lordship.

The pretensions of sovereignty assumed by *New Granada* to the whole of the *Mosquito* Territory will, I conceive, be found upon examination quite irregular, and rest merely on the Royal Order of San Lorenzo of 30th November, 1803, separating for military purposes from the Captaincy-General of *Guatemala* the Islands of *St. Andrew* and that part of the *Mosquito* shore from Cape *Gracias á Dios* inclusive towards the River *Chagres*, and making them dependent on the Viceroyalty of *Santa Fe de Bogotá*; which order was never carried into effect any more than the decrees are allowed to have been which the Government of Spain has issued at different times in a view to regulate the internal affairs of its American provinces generally, after they had declared their independence of its rule.

The Royal Order of San Lorenzo above alluded to is, I conclude, the only act upon which the New Granadian Government attempts to found a claim to the *Mosquito* Territory; and it is strange that a measure of such importance as that order seems to involve—the transferring of a vast tract of country from one Government to another—should not have been provided for in a formal manner by a Royal Cédula, or Order of the Sovereign in Council, instead of by a simple ministerial notification of instruction, which the Royal Order of San Lorenzo only amounts to.

The main point is, whether the New Granadian Government has a just claim to any part of the *Mosquito* King's territory, or to any part of that of *Central America*; and I request to lay before your Lordship such particulars as I have been able to collect respecting the origin and effect of the Order of San Lorenzo of 30th November, 1803; trusting that what I shall state will appear to Her Majesty's Government a sufficient ground for declining to recognize the right of *New Granada* to an extension

of territory beyond the boundaries on the Central American side, as they existed previous to the independence of both countries of Spain, since it is demonstrable that *New Granada* has never acquired either a military or civil jurisdiction over the *Mosquito* and *Central American* territories, nor any title to treat for the division or appropriation of States which do not belong to it.

The history of this Royal Order of San Lorenzo appears to be, that Captain Thomas O'Neill, Governor of *St. Andrew*, being at variance with the Captain General of *Guatemala*, under whose orders he was placed, applied to the Spanish Court for an accession of rank and pay, and for the transfer to the Viceroyalty of *Santa Fe* of *St. Andrew* and the coast adjacent, alleging the great distance of his post from *Guatemala*, and the greater facility of communicating with, and in case of need receiving assistance from *Carthagená*, which at the time was a considerable naval station of Spain.

This suggestion was received and treated in a purely military sense, and was in consequence referred to the opinion of the Committee of Fortifications and Defense of the Indies, who reported thereon favourably to Captain O'Neill's wishes. But there is nothing to show that the political and jurisdictional authority of the Government at *Guatemala* over the places transferred to the Viceroy of *Santa Fé* was affected by the measure, or that it ever came under the notice of the Supreme Council of the Indies, since no orders on the subject were transmitted to the legislative branch of the Government of *Guatemala*, represented by the President and Oidores; or that it was otherwise considered than (as the report of the Committee of Fortifications states) a means of uniting, for the better defence of the King's possessions towards Cape *Gracias á Dios*, the military command in that direction to the Viceroyalty of *New Granada*, whose large naval and military means were concentrated at *Carthagená*, so as to leave the Captain-General of *Guatemala* at greater liberty to provide for the security of the coast more immediately within his reach to the northward. And thus it is that the Viceroy of *New Granada* never exercised a legislative authority within the territory; nor is there any trace of an establishment or local government subject to his rule having at any period existed on the coasts of

Mosquito or of *Central America*, while it is equally true that Colombia abstained from any such occupancy.

In 1824 the Colombian President Santander, in consequence of the project of MacGregor to settle at *Poyais* on the *Mosquito* shore, issued a decree dated July 5, 1824, founded on the Royal Order of San Lorenzo, declaring all persons attempting to colonize that part of the coast liable to severe penalties; giving directions, about the same time, to take possession of *St. Andrew's* and its dependencies.

On the 23rd September, 1836, the Governor of *Veragua* wrote to the Chief of the State of *Costarica*, to protest, on the plea of the Order of San Lorenzo, against the occupation of *Boca del Toro* by Central American citizens, as had been projected by the deceased Colonel Galindo; announcing that by virtue of Decree of May 30, 1836, the place would immediately be taken possession of by a competent force, with the functionaries necessary for establishing a local Government on the part of New Granada.

On the 30th of November, 1836, the Chief of *Costarica* replied to this notification, by stating that Article V of the Federal Constitution of *Central America* declares the territory of the Republic to be that which formerly composed the ancient Kingdom of *Guatemala*; and that of *Costarica*, the State bordering on the Republic of *New Granada*, in its fundamental charter, in speaking of the extent of its territory, declares its boundaries on the coasts of the Atlantic to be fixed in one direction by the mouth of the *River St. John*, and on the other by the *Escudo of Veragua*, which were its anciently recognized limits. Upon this the Chief argues that the Bay of *Boca del Toro* and its islands being placed within the tract of seaboard between *St. John's River* and the *Escudo of Veragua*, are unquestionably the possessions of *Central America*; and that in sending settlers thither, no offence is committed against *New Granada*; and his letter concludes by stating that the whole matter will be referred to the consideration of the Federal Government.

In 1838 intelligence reached *Bogotá* of negotiations being opened with *Central America*, for constructing a canal across *Nicaragua*; and on the 24th of March, a representation was made by Congress to the President on the subject, who expressed a determination, dated 3rd May following, founded on the Royal

Order of San Lorenzo above cited, to assert the assumed rights of *New Granada* to the whole territory, including *St. John's River*.

The Colombian Government has occasionally acknowledged the rights of the *Mosquito* Chief to the territory comprised within the tract of country named in the Royal Order of San Lorenzo; and in 1825, Lieutenant-Colonel Goidot, a Frenchman, who afterwards served in *Central America*, went to the *Mosquito shore* with a Colombian colonel to persuade the *Mosquitos* to declare themselves dependent on *Colombia*. The King told them that the Spaniards had never conquered the country, and that the *Mosquitos* were not subject to *Colombia*; but being under English protection, he must refer them to the Governor of *Jamaica*.

In 1841, Antonio Escalano, the Commandant of *St. Andrew*, wrote to the King of the *Mosquitos*, inquiring if certain fugitive slaves had arrived "at Cape *Gracias á Dios*, appertaining to your territory," and offering to pay the expense of their return.

The boundaries of the Captaincy-General of *Guatemala*, and the Viceroyalty of *Santa Fé*, which subsequent events consequent upon their independence of Spain, have not changed, are described by Domingo Juarros in his "History of *Guatemala*," a work containing much valuable information, being for the most part a compilation of ancient official records. He says that the jurisdiction of the Royal Audiencia and Chancery of *Guatemala* extended along the shores of the Atlantic, from the coast of *Belize* in the Bay of *Honduras*, to the *Escudo de Veragua*, and on the Pacific coast from the bar of the *River Paredón* in the Provinces of *Soconusco* to the mouth of the *River Boruca*¹ in that of *Costarica*.

The River *Chilillo* was its boundary towards *Oaxaca*, and it extended to the district of *Chiriquí* towards the south-east, where the jurisdiction of *Santa Fé* terminated.

The Collection of the Laws of the Indies fix the respective limits of the ancient Kingdom of *Guatemala*, and of the Viceroyalty of *Santa Fé* and *New Granada*; and the dispositions which established the Governments of these sections of America could not be altered by a simple order of the Minister of War, while,

¹ River *Chiriquí Viejo*.

as I have before stated, to make a political and jurisdictional change in the administration of the country, it was essential to consult the Supreme Council of the Indies, whose sanction, if given, would have been communicated in the customary form to the President and Oidores of this Captaincy-General for its fulfillment. However it appears that soon after the representation of the Captain-General of *Guatemala* upon the inconveniences of the proposed measure, the state of affairs in the Peninsula prevented any further progress in it; and no alteration of the previous regulations, even in the purely military view contemplated by the Order of San Lorenzo, was ever made.¹

Besides the Law of the Indies and Juarros' work, which give the boundaries of *New Granada* in the time of the Spaniards, Humboldt and other recent authorities agree in fixing the limits of *Colombia* in the same way, and describe it as consisting of sixteen provinces, without taking any notice of the *Mosquito coast* between Cape *Gracias á Dios* and *Chagres*.

As to the exact line of boundary claimed by the King of *Mosquito* as dividing his territory from the State of *New Granada* and from the States of *Central America*, I am unable, as before stated, to give a positive reply; but I find amongst my notes, that the "Act of Allegiance to the Hereditary Prince Frederick (crowned at *Belize*, 18th January, 1816, eldest son of the former King George, and brother to Robert Charles Frederick, crowned in *Belize*, 23rd April, 1825, lately deceased), signed by Prince Stephen, King Regent, and the Chiefs and people of the *Mosquito coast* at *Woolang*, 14th November, 1815," describes the southern *Mosquito shore* as comprising the several townships from *Wanks River* to *Boca del Toro*.

This Act, of which I regret I have no copy, probably exists in the Colonial Office. However, in 1839 the *Mosquito King* issued a notice to persons trading at *Moin* or *Matina*, which was sent to the Government of the State of *Costarica* by its officer there, and published in the official gazette, asserting his right of sov-

¹ Mr. Chatfield was unaware that many subsequent alterations were made of the regulations regarding the *Mosquito Coast*. The state of affairs in the Peninsula did not prevent the Spanish Government from issuing regulations and decrees in derogations of the Royal order of San Lorenzo, November 20th (30th), 1803. M. M. P.

ereignty to the port, and forbidding the payment of either import duties or port charges to the *Costarica* Government.

In a letter from Colonel Macdonald, Her Majesty's Superintendent in *Honduras*, to the *New Granada* Agent at *Boca del Toro*, dated on board Her Majesty's ship "Tweed," August 19, 1841, Colonel Macdonald states that the object of his visit to the coast is to communicate a message from the Queen of England to the *Mosquito* King, and to ascertain the proper limits of the Mosco dominions. He hopes "as this place (*Boca del Toro*) is disputed territory, and the greater part of the inhabitants are of English origin or conection, and first located themselves under the protection of the *Mosquito* King, that the *New Granadian* authorities will carefully avoid any act prejudicial to British subjects, which may embroil *Granada* with Great Britain."

I annex a memorandum on the nature and object of the trading licenses issued by *Colombia* some years ago, lest that Government should now desire to argue,—although they did not apply to the *Mosquito shore*, or to places westward of *Boca del Toro*,—that the power of issuing them implied a right of sovereignty on the coast over which they extended.

In addition to the preceding, I request to annex extracts from Roberts' Narrative, a plain work, evidently the result of personal observation in the countries it describes. They relate to the occasional levy of tribute by vessels under the authority of the *Mosquito* Chief; and on the alleged acknowledgment of native tribes along the coast, the proof of right to the territory southward of *St. John's River* is considered to rest.

The nautical missions of the *Mosquito* King have extended to *King Buppam's Rock*, which, from what I can learn, is situated at the southern extremity of the Island *Escudo de Veragua*, in lat. 8° 46' 33" north, long. 81° 27' 15" west.

In my opinion the line of boundary which Her Majesty's Government should insist upon as absolutely essential to the well-being of the *Mosquito State*, is that tract of seaboard situated between the right bank of the *River Román*, where several English mahogany works are established (but which are much annoyed and harrassed by the undue interference of the *Honduras* Government), and the left bank of the River *St. John*,—an extent of territory, it is asserted, that the *Mosquito* Indians have,

ever since the country was known to Europeans, possessed and used without any other people whatsoever interfering with their native right of doing so.

Various reports upon the boundaries of the *Mosquito shore*, the condition of the people, and the number of the settlements existing, showing the correctness of these limits; and the historian Juarros, whose testimony cannot be doubted in such a matter, describes two provinces peopled by uncivilized Indians, as lying between the Provinces of *Comayagua* and *Nicaragua*, which he says extend along the Atlantic coast from the *River Aguán* or *Román* to that of *St. John*.

The Government of *New Granada*, in soliciting Her Majesty's Government to entertain a discussion with it upon the boundary of *Mosquito*, evidently aims at obtaining the powerful sanction of Great Britain to territorial pretensions of considerable magnitude, embracing an extent of upwards of eighty leagues of seaboard from Cape *Gracias á Dios* to *St. John's River*, and involving the suppression of the small State of *Costarica* along the entire Atlantic coast, with a view to place under the control of *New Granada* the navigation of the *River St. John*, and consequently of the Lakes of *Nicaragua* and the intended ship-canal, so as to render it impossible for any one at any time to undertake the connection of the two oceans by means of the *River St. John* and the Lake of *Nicaragua*, without its previous concurrence and co-operation.

It will be essential that *New Granada* should prove that these rights or pretensions to an extent of territory beyond the *Chiriquí River* (its divisorial line in the Spanish time) to the westward, rest on something more solid than the Royal Order of San Lorenzo of November 30, 1803, or that such order was not a purely military measure recommended by local circumstances, and that it was a political measure commanded by necessity and duly enforced.

Without this Her Majesty's Government cannot, I apprehend, without inconveniently committing itself, acknowledge the rights assumed by *New Granada* in this instance to a territory over which no legitimate claim, and over which another party has a title of some weight.

Moreover, looking at the probable destinies of these countries,

considerable advantages might accrue in aftertimes by reserving for settlement with *Central America* or *Costarica* (the only proper parties), the rights of *Mosquito* beyond *St. John's River*, since the line of boundary between *New Granada* at its Province of *Veragua* and *Costarica*, must be held to stop at the River *Chiriquí*.

In the event of proofs being laid before your Lordship by others, of the *Mosquito* Chief's right along the coast eastward of the *River St. John* to the *Escudo of Veragua* or *King Bup-pam's Rock*, they will help to confirm the ideas I have endeavored to express. In the meantime, considerable benefit would result to British interests by an early assertion for *Mosquito* of his clear right to the territory contained within the limits of the *Román River* on the west and the *River St. John* on the east.

III. Mr. O'Leary, Chargé de Affaires of H. B. M. in Bogotá to Lord Palmerston.—(Received September 6). Doc. 284

Bogotá, June 29, 1847.

With reference to your Lordship's despatch of the 16th of February last, and to my despatch of the 10th ultimo, both on the subject of the boundaries of the *Mosquito Territory*, I have the honour to acquaint your Lordship that I have endeavored to obtain some authentic information respecting the boundary claimed by the King of *Mosquito*. Until lately, when a claim was asserted by some civil and military servants of Her Majesty, on behalf of the King of *Mosquito*, to certain portions of the coast to the south of the *River San Juan*, I understand that that river was the southern boundary of the King's territory. And as far as a title can be acquired by a state of perfect independence, by long and uninterrupted possession, and the cultivation of the soil, by the absence of any Spanish establishment or settlement whatever, and even by the recognition of that independent State in former times by Spanish authorities, the title of the King of *Mosquito* to the territory between Cape *Camarón* and the *River San Juan*, cannot be fairly disputed.

Nevertheless, both *Central America* and *New Granada* assert a right to that portion of the coast lying between the *CHIRIQUÍ*

LAGOON and Cape GRACIAS Á DIOS. Both these Republics pretend to derive their rights from the King of Spain. On a former occasion I stated facts which in my opinion destroyed or impaired those rights; but assuming that the Spanish Sovereigns had a perfect right of dominion over the contested territory, it would appear that that right devolved upon *New Granada* rather than upon *Central America*, for under the colonial rule, the jurisdiction over the territory in question, after being transferred with frequency from the Viceroyalty of *New Granada* to the Captain-Generalship of *Guatemala* (now Republic of *Central America*) and vice versa, and at one time from that of both these colonies to the Captain-Generalship of *Cuba*, was finally restored to *New Granada* by Royal letters-patent dated the 20th of November, 1803. Therefore if the right of the Spanish Sovereigns was valid, so also is that of *New Granada*, and consequently the pretension of *Central America* is arbitrary and null, and the insignificant establishment at the mouth of the *River San Juan*, and that at *Matina* or port of *Cartago*, are usurpations. Therefore it is not necessary, and it may be prejudicial to the object your Lordship has in view, to enter into negotiations with *Central America*, which Republic cannot confer rights which do not belong to her, at least as far as regards the sea-board.

The question then lies between the King of *Mosquito* and *New Granada*. This Republic has no possessory rights on the coast between the *Chiriquí Lagoon*, (in the vicinity of which, at *Boca del Toro*, she formed a settlement), and the *River San Juan*; and I am inclined to believe that the Granadian Government would gladly accept that river as the north-western boundary of the Republic. And looking at the map, the *River San Juan* would seem to afford to the King of *Mosquito* a distinct and secure boundary line on that frontier.

But the extent and importance of the tract of coast situated between the *River San Juan* and the *Chiriquí Lagoon*, cannot be overlooked, in connection with the interests of the King of *Mosquito*. If the pretensions of the King to this portion of the coast could be maintained, the *Chiriquí Lagoon*, which affords safe anchorage, would likewise form a secure frontier.

I would therefore respectfully suggest the expediency of set-

ting the whole question at rest, by means of a negotiation with *New Granada*.

After effecting an arrangement with *New Granada*, it will not perhaps be difficult to obtain, should it be deemed expedient, the concurrent consent of those provinces of *Central America* which are conterminous to the *Mosquito Territory*.

As I stated to your Lordship in my despatch of the 10th ultimo, I have no means of ascertaining the limits claimed by the King of *Mosquito* or the Republics of *New Granada* and *Central America* in the interior of the disputed country. I have confined my observations to the coast, and therefore only point out on the map herewith inclosed (executed by Mr. Vice-Consul Mark), by yellow lines, the tract to which *New Granada* and *Central America* lay claim, remarking at the same time that it is very recently that *Costarica*, a province of the latter, has abandoned her pretension to the *Chiriquí Lagoon* and the district between it and the *River Chagres*. The boundary proposed for the King of *Mosquito* is marked on the map by red lines.

IV. Viscount Palmerston to Mr. Chatfield.

Doc. 285

FOREIGN OFFICE, June 30, 1847.

SIR:

The encroachments committed at various times by the authorities of the Central American States of *Honduras* and *Nicaragua*, upon the territories of the King of *Mosquito*, having given rise to a question as to the extent of the coast frontier of the Kingdom of *Mosquito*, Her Majesty's Government have carefully examined the various documents and historical records which exist relative to this subject; and they are of opinion that the right of the King of *Mosquito* should be maintained as extending from *Cape Honduras* down to the mouth of the *River San Juan*.

I have therefore to instruct you to inform the authorities of the several States of *Central America* bordering on the *Kingdom of Mosquito*, that this is the extent of coast to which Her Majesty's Government consider the King of *Mosquito* to be entitled; and you will inform them that Her Majesty's Government will

not view with indifference any attempt to encroach upon the rights or territory of the King of *Mosquito*, who is under the protection of the British Crown.

I am, &c.,

(Signed)

PALMERSTON.

P. S.—A similar instruction has been addressed to Her Majesty's Chargé d'Affairs at *Bogotá*.

Doc. 286 **Mr. Walker to Viscount Palmerston.**—(Received July 8).

(Extract.)

BLUEFIELDS, MOSQUITO, May 20, 1847.

I have the honour to acknowledge the receipt of Mr. Addington's despatch of 30th January last, directing me to transmit to your Lordship all the information in my power to obtain as to the exact line of boundary claimed by the King of *Mosquito*, as dividing his territory from the State of *New Granada* and the other States of *Central America*—the ground upon which such claims rest, or may on the other hand be rejected by *New Granada* or *Central America*. I am also to report what, in my opinion, is the line of boundary which Her Majesty's Government should insist upon as essential for the security and well-being of the *Mosquito State*.

In complying with your Lordship's instructions, I think it of importance in the first place to remark, that it is known from the records of Her Majesty's foreign and colonial officers, from those of *Jamaica* and *Honduras*, that, for a longer period than 200 years, Great Britain has been in intimate relation and friendship with the *Mosquito* chiefs and people. Such relations have not been defined by any formal treaty; but the soldiers of the two nations have frequently, in concert, taken offensive and defensive measures against the common enemy. At the close of the war, the *Mosquito* men having driven the Spaniards from their last post in *Black River*, seem to have laid aside with us the weapons of warfare; and looking to England for protection and advice, have since, in some measure and under great difficulties,

endeavoured to follow recommendations similar to those they received in 1816 from General Sir George Arthur, formerly Superintendent of *Honduras* and a copy of which I have now the honour to transmit.

It is also to be easily collected from writers intimately acquainted with the *Mosquito shore*, such as Dampier, Falconer, Frobisher, Bryan Edwards, Brookes, Hodgson, Malham, Miller, Wright, Orlando Roberts, and other authorities, that the tribes under the *Mosquito Kings* have been independent ever since the downfall of Montezuma,¹ and have had a recognized territory appertaining to themselves. I regret that, not having copies of all the above-named books, I cannot refer in every case to the particular page and volume.

In addition to this voluminous testimony, I have the honour to submit to your Lordship's inspection the following papers, a perusal of which will clearly show that both by Old Spain and by the new States of *Central America* a *Mosquito* territory was and is allowed to exist somewhere:

1. Original diary, which appears to have been kept by a settler, Mr. Grey, a medical man connected for the time professionally with a commission sent by the Captain-General of *Guatemala* to *Black River* in 1797, to treat with the Indians of the *Mosquito shore*. The commission seems to have been under Captain Pareja, the officer who afterwards conducted Prince Stephen on a visit to *Guatemala*, where, and on his route, he received all the honours customarily bestowed on an independent Prince. In this diary I have marked two places, to which I would respectfully direct your Lordship's attention. The first shows, among a list of toasts given by the Spanish Commissioner at a dinner to the Indian chiefs, the recognition of the King, chiefs, and country of *Mosquito*; and the second is illustrative of the independent footing on which the *Mosquito King* negotiated with the Spaniards.

2. Original letter from the Secretary of the Government of *Costa Rica*, dated 29th September, 1840, acknowledging the *Mosquito Government*.

¹ Mr. Walker was not very well acquainted with history inasmuch as the downfall of Montezuma took place in 1527 and the origin of the *Mosquitos* is clearly defined in 1650.

3. Copy letter from Commandant of *San Juan Nicaragua*, acknowledging the *Mosquito* Government.

4. Extract from Treaty between the Supreme Government of *Honduras* and General Lowrie Robinson, of date 16th December, 1843.

Besides all the foregoing evidence as to the existence of a *Mosquito* territory, free and independent, I would also, under this head, respectfully refer your Lordship to the copy of the petition from the British residents of *San Andrés* to Captain Bligh, of His Majesty's ship *Surveillante*, after his capture of that island, which shows the *Mosquito shore* to have been confessedly exempt by the Spaniards themselves from their jurisdiction.

Having now, as I humbly conceive, adduced a sufficiency of proofs to satisfy the most prejudiced and the most sceptical, that a *Mosquito* territory has existed and exists, governed by its own laws, and these administered by its own hereditary Kings, I proceed to state the boundaries claimed by the King of *Mosquito* as dividing his territory from that of the conterminous States of *Central America* and *New Granada*.

The *Mosquito* Territory commences at *Cape Honduras (Punta Castillo)*; but without taking into consideration the tongue of land which forms the Cape, the proper boundary would lead from the sea-board in the meridian of $85^{\circ} 50'$ west, leaving the town of *Truxillo* a few miles to the westward, and following this meridian till it meets the parallel of $13^{\circ} 30'$; after which it takes a south-easterly direction over the mountain summits till it crosses the *San Juan River*. After this the boundary takes a south-south-easterly direction over the mountains till it meets the parallel 10° north, where it again takes a south-easterly direction till it crosses the meridian of $82^{\circ} 30'$, when it runs due east, embracing *Chiriquí Lagoon* and several tributary rivers, continuing its course until it strikes the meridian of $81^{\circ} 50'$; when it tends to the north till it meets the sea-board of *King Bup-pam* (in *Mosquito*, King's landing), opposite the *Escudo de Veragua*, with all the islands and keys within the meridian of 82° .

In obedience to your Lordship's commands, I have had a map

prepared from the best and most authentic sources, and the lines denotive of the foregoing boundary I have marked in black.

The grounds upon which the rights of sovereignty over this expanse of country appertain to the *Mosquito* Kings, consist in the long tenure of their control over it. Malham, in his Gazetteer for 1795, states: "*Mosquito shore* proper to extend from *Cape Camerón* to *Fort Chagres*, uninterrupted by any Spanish settlement." The Spaniards, however, after 1795, had a transient possession of *Cape Gracias á Dios* and *Black River*; but all places so occupied were either abandoned by the Spaniards or captured by the *Mosquito* people before the commencement of the present century. From 1800, to about 9 or 10 years ago, the *Mosquito* Kings appear to have been in undisputed and peaceable possession of the territory I have traced out as belonging to them. At that time it appears that the Spanish authorities of the neighbouring States, taking advantage of the peaceable disposition of the *Mosquito* people, advanced claims to the King's territory, and committed aggressions upon it at *Boca del Toro*, *Matina*, and *San Juan*. The aggressions were formally remonstrated against, and the remonstrances have been regularly continued up to the last year. Reprisals could easily have been made, but every dependence seems to have been placed on the effective mediation of *Great Britain*.

In support of *Mosquito* sovereignty over the *Boca del Toro*, I have to refer your Lordship to Malham's Gazetteer for 1795 already noticed; to Roberts' Narrative, p. 86; and I have the honour to forward:

1. Original paper under date November 14, 1815, being the submission of Prince Stephen and other *Mosquito* chiefs to King George, from which document it will be seen that the *Mosquito* chiefs then exercised jurisdiction at *Boca del Toro*.

2. Commission granted to magistrate, and laws sent to *Boca del Toro* by King Robert Charles Frederic in 1832.

3. Depositions of Captain Peter Shepherd as to the allegiance being paid to Kings of *Mosquito* by the *Valiente Indians* of *Chiriquí Lagoon*, dated December, 1844. It is further known to me from personal inquiry on the spot, and can be proved at any time, that the British residents either born or located at

Boca del Toro, considered and consider themselves on a part of the *Mosquito shore* under the dominion of the *Mosquito King*, and that it was under such belief that the fore-fathers of many of the present inhabitants and also recent settlers established themselves in *Chiriquí Lagoon*.

New Granada lays claim to this part of *Mosquito* as a revolutionary heir of *Old Spain*, and in such character considers that she has acquired, within the old Viceroyalty of which she was a part, all that *Spain* possessed when the authority of that monarchy was extinguished; but without entering into the many questions involved by the claims of the several States to Viceroyalties which have been broken up and mutilated beyond redemption, it will be seen from the foregoing evidence, that at the time of the revolution, *Spain* was not in *de facto* possession of the *Boca del Toro*. It consists with my knowledge that about 1828 or 1829, on, I presume, a representation from your Lordship's department, a letter was written by the Secretary of State for the Colonies to the Superintendent of *Honduras*, desiring him to use his influence with the King of *Mosquito* to protect a mining company which had been established on the confines of *Veragua*.

The very first settlement by *New Granada* was in 1836. I quote the circumstances from a report by Commander Darley, of Her Majesty's ship *Electra*, addressed to Sir Charles Adam in May, 1842:

"Some years ago, 2 men named Joseph and Thomas Knap, obtained leave from the King of the *Mosquito shore* to trade on this coast, for which privilege they were to pay the King 100 dollars a year. About 6 years ago, a disgraced Columbian officer, named Johnson came to *Boca del Toro*, and combining with the 2 Knaps, they drew up a petition to the Columbian Government praying it to take this place under its protection. They had the address to get the signatures of several of the inhabitants, and added many more names surreptitiously to it. Johnson was the bearer of the petition, and, in consequence, the Columbian Government sent a small force down and took possession of the place, established a custom-house, charging very high duties on all goods imported, and otherwise greatly op-

pressed the people. Since the visit of Colonel Macdonald in the *Tweed*, last August, the Columbians have withdrawn their establishment from *Bova del Toro*, and their authority has ceased to exist here. Scarcely any Spaniards remain, and at present the people are perfectly free from any intrusion. All the people of the *Boca del Toro* consider themselves subject to the King of the *Mosquito* shore, and detest the Spaniards, whom they look upon as usurpers and tyrants."

I am able to corroborate the foregoing account by a knowledge of the circumstances derived from Captain Shepherd and the Messrs. Knap. It was jealousy on the part of the Knaps at Captain Shepherd's peculiar, and I must say improper, privileges, that induced them to call the attention of the New Granadian authorities to this place, I transmit copy of the licence granted to Messrs. Knap, permitting them to trade on the coast, but excluding them from *Chiriquí Lagoon*. I also transmit copy of a letter from the Colombian Secretary of State, M. Mosquera, being the first notice which appears to have been taken by the authorities of *Bogotá* respecting the *Boca del Toro* settlements.

In support of the King's claim to *Matina* and *Salt Creek*, I have the honour to transmit deposition by Señor Manuel Quijano, late Commandant of *San Juan*, as to the *Mosquito* King having been in the habit of receiving tribute at *Matina*, date August 30, 1841. And I subjoin report of Captain Darley on the same subject, to the correctness of which I can bear testimony:

"The old Spaniards had a settlement at about 15 miles from this place inland, where they had extensive cocoa plantations. They regularly paid tribute to the King of the *Mosquito coast* for this privilege, but never had any part of the coast granted to them nor did they ever settle on it.

"Mr. Peter Shepherd was employed by the Spaniards to take the tribute for the King, either 3 or 4 times; it amounted to 5 seroons of cocoa and 2 sugar each year. The flag of the *Mosquito shore* has not been hoisted here on Sundays since the Spaniards of *Costa Rica* made the people of *Mosquito* haul it down about two years ago, thereby taking forcible possession of the place. At the same time the Spaniards came to this

place, took possession of it, and they have held it ever since. They do not pay any tribute; they have established a custom-house, with regular officers and a few troops, hoisting their own flag, and, in short, exercise full sovereign power."

I submit deposition by Mr. Quin, of *Corn Island*, as to the King's sovereignty over *San Juan*, dated August 27, 1841. And I again beg to quote from Captain Darley's report, the following remarks:

"With respect to the settlement of *San Juan de Nicaragua*, it is not easy to ascertain if the Spaniards ever paid tribute for leave to establish a fort or custom-house on the north bank of the river. My impression is they never had leave for such a purpose. My reasons for so thinking are as follows: The King of the *Mosquito* shore claims the whole shore line both north and south of the *River San Juan*, and inland to the range of the Central Mountains, which may be 50 miles from the coast. Mr. Shepherd, who has lived upon the coast since the year 1811, never knew the Spaniards to claim the North Bank, nor ever to hoist the Spanish flag upon it. They had a look-out house, but not on the North Bank; it is situated at the place called the Fort on the chart, where 3 or 4 men were stationed merely to keep order amongst the boatmen who came down the river for the goods landed there, but they did not hoist any flag. Their customhouse was at *Granadio*. During the year of Independence, in the year 1811, the patriots sent an armed brig to take possession of the entrance to the river. At that time those Spaniards had 2 vessels lying in harbour, which were armed. They landed 5 or 6 guns with the crews of these vessels, and although the *Patriot* brig entered the harbour, they gave her such a warm reception that she slipped her cable and put to sea again. It was not until about 6 years ago, that the Government of *Central America* sent a force down to *San Juan*, and established a custom-house on the north side, certainly without the consent of the King of the *Mosquito* shore, who had previously made a grant to Mr. Shepherd of this very spot, which he is at any time prepared to prove. The *Mosquito* Indians have several times threatened to burn the houses put up by the people of *Nicaragua*, and turn them all away, but feared to do injury to Mr. Shepherd,

and they are most anxious to get rid of them, if permitted to do so.

“With respect to the country from *San Juan* to *Cape Honduras*, every part of it has been in the undisturbed possession of the King of *Mosquito* since last century, and has never been interfered with until very lately. The Commandant of *Truxillo*, about 8 or 9 months ago, sent an armed party within the King’s limits, and more recently he has repeated the same offence, carrying off the property of British merchants. The inhabitants are now, however, mustering to repel the intruders, and I have no doubt that they will speedily do so.”

If thought expedient by your Lordship, reference might be made as to *Cape Honduras* being the boundary of the Mosquito dominions, to former Superintendents of *Honduras* now living—General Gabriel Gordon, Major-General Sir George Arthur, Major-General Sir Francis Cockburn, and Major-General Macdonald.

I have traced in red lines the boundary which in my opinion I consider would be most advisable for Great Britain to insist on as essential for the well-being of the *Kingdom of Mosquito*.

This boundary ascends the *Román River* mid-stream as far as the junction with it of the *Guaupe*, which river it ascends till it meets the parallel of $15^{\circ} 10'$, when it follows the meridian of $85^{\circ} 50' W.$, until it meets the parallel of $13^{\circ} 30'$, after which it takes a south-easterly direction over the mountain summits till it crosses the *San Juan River*, when it descends the *San Juan* mid-stream to the Atlantic Ocean.

Along the whole of this boundary line, especially where it crosses the courses of the numerous rivers, there are points or lookout stations which are well known to and acknowledged by the inhabitants upon each side as dividing their respective territories. The registering, therefore, of these points, and running lines of connection through them are all that is wanted to form a complete boundary.

All the territory thus embraced within the red lines is now, with the exception of a custom-house on the north bank of *San Juan*, in the possession of the King of *Mosquito*, and has been under the *Mosquito* Government during the whole of the present century.

In abandoning the territory to the southward of *San Juan*, I would humbly beg to advocate, as I did in my despatch to Lord Aberdeen of 21st of July, 1846, the case of the settlers at *Boca del Toro*, and crave for them such indemnification for removal as to your Lordship may appear fair and equitable.

P. WALKER.

Viscount Palmerston, G. C. B.

Doc. 287 Mr. Chatfield to Viscount Palmerston.—(Received Dec. 16).

GUATEMALA, September 29, 1847.

MY LORD:

It was stated in the inclosure No. 21 of the despatch which I had the honour to address to your Lordship on the 15th of April last, that the *Chiriquí River*, which divides the New Granadian Province of *Veragua* from the Central American State of *Costa Rica*, is situated in latitude $8^{\circ} 55'$ north, longitude $82^{\circ} 10'$ west.

On more inquiry I discover this to be slightly inexact, and that the *River Chiriquí*, which makes the dividing boundary of the two territories, is in reality situated in latitude $8^{\circ} 50'$ north and longitude $81^{\circ} 34'$ west, nearly in a line with the *Escudo de Veragua*, which is a rock or small island in the sea, at a short distance from the mainland and which rock was the limit of the jurisdiction of the Royal Audiencia or Chancery of the Captaincy-General of *Guatemala* on the side of the Viceroyalty of *Santa Fè de Bogotá*.

The error arose from the circumstance of there being 2 rivers named *Chiriquí* on the Atlantic shore, one of which flows into the *Chiriquí Lagoon*; and that the *River Chiriquí* which formed the ancient boundary of *New Granada* and *Central America*, is not set down in the chart of the coast which I consulted.

I have since met with Captain Barnett's latest survey (West Indies, sheet XI, 1837, hydrographer's office); and I annex a sketch of the proper boundary, terminating at the *Chiriquí River* and the *Escudo de Veragua*, as it existed at the time of the

Spanish Government, and which, notwithstanding the pretensions of *New Granada*, has received no subsequent alteration.

I have, &c.

FREDK. CHATFIELD.

VISCOUNT PALMERSTON, G. C. B.

M. Mosquera to Viscount Palmerston.—(Received
May 2).

Doc. 288

(Translation.)

62 BAKER STREET,
LONDON, April 29, 1848.

The Chargé d'Affaires of Her Britannic Majesty, on the 24th day of September, 1847, addressed a communication to the Señor Secretary of State for Foreign Affairs of *New Granada*, informing the Government of the Republic, that the Government of Her Britannic Majesty, after having carefully examined various documents and historical records, was of opinion that the rights of the so-called King of *Mosquito* ought to be considered as extending from the Cape of *Honduras* to the mouth of the *River San Juan*; repeating also the declaration which had formerly been made to the Government of *New Granada*, to the effect that the British Government would not see with indifference any attempt to usurp the rights or territories of the above King of *Mosquito*, who is under the protection of the British Crown.

The Government of the Republic did nothing further at that time than state to the Chargé d'Affaires of Her Britannic Majesty, that it had given a very careful attention to this declaration of the British Government, and that it would keep it in view, to make of it the use which would be proper for the rights and interest of *New Granada*.

As the Government of Her Britannic Majesty has constantly refused to enter into discussion with the Government of *New Granada* upon this matter, no reply having been hitherto made to the different notes which this Embassy has addressed to the Ministry of Foreign Affairs, dated on the 31st of May, and 1st of July, 1844, and on the 14th of March, 1846, the undersigned, Envoy Extraordinary and Minister Plenipotentiary, is com-

manded to repeat to the Right Honourable Lord Viscount Palmerston, Chief Secretary of Her Britannic Majesty in the Foreign Department, that which he had the honour to state to the Right Honourable Lord Aberdeen, in the last of the above notes; that is to say, that the Government of *New Granada* cannot consider that the simple and repeated declaration of the British Government, that it would not see with indifference any attempt to usurp the territories of the King of *Mosquito*, is equivalent to a fair refutation of the territorial rights handed down by *Spain* to *New Granada*. The Republic has produced its titles, it has displayed in a long and circumstantial statement, all the documents and historical records which confirm its rights, and it has reason to hope that, on the part of Her Britannic Majesty, titles may be compared with titles, and arguments opposed to arguments, so that whatever may be the final result arrived at in this question, it may be due only to full justice, which would necessarily follow an impartial and matured discussion.

When the Government of the Undersigned received the said note of the Chargé d'Affaires of Her Britannic Majesty, dated 24th September, 1847, it perceived that the question was then for the first time determined in its material part, which was by it limited to the littoral territory included between the *Cape of Honduras* and the mouth of the *River San Juan*; but since then it has been surprised to see, by the authentic copy of a note of the British Consul-General, dated at *Guatemala* on the 10th day of the same month of September, and addressed to the Government of the State of *Nicaragua* that Mr. Chatfield, in that document, states that the Government of Her Britannic Majesty considers that the King of *Mosquito* has a right to that extent of coast, without prejudice to the right which the aforesaid King may have to any territory to the southward of the *River San Juan*; which declaration leaves a clear scope to the most indefinite pretensions on the part of the said King of *Mosquito*, and is not in conformity with the tenor of the note sent by Mr. O'Leary to the Government of *New Granada*.

The Undersigned has received instructions in consequence to protest solemnly and formally, as he hereby does, against this double declaration of Her Britannic Majesty's Government, both in regard to the part which is expressed and determined, and the

part which involves a reservation of the territorial rights of the King of *Mosquito*; and, moreover, it protests by anticipation against any acts whatever, which by virtue of this reservation may have been executed, or may be executed, to the injury of the rights of *New Granada*.

The Undersigned, &c.

M. M. MOSQUERA.

Viscount PALMERSTON, G. C. B.

Viscount Palmerston to M. Mosquera.

Doc. 289

FOREIGN OFFICE, May 4, 1848.

The Undersigned, &c., has the honour to acknowledge the receipt of the note addressed to him on the 29th of April, by M. Mosquera, &c., renewing the representations already made by M. Mosquera respecting the course pursued by the British Government with regard to the *Mosquito* territory.

The Undersigned has the honour to state to M. Mosquera, that the British Government does not dispute the right which the people of *New Granada*, or of any other of the American provinces of *Spain*, had to shake off the yoke of the mother-country, and to declare themselves free and independent, and accordingly, as soon as the freedom and independence of those provinces appeared to be firmly and finally established, they were formally acknowledged by *Great Britain* as independent States. But the British Government cannot acknowledge that any of those revolted provinces could by their successful revolt acquire any rights either claimed by or possessed by *Spain*, over other territories not inhabited and possessed by the revolted population, and therefore, even if the *Mosquito* territory had been subject to any just claim on the part of *Spain*, the revolt of the Province of *New Granada* could not have given to the people of *New Granada* any right whatever over *Mosquito*, a territory which they did not possess or occupy. But in point of fact, the territory of *Mosquito* has been acknowledged by *Great Britain* as an independent State for 225 years, and the King of that country has for upwards of 180 years been acknowledged as being under the protection of the British Crown.

Her Majesty's Government, therefore, do not consider themselves under any obligation to discuss with the Government of *New Granada* the rightful existence of the *Mosquito State*, which existed as a separate and independent State nearly two centuries before *New Granada* had ceased to be a dependent province of *Spain*.

With respect to the southern boundary of *Mosquito*, there are certainly strong grounds upon which the King of *Mosquito* might claim the sea coast as far as the spot called *King Buppan's Landing*, which is opposite to the island called *Escudo de Veragua*; but Her Majesty's Government have recommended the *Mosquito* Government to confine its claim in a southerly direction to the southern branch of the River *St. John*; and one main reason with Her Majesty's Government for giving that recommendation, was, that thereby all dispute between *Mosquito* and *New Granada* would, as they trusted, be avoided.

The Undersigned, &c.

PALMERSTON.

M. MOSQUERA.

Erection of the Diocese of Costa Rica.

Dcc. 290

ROME, February 28, 1849.

We, the Doctor Don Juan Gaspar Stork, Bishop of *Costa Rica*, certify in canonical form that in the Bull for the erection of the Diocese of *Costa Rica, Christianae Religionis Auctor*, issued in Rome on the twenty-eighth of February, one thousand eight hundred and forty-nine, the limits of the said Diocese were determined in the following manner, citing literally the words of said Bull, pages eleven and twelve: the original of the Bull is kept in the Episcopal Archives:

"Nivae autem huius dioecesis SANCTI JOSEPHI DE COSTA RICA territorium erit illud ipsum ex quo supra memoratus status de COSTA RICA constat, inhabitatum nempe uti perhibent a centum circiter animarum millibus, quod ad occidentem afluitur flumine vocato DE LA FLOR et protenditur quo sequitur delitus LACI NICARAGUAN. ET FLUMINIS S. JOANNIS eo usque quo influit in mare atlanticum, ad septentrionem deinde determinatur ab eodem mari usque ad superiorem fluminis S. JOANNIS et ad SCUTUM DE VERA-

GUA, *ad orientem autem ab ante dicto loco usque ad alterum flumen quod vocant CHIRIQUI ad austrum denique productum ab ipso flumine CHIRIQUI usque ad alteram DE LA FLOR secus maris pacifici plagas.*"

It is correct:

And for the legal purposes thereof and at the petition of the Supreme Government, we extend the present, which we sign in the Episcopal Palace of San José on the eleventh of February, one thousand nine hundred and eleven.

JUAN GASPAR,
Bishop of C. R.

(There is a seal which says: *Evangelizare Pauperibus Misit Me Dominus. Fide et Pace.*)

Before me:

MOISÉS RAMÍREZ, *N. M.*

MANUEL CASTRO QUESADA, Secretary of State in the Departments of Culto and Foreign Relations,

Certifies to the authenticity of the signature which is registered in the present document of the Bishop of this Diocese, which reads: "Juan Gaspar, Bishop of C. R."

San José, February 22, 1911.

MANUEL CASTRO QUESADA.

(There is a seal which says: *Secretaría de Culto. República de Costa Rica.*)

(There is a seal which says: *Secretaría de Relaciones Exteriores. República de Costa Rica.*)

Mr. Bancroft to Mr. Clayton.

UNITED STATES LEGATION,
LONDON, August, 1849.¹

SIR: Believing that the time had now arrived when it became proper on the part of the President of the United States to present his view to the British government on the subject of its occupation of the port of *San Juan de Nicaragua*, I was engaged in finishing the paper when I received your letter of recall. Sensible of the confidence reposed in me by your despatch No. 55 and its enclosures, I yet deem it now not proper to present the paper which I had prepared after much consideration; and I now confine myself to a concise report of the present state of the business.

During the debates in the House of Commons on the miscellaneous estimates, an appropriation for charge, growing out of the crowning at *Jamaica* of the so-called King of the *Mosquitos*, was asked for, and voted amidst laughter. When a member seriously objected that this interference might give umbrage to the United States, the House perceived that the subject was one which merited serious consideration.

Your directions to me were to proceed in the first instance by conversation. I have done so, governing myself by the language and spirit of your despatch. Lord Palmerston was not inclined to a conversation with me on the subject of *Central America*, but sought rather to keep the United States at a distance on the question and to bring the powers of *Central America* to an immediate or early acquiescence in his arrangements. Nevertheless, I obtained an interview, though not till after repeated solicitations. To my direct question, If the British government designed to appropriate to itself the town of *San Juan de Nicaragua*, or any part of the so-called *Mosquito* territory? he answered emphatically, "No; you know very well we have already colonies enough." The remark was just. The masses of the British colonies are becoming relatively too weighty for the central government. British statesmen perceive it; and one evening, when the ownership of Vancouver's island was the subject of debate in the House

¹ 31st Congress, 1st Session (House of Representatives). Ex. Doc. No. 75, p. 234.

of Commons, the House was counted out, so indifferent were the members to the whole question. I could not but proceed ask Lord Palmerston, In whose hands is *San Juan de Nicaragua* at this time? He replied, "For the present, in those of English commissioners." Is not this point then, I said, an occupation by England? His answer was, "Yes, but this occupation is temporary."

Having your despatch in my hand, I very concisely gave him reasons on which the opinion rests, that there is no such body politic as the Kingdom of the *Mosquitos*; that, if there were, its jurisdiction does not reach to the river *San Juan*; and even if it did, that no right of exercising a protectorate belongs to Great Britain.

Without entering into any argument, he replied, that *Costa Rica* might claim *San Juan* as well as *Nicaragua*. And he did not in the least disguise his strong inclination to restore the port; insisting, however, that any purposes the United States might have in reference to connecting the two oceans by a commercial highway, would be better promoted by the policy which he is pursuing than in any other way. And, in reference to the whole subject, his words were, "you and we can have but one interest."

The interview was very short, and came to an end abruptly, as he was summoned to a cabinet meeting; and he has shown no desire to renew it.

The next day I asked the minister of *Costa Rica*, if his country had ever claimed the port of *San Juan*. He said never; it claimed only the southern bank of the river. The port of *San Juan* had always belonged to the province or state of *Nicaragua*.

While Lord Palmerston did not invite me to renew the subject with him, he had a long interview with Mr. Castellón and Mr. Marcoleta, conversing with them for two hours in Spanish, which language he speaks extremely well. The substance of his remarks to them was, that England desires to cultivate friendly relations with *Nicaragua*, but at the same time is determined not to restore the port of *San Juan*.

Mr. Castellón, on the eve of his departure for his country, addressed me a note, insinuating the idea of the annexation of *Nicaragua* to the United States. Scrupulous not to involve the administration of the President, I could have wished the letter

had been addressed to Washington; but I thought an instant answer essential, and I therefore sent him, on the 14th of July, a note of which I enclose a copy. I trust it will seem to you precisely such as you could have wished and would have directed, had there been time to consult you.

On the 16th of July Lord Palmerston addressed a formal note to Mr. Castellón, who had already left England, containing an elaborate argument against the right of *Nicaragua* to the port of *San Juan*. I obtained a copy of this important note a few days ago, and I now send it to you.

Meantime, Lord Palmerston invited Mr. Marcoleta to an interview with him, and, I am told, proposed a general settlement of all questions between the so-called *Mosquito* government, *Costa Rica*, and *Nicaragua*. To this, I understand the agent of *Nicaragua* replied, that he could not recognize the kingdom of *Mosquito*, and, of a consequence, could not treat with it.

The Nicaraguan minister now proposes arbitration. Should this be refused, *Nicaragua* must submit, unless it can rely on the prompt exertion of the influence of the United States.

This, I believe, is all I need say on the subject. Were I to add any suggestion, it would be, that greater difficulties await you in bringing the States of *Central America* to reasonable and harmonious views, and a friendly union, than need be apprehended here, if such union existed.

Copies are annexed of various letters and documents pertaining to this subject.

I am, sir, sincerely yours,

GEORGE BANCROFT.

Mr. Rives to Mr. Clayton.

Doc. 292

LONDON, September 25, 1849.¹

SIR: Yesterday I called upon Lord Palmerston, at his house in Carlton Gardens, for the purpose of holding the interview with him which had been previously arranged. He gave me a very cordial reception, and took occasion to say that he had come up to London from the residence of Viscount Melbourne in the country, where he had been passing some days, solely for the sake of seeing and conversing with me. After some conversation of a general nature, I stated to him that there being a sort of interregnum at present in the usual diplomatic relations of the two countries, owing to the departure of Mr. Bancroft and the postponement for a few weeks of Mr. Lawrence's arrival, you had instructed me, while on my way to Paris to call upon his Lordship and converse with him on a matter which was more than ordinarily urgent and critical; that it was quite unnecessary, I persuaded myself, to assure his Lordship that the President was anxious to preserve the most cordial good understanding with her Britannic Majesty's Government; that in proportion as that desire was sincerely felt, it was seen with no little concern that there was one question which unless great prudence and caution were observed on both sides might involve the two Governments unwittingly in collision; that shortly before I left the United States a letter from the British consul at New York had been published, asserting in very positive and unqualified terms an exclusive claim for the *Mosquito* Indians to the ownership and sovereign jurisdiction of the mouth and lower part of the river *San Juan de Nicaragua*; that the United States had no disposition to intermeddle in any pragmatistical spirit or with views in the slightest degree unfriendly to Great Britain, with that question, but they were unnecessarily parties to it in their own right; that citizens of the United States had entered into a contract with the State of *Nicaragua* to open, on certain conditions, a communication between the Atlantic and Pacific Oceans by the river *San Juan* and the *Nicaragua* Lake; that the Government of the United States, after the most careful investigation of the sub-

¹ Senate Ex. Doc. No. 112, 46th Congress, 2d Session. Page 11.

ject, had come undoubtingly to the conclusion that upon both legal and historical grounds the State of *Nicaragua* was the true territorial sovereign of the River *San Juan* as well as of the *Nicaragua* Lake, and that it was, therefore, bound to give its countenance and support, by all proper and reasonable means, to rights lawfully derived by their citizens under a grant from that sovereign; that the United States, moreover, as one of the principal commercial powers of the world, and the one nearest to the scene of the proposed communication, and holding, besides, a large domain on the western coast of America, had a special and deep national interest in the free and unobstructed use, in common with other powers, of any channel of intercourse which might be opened from the one sea to the other, and, that, moved by a proper regard for that interest, it had probably already concluded or would soon do so, a treaty with *Nicaragua* for securing a transit for its commerce, and public stores by the route in question, on terms open alike to all other nations. I then proceeded to observe to Lord Palmerston that the Government of the United States was particularly desirous that there should be no misconception of its objects and motives in this matter by her Britannic Majesty's Government and that it was of the highest importance that both Governments should be made acquainted frankly with the views and intentions of each other; that it had sometimes happened in military operations that detachments of the same army had gotten engaged with each other, in the dark, in bloody strife, and so in civil and political affairs, nations, as well as individuals, in ignorance of each other's real views, and under the influence of a natural but unfounded distrust, were often committed in serious opposition to each other, when a frank and unreserved communication, in the first instance, of their respective objects would have brought them to co-operate heartily in pursuit of a common end; that the United States sought no exclusive privilege or preferential right of any kind in regard to the proposed communication, and their sincere wish, if it should be found practicable, was to see it dedicated to the common use of all nations on the most liberal terms, and a footing of perfect equality for all, securing it beforehand, by proper stipulations, against unreasonable and oppressive exactions for the use of it, either from the States through whose territories it

should pass, or the individuals or companies who might be authorized to construct it; that the United States would not, if they could, obtain any exclusive right or privilege in a great highway, which naturally belonged to all mankind, for they well knew that the possession of any such privilege would expose them to inevitable jealousies and probable controversies which would make it infinitely more costly than advantageous; that while they aimed at no exclusive privilege for themselves they could never consent to see so important a communication fall under the exclusive control of any other great commercial power; that we were far from imputing to Her Britannic Majesty's Government any views of that kind, but *Mosquito* possession at the mouth of the *San Juan* could be considered in no other light than British possessions, and his lordship would readily comprehend that such a state of things, so long as it was continued, must necessarily give rise to dissatisfaction and distrust on the part of other commercial powers. Would it not, then, be wise, I said to Lord Palmerston, that Great Britain and the United States should come to a frank and manly understanding with each other and unite their influence for the accomplishment of an object of the highest importance to both of them as well as the rest of the world, instead of hazarding the final loss of so great an object by jarring and divided councils.

I have, etc.,

W. C. RIVES.

**Extract from a Treaty of Peace and Friendship Between
Spain and Costa Rica, Dated Madrid, May 10, 1850.**

Doc. 293

ART. 1. His Catholic Majesty, with the authority with which he is invested by Decree of the General Cortes of the Kingdom of December 4, 1836, renounces forever, in the most formal and solemn manner, for himself and his successors, the sovereignty, rights and authority which belongs to him over the American territory, situated between the Atlantic and Pacific Oceans, with its adjacent islands, known heretofore under the denomination of Province of *Costa Rica*, now the Republic of the same name, and over the other territories that may have been incorporated in said Republic.

ART. 2. In consequence thereof His Catholic Majesty recognises as a free, sovereign and independent Nation the Republic of *Costa Rica*, with all the territories that now constitute it or which hereafter constitute it.

Doc. 294 **Contract for the Opening of an International Route from Boca del Toro to Dulce Gulf, Made Between the Government of Costa Rica and M. Gabriel Lafond (de Lurcy).**

PARIS, March 15, 1850.¹

The Señores Don Felipe Molina, Minister Plenipotentiary of *Costa Rica* in France, resident at Paris at the Hotel Montmorency, Boulevard des Italiens, of the one part, and Don Gabriel Pierre Marie Mars Lafond, a French citizen, domiciled at No. 4 Place de la Bourse, Paris, of the other part, have agreed and they do agree as follows:

1. In order that Gabriel Lafond, concessionaire of the lands of *Dulce Gulf*, may, by himself or through his agents, bring colonists directly to said lands by the Atlantic, the Republic of *Costa Rica* makes a new donation to him in full ownership, consisting of a zone of tillable land running from the BAY OF BOCA TORO to the limits of the first concession; which zone shall have a width of one league and shall be laid out as near as possible to the frontier of *New Granada*.

2. The Government of *Costa Rica* shall choose the form that it prefers for its compensation; either Señor G. Lafond will pay the value of the area which said zone may be found to contain, at the rate of one peso per *manzana*, in shares of the company which may be formed for the colonization of those lands, or Señor Lafond by himself or by his agents will undertake to colonize it within twelve years, at the rate of one family or couple for each twenty-five *manzanas*, under penalty of losing that which shall not be settled at the expiration of the term;

¹ This contract was approved by a decree of the Congress of Costa Rica of June 15, 1850. Collection of Laws of Costa Rica, Vol. IX, p. 287.

but if the road is opened and can be used for transit from the Atlantic to the Pacific, Señor Lafond will have thereby fulfilled his contract.

3. The port which is formed at *Boca Toro*, with the immediate coves, islands and rivers, shall belong to Señor Lafond and associates, and they shall enjoy the same privileges and for the same term of fifteen years at *Dulce Gulf*, and the settlers of this new concession will likewise enjoy the same exemptions and privileges as the former.

4. This contract shall be submitted to the Government of *Costa Rica* for its ratification.

Made in duplicate in Paris, March 15, 1850.

Approved: Gabriel Lafond.

Approved: F. Molina.

The Secretary of Foreign Relations of Costa Rica to the Governor of the Province of Chiriquí, Republic of New Granada.

Doc. 295

No. 42.

SAN JOSÉ, August 13, 1850.

To the Governor of the Province of *Chiriquí*, Republic of *New Granada*.

I have had the honor to receive Your Worship's courteous official letter No. 258 of the 23rd of July last, in which Your Worship informs that, by legislative act of *New Granada* dated the 29th of April ultimo, the territory of *Bocas del Toro* has been suppressed and incorporated to the Province of Your Worship's command.

Having informed His Excellency the President of the Republic of the contents of said letter, he instructed me to answer that, opportunely he will make the corresponding observations to such act of the Supreme Government of *New Granada*; and that as the territory of *Bocas del Toro* lies within that of *Costa Rica*, it is not in His Excellency's power to accept such an act that tends to trespass the limits of the Republic, limits which were legally described prior to the independence from the Spanish Metropolis, and ratified by posterior acts.

At the same time that I transmit the above to Your Worship's knowledge, I take the advantage of the opportunity to subscribe myself Your Worship's very obedient servant,

JOAQUÍN BERNARDO CALVO.

Doc. 296 **Petition of the Golfo Dulce Colonization French-Costa Rican Company Relating to the Grant of the Zone of Costa Rican Territory Occupied by New Granada.**

September, October, 1850.¹

No. 89.

National Palace.

SAN JOSÉ, September 20, 1850.

To the Secretaries of the Most Excellent Congress:

I have the honor to forward to you a copy of a petition of the French-Costa Rican Company and the enclosed statement of the Executive Power, in order that you shall inform the Most Excellent Congress.

With all my estimation I am, as always, your obedient servant.

JQ. BERNDO. CALVO.

SAN JOSÉ, September 30, 1850.¹

To the Minister of

Foreign Relations and Government.

As attorney of the Colonization Company of *Golfo Dulce*, I have the honor to address the Government of *Costa Rica* through the respectable medium of Your Excellency, with the important object of stating to it that after serious consideration the Company thinks that it would be detrimental to the advancement of the Colony and to the opening of the road to *Boca de Toro* that the zone of land located between the one which has been granted to it and the boundaries of *New Granada*, should be settled with people of any other nation, even if France might be on good terms with it, because it may always be feared that disagreements could arise and then difficulties. In order to prevent this inconvenience so as it may be possible to undertake with entire

¹ Archives of the Congress of Costa Rica.

safeness the opening of the road to *Boca de Toro*, the Company asks that there shall be granted to it the said zone or track of land which *New Granada* enjoys now. As a compensation for this, the Company offers that it will endeavor, and through the medium of its Government influence, to support the territorial boundaries which justly belong to *Costa Rica*. Besides, it offers that the Colony shall be governed by the laws of the Republic and the authorities appointed by the Government, according to what has been agreed with regard to *Golfo Dulce*. Thus the only thing that is asked for is the ownership of the land in order to settle it to the benefit of this country.

With high consideration, I have the honor to be Your Excellency's obedient and humble servant.

R. G. ESCALANTE.

This is a copy.

CALVO.

Most Excellent Congress:

Upon submitting to the knowledge of Your Excellency a legalized copy of the petition of the Company for the colonization of *Golfo Dulce*, dated 23 ultimo, for the grant of the zone of land located between the one which has been granted to it and the boundaries of *New Granada*, the Executive Power has ordered me to inform that although *Costa Rica's* ownership of the territories located on this side of the line which starting from the *Escudo de Veragua* ends at *Punta Burica* is incontrovertible, it will be very difficult for the Republic at the present time to recover the part occupied by *New Granada* and make the boundaries of the Costa Rican territory on that side to be respected, which only could be possible to a strong power interested in the matter as France, according to what the Company states; and that on account of this powerful reason and because the colony or colonies that the French Company should establish and advance in the said zone must remain under the direct dominion of the laws and the authorities of the country, it should be very useful to agree to the said petition, especially if it is considered that in any case the territories located in the said zone

not only are going to return to the dominion of the Republic, but because it will keep them forever without any expense or sacrifice whatever, and lastly that whether the establishment of colonies proposed by the French-Costa Rican Company should not be carried into effect, the Republic does not suffer any loss; rather a large extent of land within the southern boundaries of its territory should be discovered for posterity.

According to this, the Executive Power recommends this important affair to the enlightened consideration of Your Excellency and hopes that it will resolve affirmatively and with the rapidity required by the case.

San José, September 30, 1850.

To the Most Excellent Congress.

JQ. BERENDO. CALVO.

Secretaryship of the
Most Excellent Constitutional Congress.

SAN JOSÉ, October 1, 1850.

Let it go to the Committee of Commerce and Agriculture, to which shall be associated the Representatives Marchena and Mora.

To the Most Excellent Congress:

The Committee of Commerce and Agriculture has the honor of informing the Honorable Chamber that after having examined carefully the petition of the French-Costa Rican Company, it judges that this petition must be considered from two standpoints, that is to say: the power to grant it and the suitableness of the grant. With regard to the first point, it is not doubtful that the nation has a perfect right to dispose of the lands located within its territory, even if this territory is disputed by a neighboring country; because one thing is the right that does not prescribe, and another the fact which is repelled by the fact instead of reason. Thus, any hesitation in the use of the said right would permit to doubt its legality and would expose us to very serious results. Therefore the Congress must act fully conscious that it is using a harmless right which belongs to the Republic and

so not making any usurpation. In regard to the second point it is enough to say that as no disputed lands have been granted to those who asked to settle and defend them, this matter does not require any more explanation.

Besides, it must be considered that even lacking such a powerful reason, the sole consideration of the French-Costa Rican Company wishing not to have another neighboring colony in order to avoid the disagreements which may arise from the difference of origin and religion, languages and habits, would be enough to agree to its petition. Lastly, as the only thing that is asked for is the ownership of the land, the nation reserving for itself the high dominion of it, the power to impose its laws and to appoint its authorities, there is no hindrance to a favorable resolution.

According to such solid basis and as a token of respect for the enlightened opinion of the Executive Power, which is entrusted with the care of foreign relations and is our partner on the legislative acts on account of the power of sanctioning them that it has by the Constitution of the Republic—the opinion of the Committee is that the petition of the French-Costa Rican Company must be agreed at once and without any exception or restriction.

Done in the Hall of the Committee, San José, October, 1850.
To the Most Excellent Constitutional Congress.

Miguel Mora. Juan de Ds. Marchena.

Therefore, the following Decree is proposed:

The Most Excellent Congress, &c. * * *

Sole article.—In accordance with the opinion of the Committee and considering that the petition of the French-Costa Rican Company is beneficiary to the Republic, this petition is entirely agreed.

Such is the opinion of the Committee, but the wisdom of the Congress will resolve the best.

Done in the Hall of the Committee. San José, October 9, 1858.
To the Most Excellent Congress,

Miguel Mora. Bonilla. Marchena.

October 10.—The discussion of the aforesaid opinion shall take place in the next session.

October 11.—The second discussion shall take place in the session of next Monday.

October 14.—The third discussion shall take place in the next session.

Most Excellent Congress:

The Committee of Commerce deferring to the observations that several of the Representatives have made to the opinion given by it on the proposition made by the French-Costa Rican Company to colonize the lands that the Republic owns between the boundaries of *New Granada* and the line granted to the same Company, formulates the resolution that it deems suitable to be taken for the present:

“The Most Excellent Congress of the Republic postpones its resolution on the proposition made by the French Costa Rican Company for the colonization of the lands located between those that have been granted to the same Company and the boundaries of *New Granada*, until it shall receive official information of the success of the contract for colonization made in London with Messrs. Fyler and Carmichael.”

This is what the Committee thinks must be answered to the Supreme Government; but Your Excellency will resolve the best.

San José, October 15, 1850.

Marchena. Bonilla. Mora. Chamorro. Sandoval.

October 15.—Third Session. The aforesaid resolution was unanimously approved.

Doc. 297 **Extracts from Notes on the Constitution of the Republic of Colombia.**

1853.

On the 28th of May, 1853, a new constitution was promulgated. It is known by the name of “Constitution of 1853.” It marks the introduction of the federal system into *Colombia*. The preamble of this constitution reads:

The Senate and Chamber of Representatives of *New Granada* assembled; Considering that the political constitution sanctioned the 20th of April, 1843, does not fully satisfy either the wishes or the requirements of the nation;

In virtue of the power to add to and amend said constitution

conferred by it on Congress, and following the course of proceedings and in accordance with the extent of power permitted by the additional act to the constitution of March 7, 1853, decree the following political constitution of *New Granada*:

CHAPTER I.

ARTICLE 1. The ancient Viceroyalty of *New Granada*, which was a part of the old Republic of *Colombia* and subsequently became the Republic of *New Granada*, does hereby constitute itself into a democratic Republic, free; sovereign, independent of all foreign power, authority or dominion, which is not, nor ever shall be, the patrimony of any family or person.

The Congress of 1855 passed an amendment to the constitution, which had been before the various Congresses since 1852, and which had primarily for object to make the territory of the *Isthmus of Panama* a Federal State, sovereign in itself, and only dependent on *New Granada* as regards certain points essential to the nation. As finally unanimously passed this act allowed not only *Panama*, but (by Art. XII) the other Provinces of the Republic to become States. Under it *Panama* organized itself into a State in 1855; in 1856 (11th of June) *Antioquia* was made a State by the passage of a law, and in 1857 two laws brought about the division of the whole country into States.¹

Report of Don Pedro Fernández Madrid on the Coast of Mosquitos and the Question of Boundaries with Central America. Doc. 298

BOGOTA, November 29, 1852.¹

To the Secretary of State in the Department of Foreign Relations:

SIR:

An indisposition from which my health suffered during the

¹ See J. Arosemena-Estudios Constitucionales, II, p. 42. The Constitution of 1853 was amended by legislative acts of February 27, June 4, 1855, and February 10, 1858. F. Vélez-Derecho Nacional, 12, calls the creation of these sovereign States "a natural but absurd consequence" of the Constitution of 1853.

² *El Repertorio Colombiano*, No. XLVIII of June, 1882. Peralta—*Lím. de C. R. y Col.*, p. 363.

latter part of the month of October last and some urgent affairs which I was called upon to attend to afterwards, although not entirely recovered from my illness, prevented me, very much to my regret, from responding as promptly as I desired to the notes which you did me the honor to address to me, dated the 12th of the same month and the 2nd of the present one, of which however I beg to acknowledge the due receipt.

In them you were pleased to enclose various communications addressed by the Political Chief of the Canton of *San Andrés* to the Governor of the Province of *Cartagena*, advising him of certain infractions committed by some public agents and other subjects of H. B. M., under pretext of rights of sovereignty of the so-called King of the *Mosquitos* and in open violation of those of the Republic over the *Manglares Islands*, commonly known as *Mangle-grande* and *Mangle-chico* (Big and Little Mangle),² which have always been considered as belonging to that Canton and subject therefore to the jurisdiction of its superior authorities; and with this purpose also you were good enough to advise me that the Executive Power had hastened to take suitable measures that such improper acts should cease, causing the dominion of the Republic to be restored over the said islands, and that in due time there would be sent to me copies of some documents relating to the *Coast of Mosquitos* recently found in the archives of the Secretaryship of Government, to the end that, upon their examination, I should give my opinion as to what is best to be done for the welfare of the Republic in the matter and should submit such reports as I might deem proper.

In accord with this action, and being very sensible of the honor which has been shown me, I will frankly state my opinion, and will make such observations as occur to me concerning the subject to which you have been pleased to call my attention; for although I understand how delicate a thing it is to venture categorical views upon so difficult a question, and although it is very true that I do not consider myself competent to satisfactorily elucidate it, still I believe that it is my duty in the present case to candidly respond to the desire of the Government, assured that

² Upon the English maps these appear under the names of "Great Corn Island" and "Little Corn Island." These islands were ceded by Spain to Nicaragua by the Treaty of July 25, 1850. M. M. P.

your superior wisdom will correct the errors which I may commit and that in any event they will not be the result of pride or vain presumption but of the earnest desire with which I am animated to loyalty carry out the will of the Government.

Under the terms which you intimated, it would be superfluous for me to go into a detailed exposition of the origin of the titles of the Republic to the dominion of the *Coast of Mosquitos*, of the principles of International Law upon which it is based, of the historic facts which confirm it or the philosophical reasons which demonstrate and justify it. Nevertheless, for the sake of clearness and in order that the present report may be somewhat methodical, permit me to briefly refer to some facts, though without descending to the petty details which would make this communication too tedious and prolix.

What the Spanish Government maintained, as Your Worship knows perfectly well, and what the geographers and navigators of America have always understood as the *Coast of Mosquitos*, is that which extends for more than a hundred and eighty leagues along the Atlantic littoral of this continent, beginning on the westward at *Punta Castilla* or *Cape Honduras*, the boundary which separates it from the bay of that name, latitude 16° North. From its start at that point, the *Coast of Mosquitos* continues in an easterly direction, forming a somewhat obtuse angle toward *Cape Gracias á Dios*, and running from that point in a North-South direction it terminates at *Punta Gorda*, near the most northern arm of the River *San Juan de Nicaragua* at 11° North latitude.³

This coast, made up of the old native provinces of *Taguzgalpa* and *Tologalpa*, in the first years following their discovery, made by Columbus in person, was included within one of the two primitive governments conferred upon Alonso de Ojeda and Diego de Nicuesa; but as soon as the Captaincy-General of *Guatemala* was organized the whole *Coast of Mosquitos* was placed under the immediate dependency of the Intendants of *Comayagua* or *Honduras*, although the portion of the coast which extends from *Cape Gracias á Dios* towards the South was subsequently segregated from the Presidency of *Guatemala* and added, at one time

³ Punta Gorda is at 11° 26' North latitude.

to the Captaincy-General of the Island of *Cuba*, and at another time to the Viceroyalty of the *New Kingdom of Granada*, because it was easier to watch over and protect it from the maritime stations of *Havana* and *Cartagena* than from the naval station of *Veracruz*.⁴

⁴According to *ALCEDO* the *Coast of Mosquitos* was embraced between the parallels of 13° and 15° North latitude.

The demarcation most generally admitted is from the River *San Juan de Nicaragua* to the River *Román* or *Aguán* (from 11° to 16° North latitude.)

The boundaries which the Audiencia of *Guatemala* set for the Province of *Taguzgalpa*, under the Royal Cédula of February 10, 1576, were:

“* * * from the mouth of the *Desaguadero* (or River *San Juan*) to the point of *Camarón*, in the same direction where the Province of *Honduras* begins, with all the interior territory until the frontier is reached of what is now the district and jurisdiction of the Province of *Nicaragua* and that which is the same of *Honduras*.” (Archives of the Indies. Patronato. Shelf 1, Comp. 1. *TORRES DE MENDOZA*: Collection of Unpublished Documents, etc. Vol. XIX, p. 528 to 537).

The government of *Alonso de Ojeda* did not have any point of contact with the *Coast of Mosquitos*; and *Señor Fernández Madrid* tries to bring in *Nicuesa*. It is not correct to say that as soon as the Captaincy-General of *Guatemala* was organized it was placed under the immediate dependency of the Intendant (for Governor) of *Honduras*. The Captaincy-General of *Guatemala* was created by the cédulas of September 7 and 13, 1543, and three years before the *Coast of Mosquitos* formed part of the Government of *Cartago* or *Costa Rica*. This government was dismembered by the King *Don Felipe II* on December 1, 1573; from its southern border upon *Veragua* to the River *San Juan* the Province of *Costa Rica* was established; from the River *San Juan* to the River *Román* (the old *River Grande*) it was left without any provision being made for three years, until the Province of *Taguzgalpa* was created by the Audiencia of *Guatemala* with the *capitulación* or agreement made with *Diego López*, having the boundaries indicated at the beginning of this note.

Señor Fernández Madrid often takes one thing for another. The duty imposed upon the *Comandante de Marina* of *Havana*, or upon the Viceroy of *Santa Fé*, to watch over and protect the *Coast of Mosquitos*, he calls a segregation from *Guatemala* and an addition to *Cuba* or to the *New Kingdom of Granada*. But that was not the case, for the said coast remained from every point of view under the jurisdiction of *Guatemala*. Only the Royal Order of November 20, 1803, used the words “segregate” and “add,” and the documents show that this Royal Order neither added nor segregated, and as the author himself says a little further on, was worth nothing. M. M. P.

The portion of the coast mentioned, that is to say, that embraced from Cape *Gracias á Dios* towards the South, was, as has been said, directed to be added to the *New Kingdom of Granada*, in the time of the Viceroy, Flores and Góngora, by whose reports, which can be referred to in the copies that are on file in the library of national works, it was reincorporated in the Captaincy-General and Audiencia of *Guatemala*,⁵ until by the Royal *cédula* of No-

⁵ There was no such addition of the *Coast of Mosquitos* to the *New Kingdom of Granada* in the time of the Viceroy Flores and Góngora, and consequently it was not necessary to reincorporate it in the Captaincy-General of *Guatemala*. The fact was that the Viceroy of *Mexico* and *Santa Fé* and the *Comandante de Marina* of *Havana* had orders to aid the Captain-General of *Guatemala* with “* * * war vessels or quite different assistance of another sort” (Royal Order of San Ildefonso, September 24, 1786), without conferring upon those authorities any jurisdiction over the territory of *Guatemala*. During the administrations of the Viceroy of *Santa Fé*, Don Manuel Antonio Flores and the Archbishop D. Antonio Caballero y Góngora (1773 to 1789), the Captains General of *Guatemala*, Don Martín de Mayorga, Don Matías de Gálvez and Don José de Estachería, constantly exercised their jurisdiction over the *Coast of Mosquitos* and defended it against the English. It is well known that Gálvez drove them out of the Island of *Roatán*, from *Río Tinto* and from the River *San Juan de Nicaragua* with his own resources, without the *New Kingdom of Granada* helping him with so much as a musket shot. Señor Estachería, and under his orders Colonel Don Juan N. de Quesada and Lieutenant Colonel Don Gabriel de Hervías, received a commission from the King to make the evacuation of said coast effective.

The duty of watching over and protecting it must have appeared very difficult to the Viceroy of *Santa Fé*, Don Francisco Gil de Lemos, for on July 31, 1789, he asked that the Captain-General of *Havana* should be charged with it. The Viceroy Don Josef de Ezpeleta was willing that the command of the *Coast of Mosquitos* should be confided to him and he asked for it; but he did not succeed in his desires, although he interfered whenever he could in the affairs of that country. Therefore it is a vain task to pretend that before 1803 there was any segregation or reincorporation of the *Coast of Mosquitos*, because it continued under the dominion and within the geographical limits of the Captaincy-General of *Guatemala*.

See Peralta: *Costa Rica y Colombia*, various chapters upon the *Coast of Mosquitos*.

PEREIRA (Ricardo S.); *Documentos sobre límites de los Estados Unidos de Colombia* (Documents concerning the limits of the United States of Colombia), p. 115, 135; the report of the Viceroy Gil y Lemos

vember 30, 1803, it was definitely added anew to the Viceroyalty of *Santa Fé* or *New Granada*, together with the Islands of *San Andrés*, conferring the government of the latter upon Don Tomás O'Neilly.

Our title to the dominion of the *Coast of Mosquitos* and of the Island of *San Andrés* mentioned, as being placed *quoad hoc* in the stead of Spain, is founded upon the Royal Order cited, the original of which exists in the Secretaryship of Foreign Relations and was printed in the Gazettes, Nos. 349 and 383. This title has its origin in the exploration undertaken by Spain of those countries and in the occupation which was made of the most important points by the same Power. It has, therefore, in its support all the principles of natural and common law, which give the ownership of a territory to the nation which discovers and occupies it, and it was further strengthened by the cession which Great Britain made in favor of Spain of the inchoate right acquired by the former upon said coast during the wars in which both were engaged during the last century.⁶

As is known, the provinces of Spanish America, before their emancipation, were nothing more than a vast appendix of that Monarchy, maintained in their dependency by the absolute isolation in which they were kept from the rest of the globe. Such a system of deprivation of intercourse was the result of a rigorous merchantile monopoly which was participated in exclusively by Spaniards, so that the flag of other nations was not seen in our ports except during the wars in which Spain was involved and

and the despatch of the Viceroy Ezpeleta. The argument and opinions of Señor Pereira are very extravagant, and any one who compared his assertions with the authentic documents would perhaps judge him more severely than was done in the case of his "Geography of the United States of Colombia" (in French) by the well known Review, the *Geographische Mittheilungen*, of Gotha. M. M. P.

⁶As it is shown by the documents that the legitimate successor of the rights of Spain in *Guatemala* is *Guatemala* or *Central America*, and as Great Britain has ceded to *Central America* the inchoate right which it acquired by itself or in the name of the Mosquito King upon the *Coast of Mosquitos*, it should be said, turning the argument of Señor Fernández Madrid, that the title of *Central America* finds its support in natural and common law, strengthened by the explicit recognition of Spain and of Great Britain, that is, by positive international law. M. M. P.

to which allusion has just been made. This foreign commerce was from its very nature precarious, since the greater or lesser profit therefrom depended upon the caprice of the Spanish Government and the greed of the local authorities, upon whom it had conferred the power of permitting it temporarily by means of special licenses. Nevertheless, under the shadow of this traffic, and consequently of the piratical expeditions of the filibusters or buccaneers, by degrees some English were introduced into the Spanish dominions and they came to frequent certain places under various pretexts, such as fishing for sea animals and the making of salt upon the Island of *Tortuga*, the cutting of wood in the Bay of *Honduras* and upon the *Coast of Mosquitos*, etc.

It was in this way that different English adventurers began to establish themselves clandestinely among the wandering Indians along the said coast, and noting the advantages it possessed for fishing, its lands, its valuable woods and its favorable position for trade with the other Spanish possessions of the interior, and even for the opening of a route for interoceanic communication, they conceived the purpose of appropriating it for themselves. To this end their relations with the natives were extended little by little, suggesting to them malevolent ideas and furnishing them with firearms for carrying on hostilities against the civilized settlements; so that in the course of time British interests were formed there which were taken into account and were already spoken of with marked attention in the debates and diplomatic negotiations which were carried on between the Crowns of England and Spain.

Still, Great Britain did not find any authorized or recognised establishment in this part of our hemisphere, until by Art. 17 of the Treaty concluded at Paris on February 10, 1763, the Spanish Government conceded to the subjects of that Power the right to reside and to cut wood at the foot of the peninsula of *Yucatán*, in the district of *Belize*, embraced between the Rivers *Hondo* and *Vallis (Belize)*, which have their outlets upon the western coast of the Bay of *Honduras*.

This privilege, which did not imply any right to the ownership or dominion of the territory, but merely to the use of some

of its natural products, was confirmed by the stipulations of Art. 6 of the Treaty celebrated between the same Powers at Versailles on September 3, 1783; it being well understood and expressed that the territorial rights of Spain should in no wise be abrogated, and that therefore the English subjects who were found scattered in any parts of the Spanish continent whatsoever, or upon the adjacent islands, should withdraw therefrom within the period of eighteen months, counted from the exchange of the ratifications of said treaty, without being allowed to gather at any other point except that of *Belize* already mentioned.

With the purpose of explaining, amplifying and making effective what was stipulated in the foregoing Article of this compact,⁷ completing it and arranging in detail as regards the concessions made to the English on the Bay of *Honduras* and the regulations for the complete evacuation of the *Coast of Mosquitos*, there was shortly afterwards celebrated in London the Special Convention of July 14, 1786, which, like the former, was duly ratified, exchanged and promulgated. By it the King of Great Britain was required to cause all his subjects, without any exception whatever, to abandon the possession of the *Coast of Mosquitos* and other points of the continent generally, and of the islands adjacent, which were outside of the limits indicated for the district of *Belize* upon the Bay of *Honduras*.

In the same Convention H. B. M. agreed that if any of his vassals evaded his orders, going into the interior of the country, or resisted them in any other way, far from supporting them he would repudiate them entirely, as he also would repudiate those who might thereafter locate themselves in territories belonging under Spanish dominion, which were not embraced within the limits indicated for the district of *Belize*, and that he would prohibit his subjects in the most positive manner furnishing arms or munitions to the Indians established in the Spanish possessions.

⁷ The English deny that they were compelled by the Treaty of 1783 to evacuate the *Coast of Mosquitos*. This denial and the disputes that followed were the cause of the Convention of London, of July 14, 1786. The English who, with their slaves, evacuated that coast numbered 3,550. (H. H. Bancroft; "History of Central America;" vol. II, chap. XXXII.) M. M. P.

Under this Convention (of which you were good enough to forward to me a certified copy and which like the others has been printed in various collections of public treaties) both Courts issued orders and instructions which are on file in the Secretaryship of Government, of which you have also been kind enough to send me a copy. These documents, with which I was not acquainted and which I have read with all the attention they deserve, are certainly of great historical interest, as papers illustrative of the diplomatic bargain to which I have referred; and if, after the voluminous historical evidence and decisive official proofs which have been adduced in this question, it was necessary to have any further data, these would be sufficient to demonstrate what has already been superabundantly proved, to wit:

1. That Great Britain never denied abstractly recognition of the right which Spain held upon the *Coast of Mosquitos*, but on the contrary recognised it repeatedly and explicitly.

2. That when it took possession of that coast it was only as a hostile measure, similar to those which it carried out at the same time upon the Island of *Cuba* and in other Spanish possessions.

3. That the inchoate right which Great Britain thus acquired over the *Coast of Mosquitos* was not only never perfected, but it was expressly abandoned in favor of Spain, giving back formally and materially that territory and the immediate islands, by means of the most positive and solemn restitution.

4. That the sacrifices which Spain made to attain this restitution, such as the permission granted to the English to cut wood in the district of *Belize*, to establish themselves there and build dwellings and warehouses, etc., gave greater force and authority to the rights of Spain over the *Coast of Mosquitos*, adding to the titles which it originally possessed and of which it never had been despoiled the one given to it by a public restitution obtained from Great Britain in an onerous contract, in which, as it was expressed by its own governing authorities, the latter, instead of a simple cession, made a very advantageous exchange.

5. Lastly, that in the correspondence to which the occupation of the *Coast of Mosquitos* by the English gave rise, no other rights were ever taken into consideration than those of sovereignty of Spain over said territory, or those which Great Britain claimed to have acquired, as a matter of grace, for the cutting of

timber therein ; but neither upon the one side nor upon the other was there ever any claim to set up a representative or political individuality, or any title whatever to dominion on the part of the Indians, or to pay the slightest attention to them, except to ask in their behalf the clemency of the King of Spain, as the recognized sovereign of those Indians.

Until within a few years ago the British Government, recognising by numerous explicit and deliberate acts the rights derived from Spain which the American Republics hold upon the *Coast of Mosquitos*, made no further claim upon them except that they should continue tolerating this establishment of *Belize*, under the same conditions as it was tolerated by Spain, without asking as regards the *Coast of Mosquitos* anything more than the right to trade with the natives thereof, under the same terms as the Government of *Colombia* allowed this traffic to the other nations.

This attitude of the British Government was a natural consequence of the recognition of the independence of the old Spanish colonies, which were accustomed to the method of existing in large compact portions under the administration of the Viceroys, Presidents or Captains-General, and felt that in withdrawing themselves from the peninsular dominion they ought not to dissolve the social bodies which had been formed, and they therefore continued to respect the territorial demarcations indicated by their natural character and adopted by the previous administration, each section assuming the sovereignty which it needed for its own government by itself, but without changing ordinarily the ancient respective territorial integrity. Thus it was that upon the emancipation of *New Granada*, either as an integral part of the *Old Colombia* or as a section separate from it, each city, each town, each village, or each tribe, did not assume sovereignty, but the whole made up of these parts ; that is to say, the people of the ancient Viceroyalty, capable of being constituted into a State or Nation independent of Spain, but compact within itself. In any other way independence would have been a principle of dissolution, a disorganization of society instead of preserving it under regular forms, susceptible of interior order and of exterior consideration.

Nevertheless, Great Britain, long years after it had recognised our independence, the execution of the foregoing compacts having already been relaxed by the political changes of the new

American States, not only has refused to take up the examination of our protests and claims against the repeated acts infringing the territorial rights of the Republic which were committed by the Superintendent of *Belize* and other British subjects upon the *Coast of Mosquitos*, at *Bocas del Toro*, upon the *Mangle Islands*, now begun anew, and at other places in Granadian territory, but it has confined itself to replying disdainfully to the extended and well founded statements of our rights, without making any effort to controvert them:—

“That the *Mosquito* Nation continues now, as it has from remote times, in a certain sense under the guardianship of the British Government; that the latter does not claim to appropriate to itself any part of the territory of that tribe; but recognising, as it does recognise, the independence of the *Mosquito* Indians, it has more than once instructed the British authorities in that part of the world that they should notify the neighboring States, that Great Britain will not view with indifference any usurpation of the territory of *Mosquitos*.”

These and other analogous declarations have been closely followed by scandalous acts of official intervention, diplomatic and armed, such as the appointment of a Governor Superintendent under the specious designation of Consul General; the wrongful and forcible permanent occupation of the Port of *San Juan de Nicaragua*, and other acts outraging every principle of justice and international security with which the usurpation has been consummated which that Government undertook to carry out in the name of the imaginary King of *Mosquitos*.⁸

⁸ Although Señor Fernández Madrid wrote in 1852 it is apparent that he was not aware of the stipulations of the Clayton-Bulwer Treaty and the diplomatic negotiations which followed.

The occupancy of the Port of *San Juan del Norte (Greytown)* by the English took place on the 1st of January, 1848; but not in a permanent and irrevocable way.

Lord Palmerston, in despatches of May 28 and October 28, 1850, to Sir Henry Bulwer, Minister of H. B. M. at Washington, suggested the cession of *Greytown* and of a sufficient district at the North of *Greytown* to *Costa Rica*. The same Lord Palmerston made a similar proposition for cession on June 25, 1851, in favor of *Nicaragua*, and the first article of the Crampton-Webster Convention stipulated for such cession in a very explicit and solemn manner, and it is singular that the Government of *New Granada* should have had no knowledge of this diplomatic instrument. M. M. P.

Under such a state of things, which may already be deemed as unchangeable, the question of what is best to be done for the welfare of the Republic is as natural and pressing as it is difficult of solution. Therefore it is, that in suggesting for your consideration the few points that occur to me in reference to this matter, I consider it is also my duty to hastily examine those which I know have been given out concerning the same subject to the public or to the Government.

There has been no lack of those who were of opinion that the latter could without disgrace or dishonor declare the independence of a territory like that of *Mosquitos*, which it is evidently not prepared to govern nor could it govern well; and it is immediately apparent that if we were to do such a thing our question with England would be reduced to the narrow limits of a question of laying out a boundary in which there would be no difficulty in making an arrangement, inasmuch, as was stated in a notice given by the British Legation to your Secretaryship in 1847 or 1848, “* * * the British Government, after having examined various documents relating to the *Coast of Mosquitos*, is of the opinion that said coast embraces the territory situated between Cape *Honduras* and the mouth of the River *San Juan*.”

This declaration, to which the British Government, in fixing the limits of the territory of *Mosquitos* at the mouth of the River *San Juan*, did not add that it should be understood “without prejudice to those that might belong to it further to the South,” which words are found in some of its communications addressed to the States of *Honduras* and *Nicaragua*—this declaration, I say, was considered by our Government as a thing that should be taken up, because it narrowed the sphere of the question, giving to it precise terms, and because reducing the *Coast of Mosquitos* to what it really is and ought always to be understood to be, it amicably settled in advance a basis for some compromise or bargain in case of need as circumstances might make desirable.

And while it is clear that of said declaration, and especially of the omission which has been noted in it, a very different under-

standing could be had from that which was then had, it would always be evident that the British Government sought to induce us to enter into such an arrangement, for its agents never lost an opportunity to indicate to those of the Republic (as Mr. O'Leary did in announcing in 1845 the appointment of a British Consul for the *Coast of Mosquitos*) “* * * that the Government of H. B. M. would regard with satisfaction the equitable settlement of the boundary points which are in dispute” between the King of *Mosquitos* and the neighboring States, and that the agents of H. M. in *Central America* and in *Mosquitos* were authorized to make such a settlement by means of a treaty or written agreement.⁹

With knowledge of the dispositions that may be inferred from these intimations, it was also suggested to the Granadian Government, by persons familiar with the matter, that it should invite that of H. B. M. to make an explicit recognition of our rights over the *Isthmus of Panama* as far as the River *Doraces* or *Culebras* and that such recognition be arranged with the British Government by means of a Décreé which should be passed by the Congress, by which, without cession to any third party, it simply renounced the rights of the Republic to the littoral embraced between those rivers and Cape *Gracias á Dios*. And as a matter of fact, confining the attention solely to the form that should be adopted in order to carry this idea into effect, it may without trouble be conceived that, disregarding some constitutional difficulties which perhaps it would be possible to get rid of, the renunciation or better still the abandonment of the national rights over the *Coast of Mosquitos*, could be made by implication in a decree reorganizing the territory of *Bocas del Toro*, or bounding it anew as Canton of the Province of *Chiriquí*, fixing its western limit and that of the Republic, upon the Atlantic, at the

⁹ These conjectures were gratuitous. By the note of Lord Palmerston to Señor Mosquera of May 4, 1848, it appears that the English Government did not admit the right alleged by that of *New Granada* over the *Coast of Mosquitos* and refused to enter into a discussion with it. The strange thing is the silence which the Colombian Government observed in respect to this note, notwithstanding the fact that its Minister in London received it in May, 1848, and that it was published on July 3rd of the same year. M. M. P.

River *Culebras* or *Doraces*; by which *ipso facto* our title would be given up to the dominion of said coast.¹⁰

But it is not easy to see how it would be feasible to combine this tacit renunciation of our rights over the Coasts of *Central America* (an idea that ought at all times to be kept in mind, as at sometime it will be desirable to make use of it) with an explicit recognition that Great Britain ought to make of our sovereignty upon the rest of that littoral and from the borders of the archipelago of *Bocas del Toro*, at the north-west of the *Isthmus of Panama*, to its greatest extension toward the South. For this to be regularly done, it seems that it would be necessary to celebrate, under the intervention and guaranty of the British Government, one or more boundary treaties with *Costa Rica* and the other States of *Central America* interested in this question, and it is at once apparent what grave practical difficulties and what transcendent political consequences such an operation would entail.

¹⁰ How could Señor Fernández Madrid forget that the Government of *New Granada* in 1836 organized the territory of BOCAS DEL TORO and that in 1837 it erected it into a Canton, fixing as its western boundary the River *Culebras*? Sixteen years before the Colombian Government had already adopted the plan here suggested. Although the Decrees of 1836 and 1837 did not expressly state that the River CULEBRAS was the *boundary of the Republic*, it was evident that such was the intent of the legislature, in proposing, as set out in the first preamble of the Decree of 1836, *to assure the proprietorship of the Republic over that territory*, organizing it for the first time and indicating a demarcation which, while not claiming to be precise left it somewhat less vague and arbitrary, without the least basis in Royal Cédulas or other valid acts of the sovereign power.

The Decree which Señor Fernández Madrid asks for, which had been issued since 1836, was equivalent, in his opinion, to a tacit renunciation of the rights of *New Granada* to the coasts of *Central America*. But, what did *Colombia* give up, if its title was no more than a duty, onerous, vague and undefined, which was *worth nothing*, as he himself states? *Colombia* could not give up what it did not have, but it should make *its title* (the Royal Order of 1803) serve to give color to its real and actual territorial pretensions, making use of such title as a screen until it could create a valid one, as the result of negotiations with Great Britain and the States of *Central America*,—which would assure to it more efficiently than by its own decrees the sovereignty and tranquil possession of BOCAS DEL TORO, to which territory it recognised that it had no clear title prior to the forcible occupation of 1836. Such is the view of the author. M. M. P.

It would afford a basis and it would even confirm in a certain way the false principle that within the ancient limits of the Spanish American Republics there existed independent native tribes with which other powers had the right to treat, or territories *adespota* which they were at liberty to occupy. Furthermore, such a step would take us away from the system of quasi-alliance which we have initiated with the United States and which it is desirable should be cautiously tested, not because of itself it is deserving of great regard but because it is our written duty and because it may perhaps be that it may be for the material interests of the United States to afford us efficient aid in this matter. And I speak of material interests and not of any other, because as we know they are what dominate there and what move all the social machinery, perhaps more powerfully than in Europe, where in the opinion of intelligent persons the number of men is greater and more influential who do not look upon humanity and philanthropy as vain words.

Putting this one side, I will only permit myself now to say that in my opinion *New Granada* can not undertake to enter into any bargain which has for its basis the tacit or express recognition of the independence of the territory of *Mosquitos*, without being guilty of the most flagrant inconsistency, for, how will others judge us and what will they think of our fickleness, if, after so many and such solemn declarations to the contrary, and after having put in evidence the titles which *New Granada* holds to the proprietorship and dominion of that territory, we come at last to a recognition of its independence? If, in spite of fundamental principles and the best settled and generally admitted axioms of the Common Law; if, sacrificing not only our sovereignty, but also that which belongs to *Honduras*, *Nicaragua* and *Costa Rica*, we should make such a recognition, notwithstanding the force of law and the powerful arguments which are afforded by public treaties and historic facts that favor us in the present case? What principle could we allege and to what sufficiently powerful reason could we appeal when the day comes that the same England, or any other maritime Power, may seek to question our dominion over the coasts of *Darién*, *Goajira* or other points of our territory, deserted or occupied only by wandering natives? None, evidently none.

We may conclude, then, that however we may compromise in endeavoring to reach a final conclusion, less dangerous if not in all respects favorable, of this disagreeable question of British power, we must never give up the principle which we have asserted, which is observed by Great Britain and generally adopted by the United States and the other nations that have conquered and now hold by succession the countries of the two Americas, and that is, that the discovering Power and its legitimate successors, while respecting the occupation of a portion of territory by natives, exercise over it a certain sort of supremacy and direct dominion, with all the consequences flowing from this principle and which were borne in mind by your immediate predecessor in his report to the National Legislature of 1850.

The *Mosquitos* affair, as was then stated, has for *New Granada* not merely the interest of a simple question of law, or of a simple question of territory, but it is one of honor, of security and the principles involved are essential to our nationality and independence; for the principle set up by the British Government, alleging the existence of native powers of a sovereign character, within the limits of the Spanish American States, constitutes a direct threat against the proprietorship and dominion of these Republics over the greater part of the regions over which yet wander some remnants of the primitive hordes of heathen Indians who inhabited them at the time of their discovery, conquest and colonization by Spain. It obtained in those territories, and the Republics by which it was succeeded also preserved, such a possession as was possible in uncultivated regions, vast in extent and almost deserted.

Looking at things in this way, from which we must not get away in our relations with Great Britain, nor with any other foreign Power, with the exception of the States of *Central America*, the only one adjoining upon that side, with which we have celebrated treaties under which it is to be presumed we will some day come to an understanding in order to settle in a manner satisfactory to both parties the exact demarcation of our extensive territorial boundaries. Looking at things in this way, as I said, it appears that while the British Government continues to pursue the line of conduct which it has hitherto followed and until

some opportunity presents itself for us to put a decorous termination on our part to so embarrassing a question, we ought to formally follow our system of protests against every prejudicial act performed by British agents upon the *Coast of Mosquitos*, so far as it affects the rights of *New Granada* in the portion of that territory which belongs to it.

This course, a proper one for us and easy to pursue, while it may not offer any other advantage, will serve us as it has thus far in preventing Great Britain from carrying out the design which it harbors and is shown by its acts of infringing upon our sovereignty in the territory of *Bocas del Toro*, which having a magnificent bay and the best port there is upon the whole of that littoral is also the object that most highly excites its covetousness.¹¹

To stop Great Britain in the course of its usurpations, although it may be only temporarily, is to gain time, and to gain time in this question in the present condition of the whole world is to gain a great deal; for, as has already been intimated, it may very well happen that in the unforeseen fluctuations of politics, some other powerful nation may see fit to interpose some obstacle to British ambition, or that by our own efforts we may succeed in giving a more favorable direction to the question. With our scant means for resisting the ambition of the great powers, we ought to take advantage of everything that may afford us the slightest hope of a better result, and in fact we may expect this from the reciprocal fears of these powers. If, for example, the considerations which have been observed by the Governments of England, France and the United States, led to the independence of the Sandwich Islands and of the Society Islands being respected, as to which mutual concessions have been made, and if,

¹¹ Great Britain maintained that the *Mosquito Kingdom* extended to *Buppan's Rock*, at the South of the *Escudo de Veragua*, and it has already been seen that the Government of H. B. M. considered that the frontier of the Captaincy-General of *Guatemala* and of *Costa Rica* reached as far as the *ESCUDO DE VERAGUA* and the River *Chiriquí*, at meridian 81° 34' of longitude West of Greenwich. Under this view Great Britain did not in any way infringe the sovereignty of *New Granada* and as regards the rights of *Costa Rica* it is fair to say that Lord Palmerston recognised them with justice and gave them his support in the course of various diplomatic negotiations. M. M. P.

by virtue of these views *Peru* was able to maintain its dominion over the uninhabited Islands of *Huano*, why, observing upon our part a discreet and dignified attitude, may we not hope with greater reason that our present and positive possession may be respected in the archipelago of *Bocas del Toro* and the Islands of *San Andrés*?

It is however necessary to remember that we must be more moderate in the expectations we cherish as to the friendly help of other nations and that in order to secure this result the main thing is still for us to seek to preserve our rights by our own strength and that in order to assure and defend them we must accustom ourselves to first of all count upon ourselves. To put an end to the uncertainty as regards our frontier with *Central America*, fixing our territorial demarcation on that side in the clearest and most precise manner possible; without however on this account failing to go on meanwhile formally indicating efficiently, by acts of actual and material possession our exclusive dominion over the territory that belongs to us absolutely and unequivocally as far as the River *Culebras* and over the adjacent islands, founding permanent establishments at the most important points and protecting those which we have already, this is the first thing about which we must think. The other measures we may be able to adopt are all of a secondary interest and of an accessory character; it would, therefore, be a grave error to give to them more importance than they deserve, for this would distract our attention from the essential thing, which consists in marking out and occupying that territory.¹²

Taking up now the consideration of the succinct indications which have just been made, we start with two facts that appear to be unquestionable:

1. The usurpation carried out upon the *Coast of Mosquitos* is

¹²This paragraph explains the consecutive acts of invasion committed by *Colombia* upon the territory of *Costa Rica*, in spite of all the arguments and principles which its defenders bring forward when Great Britain or *Venezuela* is considered, and that the purpose is to formalize, by acts of actual and material possession; the dominion which it pretended to hold *exclusively, absolutely and unequivocally* (?) over the territory of *Costa Rica*, which extends between the River *Chiriquí* and the River *Culebras* (?) or the *Sixoula*. M. M. P.

virtually of an irrevocable nature, by reason of the enormous disproportion between the power and the resources of the aggressor and the party injured, and on account of the inflexible policy which characterises the former.

2. Our title to the dominion of the *Coast of Mosquitos*, reduced to the onerous duty which was imposed upon us by the Royal Order of November 30, 1803, is worth nothing, nor is it of any utility for ourselves; we ought to get rid of it, in such a way that it may not make us troubles of another kind.

Neither *New Granada* nor the States of *Central America* can undertake to re-establish upon the *Coast of Mosquitos* an authority which, for reasons that can not be gone into at the present time, has probably been lost there forever.¹³ It would be necessary to conquer that territory anew, for the British Government has made advances of such a character in that question, its innate arrogance and its physical interests are involved in such a way therein, that it is easy for it to convince itself that, not only for its own convenience but as a point of honor, England, unless there is some emergency it is not possible to foresee, will never take a step backward. The *Coast of Mosquitos*, like *Texas*, like *California*, like the *Falkland* Islands and other territories, has been snatched away from our unfortunate Republics as some of them may perhaps disappear from the political map of the world, like a fruit which falls from the tree without ripening. With a little more judgment, with some concert of ideas and principles, with more unity and energy of action, they would have made themselves respected as powers or admired as victims, in which case they would also have compelled respect.

This required, however, heroic sacrifices, and intimate and permanent fellowship, a vigorous conduct and a firmness and perseverance which could hardly be expected from such precarious governments, torn by turbulent factions, compelled to provide for their daily wants and at times administered by men

¹³ Señor Fernández Madrid did not know of the existence of the Clayton-Bulwer Treaty and the Crampton-Webster Convention, by which England made a tacit renunciation of the *Mosquito* Protectorate and undertook to refrain from colonizing or exercising any dominion upon that coast. The Treaty of *Managua* was signed eight years after this Memorial was written. M. M. P.

incapable of lifting their eyes to the height from which the Granadian Government has contemplated and now regards our situation.¹⁴

But there is still more, and that is that if on the one hand the task of recovering the *Coast of Mosquitos* is greater than our strength, on the other hand *the title that we have to the dominion of that territory is of such an anomolous and indefinite nature, that strictly it would be reduced to the duty of affording it the maritime protection it might need for its coast guard against outside aggressions.* It appears very certain that in view of all the circumstances of the case this appears to have been the intention with which the Spanish Government issued the *Cédula* of 1803; since by it *there was not then added to NEW GRANADA any integral province or territory, but simply a portion of the COAST OF MOSQUITOS; and by coasts can not be understood the districts of the interiör country, nor even the littoral establishments of MOÍN, or SALT-CREEK, SAN JUAN DE NICARAGUA, or GREYTOWN and LAGUNA DE PERLAS or BLUEFIELDS, which always were, as they continued after the issue of that order, exclusively dependent upon CENTRAL AMERICA.*¹⁵

Under this interpretation, which seems to be the only one that harmonizes well with that document, the dominion we have derived from Spain over the said territory would be left reduced to the islands, which undoubtedly are embraced under the designation of "coasts," and to an extension of beach, littoral or shore of the sea, exceedingly difficult to mark out and of which we have absolutely no need. We ought, therefore, to make haste

¹⁴ Señor Fernández Madrid treats the Republics of *Central America* with great injustice. The firmness and perseverance with which *Nicaragua* has maintained its rights in the face of powerful England, even at the risk of war, which might have caused her to disappear from the roll of States, are noteworthy, and *Nicaragua* may take pride in the fact that to her energy is due the restoration of her dominion over the *Coast of Mosquitos*. M. M. P.

¹⁵ These words are sufficient to decide the question between *Central America* and *Colombia* in favor of the former; for just as he had already stated, the Royal Order of 1803 was for *Colombia* no more than a weapon with which to fight. The cession which Señor Fernández Madrid suggests presupposes the validity of such Royal Order, which was abrogated and annulled by others subsequent to it. M. M. P.

to cede it to the States of *Central America* in exchange for securing in the interior of the Isthmus, taking advantage for that purpose of any favorable opportunity, a frontier demarcation which would avoid all reason for doubt or dispute in future, or at least marking out for us the *Coast of Mosquitos*, fixing towards the North-west upon both oceans the boundary of our territory at conspicuous points and in a permanent and positive manner, provided that this can be carried out without compromising any principle engaging our security and without diminishing directly or indirectly our right to the other territories which belong to us.

Having made this general observation, from which it becomes very evident that the settlement of our boundaries with *Central America* is an essential means for putting an end to the *Mosquito* question, it may perhaps not be deemed improper at this place to offer some special considerations regarding those limits, to which you were also pleased to call my attention in verbally advising me of the commission which you had just conferred upon me.

The division line between *New Granada* and *Guatemala* was not established by the Spanish Government except only in the vague way which has just been stated, and at times in a still more indefinite manner¹⁶; and out of this arises the lack of uniformity which is observed in that border line, purely imaginary, indicating by a series of dots which run across the *Isthmus* upon some of the maps. The fact is that the division line between the two Republics ran through a rough country which was never explored during the time of the Spanish Government and which even yet has not been surveyed. It is therefore clear that in order to proceed to locate the internal demarcation in a precise, correct and definitive way, it would be necessary to have a preliminary reconnaissance made of the territory referred to and have a topographical chart of it prepared, so that with this in

¹⁶ This assertion is entirely erroneous. The demarcations made by the Royal Cédulas, Capitulaciones and Provisions of September 6, 1521, December 24, 1534, January 19, 1537, November 29, 1540, January 21, 1557, May 20, 1559, August 20 and September 22, 1560, December 1, 1573, August 30, 1576, and Dec. 29, 1593, are neither indefinite nor vague; but those of the maps are. M. M. P.

view or simply with the reports of the respective engineers, and with a knowledge of the lands and waters where the line was to run, the stipulations might be drawn up for the corresponding treaty, with the clearness, exactitude and definiteness proper in documents of that nature.

This is the way in which it appears that our Government ought to proceed in order to secure a perfect and conclusive adjustment of its boundaries; but if this procedure is deemed too slow and embarrassing and another less tardy and difficult of execution is desired, we could conform thereto, as already has been stated, by clearly fixing the extremities of the division line upon both littorals of the *Isthmus*, leaving to later negotiations the arrangement of the details as to the internal frontier throughout its whole extent, from *Punta Careta* or the outlets of the *Doraces* or *Culebras*, upon the Atlantic side,¹⁷ to *Punta Mala*, Cape *Burica* or other suitable region of *Dulce Gulf*, upon the Pacific, for with

¹⁷ Señor Fernández Madrid speaks of two distinct rivers, the *Culebras* and the *Doraces*, and suggests one or the other as the boundary for *Colombia*. What does it amount to? Señor Felipe Pérez considers the *Culebras* the same as the River *Doraces*, *Dorces* or *Dorados*, and it was a river *Dorados* which the Congress of *New Granada* proposed as the boundary in 1857. Señor Pérez submitted to the legislative authority of his country. See Felipe Pérez: *Geografía física y política del Estado de Panamá*; (Physical and Political Geography of the State of Panama). Bogota, printed by La Nación, 1862, p. 6.

Upon the chorographic map of *Panama* (official) by Señores Ponce de León and Paz (Bogota, 1864), the River *Culebras* or *Dorados* is a single river, the location, course and outlet of it being purely imaginary.

Señor Rico, Minister of Foreign Affairs of *Colombia*, in 1880 fixed as the boundary the River *Culebras*, without making any mention of the *Doraces* or *Dorados*. The Neo-Granadian Congress of 1857 was given no attention by Señor Rico, who adhered to the simple River *Culebras*, fixed by the legislature of 1836 as the frontier of the territory of *Bocas del Toro*.

What is the River *Culebras* and what is the *Dorados*?

Is it one or are there two rivers?

In view of this disagreement may there not be a third?

At all events, it is not the river which *Colombia* claims as the frontier of *Costa Rica*, but the one which empties to the South of the *Escudo de Veragua*, which may be called *Chiriquí*, *Calobébora* or *Culebras*.

Upon the Pacific the boundary of *Costa Rica* was the River *Chiriquí* and *Dulce Gulf*, wholly, with all its shores belongs to *Costa Rica*. M. M. P.

this and by giving up the remainder of that littoral as far as the promontory of *Gracias á Dios*, our position would be very much simplified, beginning the demarcation of our frontier and without any new burden or additional charge for the States of *Central America*, but rather one trouble the less for them. There would be a positive relief and advantage for *New Granada*, which would get rid of the bother of the questions relating to *Mosquitos* and it could devote itself to the development of the neighboring territories which belong to it.

Unfortunately there is not now in *Central America*, nor is it probable there will be constituted there at a very early day, a general government with which that of *New Granada* can come to an understanding. Nor can we expect that those States, generally so discordant, are now going to unite in maintaining at Washington a Legation which could treat with ours concerning this matter.¹⁸ And yet it is more sensible to suppose that even if we should determine, as I think we ought to do to send a respectable mission which could negotiate directly with the Government of *Nicaragua*, *Honduras* and *Costa Rica*, as it would be with those that we would have to deal, the successful issue of such a mission would be more or less problematical.

With the first of these States we would have nothing more to do than to cede to them the portion of the *Coast of Mosquitos* which belongs to us from the River *San Juan* to *Cape Gracias á Dios*, and we could do the same with *Costa Rica* as regards the littoral embraced between the River *Culebras* and the *San Juan*, as to which there would be also no difficulty, but it is to be feared that in tracing the division line properly so-called, which is to run through the interior of the continent, or even if we only discuss the fixing of the terminal or border points upon the littoral, *Costa Rica* will bring up again the claim of sovereignty which has heretofore been advanced on the part of *Central America* over

¹⁸ *Costa Rica* had from 1851 a Legation in Washington under the charge of the noted diplomatist Don Felipe Molina. When Señor Fernández wrote his Memorial he was in negotiation with the Minister of *New Granada*, Don Victoriano de D. Paredes and it was already nearly three years that Señor Molina, at Madrid, at Paris, at London and in Washington, had fought the claims of *New Granada*. Don José de Marcoleta represented *Nicaragua* at that time. M. M. P.

the archipelago of *Bocas del Toro* and the Island of the *Escudo de Veraguas*, a claim which has more than once given rise to strong demands upon our part, this having also been the reef upon which have stranded various negotiations undertaken during the time of *Colombia* and even more recently during the revolution of 1840 and 1841.

From the time that the Provinces of *Central America* threw off the temporary control of General Iturbide, providing for their respective forms of administration and that of the confederation in which they maintained themselves for sometime, the State of *Costa Rica* declared in 1825, in one of the Articles of its Political Constitution: “* * * the territory of the State is now extended * * * North-South from one sea to the other, its limits on the North being the River *San Juan* and the *Escudo de Veraguas*, and on the South at the outlet of the River *Alvarado* and that of the *Chiriquí*,” and this same expression as to boundaries was reproduced in the various constitutions which *Costa Rica* adopted subsequently for its government, either as an integral part of the *Central America* Confederation or as an independent State.

The same general government of those united provinces, in a communication addressed by it to the Colombian plenipotentiary charged with the boundary negotiations in 1825 or 1826, indicated as the division line, natural or convenient, between the territories of the two Republics, the one running by the *Escudo de Veraguas* upon the Atlantic, the outlet of the River *Boruca* upon the Pacific and the district of *Chiriquí* in the interior of the ancient Province of *Veragua*. The Government of *Colombia* was no more moderate in its pretensions at that time, since it sought to obtain in compensation for the abandonment of its rights over the *Coast of Mosquitos*, the sovereignty of all the territories situated upon the southern bank of the River *San Juan*, and consequently the perfect right to the free navigation of this river and of Lake *Nicaragua*. And it was because of these exaggerated and conflicting claims that the negotiations had no result whatever, but the boundary question was left, as it continued, upon the footing it was placed by the Treaty of March 15, 1825 (No. 7, part 2, treaty 7, R. G.), by Art. 7 of which

both parties agreed to celebrate a special agreement as to boundaries and to respect meanwhile those which then existed, *which are still the same that separated the Viceroyalty of Santa Fé from the Captaincy-General of Guatemala.*

Notwithstanding this disposition, the Government of *Costa Rica*, interpreting or feigning to interpret absurdly Art. 8 of that same treaty,¹⁹ which allowed the making of surveys in the border territories, in 1836 sent to the Islands of *Bocas del Toro* some persons commissioned by that Government to colonize that territory and rule over it in its name, at the very time that by virtue of the Legislative Decree of May 30, 1836, which organized provisionally the administrative government of that same territory, there was being established there a Granadian authority, as no one had disputed, nor could they dispute justly, the proprietorship of the Republic over said territory, an integral part of that of *Veragua* from time immemorial.²⁰

The Granadian Government was not unmindful of this project, nor of others which that of *Costa Rica* undertook at the same time in order to plant illegal colonization establishments upon the shores of *Burica* or *Boruca*,²¹ in the same Province of *Veragua*, but made timely protests and formal claims, the former Government passing resolutions in accordance with the rights and dignity of the Republic as regards the uncertainty of the true frontier line. And what is more, it caused an official visit to be immediately undertaken upon the Islands of *Bocas del Toro*, despatching forthwith from *Cartagena* a small but well-equipped military expedition to occupy them and there was obtained from the inhabitants, almost all of whom came from *Jamaica* and other English possessions, a solemn recognition of the national au-

¹⁹ It was not under Art. 8 of the Treaty of March 15, 1825, that *Costa Rica* proposed to colonize the Islands of *Bocas del Toro*, but in virtue of its titles of sovereignty and legitimate possession since the year 1540 and under the guaranty of that treaty, infringed by *Colombia*. M. M. P.

²⁰ This assertion is contrary to the facts and the titles of *Costa Rica*. M. M. P.

²¹ These two names were often confused but they are quite a different thing. The pretensions of *Colombia* never reached further than the *Rio Golfito* in *Dulce Gulf*, and the *River Boruca* or *River Grande de Terraba* is situated at 70 kilometres to the North-West of *Burica*.

thority, which, with the material possession we have kept, has been maintained inviolate in spite of the hostile threats and the subtle efforts of the English.²²

Since then I do not know of any other acts on their part except the one to which I will refer, as it was set forth in the publications made at the time in *Panama* and which were to be found until a short time ago in the National Library.

In 1841, when the Provinces of the *Isthmus* were separated from the rest of the Republic, Señor Pedro Obarrio, a citizen of the former, went to *San José*, capital of the State of *Costa Rica*, and in pursuance of a certain diplomatic commission which had been confided to him, subscribed an agreement with the Supreme Chief of *Costa Rica* under date of September 22, 1841, concerning the recognition of what was called the "State of the *Isthmus*," in which were set out the bases for a treaty of friendship and commerce, and in which the State of *Costa Rica* declared that it "* * *" reserves its right to claim from the Government of the *Isthmus* the possessions of *Bocas del Toro* upon the Atlantic Ocean, which the Government of *New Granada* had occupied crossing over the division line located at the ESCUDO DE VERAGUA."

In acknowledging the receipt of this document, promising that it would be submitted to the consideration of the Congress of the *Isthmus*, the Minister of Foreign Relations of this latter State announced to that of *Costa Rica* that the claim as to *Bocas del Toro*, to which Art. 4 of the Convention cited referred, would be satisfactorily answered by the Government of the *Isthmus*, and that in the respective conferences the principles established by modern civilization and by international law would be observed. Nothing further was done in regard to this matter, because order having been re-established in the rest of the country, the authorities who had been in office upon the *Isthmus* were replaced by the legitimate ones and the Government of *Costa Rica* refrained from seeking the approval of the pending treaty.

These facts and the other analogous incidents which have recently occurred ought to be taken into account in the renewal

²² *Colombia* has always proceeded by force and presented the point of the sword when it undertook any of its invasions. M. M. P.

of the boundary negotiations, for although on the part of the States of *Central America* such acts only constituted an absurd pretension to settle by their own action a question which, if it could deserve to be called such, would be essentially an international one and could only be decided by a treaty; and although even then they could never invalidate the legitimate possession which *New Granada* obtained and the jurisdiction exercised by its government over the territory of *Bocas del Toro*, such as was shown by the Legislative Decree of May 30, 1836, fixing, in accordance with the *uti possidetis* of 1810²³ the extremity of its littoral at the River *Culebras*, yet still such acts would furnish a strong presumption concerning points that would give rise to controversy when it was undertaken to arrange by negotiation a settlement of the boundary line between the two Republics and therefore they deserve to be kept in view against the arrival of such an exigency and on this account it is necessary in this paper to devote some additional consideration thereto.

The Royal Cédulas relating to the original establishment of the Viceroyalty of *Santa Fé* and the Kingdom of *Guatemala* and of their respective Audiencias and Chancelleries, not only those inserted in the Code of the Indies, but also those which have not been given to the public,²⁴ far from making a complete demarcation of these countries, hardly do more than designate vaguely, as I have already said, the principal provinces and cities embraced in the respective jurisdictional district. It can not, however, be doubted, that in some official document of the Spanish Government there was fixed as the end of the two jurisdictions, upon the Atlantic the River *Culebras* and upon the Pacific the Gulf of *Dulce*, between *Punta Mala* and *Cape Boruca*,²⁵ since the most accredited old geographers are in accord in the recognition of such boundaries, among the French, D'Anville and

²³ The documents show that this assertion is erroneous. M. M. P.

²⁴ The Royal Cédulas which have not been given to the public.—Where did Señor Fernández Madrid see them? If in the following lines he loses the opportunity of citing a single one in his support and goes back to the authority of foreign and Spanish geographers who prove nothing, it might be supposed that he spoke of the unpublished Royal Cédulas, without suspecting that they mark out the Province of *Veragua* with perfect clearness and that they contradict his assertions. M. M. P.

²⁵ Cape *Burica* or *Burica* Point.

Robert de Vaugondy, among the English Faden and Jefferys, and among the Spanish, Don Juan de la Cruz Cano and Don Antonio de Alcedo. In accordance with these boundaries the Spanish authorities constantly proceeded in those regions during the last century and during the first years of the present one down to the epoch of the emancipation.

These were, then, the ends of the territory of *New Granada* toward the North-west, until by the Royal Order, so many times cited, issued at San Lorenzo on November 30, 1803, which was in force when *New Granada* and *Guatemala* became independent of Spain, that territory was increased by the Islands of *San Andrés* and the part of the *Coast of Mosquitos* from Cape *Gracias á Dios* inclusive toward the River *Chagres*, a coast and islands which, by virtue of that Cédula, were segregated from the Captaincy-General of *Guatemala* and left dependent upon the Viceroyalty of *Santa Fé*. The Treaty of 1825, made between *Colombia* and *Central America*, was subsequent to that Royal Order, and by its Arts. 7, 8 and 9 the existing rights were fully recognized and confirmed.

The Constitution, also, of the Federal Republic of *Central America*, adopted November 22, 1824, in its Art. 5 designated as the territory of that Republic what had been previously embraced in the Kingdom of *Guatemala*, excepting the Province of *Chiapas*; and the territory embraced within the ancient Kingdom of *Guatemala* is that set out in Law 6, title 5, book 2 of the *Recopilación de Indias*, which as regards this point says that, “* * * the district of that Kingdom will border on the East upon the Audiencia of *Tierra Firme*,”—so that no respectable or satisfactory argument can be found for the pretension set up by the Government of *Costa Rica*, alleging that its territory extends to the meridian that passes by the Island of *Escudo de Veragua*, and this is a name which in itself contradicts such an extraordinary claim.²⁶

²⁶The Royal Order of San Lorenzo was NOT in force when *New Granada* and *Guatemala* proclaimed their independence from Spain. It is enough to say that the Royal Order of March 31, 1808, the Decree of the Cortes of December 1, 1811, and the Law of Territorial Division of *Colombia* of 1824, excluded the *Coast of Mosquitos* from the jurisdiction of *New Granada*.

By the *Memoria del estado político y eclesiástico de la Capitanía Gen-*

This can have no other origin than the statement by a Guatemalan writer, Don Domingo Juarros, who, in his statistical and commercial history of the ancient Kingdom of *Guatemala*, published at the beginning of this century, was the first one who claimed that the limits of *Costa Rica* extended upon the Atlantic from the River *San Juan de Nicaragua* to the Island of the *Escudo de Veraguas* basing his assertion upon a certain document preserved in the archives of *Cartago*, by which it appeared that one Diego de Artieda Chirinos had been the first Governor or Captain-General of *Costa Rica*, in the XVIth century, the King having granted

eral de Guatemala (Report upon the political and ecclesiastical condition of the Captaincy General of Guatemala), by Dr. Méndez, presented to the Spanish Cortes May 17, 1821, and received by that body with favor, it may be noted that the demarcation of *Guatemala* on the side of *Veragua* was the same as that fixed by the King Don Felipe II; and Dr. Méndez refers to the *Historia de Guatemala* of Don Domingo Juarros and to the statement presented to that same Cortes by its president, Don Florencio del Castillo, on May 31, 1813.

These limits are alluded to in Art. 5 of the Constitution of *Central America* of November 22, 1824, and in the Constitution of *Costa Rica* of January 21, 1825, and no other limits could be treated in the Convention of 1825, between *Colombia* and *Central America*, because the Central American plenipotentiary was not ignorant of the fact that the Royal Order of 1803 had at that time no value whatever.

Don Tomás O'Neill himself, the Governor of *San Andrés*, at whose instance the Royal Order of 1803 was issued, stated explicitly that the *Escudo de Veragua* was the limit of demarcation between the two Kingdoms (of *Guatemala* and *Santa Fé*).

Yet, still Señor Fernández Madrid declares that the name of "*Escudo de Veragua*" contradicts of itself the extraordinary claim of *Costa Rica* to extend its territory to the meridian which passes by that island.

How could the learned expositor be ignorant of the fact that the name of "*Veragua*" was a common one to all the Atlantic coasts of *Central America* discovered by Columbus in 1502? At different times and by different authors this was used as a customary designation and demarcation for a certain territory, when there was no fixed rule therefor. *Costa Rica* was given the name and was a part of *Veragua*, it was the "*Royal Veragua*," distinct and separate from the *Dukedom of Veragua*. It began to be called *New Cartago* and *Costa Rica* in 1540, so as not to confuse it with the *Dukedom*. In 1565 Philip II designated it exclusively by the name of *Costa Rica*, and in 1573 set it off from the new and diminutive Province of *Veragua*, created in 1560 out of what was the ducal dominion of Don Luis Columbus, restored to the Crown in 1556. M. M. P.

this position to him for his life and that of one of his sons, and prescribed the limits of their jurisdiction, which should extend along the coast of the Atlantic from the mouth of the River *San Juan* to the Island of the *Escudo de Veragua*, and upon the Pacific Ocean from the River *Nicoya* to the River *Boruca*.²⁷

The fact alone, as was observed very justly by Señor Manuel María Mosquera—the fact alone of digging out such a document from the archives of *Cartago* and producing it at this late day as the discovery of a forgotten or lost title, well proves that the possession of all the littoral by the Government of *Costa Rica* never had any actual reality or it would have been kept up subsequently; and this is taking for granted the authenticity and signification of that paper, which does not harmonize very well with the better known historical facts, according to which we see that the authority of the Viceroyalty of *Santa Fé* was constantly exercised, without any doubts or disputes as to their jurisdiction, as far as the district I have before indicated, without the authorities of *Central America* ever having gone beyond them. Therefore, if this point is now to be controverted, it would be more just and natural to consider the reality of those historical facts and the boundaries generally recognised than those they indicate for us, not between governments of primitive establishments but a short time subsequent to the conquest, but between territories embraced in the two jurisdictions of the Royal Audiencia of *Guatemala* and of the Royal Audiencia of *Tierra Firme*; that is to say, between the Captaincy-General and the Viceroyalty.²⁸

Proceeding thus, with an earnest and sincere mutual desire to reach a settlement, it does not seem that it should be impossible

²⁷ In the document published in 1883 by Señor Peralta and in 1886 by Don León Fernández, it is seen that the *Escudo de Veragua* had been regularly fixed as the limit of *Costa Rica* since the year 1605. The Capitulación of Artieda of December 1, 1573, and the Royal Cédula of August 30, 1576, indicated that the Bay of *Almirante*, the *Bocas del Toro* and the River *Guaymí*, that is, the lagoon of *Chiriquí*, belonged to *Costa Rica*. M. M. P.

²⁸ The documents published on the part of *Costa Rica*, or in the *Colección de documentos inéditos de Indias* (Collection of unpublished documents of the Indies), by Torres de Mendoza, show the emptiness and worthlessness of these arguments. M. M. P.

to secure it, especially if we confine ourselves to *assuring our possession of Bocas del Toro* and reserve for ourselves a good anchorage in *Dulce Gulf*, being entirely satisfied that, this being settled in a satisfactory way, all the other points are absolutely subordinate. In the interior of that portion of our frontier the thing that is important for us is not an increase of territory, but to obtain that which, even though less in extent, shall be more easily administered and best adapted to facilitate the fixing of the line of division between the two countries in a clear and specific manner, taking advantage of the orographic and hydrologic land characteristics and peculiarities which would serve to locate a natural and permanent demarcation, thus avoiding all reason for perplexity or confusion on the part of the neighboring authorities along the border in the exercise of their respective jurisdictions, in the return of fugitives and the other acts that become so difficult when there is uncertainty in this respect. That boundaries which are clear and precisely marked by their very nature are preferable to those which are clearly conventional, is a truth which is so generally recognised that there is no need of dwelling upon it. I will only add, therefore, that in order to definitely carry out the demarcation of a natural boundary line with *Guatemala*, it is all the more necessary to have recourse to practical explorations and the reports of authorized experts, acquainted with the maps and the accounts of the geographers of those coasts, inasmuch as some of the persons who have visited them recently declare that among their inhabitants the names so commonly used of *River Culebras* and *Punta Careta* ARE NOT KNOWN; the former being called there the *River Sixsaula* and the latter *Punta del Mono*, without there being in the other designations any similarity whatever with those that we know here.

Passing now to speak of the Islands of *San Andrés*, under which designation, if I am not mistaken, there are embraced beside those which bear that name those of *Santa Catalina*, *Old Providence* and the two *Manglares* (Big and Little Corn Island), I ought to state that, so far as I can understand, these should not be the object of dispute between *New Granada* and the States of *Central America*, for although the larger *Mangle Island* (Big Corn Island) is scarcely four and a half leagues distant from the *Coast of Mosquitos*, and although the others are nearer to said coast

than to any other points of the continent, those States have never pretended to have any dominion over them.²⁹

True it is that in the maps of Fidalgo and in other geographical documents which are in the Public Library and in the office of the chorographic commission the said islands are represented as an appendix to the said coast; and it is also the fact that from the Royal Cédula in which one part of this coast was added to *New Granada* it could be inferred that the Spanish Government so considered them. Nevertheless, this dependency or subordination of the Islands of *San Andrés* as regards the *Coast of Mosquitos* and of *Central America* must be entirely casual and transitory, for from various old historical memorials it is evident that these islands were considered as belonging to *New Granada* for a long time before the said Cédula was issued; and besides it is a fact of some notoriety that the Viceroys of *Santa Fé* assisted them in their struggles, sending to them garrisons, provisions and other timely help, through the Governors of *Panama*, from whom it appears that they immediately depended. Thus it was, when the filibusters occupied them in 1685, fortifying themselves upon *Santa Catalina*, from whence they despatched one of their most celebrated expeditions, against the *Isthmus*, the authorities of the Viceroyalty hastened with such zeal to recover them and dislodged the pirates so completely that, although there were, as there are today, some residents upon those islands of English origin, none of those islands again fell into the power of foreigners.³⁰

During the war of independence these islands passed through some wonderful vicissitudes, but no more serious or trying than those to which at the same time a great part of Spanish America was subjected. Alternately occupied by the Royalists and the

²⁹ *Nicaragua* has under its sovereignty and dominion the Islands of *Mangle-grande* and *Mangle-chico*, or *Manglares* (Big and Little Corn Islands) which do not figure in the enumeration made by the Law of Territorial Division of *Colombia* of 1824. M. M. P.

³⁰ When the Island of *Santa Catalina* was occupied by the filibusters the Viceroyalty of *Santa Fé* did not exist, and the Audiencia of *Panama* depended upon the Viceroyalty of *Peru*. These statements of Señor Fernández Madrid are imaginary, so far as they bring in the authorities of *Santa Fé*. M. M. P.

Patriots, or by adventurers who assumed these designations, they had the bad fortune in 1818 to have established upon them a company of pirates under the command of Captain Luis Aury, who claimed to act under a special commission from the Republics of *Chile* and *Buenos Aires*, but who really was acting on his own account, without any true interest or admiration whatever for the American cause of which he affected to be an earnest supporter. This official and his associates exercised there an absolute control for three consecutive years, until in 1822, already assured of independence the Government of *Colombia* deemed that the moment had arrived to vindicate its authority over those islands, which was immediately carried out with the assent and cordial although indirect co-operation of the government whose flag was hoisted by Aury, as may be seen in the *Gaceta of Colombia*, No. 68 of February 2, 1823.

Since that epoch we have continued in possession of said islands, especially of those of *San Andrés*, *Santa Catalina* and *Old Providence*. At the beginning they were embraced in the old Colombian department of *Magdalena*, under paragraph 1, Art. 2, of the Law of June 25, 1824; later they were erected into a territory subject to special regulation under Art. 137 of the Granadian Constitution, and finally they were turned back to be added to the Providence of *Cartagena*; but under whatever form they were dependent from *Colombia* or from *New Granada* they were always the calling places for our maritime mails, the station of a company of national artillery guard and the residence of a regular magistracy, duly provided for and at times filled by officials of high rank in the army, all circumstances which show that we have regularly and constantly exercised our authority over said islands, that is to say, over those of *Santa Catalina*, *San Andrés* and *Old Providence*.

In the two *Manglares* (Big and Little Corn Islands) which, as I have said, of all those of the Canton lie nearest to the *Coast of Mosquitos*, although both of them are outside of the radius of the geographical league, our dominion has not been so effectually and peacefully exercised as in the others. One of them, that of *Mangle-grande* (Big Corn Island) is settled; and still we have never had it appear in our census; an omission which

may also be noted in the legislative decrees and statistical statements concerning territorial division;—an omission which reveals the complete neglect upon our part in respect to that island.

This absolute lack of attention was sure to produce what it did in fact produce,—the most deplorable results. In the excursion which the Superintendent of *Belize* made in 1841, visiting various points of the coast from 'Cape *Gracias á Dios* to the Island of *Escudo de Veragua*, where the ruler of the *Mosquitos* was given to understand that they must fix the limits of their pretended dominions, he landed, among other places, upon the Island of *Mangle-grande* with all the honors of a sovereign of the land, and besides it was formally intimated to the inhabitants that they should recognise his authority. The difficult situation in which the Republic found itself at that time, prevented the Government taking due notice of these acts so as to remedy them; and when it endeavored to do so, it was already really too late. The Governor of *Cartagena* and the Political Chief of *San Andrés* attempted to go back and take steps in 1844 to restore the dominion of the Republic in that island; but I presume that they did not secure the desired results, for by the documents you have been kind enough to send me it appears that the Island of *Mangle-grande* has continued segregated from that Canton and that the smaller island of that name is already following the same destiny, the British functionaries of the *Coast of Mosquitos* having disposed of it under lease.³¹

The péril which threatens the other islands of the Canton of *San Andrés* and the necessity for turning it aside are, therefore, evident. These islands, that is to say, *Santa Catalina*, *Providence* and *San Andrés*, whatever may be the result of the measures adopted by the Executive Power for the re-establishment of the national authority over the *Manglares*, demand prompt

³¹ The islands of *Mangle-grande* and *Mangle-chico* are under the jurisdiction of *Nicaragua*. They belong geographically to the *Coast of Mosquitos* and they are inhabited by the same natives. They were embraced in the cession and recognition of sovereignty which Spain made in 1850 in favor of *Nicaragua*, Great Britain also recognised the sovereignty of *Nicaragua* over them in 1860, and the sovereignty of *New Granada* has never been exercised over them, nor do they appear in the Law of Territorial Division of *Colombia* of 1824. M. M. P.

attention and a protection which shall be constant, tangible and regular, such as those of *Bocas del Toro* also require, and with the same purpose, timely and special improvement. It is absolutely indispensable to furnish the Islands of *San Andrés* with some means of communication, or it may be with a military marine, always needed to maintain the sovereignty of the nation at isolated and distant maritime posts; although it will of course be understood that I do not speak nor could I speak of squadrons, but of the support of two or three vessels of light burden.

The territory of *Bocas del Toro* is in the same situation as the Islands of *San Andrés*, a marine force is therefore needed; and besides a free and safe route for communication with the Interior of the *Isthmus*, as far as *David*, in the Canton of *Alanje*. If to this we add the help of small but select veteran garrisons, convertible into stations for agricultural colonization and the appointment of well paid political chiefs, respectable for their position and character, educated and prudent we shall accomplish all that is now within our reach to protect those territories and to take them out of the isolation in which they are found by reason of their topographical position; and an isolation which keeps under these circumstances, in our weakness and on account of our domestic quarrels has provoked and is tending to bring about foreign usurpation.

To make the action of the government felt in those territories, encouraging their natural development and positive betterment, so that it may be seen that we are already occupied in their cultivation and improvement; and that we are engaged in this because these territories are our property, a portion of those belonging to us which cannot be taken away without destroying us first; such are, Señor Secretary, the measures which have heretofore been recommended as the only efficient ones to be used to prepare us against the danger which threatens our interests and our very existence as an independent nation. I have done no more than to indicate them without going into details, for you know them perfectly, and because I cannot discuss them in detail without some trouble, being as I am thoroughly conversant with the difficulties which make the hope illusive that they will be earnestly and perseveringly carried out. Still, I have no others to propose, since

these are the only ones which inspire me with confidence, for if I am to express myself without any reserve I must say in all frankness, making use of the language employed by the Spanish negotiator of the Convention of 1786, that “* * * either we must abandon our territory to British greed, or we must resolve to go to the root of the matter, cost what it may.”

That minister stated, in one of the documents which you were good enough to send to me—

“Being advised and supposing that the evacuation of *Mosquitos* already completely effected and the English located in peace and tranquillity within the limits indicated for them, we must consider seriously that there are always some adventurers whose interests will lead them to our shores, they will land and commit their misdeeds, even if they do not go so far as to establish themselves upon a firm footing or in a community. To do this they must go to a certain extent armed, in order to oppose any coast-guard or patrol. To require the Governor of *Jamaica* or other foreigner to be our warden, is useless. To run to them with complaints about every incident, would be a vain effort, since it would be impossible to prove to them that they are at fault and if it were taken to the courts there would be a long negotiation, while in the meantime the evil would have become firmly rooted.”

This minister further goes on to say—

“I know very well that it is physically impossible to settle thousands of leagues, and I also know that Spain has no surplus of men to make many sacrifices. But either the King must abandon his Americas to the greed of the jealous nations and endure a bloody war every ten years, or he must devote his most earnest attention to attacking these evils at the root by means of small establishments at intervals, at healthful and advantageous locations and points that will be respected. I am so far from thinking that anything I have said is new, that, on the contrary, it seems to me and it is to me a great satisfaction that the Minister of His Majesty is deeply interested in carrying out this system. But I consider it in this way, because the matter so presents itself and because I see no human remedy, cost what it may.”

This can be repeated now with double reason respecting *New Granada*, for without denying that there are other expedients

we may also be collaterally employed to advantage, and good sense and experience teaches us that without some positive acts of protection and physical development, and without a constant and efficient watchfulness, whatever other measures are adopted to ensure the preservation of our territorial integrity and however advantageous they may appear in themselves, if joined to the former they would be in the highest degree desirable, but without them would be upon the whole of no avail.

One of these measures which I deem useful in a subordinate way to strengthen our territorial integrity, would be that which might tend to legitimise, if such an expression can be used, our subrogation to the rights which Spain exercised over this portion of its ancient dominions, in so far as we are not in the actual and physical possession thereof. For this it would be necessary to undertake to obtain by means of the respective treaty of peace and friendship with Spain, the recognition of our independence and the consequent cession of its rights over the portions of our territory, deserted or only inhabited by native savages, where we have no establishments whatever, nor any other title of dominion than the allegation that that the one we are maintaining was derived by us from Spain itself.³² From this consideration there naturally arises the very timely one that we should be on our guard against any interested objection upon this point, making the diplomatic bargain in the matter with Spain, for it is very certain that it could not despoil us of the independence acquired, nor would it for that reason fail to consider that it had a right to these countries and make us of that right as regards the wild territories to annoy us and punish us for our audacity, either by ceding them to some other nation, as it appears to have done in some cases where it was asked, or by interfering with our commerce, if it should be in a position to do so, or, lastly, by making undue demands upon us if we waited too long before determining to negotiate with her.

Another means that may be deemed desirable for this purpose

³² Spain made a cession of all its rights over the territory of *Central America*, with its adjacent islands, to the present Republics of *Guatemala*, *Honduras*, *Nicaragua* and *Costa Rica*, from the borders of *Yucatán* as far as the *Escudo de Veragua*, by treaties of recognition or sovereignty and friendship between them. M. M. P.

is that of popularizing in some foreign countries a knowledge of our controversies with England by means of frequent publications, in which may be recapitulated from the double point of view of history and law the bases of our dominion over the territories that are torn away from us now in the name of a decadent tribe of savages. In these publications we should make use of the treaties in which Great Britain recognised the Spanish sovereignty over the said territories and the different acts in which it made a like recognition respecting *Colombia* and *New Granada*, without forgetting any of the material facts of the complaints which we have formulated, nor the antecedents which prove the indisputable right of these Republics. Indeed, informing and correcting public opinion abroad, we ought to secure zealous attorneys who would voluntarily defend our cause and make it known in the discussions of the legislative bodies and in those of the periodical press, especially in those of the United States,³³ where we have pending the celebration of an agreement in which the guaranty of our dominion over the *Isthmus* must be perfected, and where for obvious reasons there is a disposition to hold the principles which we have declared in this matter;—principles which are perfectly in accord with the declarations made by Presidents Monroe and Polk, not to allow the Republics of this hemisphere to be considered as still open to intervention, nor to colonial enterprises by European Powers.

However, I will not go into these considerations, because apart from the fact that it would be rash for me to venture to do so, I know that these and other similar measures that might be indicated, aside from those of a purely governmental character of which I have before spoken as essential, are liable to be changed insensibly into measures of foreign policy that tend to engage us in alliances more or less direct, and they inspire me for this reason with very little confidence, not because I am not aware of the great importance of influencing public opinion of other countries in our favor, but because I fear that going beyond this useful purpose we will run the risk of involving ourselves in a

³³ The Government of the United States never has recognised the pretensions of *Colombia* to the *Coast of Mosquitos*, as is shown by the Clayton-Bulwer Treaty, the Crampton-Webster Convention and its treaties with *Nicaragua*. M. M. P.

predicament which will prevent us from taking the correct possession to which we aspire.

The idea that seems to predominate among the great Powers of Europe and also in the great power in the northern part of this hemisphere, the guiding principle of its policy toward the new Spanish American Republics, if we are to judge by the course that has been thus far pursued, is to look upon us as nothing more than outlets for their commerce. The United States and France, like England, harbor toward us the same views, the same secret contempt, covered up with empty expressions of courtesy and benevolence at times but more frequently revealed in insulting intimations. How then can we expect that they will protect us frankly, cordially and disinterestedly? The pretensions of the United States, under whose shelter, after having in vain sought it from England, we have at last placed ourselves, are, if possible, more unjust as regards the potency of its commerce and of its citizens; for in the view of the United States its mercantile relations with these countries are not only a means for getting rid of their manufactures, but they furnish a perennial source of claims which will yield them enormous tribute under the denomination of "indemnities."

And while this observation may to a certain extent be found applicable to the European Powers, no less than to the United States, it should be noted in respect to the latter that their outcome is a great acquisition of territory, which they obtained in *Texas, New Mexico, Tamaulipas and California*; which clearly shows us that, if with this spirit of assimilation or conquest which has so far been markedly developed among the North-American people their government shall frankly take up the guardianship of the southern Republics, it would be as dearly bought as it always has been by weaker nations from the stronger, and we would have succeeded only in undermining our independence in seeking to strengthen it.

We need, assuredly, that the nations who have preceded us in the way of civilization of the human species should help us with their friendship, with their wisdom and even with their indulgence; and it is for us, no doubt, to undertake to secure this, so

that at no very distant day we shall come to be esteemed as a useful part of the great family of cultured peoples, instead of continuing, as up to the present time, to be treated as if we were semi-barbarous hordes, toward whom no considerations were to be held sacred nor the rules of the Law of Nations observed, where territories still may belong to any new occupant and whose complaints may be absolutely ignored. But to obtain such a result and for us to be treated not perhaps with respect but at least with the attention which is due to an independent and civilized nation, the thing most necessary is not to beg for help, but to merit it, applying ourselves with an earnestness to making use of the means for improvement and defense at our command, being assured that difficulties postponed nearly always become worse and that undue concessions almost always lead later to other and greater ones.

Reflecting upon the criticism and unfortunate character of our present position, considered as we are by the great powers as spurious members of the company of Nations, I have come to wish (I do not know whether rightly or by an irresistible feeling of dismay) that making use of one of these great questions of sovereignty or national integrity, which strongly attract attention, and in which our good faith and the justice that supports us could not be brought in question, we should definitely put to proof our existence as independent peoples, resolving to defend it at all hazards, until it was lost or absolutely assured and for all time; for, really it seems that any other method of existence, clear and distinctly defined, would be preferable to the anomalous and degrading situation into which we have gradually fallen, in which we neither enjoy the powers of peoples who are really sovereign, nor can we appeal for the protection which is presumed in the colonial relation.

I have finished, Señor Secretary, but I still fear that I have said too much, if I did not know that this paper will have no other circulation than among those persons who are connected with the matter and influencing the operations of the Government, who I trust will have the goodness to overlook, in view of the honesty of my purpose, any fault of judgment or in the way in which I have expressed myself.

I take this occasion also to respectfully forward to you a copy of the series of articles which I published in 1846, upon the theme of "Our Uncultivated Coasts,"—relating to matters intimately associated with those considered in the present communication; and repeating my excuses for the involuntary delay in replying to your Department, I subscribe myself with due respect your very obedient servant,

PEDRO FERNÁNDEZ MADRID.

Mr. Marcy to Mr. Ingersoll.

Doc. 299

DEPARTMENT OF STATE,
WASHINGTON, June 9, 1853.¹

SIR: Some days since, Mr. Crampton, her Britannic Majesty's minister, read to me a dispatch of the 29th of April last, addressed to him by Lord Clarendon, her Majesty's principal secretary of state for foreign affairs, relative to the occurrences in March last, at *San Juan* (called *Greytown* in that dispatch.) Having afterwards been furnished by Mr. Crampton with a copy of the dispatch, the President has been made acquainted with the views which it presents. He does not discover in those occurrences, and, if fully known to her Majesty's government, he presumes it would not discover, anything that could give rise to the apprehension of Lord Clarendon, that they tend "to complicate still further a question already sufficiently embarrassing and difficult of solution:" the *Central American* question. As the President has not seen anything to disapprove in the proceedings of Captain Hollins, on the occasion referred to, he has instructed me to communicate his views to you on that subject, in order that they may be presented to her Majesty's government; and he is quite confident that the transaction at *San Juan*, when all the facts in relation to it are known, will appear in a light very different from that in which it has been viewed by Lord Clarendon. There is probably some difference of opinion between the two governments as to the right of the Accessory Transit Company to retain possession of *Punta Arenas* against the people of *San Juan*. The dwellers at that place were not, when these occur-

¹ 33rd Congress, 1st Session (Senate). Ex. Document, No. 13, p. 8.

rences happened, and, as the President believes, never were, in actual possession of *Punta Arenas*; nor, as the case is understood here, have they any title to it, or any right to disturb that company in the occupancy thereof.

If this point of land is within the territorial limits of *Nicaragua*, as that republic claims it to be, the right of the Accessory Transit Company can hardly be drawn in question. It is derived from an express grant in their charter from the government of *Nicaragua*. If, on the other hand, it is within the territorial limits of *Costa Rica*, as that State asserts, the company can retain their possession, as against the people at *San Juan*, who do not pretend to hold the town of *San Juan*, or any other property, by grant or permission from the government of *Costa Rica*.

The United States cannot recognize as valid any title set up by the people at *San Juan*, derived from the *Mosquito Indians*. It concedes to this tribe of Indians only a possessory right—a right to occupy and use for themselves the country in their possession, but not the right of sovereignty or eminent domain over it.

It is not now made known, for the first time, to her Majesty's government, that the United States denies that these Indians have any sovereignty over the country they occupy. Our government does not make—nor does it perceive any good reason for making—any distinction between the tribe of savages and those which occupied parts of our territories or the territories of the British provinces in North America. I am aware that her Majesty's government regard the *Mosquito Indians* as an exceptional case to the rule generally acted on by itself, as well as other nations; but in this claim the United States has never acquiesced. It is not proposed, on this occasion, to discuss this question; for, however decided, it cannot change the aspect of the transaction alluded to. It is not probable that any attempt will be made to claim for the people at *San Juan* any authority over *Punta Arenas*—derived from the *Mosquito Indians*, even if it were possible to invest them with sovereign authority over the country they have occupied. *Punta Arenas*, it will be recollected, is on the southern bank of the river *San Juan*. At the time when the Accessory Transit Company took possession of it, there was scarcely the foreshadowing of a pretension to a claim for these

Indians to any territory whatever on the south side of that river.

With such a title, and actual possession under it, by the Accessory Transit Company, the extraordinary proceedings of the people at *San Juan* to destroy the company's property at *Punta Arenas* seems to me to deserve no countenance from any quarter; nor does the assistance rendered to the company, being composed of citizens of the United States, by the commanding officer of one of our national vessels, merit rebuke or require justification.

I am quite sure her Majesty's Secretary of State would not have commented as he has upon the transaction, if all the facts had been known to him. The main, if not the only ground of objection presented by her Majesty's government to the conduct of the commander of the *Cyane*, is not, as I understand the dispatch of Lord Clarendon, that Captain Hollins interposed to prevent acts of violence from being perpetrated against the company, "but that he did not, in the first instance at least," confine that interposition to warning to the town council of *Greytown* to desist from those forcible proceedings, under pain of compelling him, if they were persisted in to interfere by force of arms, in protection of the company, until the question of lawful or unlawful occupancy should have been fairly decided."

Lord Clarendon assumes that no such warning was given; and the omission to give it appears to be the only ground for his animadversions on the conduct of the commander of the *Cyane*. This ground is entirely swept away by the facts of the case. The warning to the full extent suggested was given to the town council of *San Juan*, over and over again. The day before that fixed on for the demolition of the buildings on *Punta Arenas* by the people at *San Juan*, Captain Hollins, hearing of their intention to commit that act of violence, sent Theodore P. Green, his first lieutenant, on shore, with directions to inform the people of *San Juan* that if they attempted to carry their resolution to destroy the property at *Punta Arenas* into effect, he should resist them by force. Lieutenant Green gave this warning to the mayor and common council, while in session at their council chamber. He, in fact, did all that Lord Clarendon suggests as proper to have been done prior to an allowable interposition by an armed force. But Captain Hollins' precautionary steps went much further. In

the morning of the same day on which the attempt was made to destroy the property at *Punta Arenas* by the people of *San Juan*, being informed that they did not intend to heed this warning and desist, but were preparing to execute the threatened outrage, he went himself on shore, and in person to the common council, then in session, and notified them "that he should be compelled to put a stop to any depredations they might attempt upon the property of the Accessory Transit Company." Captain Hollins' efforts to prevent the violent proceedings of the people at *San Juan* did not cease with this twice-repeated "warning"; but, after his return on board of the *Cyane*, he issued a written warning, addressed to the mayor of that place, of which the following is a correct copy:

United States Ship *Cyane*,
Harbor of *San Juan del Norte*, or *Greytown*, March 11, 1853.

SIR: After the interview I had with your "honor" this morning, before your honorable council assembled, I have to state, most respectfully, that I cannot permit any depredations on the property of the Accessory Transit Company whose depot is located upon *Punta Arenas*, at the entrance of this harbor.

I am, very respectfully, your obedient servant,

GEO. N. HOLLINS,
Commander U. S. S. *Cyane*.

To his Honor, the Mayor of *San Juan del Norte*, or *Greytown*,
Nicaragua.

These facts, when brought to its notice, must, as the President believes, convince her Majesty's government that there is no cause for taking the exception which it has taken to Captain Hollins' conduct at *San Juan* in March last; they must remove from Lord Clarendon's mind all feelings of regret, and all apprehension that the occurrences to which he refers will, in any way complicate "the already sufficiently embarrassing and difficult question" between the two governments in regard to *Central America*.

The President considers it to have been the unquestionable duty of the commander of the *Cyane* to afford the protection he did to the Accessory Transit Company against the threatened outrage of the people at *San Juan*; and he cannot discover anything

in the manner of performing that duty to which any exception ought to be taken.

If there be anything in the transactions at *San Juan* at that time to be regretted, it is the course which the commander of the British steamer *Geyser* saw fit to pursue, in regard to this movement of the populace at that place, a short time previous to that of the 11th of March, against the servants and property of the Accessory Transit Company, on *Punta Arenas*. On the evening previous to the day when an attack upon both was made by a party from *San Juan*, the captain of the *Geyser* was at anchor in the harbor, and was notified by the company's agent of the intended attack the next day on the property of that company at *Punta Arenas*; but, instead of interposing to prevent the meditated destruction of it, or to dissuade the reckless men engaged in that project, from an act so outrageous—so likely to lead to violence and civil confusion—he departed temporarily from the port, leaving the servants and property of the company at the mercy of their assailants. It is reasonable to conclude that, if the kind offices of that officer had been then vigorously interposed, and his departure from the port at that crisis had not given some plausibility to the interference—doubtless unjust towards Captain Wilson—that he did not disapprove of the movement, no force would have been required to prevent difficulties at that or any subsequent period.

It is proper to say, in conclusion, that the President does not authorize me to say in reply to the dispatch of her Britannic Majesty's principal secretary of state for foreign affairs, anything which may be construed into a recognition on his part, of the claim set up by the people at *San Juan* to sovereign authority in themselves over any territory whatever, or to any municipal or corporate powers, or political organization derogatory to the sovereign rights of either *Nicaragua* or *Costa Rica*; nor does he regard any instructions heretofore issued from this or the Navy Department to our naval officers, for the temporary recognition of an authority for the mere purpose of preserving the public peace, and punishing wrong doers, by the anomalous settlement at *San Juan* as sanctioning the pretensions of the people of that place to be considered a *de facto* government, independent of the

state within the territorial limits of which the town of *San Juan* is situated.

In order to apprise her Majesty's government of the views of the President in regard to the occurrences at *San Juan* in March last, you will read this dispatch to the Secretary of State for Foreign Affairs, and also furnish him with a copy of it, if a copy should be requested.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JOSEPH R. INGERSOLL, Esq., &c.

Doc. 300 **Don Victoriano de Diego Paredes, Chargé d'Affaires of New Granada in Washington, to the Department of Foreign Relations of Bogota.**

Republic of New Granada.

Legation in the United States.

No. 137.

NEW YORK, February 3, 1854.¹

To the Secretary of Foreign Relations:

Seeing that the time was passing without any progress being made in the question as boundaries with the Plenipotentiary of *Costa Rica*, by reason of the well founded expectations which he has that this question will be placed in the hands of the British Government, I have attentively meditated upon what is best to be done in the present situation of affairs, with a view, if possible, of removing or dissipating such hopes and confining the question to certain definite points, repulsing at the same time the exaggerated aspirations on the part of *Costa Rica*, which we can not take up, not even to accord to them the honor of discussion, according to my way of thinking.

I conceived at last the idea of suggesting the continuation of the negotiations, reducing to a nullity the question of arbitration, without compromising in any way the good faith and dignity of the Granadian Government. The plan which I have thought to follow is a simple one and appears fully developed in the notes,

¹ Peralta—*La Géog. Hist.*, etc., p. 328.

copies of which I have the honor to enclose copies herewith, to wit:

No. 1. That which I addressed on the 23rd of January last to Señor Molina, inviting him to continue the negotiations and suggesting to him my disposition not to have recourse to arbitration; and the other one, No. 2, the response which I expected to receive from that gentleman and which he did in fact send to me; and another which is the reply I addressed to him under date of the day before yesterday, in the final portion of which you will find everything that occurred to me in my zeal on behalf of the interests of *New Granada*.

I wish that this step may be approved by the Government, because it seems to me to be of the greatest importance. You will also be good enough, at the same time, to tell me what the Government decides in this matter, with the assurance that I will abide by its resolutions. Perhaps I may have been too explicit with Señor Molina; but, I repeat, that I did not proceed in this way except after the most attentive reflection. In a word, I thought it was necessary to stop, with a bold and firm pen, the incalculable consequences of an uncertain arbitration, and which every day seems to me to be more hazardous.

When Señor Molina sees that my declaration confines the arbitration, in case it should take place, to such narrow limits as those which I have indicated, it is probable that he will forego his pretensions to the territories of *Chiriquí* and *Bocas del Toro* and be content to enter into an amicable arrangement in respect to those that are really disputable. But if this should not be so, *New Granada*, at all events and before submitting the question to arbitration, as that gentleman desires very earnestly and properly, should remain tranquil and wait until time presents an opportunity for the termination of this affair. *This gain in time will be advantageous, provided the exercise of our sovereignty, in a positive way, makes itself felt, as seems to be necessary, in BOCAS DEL TORO and the remainder of the Province of Chiriquí.*

I shall take care to bring to the knowledge of the Government, through your honorable self the response which may be given

to me by the Plenipotentiary of *Costa Rica*, together with such observations as may occur to me.

With sentiments of consideration and respect, I am your very devoted and obedient servant,

VICTORIANO DE D. PAREDES.

On the margin of the above document there is found the following:

“DEPARTMENT OF FOREIGN RELATIONS, April 7, 1854.

“Let the receipt of this be acknowledged to him, adding that the Executive Power thinks that in the negotiations with *Costa Rica* it would be better to send to that country a Minister upon Special Mission, for the arrangement of those matters. Let this be accompanied by the Gazette, which should also be sent to him, containing the Message upon this subject, which was sent to the Congress, and tell him that the Executive Power has reason to expect that the Congress will agree to the item providing for sending such a legation and that it is expected Señor Paredes will furnish whatever data and documents he may be able to secure in support of the rights of *New Granada*.

“For the Citizen President: the Secretary: PLATA.”

Explanation: by Señor Peralta.

The note of Señor Paredes is a very valuable document furnished by the adversary himself.

In it the representative of *New Granada* exposes himself, as presenting a snare to Señor Molina and trying to get him to abandon arbitration, which the latter desired “very earnestly and properly,” since, according to Señor Paredes, the consequences would be incalculable and the arbitration seems to him every day more and more hazardous.

Señor Paredes, appearing to ignore the fact that his Government had requested those of London and Washington to be good enough to interpose as arbitrators between *New Granada* and *Costa Rica*, proposed to the Minister of *Costa Rica* that the differences be arranged by mutual consent, at the same time seeking to intimidate him; and when the latter expressed himself as aston-

ished and copied for him the despatch of Lord Clarendon to the Consul General of *Costa Rica* in London,¹ asking if his Government was equally desirous of accepting the good offices of the two countries, he pretends to have no knowledge of the request made by the Government of *New Granada*.²

The note of Señor Paredes gives us the key to the numerous delays secured by *Colombia* in this matter. It seems, indeed, that it was very necessary for it to gain time; so as to allow the pretended and quite new sovereignty of *Colombia* over *Bocas del Toro* and *Chiriquí* to make itself felt.

The precarious nature of the Colombian possession is made evident by the very same diplomat, who is charged with the proof of its legitimacy.

The fears of Señor Paredes were only too well founded, for he himself, in order to defend his cause, was compelled to have recourse to documents which, closely examined, turn against that cause or prove nothing, neither for nor against. Such was the pretended decree of General Morillo, declaring the blockade of the *Mosquito Coast* in 1815. We have published the documents, which establish the fact that this blockade did not extend to the *Mosquito Coast*, and did not go beyond Cape *Tiburón*, at the entrance to the Gulf of *Urabá* or *Darién*.

To pretend that this blockade extended as far as Cape *Gracias á Dios*, as *Colombia* has ventured to assert in some official documents, is a wild vagary of the imagination.

See PERALTA: *Costa Rica y Costa de Mosquitos*, p. 532.

VICTORIANO D. PAREDES: *La Costa de Mosquitos y la cuestión de límites entre Nueva Granada y Costa Rica* (The Mosquito Coast and the question of boundaries between New Granada and Costa Rica); New York, 1855: p. 7, 50. Memorandum concerning the *Mosquito Coast* (*Memorandum sobre la Costa de Mosquitos*). See Documents appended to the Report of Foreign Affairs of Colombia, 1896, p. 132.

¹ Documents of Colombia. Despatch of Don Felipe Molina to Señor Paredes: Washington, January 27, 1854.

² Documents of Colombia. Note of Señor Paredes to Don Felipe Molina; Februray 1, 1854.

Doc. 301 Extract from the Amendment to the Constitution (February 27, 1855) Creating the State of Panama.

"The Senate and House of Representatives of New Granada in Congress assembled, Decree:

"ARTICLE 1. The territory which comprises the Provinces of the *Isthmus of Panama*, to wit, *Panama, Azuero, Veraguas*, and *Chiriquí*, form a sovereign federal state, integral part of *New Granada*, under the name of the *State of Panama*.

"ARTICLE 2. The boundaries of the state on the *west* shall be those which may be definitely established between *New Granada* and *Costa Rica*. A subsequent law shall fix the boundaries which shall separate it from the rest of the territory of the Republic.

"ART. 3. The State of *Panama* is subject to that of *New Granada* in the matters which are here mentioned:

"1. All matters concerning foreign relations.

"2. Organization and service of the regular army and of the marines.

"3. Federal finances.

"4. Naturalization of foreigners.

"5. Official weights, balances, and measures.

"ART. 4. In all other matters of legislation and administration the State of *Panama* shall legislate freely in the manner it considers proper, in accordance with the rules of practice of its own constitution.

"ART. 12. A law may establish into a State, which shall be governed in conformity with the present amendment, any part of the territory of *New Granada*. The law which provides for the establishment of a State shall have the same force as the present constitutional amendment, and shall not be amended except as provided for by the rules of practice of the constitution.

"ART. 14. In case of the adoption by the Republic of an amendment to the federal constitution, the State of *Panama* is included in all of the laws of the confederation with respect to business

of general jurisdiction, provided that those laws do not restrict the powers conceded to said State by the present constitutional amendment."

Report Concerning the Question of the Boundaries Between New Granada and Costa Rica, by Don Pedro Fernández Madrid. Doc. 302

BOGOTÁ, April 10, 1855.

Citizen Senators:

Your Committee of Foreign Relations has carefully examined the communication which the Executive Power addressed to you under date of February 26 last, through the respective Secretary of State, earnestly advising the great importance and the necessity, each day more urgent, of despatching a diplomatic agent to arrange directly with the Government of *Costa Rica* the question of the boundaries which we have pending with it.

Your Committee is in full accord with the sentiments expressed by the Executive Power. It could, therefore, confine itself to the matter of the consequent expense. But, considering that this is an affair that is especially of interest to you and to which attention should be called, Your Committee will permit itself to make some statements for that purpose, which though they may not be indispensable, neither are they beside the case, since they tend to confirm those of the Executive Power.

1.

The desirability of arranging with certainty the limits of the Republic on its borders with *Central America*, is so evident, that there is no time when it has not been acknowledged.

The Government of *Colombia*, as soon as it had succeeded in settling its first interior administrative arrangements, gave preferential attention to this matter, and in 1826 sent to *Guatemala*, then the capital of the United Provinces of *Central America*, a Legation

especially charged with the adjustment of a special Convention, in which the doubtful boundary points should be determined which could not be satisfactorily arranged in the general Treaty concluded at *Bogotá* March 15, 1825.¹

It is true that this effort did not produce any result, because the exaggerated ideas which all the Governments at that time held and the unsettled political conditions which prevailed in both Republics at that period did not permit the negotiations to go forward and reach a conclusion; but, although this condition of affairs has continued, it did not present any insuperable difficulties then, nor would it do so today if the subject was again taken up in a sincere conciliatory spirit with a willingness to consult the well understood interests and rights of both countries.

It is well known² that the ancient limits of the Province of *Veragua*, as an integral part of the *New Kingdom of Granada*, terminated upon the Atlantic at the River *Culebras*, and upon the Pacific on the Gulf of *Dulce*, between *Punta Mala* and Cape *Boruca*.³ It is also known that in the interior the frontier of said province was confused with that of *Costa Rica* in territories that were unexplored, which stretched from one sea to the other; and it is equally well known that the jurisdiction of the Viceroyalty was extended later over the Atlantic littoral, by the Royal *cédula*⁴ of November 30, 1803, which separated from the Captaincy General of *Guatemala* all that portion of the coast beginning at Cape *Gracias á Dios* and going toward *Chagres* and added it to the Viceroyalty of *Santa Fé*.

Nevertheless, it is well known that, under the actual circumstances, our dominion over the territory which was added to *New*

¹ Doctor Don Pedro Molina, one of the most illustrious personages of *Central America*, went to *Bogotá* with the special purpose of settling the questions of boundaries. M. M. P.

² Here Señor Fernández Madrid asserts as well known what was hardly his own conjecture thirty months before. There is no document, no act of the Spanish Government, which indicates any River *Culebras* as the boundary of *Veragua* on the Atlantic, nor on the Gulf of *Dulce*. M. M. P.

³ *Burica* Point.

⁴ This was not a Royal *cédula* but a Royal Order. This contradicts what Sr. Fernández Madrid had already stated in his Memorial of 1852.

Granada by that Royal *cédula*, has come to be reduced to the duty, or it might be called a right, but a burdensome right, of protecting the part of the coast which extends from the mouth of the River *Culebras* mentioned as far as Cape *Gracias á Dios*; a right for which we have become answerable in disagreeable claims, which may become still greater if we do not make haste in accord with our neighbors to put an end to the question.

In this situation the most desirable thing to do would be to proceed in a fraternal way, under Art. 7 of the Treaty before cited, which was made between *Colombia* and the United Provinces of *Central America*, and adjust the boundaries either with the general government of said Confederation, if it should be done or only with the government of the State of *Costa Rica*; ceding to it the aforesaid stretch of coast, as far as the mouth of the River *San Juan*, where the territory of *Nicaragua* begins; ceding also to the latter State and to that of *Honduras* the remainder of said coast as far as *Cape Gracias á Dios*; and obtaining from that of *Costa Rica*, in exchange for the coast that is ceded to it between the River *Culebras* and the *San Juan* a greater latitude of internal frontier or some bordering demarcation, but precise, just and mutually advantageous.

The present circumstances are not only most pressing but are also the most propitious that can be presented for carrying into effect such an arrangement. There is the most urgent need for both Republics to mark out their frontiers, in a clear and definite manner, in order to obviate any ground for disagreement over the matter; for what is now a wilderness or of little value may soon be settled up and become desirable, and it is not the part of wisdom to allow the time to pass and difficulties to arise which may be very embarrassing to solve when they may now be easily prevented by mutual arrangement.

Moreover, the two nations are now enjoying an interval of peace; that is, they are not now torn by civil war and they can therefore devote some attention to the arrangement of their international questions. Let them try to settle their boundary matters in a friendly way, or at least to simplify them so as to lay the foundation for a future agreement, carefully prepared and final, if they are going to do it sometime and if they really desire to

establish a natural, convenient and permanent boundary line.

Finally, and this is the most important consideration that appears at first sight, *New Granada* can now count upon an intelligent and patriotic engineer, the worthy Colonel Codazzi,⁵ who visited the *Isthmus* some months ago and from whom very valuable data may be obtained (such as he has already begun to furnish), which it would be desirable to take into consideration at the time of taking up the negotiation of the respective treaty, since it should not be forgotten that the line dividing the two Republics, although it terminates on both coasts at points which are well known, still it passes through territories which were never explored by the Spanish Government and which have not yet been traversed.

New Granada already possesses a chorographic map of the Province of *Chiriquí*, the work of the engineer mentioned;⁶ but, as he has himself said, "the country embraced between the two geographic points known as boundaries is a complete wilderness; and there is now a need, as in the time of *Colombia*, of a scientific exploration to see the configuration of the land and in order to determine the natural points that should thereafter fix permanently the whole of the division line"; and there is all the more reason for this, inasmuch as the interior of that region, crossed by rivers and sprinkled with mountains, would facilitate the respective reconnoissance, which from its importance, under every aspect, it is very desirable to carry out.

It is, then, clear that in order to fix the boundary demarcation between the two countries definitively and conclusively, throughout the whole of the divisional line, it will be necessary to make a special survey of the territory referred to and prepare a detailed chart thereof, so that in view of this data, or at least with the reports of the respective engineer, the stipulations of the

⁵ To Col. Codazzi *Colombia* owes the invention of the divisional line which gives to it the peninsula of *Burica* and part of the Gulf of *Dulce*, as far as the *Golfito*. See Codazzi: *Physical and Political Atlas of Venezuela (Atlas físico y político de Venezuela)*, Paris, 1840. M. M. P.

⁶ It is almost wholly the work of his bold pencil, in which he multiplied the rivers, gave them the courses he pleased and drew the frontier as he deemed it desirable, without conforming either to the topography or the laws. M. M. P.

corresponding treaty may be drawn up with perspicuity, exactness and clearness, much to be sought for in instruments of this character.

It is in this way that it seems our Government ought to proceed in order to secure a perfect and conclusive adjustment of the boundaries; but if this procedure is deemed too tedious and one not so tardy in execution is desired, we would be able to conform to it, as has already been intimated, by fixing visibly the extremities of the divisional line upon both shores of the *Isthmus*, at conspicuous points and in a permanent and absolute manner; leaving to later negotiations the arrangement of the details of the internal frontier throughout its whole extent, from *Punta Careta* or of the mouths of the *Doraces* or of the *Culebras*, on the Atlantic side, to some convenient location on the Gulf of *Dulce*, between *Punta Mala* and Cape *Boruca* on the Pacific. With this, and the abandonment of the remainder of the littoral as far as the headland of *Gracias á Dios*, we would simplify our position very considerably, beginning to mark out our limits, and without any new burden or additional charge for the States of *Central America*, but rather one difficulty the less for them and a positive relief and advantage for *New Granada*, for being relieved of the burden of questions maintained up to the present time only as a point of honor, it would turn its attention to the development of the contiguous territories that belong to it.

Unfortunately, there is not now in *Central America*, nor is it probable that there soon will be constituted there a general government with which *New Granada* could come to an understanding. Neither can we feel sure that those States, usually so discordant, can now unite together to maintain in Washington a Legation that can treat concerning this matter with ours. And yet it is more sensible to think that though a respectable mission be sent to negotiate directly with the Governments of *Nicaragua*, *Honduras* and *Costa Rica*, as it would be with those we would have to treat, none the less would the successful issue of such mission be left doubtful.⁷

⁷ Sr. Fernández Madrid reproduces here literally the same paragraph contained in his Memorial of 1852, and his assertion was unfounded in 1855. M. M. P.

With the first two of these States we would have nothing more to do than to cede to them the part of the *Coast of Mosquitos* which belongs to us, from the River *San Juan* as far as Cape *Gracias á Dios*; and we would be able to do likewise with *Costa Rica* as regards the littoral embraced between the River *Culebras* and the *San Juan*, as to which there would be no difficulty; but it is to be feared that in tracing the dividing line properly speaking, which is that in the interior of the continent, or even if we only undertake to fix the ends of that line upon the coast, *Costa Rica* will bring up the claim of sovereignty, which has been heretofore advanced on the part of *Central America*, from the Archipelago of *Bocas del Toro* and the Island of *ESCUDO DE VERAGUAS*, a claim which has more than once given rise to strong demands upon our part, having also been the danger point in various negotiations initiated in the time of *Colombia*, and still more recently during the revolution of 1840 to 1842.

After the Provinces of *Central America*, emancipated from the dominion of Spain, were separated from the ephemeral empire of General Iturbide, establishing the confederation which was for some time maintained, the State of *Costa Rica* declared in its political constitution which was promulgated in 1825, that "the territory of the State extends North South from one sea to the other, its limits being on the North the mouth of the River *San Juan* and the *Escudo de Veragua*, and on the South the outlet of the River *Alvarado* and that of the *Chiriquí*"; and the same expression as to boundaries has been reproduced in the various constitutions which *Costa Rica* has enacted subsequently for its government, either as an integral portion of the central American confederation, or as an independent State.⁸

The same general government of those united provinces, in a communication addressed to the Colombian plenipotentiary charged with the negotiation of boundaries in 1826, indicated as the divisional line, natural or convenient, between the territory of the two Republics, that which passes by the *Escudo de Veragua* in the Atlantic, the outlet of the River *Boruca* in the

⁸This statement of boundaries is correct. M. M. P.

Pacific and the district of *Chiriquí* in then ancient Province of *Veragua*. The Government of *Colombia* did not moderate its claims at that time, since it sought to obtain as compensation for the abandonment of its rights over the *Coast of Mosquitos* the sovereignty of all the territories situated upon the southern bank of the River *San Juan*, and consequently the perfect right to the free navigation of this river and of the Lake of *Nicaragua*.

As already has been said, these exaggerated and discordant claims caused the negotiations to come to an untimely end without arriving at any result. The boundary question, therefore, was left as it continues upon the footing it was placed by the Treaty of March 15, 1825, in Art. 7 of which both parties promised to celebrate a special convention as to boundaries and in the meantime to respect those which then existed, which are still the same that separated the Viceroyalty of *Sante Fé* from the Captaincy-General of *Guatemala*.

Notwithstanding that solemn stipulation, the Government of *Costa Rica*, improperly interpreting Art. 8 of the same treaty, which permits the making of surveys within the frontier territories, sent some individuals to the Islands of *Bocas del Toro*, commissioned to colonize that territory and administer it in its name, just at the period at which, by virtue of the legislative decree of May 30, 1836, the Granadian authorities were going to establish their authority there, as no one had disputed, nor could they ever dispute with justice, the proprietorship of the Republic over said territory, an integral part of that of *Veragua*.

The Granadian Government was not unmindful of this project, nor of another which that of *Costa Rica* undertook at a convenient season of locating illegal establishments for colonization on the coasts of *Burica* or *Boruca*, in the same Province of *Veragua*; but it sought by timely protests and formal claims to obtain from that government action in accord with the rights and dignity of the Republic so far as the uncertainty as to the true line of the frontier permitted. It did more, it immediately carried out an official inspection of the Islands of *Bocas del Toro*, and it despatched at once from *Cartagena* a small but well equipped

military expedition to occupy them, obtaining formally from their inhabitants the recognition of the national authority, which with the material possession has been preserved safely despite the hostile threats and the subtle attempts of some adventurers.

In 1841, when the provinces of the *Isthmus* were separated from the rest of the Republic, one of their commissioners subscribed with the Supreme Chief of *Costa Rica* a certain agreement, dated September 22nd of that same year, concerning a survey of what was entitled the "State of the *Isthmus*," in which there were set out the bases for a treaty of friendship and commerce and in which the State of *Costa Rica* declared that it "* * * reserved its right to claim from the Government of the *Isthmus* the possession of *Bocas del Toro* in the Atlantic Ocean, which the Government of *New Granada* has occupied, overstepping the constituted division line in the *Escudo de Veragua*." In acknowledging the receipt of this document, stating that it would be submitted to the consideration of the Congress of the *Isthmus*, the Secretary General of the latter State announced to that of *Costa Rica* that the claim of *Bocas del Toro*, to which Art. 4 of the Convention cited referred, would be satisfactorily answered by the Government of the *Isthmus*, but public order having been re-established in the rest of the country the authorities *de facto* on the *Isthmus* were replaced by the lawful ones, and the Government of *Costa Rica* refrained from urging the approval of the pending treaty.⁹

Nevertheless, always having its eye fixed upon our magnificent Bay of *Almirante*, and upon the archipelago which adorns it, the Government of *Costa Rica* has in these last few years re-

⁹ Let us compare this passage with the corresponding one in the Report of Señor Fernández Madrid of 1852 which begins: "In 1841" and ends with the words "pending treaty." Let it be noted that the State of the *Isthmus* (*Panama*) did not reject the claims of *Costa Rica* to *Bocas del Toro* and that not the slightest allusion was made to the coasts of the Gulf of *Dulce* and *Burica* in the negotiations between the diplomatic agent of said State of the *Isthmus* and the Government of *Costa Rica*, because at that date neither the Government of *Colombia* (or *New Granada*) nor the local one of *Panama* had made the least claim to the territory situated to the West of the River *Chiriquí Viejo*. M. M. P.

newed its claims, inspired by the desire of acquiring a good port, which it lacks upon the Atlantic.¹⁰

In fact, if the topography of the coast is examined which reaches from the River *San Juan*, the northern limit of *Costa Rica*, as far as the mouth or channel of *Drago*, the most western entrance to the Bay of *Almirante*, it will be seen that between those locations there is no port at all which can be compared with our harbor of *Bocas del Toro*, which, with the lagoon of *Chiriquí*, forms one of the most ample, safe and sheltered bays

¹⁰ This is the desire which has moved *Colombia*. The Bay of *Almirante* belongs of right to *Costa Rica* since 1540 and it occupied and began to colonize it from the year 1560 down to 1836, when *New Granada* resorted to force in order to take possession of it.

It is sufficient to read the text of the Capitulación of December 1, 1573, between the King Don Philip II and Diego de Artieda and the Royal cédula of August 30, 1576, addressed to the Audiencia of *Guatemala*, in order to be convinced that the Bay of *Almirante*, the *Bocas del Drago* and the River *Guaymí* (now the River *Chiricamola* or *Cricamola*) which empties into the lagoon of *Chiriquí*, in the eastern part of the Bay of *Almirante*, "is the same thing" and is included in the Government of *Costa Rica* and that the jurisdiction of *Veragua* does not pass beyond where it is settled toward the West.

How far was *Veragua* extended and settled in 1573 or 1576?

The "Description of the Kingdom of Tierra Firme," addressed to the King on May 7, 1575, by Dr. Criado de Castilla says that "the Province of *Veragua* has a district of thirty leagues in longitude, which are from the said city of CONCEPCIÓN as far as the settlement of MERIATO, and twenty leagues in latitude in its greatest extent, which is from the River CALOBRE as far as the said city of CONCEPCIÓN."

Where is *Concepción* situated? The "Demarcation and Division of the Indies," and the "Description of the Western Indies," of Antonio de Herrera, say "The city of *Concepción*, forty leagues from *Nombre de Dios*, to the West."

And the *Escudo de Veragua*? "An island in the North Sea, nearly to the West of *Nombre de Dios* and to the North of *Concepción de Veragua*."

Measuring forty leagues, which there are from *Nombre de Dios* to *Concepción* (137 geographical miles) it reaches close to the Island of *Escudo* and the River *Chiriquí* or *Calobébora*, which empties to the South of said island and which since the days of Philip II served as the boundary for the Audiencia of *Guatemala* and *Panamá*.

The reader, therefore, cannot but admire the serene complacency with which Señor Fernández Madrid speaks of "our" Bay of *Almirante*. M. M. P.

in the world, the best we have and capable of receiving easily the largest squadrons.

In the considerable stretch of the Atlantic shore, embraced between the river and the channel mentioned, only three points are found where through necessity it has been sought to establish ports. These points are: the mouth of the small streams known as *Moin* and *Matina* and that of the aforesaid River *San Juan*, situated in the territory of the State of *Nicaragua* and noted for its dangerous bar. The whole coast where these roadsteads are found is studded with shoals, reefs, headlands and islets, which make navigation difficult, and together with the bad repute of the climate have caused the settlements here to be very sparse and commerce with *Central America* has gone by preference to the Gulf of *Honduras*.

Therefore, *Costa Rica*, which within a few years in this region has begun to develop an export trade of some consequence, now seeks with eagerness a port; not however any port but the one it covets in order to afford easy exit for its coffee, indigo and other intertropical products. Under such circumstances the Government of that State seems to have conceived as the easiest and quickest means of securing its object, the renewal under some pretext of its unfounded claims of dominion over the territory that belongs to us in the plains along the lagoon of *Chiriquí*, or that is in the Canton of *Bocas del Toro*. Hence the exaggeration of its present aspirations, which are not confined to securing the use but the cession of some anchorage in the Bay of *Almirante*, and a strip of territory in the interior on the frontier as far as the port ceded to it. Hence, also, the manifest purpose that it harbors of establishing its jurisdiction over said territory, by various acts which, in virtue of our ignorance or condescension, may in the future be interpreted as a tacit recognition that this region belongs wholly to it, or at least that it belongs to it *proindiviso* with *New Granada*. Hence, finally, the measures dictated by that Government (without complying with the formalities required by Art. 8 of the Treaty, even for simple acts of exploration), conceding in 1849 a vast portion of the Coast of *Burica* to a French corporation; and immediately thereafter, in 1850, a franchise for the opening of a certain road from that coast to the territory of *Bocas del Toro*; concessions which were

not carried into effect but against which our Government, as it was its duty to do, duly submitted the claims tending to prevent the prosecution of the attempt, with the protest of resorting, in case of need, to the use of force in order to obtain justice and reparation.¹¹

These facts and other analogous incidents which have recently occurred must be taken into account in renewing the negotiations as to boundaries; for although on the part of the States of *Central America* they only constituted a disagreement and bold pretension of solving,¹² by their individual actions, a question which, if it deserves to be called such, would be essentially international and could only be decided by a treaty; and although they would never invalidate the legitimate possession which *New Granada* obtains and the jurisdiction which its Government exercises over the respective territories; yet still such acts afford a strong presumption as to the points which will give rise to controversy when it is undertaken to arrange by negotiation the border line between the two Republics and they show the urgent necessity which exists for adopting efficacious measures to adjust it without delay. For the same reason they deserve to be kept in view when that time arrives, so that in this report some additional observations will be devoted to them.

II.

The Royal *cédulas* for the first erection of the Viceroyalty of *Santa Fé* and Kingdom of *Guatemala* and their respective Au-

¹¹ With this argument of force *Colombia* could also take possession of the whole of the territory of *Costa Rica*. Art. 8 of the Treaty of 1825 has no application in the case which Sr. Fernández Madrid cites, because the concessions of *Costa Rica* at *Bocas del Toro* and on the coast of *Burica* were at a considerable distance from the frontier and within a territory which from all the evidence did not belong to *Veragua*, because it was found at a considerable distance to the West of the Island of *Escudo* and from the mouth of the *Chiriquí Viejo*, extreme points of the divisional line between *Costa Rica* and *Veragua* and of the ancient Captaincies General of *Guatemala* and *Panama* in 1810, as also in 1821. M. M. P.

¹² Was it a bold pretension? *Costa Rica* exhibited its titles and does not claim any more than they justly give to it. Where are and what are the titles of *Colombia*? It would be much better for Señor Fernández Madrid to cite some *Royal cédula* and argue less.

diencias or Chancelleries, far from containing a complete description of the bounds of these countries, hardly did more than designate vaguely the principal provinces and cities embraced within each jurisdictional district. It cannot, however, be doubted that the Spanish Government fixed as the ends of the two territories upon the Atlantic, the River *Culebras*, and upon the Pacific the Gulf of *Dulce*, between *Punta Mala* and Cape *Boruca*;¹⁸

¹⁸ It is necessary to repeat that the Spanish Government never indicated the ends which are stated by Señor Fernández Madrid. The geographers which he cites contradict themselves at every step and not only do they not justify the confidence which the distinguished Colombian publicist has in them, but their authority is hardly secondary and indeed almost nothing. Let us examine these authors:

ROBERT DE VAUGONDY, cited with so much regard by the Colombian publicist, arbitrarily put the frontier of *Veragua* as far as a River *Culebras*, situated immediately to the West of Almirante Bay; and from the mouth of this river, in a South-east direction, he traced a dotted line which ended to the East of the peninsula and *Punta Burica*, leaving the latter and the whole of the Gulf of *Dulce* within the jurisdiction of *Costa Rica*. See, "Northern and Southern America divided according to their different countries" (*Amérique Septentrionale et Méridionale divisée suivant ses différents pays*), by Robert de Vaubondy, geographer, Paris. It is without date, but it is evident from the political divisions that it was about 1780, more or less.

D'ANVILLE, in some maps is identical with Vaugondy; in others he excludes *Punta Burica* from the jurisdiction of *Tierra Firme* and locates it, as also the Bay of *Boca Toro*, under the general denomination of *New Spain*.

FADEN (not Fanden, as it is written by Señor Fernández Madrid), in the map entitled: "*Colombia Prima*," South America, engraved in 1607, from the sketches of D'Arcy de la Rochette, indicates the division line of the Captaincies General of *Guatemala* and *Panama*, and includes within the territory of *Costa Rica* all that which is claimed by *Colombia*. He contradicts entirely Señor Fernández Madrid.

DON JUAN DE LA CRUZ CANO Y OLMEDILLA did not complete his great map of Southern America on the side of *Veragua*; he hardly reached the point of *Mariato* on the South Sea, and no conclusion can be arrived at from the fragment of *Veragua* which he depicts and for which he traces no divisional line.

In the Maritime Map of the Gulf of *Mexico* and Islands of America, by Don Thomás López and Don Juan de la Cruz (year 1755), the coasts of *Central America* are drawn, but there is no line that indicates the divisions of one province from another and the names of the rivers are arbitrary.

ALCEDO contradicts himself with so much frequency and his mistakes

since the most accredited ancient geographers agree in recognizing these limits; among them the French D'Anville and Robert de Vaugondy; among the English, Fanden and Jeffrys; and among the Spanish Don Juan de la Cruz Cano and Don Antonio de Alcedo, whose historical and geographical dictionary, pub-

are so considerable that his authority cannot be invoked. He includes the *Bay of Almirante* and *Bocas del Toro* within the territory of *Veragua*; but he says that the RIVER BELEN and the RIVER CULEBRAS belong to *Costa Rica*. If the *River Belén* belongs to *Costa Rica*, with still more reason does the *Bay of Almirante*, situated between the said two rivers.

HUMBOLDT does not attribute to *Veragua* any greater extension than that which was given to it in 1575 by the Audiencia of *Panama*. In the Map of *Colombia*, according to Humboldt, published in London in 1822, for account of the said Republic and under the direction of its Vice-president and diplomatic minister, Don Francisco A. Zea, neither the *Bay of Almirante* nor the *Gulf of Dulce* appear within the dominions of *Colombia*.

DON ANTONIO DE ULLOA is the only one who supports Señor Fernández Madrid; but his demarcation is entirely arbitrary; since it is not founded upon any legal authority nor upon facts. Ulloa was in *Panama* in 1735, and there he took without investigation the reports which were furnished to him by some interested party, who reproduced the pretensions of the ancient Governors of *Veragua*, pretensions against which Diego de Artieda protested in 1576 and which Don Juan de Ocón y Trillo undertook to combat in 1608.

The authors and cartographers who attribute the *Bay of Almirante* or of *Zorobará* to *Costa Rica* are innumerable, and none, except Ulloa, deny to it the absolute and complete jurisdiction over the *Gulf of Dulce*. Besides, Vaugondy, D'Anville, López, Alcedo and others have done no more than to servilely copy Ulloa. Alcedo contented himself at times with copying the erratas of the map of López cited and Don Juan de la Cruz, and he writes *Molina* for *Matina* and *Boruga* for *Burica*, etc.

The same Don Tomás López, in a small "Geographical Atlas of Northern and Southern America," (*Atlas geográfico de la América Septentrional y Meridional*), published in 1758, reproduced that already cited of 1755. In the text which accompanies it he shows himself so scant or lacking in information that he gives *Concepción* as the capital of *Veragua*, although it had been extinguished at the end of the XVIth century, instead of *Santiago*.

López says that he has made use of the works of Popple, D'Anville, Ulloa and Frezier. He reproduces the errors of the last three and he differs from Popple where the latter is most correct, which is in the demarcation of *Costa Rica* and *Veragua*, traced according to Herrera, de Laet, Sanson d'Abbeville, Guillaume de l'Isle, etc., more in harmony with that of the Emperor Carlos V. M. M. P.

lished for the first time in 1789 and translated into English with additions by Thomson in 1829, is a most respectable authority in everything relating to the political geography of these countries.

As regards the boundaries mentioned, the Spanish authorities were constantly at work in these regions, until the epoch of the emancipation, as it would be easy to demonstrate with a great number of citations, ancient and modern; and like his are found to be all the charts prepared by the orders of the Spanish Government, or with its approval, especially those published in the Hydrographic Office of Madrid, by Fidalgo; in London by Arrowsmith and in Paris by Brué and Dession. In these charts, as in others much older and no less accredited, the frontier line of the two countries is marked by a dotted line which terminates above the *Doraces* or the *Culebras* in the Atlantic and upon the *Gulf of Dulce* in the Pacific; consequently leaving embraced within the Granadian territory *Bocas del Toro* in the former Ocean and *Burica* on the latter.

There are besides various historic facts of the greatest notoriety, which essentially confirm this demarcation and show that it has been maintained as valid and legitimate from the earliest times of the discovery of America until our day.

Thus we see that Columbus, in his Fourth Voyage to America, cruising along the whole of the coast from the most northern portion of that of *Honduras* as far as *Portobelo*, made a landing in the Archipelago of *Bocas del Toro*, and he went inland to the West by a river the waters of which had a certain greenish tint, and being satisfied of the signs of gold in the country he resolved to found a colony in it and he entrusted its charge to his brother Don Bartholomew.¹⁴

¹⁴ Not to the West, but to the East of *Bocas del Toro*, and at more than twenty leagues from the *Bay of Almirante*, Columbus discovered the *River Veragua*, called so by the natives, although Don Antonio de Ulloa and Alcedo suppose that it may have been on account of the greenish tint of its waters. The colony which Columbus founded was not on this river, where Señor Fernández Madrid takes him into the interior, but on the banks of the BELEN, 95 miles to the East of the *Bay of Almirante*.

This bay was left entirely outside of the demarcation of the *Dukedom of Veragua* and of the Government of that name, as is shown by the Royal *cédula* for the erection of the *Dukedom* of January 19, 1557, and

Hence came the names of *Almirante Bay* (Bay of the Admiral), given to the very spacious and sheltered waters that surround the islands of that archipelago; the name of *Colón* (Columbus) which was given to the island that is called "*Boca del Toro*"; and that of *Veragua*, which from that time was given to the province within which that bay was always embraced, its archipelago and all the neighboring territory; and hence also came the title of "Duke of *Veragua*," with which Columbus was decorated and which is kept by his descendants to this day: all facts that tend to prove the antiquity of our rights over the territory of *Bocas del Toro*, as an integral part of the *Veraguas*, which never has been disputed against us.¹⁵

While Columbus was exploring and taking possession of these coasts, Rodrigo de Bastidas Juan de la Cosa and Alonso de Ojeda were doing likewise, by commission from the King of Spain, from *Cabo de la Vela*, at the extremity of the peninsula of *Goajira*, to the Gulf of *Darién* or *Urabá*. Growing out of these enterprises there were created in 1508 the first two Governments of what was called "*Tierra Firme*," and later "*New Granada*," granting to Ojeda what was designated as *Nueva Andalucía* (New Andalusia), from *Cabo de la Vela* to the Gulf of *Darién*; and what was denominated *Castilla del Oro*,¹⁶ from the Gulf of *Darién* to Cape *Gracias á Dios*, to Diego de Nicuesa; so that it is certain that the Archipelago of *Bocas del Toro* has always been, from its discovery, ascribed to the territories that belonged to *New Granada*.

This territorial demarcation temporarily suffered a slight change in the year 1513, when a Royal Provision was issued appointing Pedro Arias de Avila as Governór and Captain General of *Castilla del Oro*, but excepting from his dependency the Province of *Veragua*, the special administration of it belonging to Don

the Royal *cédulas* establishing the Province of *Costa Rica* and in particular those of November 29, 1540, and December 1, 1573.

It is an evident mistake to say that Columbus, the Discoverer, was decorated with the title of "Duke of *Veragua*." This was granted to his grandson, Don Luis Columbus. M. M. P.

¹⁵ A manifest mistake, as shown by the Royal *cédulas* of January 19, 1537, November 29, 1540, and December 1, 1573, etc. M. M. P.

¹⁶ It was denominated "*Veragua*," not *Castilla del Oro*. M. M. P.

Diego Columbus, with the title of Duke.¹⁷ This title, as has been already indicated, was perpetuated in the family, but not so the property and jurisdiction, since the latter was subsequently incorporated in the Crown, and the latter restored it to the Government of *Castilla del Oro*; ¹⁸ recognizing in favor of the Columbus Proprietors as against the Royal Treasury what it was computed that the Dukedon yielded them annually.

The primitive Governments conferred upon Ojeda and Nicuesa having been merged in another general one, known since 1538, sometimes with the name of "*Kingdom of Santa Fé*," sometimes with that of the "*New Kingdom of Granada*," but always having the same frontier to the West of *Veraguas*,¹⁹ all this territory, subject first to the authority of a Governor and then to that of a President and Special Audiencia, continued, nevertheless, under the dependency of the Viceroy of Peru, as Guatemala, or that is to say *Central America*, was under that of *Mexico*, until by the Royal *cédula* of April 29, 1717, the Viceroyalty of *Santa Fé* was created, formed from those two primitive Governments, embracing, of course, all the territory of the ancient Province of *Veragua* (now *Chiriquí* and *Veraguas*), inclusive of that of *Bocas del Toro*.²⁰

¹⁷ An error. The first Duke was Don Luis, a son of Don Diego. M. M. P.

¹⁸ There was no such "restoration" of *Veragua* to *Castilla del Oro*. M. M. P.

¹⁹ A fanciful assertion and one not warranted by the documents. Until the year 1550, the Government of *Tierra Firme*, including *Veragua*, was subject to the Audiencia of the *Confines*. See the *Recopilación de Indias*. Law VII, Title I, Book V,—also Peralta: *Costa Rica, Nicaragua y Panama*, p. 130. M. M. P.

²⁰ It is not correct to say that the Royal *cédula* of 1717, which established the Viceroyalty of *Santa Fé*, should include the territory of *Bocas del Toro*, nor the whole of that which was the Government of Nicuesa. The Viceroyalty did not extend beyond the limits of the Captaincy General of *Guatemala*, which reached as far as the *Escudo de Veragua* by the North Sea and as far as the *River Chiriquí Viejo* on the South Sea in 1717.

Nor in 1739, when the Viceroyalty of *Santa Fé* was reconstituted, was there added to it any territory to the West of the *Escudo de Veragua* or of the *River Chiriquí Viejo*. The Account of the Viceroy, Don Pedro

The Viceroyalty of *Santa Fé* being suppressed a few years later, it went back and was left recast in that of *Peru*, until under the Royal Order of August 20, 1739, it was again reestablished in the same form and with the same districts as it had been in 1717.

Thus constituted the Viceroyalty continued until February 12, 1742, when it was released from its dependency upon the Captain General of *Venezuela*, with the exception of some provinces which were subsequently also taken away from the Viceroyalty and incorporated in the Captaincy General of *Venezuela* by the *cédula* of September 8, 1777. Under others, dated in 1790, 1792 and 1795, there was a gradual separation from the Province of *Riohacha* and the addition to that of *Maracaibo* of the town of *Sinamaica* and its district, which is the common border of said provinces.

This was the last dismemberment to which the Viceroyalty was subject, of which there is any information; so that, until the contrary is proven, it should be assumed that the *uti possidetis* of 1810 was the same that existed during the last years mentioned in the preceding century.

In the present one, the only change was that which was caused by the Royal *cédula* issued at San Lorenzo on November 30, 1803, respecting that part of the littoral of *Central America* embraced from Cape *Gracias á Dios* towards the South. This littoral, known in ancient times under the name of *Taguzgalpa* and *Tologalpa*, then took that of "*Coast of Mosquitos*," and after having formed a part of the *New Kingdom of Granada*,²¹ it was at one time dependant from the Captaincy General of *Guatemala* and at another time from that of *Cuba*, until finally, it was definitively

Messía de la Cerda, written in 1772, indicates the limits of the Viceroyalty and contradicts the assertions of Señor Fernández Madrid.

See Peralta: *Costa Rica y Colombia*, p. 146, 147, 199 and 245 (or p. 162, 163, 215, and 261). M. M. P.

²¹ This is an error. Before 1803 *Taguzgalpa* and *Tologalpa*, or *Coast of Mosquitos*, never formed any part of the *New Kingdom of Granada*, nor of the Captaincy General of *Cuba*, but only of the Captaincy General of *Guatemala*.

reincorporated in the territory of *New Granada*, by virtue of said Royal *cédula*.²²

But it is to be observed that these mutations, which had for their sole purpose the better defense and protection of the said coast, did not introduce any substantial change in the limits of the Viceroyalty, properly speaking, the jurisdiction of which (as appears from the Memorials or official accounts of the Viceroyas, Messía de la Cerda, Guirior, Flores, Góngora, and Ezpeleta, and from the geographical descriptions published by Don Antonio Ulloa in 1746, when the Viceroyalty was reestablished, and by Don Francisco José de Caldas in 1809, when our separation from Spain was on the point of being proclaimed) was extended constantly to all the territory of the *Isthmus* which, according to trustworthy, historical and geographical data, adduced in the course of this paper, bordered with the territory of *Costa Rica* by a line drawn from the *middle* of the Gulf of *Dulce* to the mouth of the River *Doraces* or *Culebras*, a short distance from *Punta Carcta*, which is also, approximately, the boundary indicated by Baron de Humboldt and other celebrated travellers.²³

Such were, then, the borders of the territory of *New Granada* toward the North-west, until by the Royal Order so often cited, that territory was increased with the part already mentioned of the *Coast of Mosquitos*, which in virtue of said *cédula* was left segregated from the Captaincy General of *Guatemala* and dependent from the Viceroyalty of *Santa Fé*.

The Treaty of 1825, celebrated between *Colombia* and *Central America*, was subsequent to the said Royal Order, and by its Arts. 7, 8 and 9, the existing rights were fully recognized and confirmed, the *Guatemala* plenipotentiary, Señor Don Pedro Molina,

²² The documents and the fact that it never exercised nor was permitted to exercise any act of jurisdiction over the *Coast of Mosquitos*, contradict the assertion that it was *incorporated* definitely in the territory of *New Granada* by virtue of said Royal Order,—it was not a Royal *cédula*. M. M. P.

²³ The Account of the Viceroy, Don Pedro Messía de la Cerda, contradicts this assertion of Señor Fernández Madrid. See Peralta: *Costa Rica y Colombia*, p. 214. J. A. García y García, Accounts of the Viceroy of the New Kingdom of Granada (*Relaciones de los Virreys del Nuevo Reino de Granada*), 1 vol. 8 vo., New York, 1869. M. M. P.

respecting the validity of said *cédula* and the other documents they had before them during the negotiations of that treaty.²⁴

The very Constitution of the Federal Republic of *Central America*, agreed to on November 22, 1824, designates in its Art. 5, as territory of that Republic, that which was previously embraced within the Kingdom of *Guatemala*, excepting the Province of *Chiapas*; and the territory which the ancient Kingdom of *Guatemala* embraced is that stated in Law 6, Title 15, Book 2, of the *Recopilación de Indias*, which in touching on this point only says: "the district of that Kingdom shall border (separate their ends) on the East with the Audiencia of *Tierra Firme*."²⁵

So that no respectable or satisfactory basis can be found for the claim advanced by the Government of *Costa Rica*, that its territory extends to the meridian that passes by the Island of *Escudo de Veraguas*; a name which in itself forbids such a strange clam.

It is probable it has no other origin than the statement of a Guatemalan writer, Don Domingo Juarros, who in his statistical and commercial history of the ancient Kingdom of *Guatemala*, published at the beginning of this century, was the *first* to assume that the limits of *Costa Rica* extended upon the Atlantic from the River *San Juan de Nicaragua* to the Island of *Escudo de Veragua*; basing his assertion upon a certain document which was said to exist in the archives of *Cartago*, and by which it appeared that Diego de Artieda Chirinos had been the first Governor and Captain General of *Costa Rica* in the XVIth century, the King having granted to him this position for his life and for that of one of his sons, and prescribed the limits of his jurisdiction upon the Atlantic Coast, from the mouth of the River *San Juan* as far as the Island of *Escudo de Veragua*, and upon the Pacific Ocean from the River *Nicoya* as far as the River *Boruca*.²⁶

²⁴ Neither Don Pedro Molina, nor the Government of the Republic of *Central America*, recognized the validity of the Royal Order of San Lorenzo. If they had recognized it, the boundary question would have been settled since the year 1825. M. M. P.

²⁵ The Federal Constitution of *Central America* referred to the territory of *Guatemala*, as it was marked out by Juarros and Dr. José Mariano Méndez. M. M. P.

²⁶ The documents published on the part of *Costa Rica* or in independent collections prove this assertion erroneous. M. M. P.

It is to be noted that Juarros did not speak of this *cédula* of his own knowledge, but from the statement of one Ceballos; but however that may be, it is nevertheless true, as the learned Señor Manuel María Mosquera very justly observed, that the mere fact of digging up such a document from the archives of *Cartago*, in order to produce it so tardily as a great find of a title forgotten or lost, proves clearly that the possession of the whole of that littoral by the Government of *Costa Rica* was either never really effected or it was not thereafter kept; and this is taking the authority and meaning of such paper for granted, which is not in accord with the historic facts, according to which we have seen that the authorities of the Viceroyalty of *Santa Fé* exercised jurisdiction as far as the borders already indicated and that those of *Central America* never overstepped them.²⁷

Therefore, if this point should now be controverted, it would be more natural and just to admit the reality of these historic facts and the generally recognized boundaries which they indicate, not between temporary Governments shortly after the conquest, which perished with the life of the one upon whom they were incidentally conferred, but between the territories embraced in the two jurisdictions of the Royal Audiencia of *Guatemala* and the Royal Audiencia of *Tierra Firme*, or it may be between the Captaincy General and the Viceroyalty, which is what constituted the *uti possidetis* of 1810 or of 1825, the date of the Treaty between *Colombia* and *Central America*.

III.

It may be inferred from what has been stated that, without prejudice to scrupulously respecting the known frontiers of the two territories, the negotiation can be reduced now to determining the division line in a general way, in the places where as yet it has not been clearly fixed.

These places are:

1. The precise section of the *Gulf of Dulce* not yet well known, between *Punta Mala* and *Cape Boruca*, where the frontier demarcation must be begun; a section or point of departure which, as Sr. Colonel Codazzi proposes, can be fixed in the cen-

²⁷ This assertion has no foundation. M. M. P.

tral channel of said *Gulf*, denominated *Golfito*, in which there empties the river of the same name.

2. The irregular line (also unknown in part) which, ascending by the River *Golfito* and passing by the *Sierra de la Cruz*, must serve as boundary in the interior, until it reaches the head-waters of the *River Doraces*, or of the *Culebras*; by the course of one of which streams the frontier must naturally proceed.

3. The point at which the said line ought to come out on the Atlantic, adopting for that purpose the mouth of some of the rivers mentioned, or in the last resort *Punta Careta*.

The most general and accepted opinion of the geographers and historians of America and the acts themselves of the Spanish Government, taken altogether, as has already been seen, indicate the end of the division line in the *River Culebras*; but as there cannot fail to be noted in one writer or another some discrepancy concerning which of the points stated (*Doraces*, *Culebras* or *Punta Careta*) is the one which in reality does separate the two jurisdictions, it seems that this uncertainty, although of little weight in comparison with the other uniform data which designate the River *Culebras* as the border, it could nevertheless be admitted, thanks to the freedom the two Governments enjoy to deviate from a strictly legal line, and accommodate themselves, if they deem it proper, to take another, which, without departing in any absolute way from the boundaries already indicated, may be more in harmony with what is desirable for both countries.

Proceeding thus, with a frank and sincere mutual desire to reach an agreement, it does not seem that it will be impossible to secure it, especially if we confine ourselves to assuring our possession of *Bocas del Toro* and reserving to ourselves a good anchorage in the Gulf of *Dulce*, being thoroughly convinced that this being settled in a satisfactory manner, all the other points are of entirely secondary interest. In the interior of that portion of our frontiers, what interests us is not to enlarge our territory, but to obtain that which, though less in extent, may be more easy of administration and more susceptible of the establishment of a natural and permanent demarcation, which will avoid for the border authorities every reason for perplexity or confusion in the exercise of their respective jurisdictions, in the return of

fugitives and in other acts which are made so difficult if there is uncertainty in this respect.

It is to be hoped that the Government of *Costa Rica* sharing in these friendly and conciliatory sentiments may be persuaded that, as long as the border line of the two States is not fixed with clear and definite points, marked out by natural objects and adjusted to the rights of both countries, they will both be causing reciprocally the greatest injury that can be done; for while this is not carried out, little or no progress can be effected in an efficient manner in order to assure the ownership and promote the cultivation and settlement of the untilled lands which the two Nations possess in those regions.

What does *Costa Rica* claim? Does it wish to have a port on the Atlantic? Then *New Granada* is not only disposed to give it the freedom of all those on the *Isthmus* and free transit by that territory, without any kind of hindrance or imposts, but, ceding the entire coast between the rivers *Culebras* and *San Juan*, it would cede to it two ports, those of *Moin* and *Matina*, which, although they are not commodious, are the only ones that we have the capacity to cede.²⁸

And let it be noted that Great Britain having declared, since 1847, with the express purpose of meeting our claims, that this portion of the coast is not within those embraced in the pretended dominions of the native chief who was said to be allied with and protected by them, in ceding the right derived from the *cédula* of 1803, we would cede it guaranteed by the explicit recognition of the only Power which up to the present time has disputed it.²⁹

What more will *Costa Rica* claim? Does it expect that we will give up all the shores of the magnificent Gulf of *Dulce*, the fertile prairies of *Chiriquí* and our precious Archipelago of

²⁸ The ports of *Moin*, *Matina* and *San Juan de Nicaragua* never have belonged to *Colombia*; they were always, even after the issue of the Royal Order of 1803, UNDER THE EXCLUSIVE DEPENDENCY OF CENTRAL AMERICA, as Sr. Fernández Madrid himself recognized in his Memorial of 1852. M. M. P.

²⁹ The despatches of Lord Palmerston, Chatfield and of O'Leary, demonstrate the error of this opinion. M. M. P.

Bocas del Toro? Let it be undeceived, those territories belong to us by a just title and perfect occupation; we have made great sacrifices to protect and defend them, to settle and develop them; and we have done this so that it may be seen that these territories are an integral part of our country, which can not be wrested from us without first destroying us.³⁰

So, let *Costa Rica* be persuaded of this and let it resolve, as *New Granada* has already, to give to the peoples of Spanish America commendable example of moderation and fraternal generosity, deciding within the family these irritating territorial questions. Let both show by their acts, that there is no truth in the assertion of those who say that the Spanish American peoples are animated by petty rivalries. Relations of friendship and good understanding between nations are not developed by useless protests, but by the practice of strict justice and the advantage that may be derived from such relations. Let us not, then, disregard the actual situation, nor permit the reasons for disagreement which now exist to longer continue. Reason indicates and experience proves that such a state of things is a source of imminent danger to the peace of both nations and even for the preservation of their dominion over the very territory in dispute. The most important thing for these Republics is not to enlarge, but to preserve, protect and develop the territories which they possess, uniting all their efforts for that purpose.

Therefore, though it were only to stifle, in consideration of our common interests, the germ of fatal rivalries and grudges which the unsettled condition of the frontiers may foster, an end should be put to a situation so threatening and anomalous even at the cost of some sacrifice.

Happily, Citizen Senators, this is what the Government of the Republic has proposed, in asking your approval of the proposition to accredit a Diplomatic Agent near the Government of *Costa Rica*. The measure is an important one and the desirability and necessity of its adoption is unquestionable. Therefore your Committee respectfully submit the following resolutions:

"In view of the communication of the Executive Power, dated

³⁰ It will be enough for *Colombia* to submit its just titles, as *Costa Rica* submits its own, without any need of reproducing fanciful statements such as are found in the words of Señor Fernández Madrid. M. M. P.

February 26, last past, stating that in its opinion the measures that should be employed to settle more promptly and with practical advantage the boundaries between *New Granada* and *Costa Rica*, are those of a vigorous negotiation conducted on the part of *New Granada*;

“The Senate, cordially approving the idea expressed by the Executive Power in the communication referred to, resolves to provide the corresponding credit in the National Budget.

“Let this report be forwarded to the Committee on Accounts for that purpose, and the annexed documents be returned to the respective Secretary of State.”

Bogotá, April 10, 1855. Citizen Senators.

PEDRO FERNÁNDEZ MADRID.

This is a copy.

The Secretary of the Senate: *Lázaro María Pérez*.

Doc. 303 **Minutes of the Conferences had Between the Plenipotentiaries of the Republic of Costa Rica and New Granada, with a View to Making a Treaty of Boundaries, Friendship, Commerce and Navigation.**

NEW YORK, October, 1855.

In the city of New York, on the 3rd day of October, 1855, the Señores Don Luis Molina, Chargé d’Affaires of *Costa Rica*, and General Don Pedro Alcántara Herrán, envoy extraordinary and minister plenipotentiary of *New Granada*, each one of them near the United States, and both invested with full powers to celebrate boundary treaties and others of reciprocal interest between *Costa Rica* and *New Granada*, met and mutually presented their papers, and these being found in due form they exchanged authentic copies, in order to proceed, as they did thereupon, to the negotiation of the treaties.

General Herrán said:

“From the conversations which I have held with the Señor plenipotentiary of *Costa Rica*, I believe that, if the article as to boundaries is adjusted, there will be no difficulty whatever in concluding the treaties of Friendship, Commerce and Navigation,

because the polity, the necessities of each of the parties being identical, with a good will, there is nothing else which will prevent their relations being bound together as their sympathies and interests demand. I am confident that the settlement of the question of boundaries, from its vital importance, will be one of the greatest bonds of friendship between the two Republics and that it will not only facilitate but it will assure forever the closest relations which they are desirous of cultivating. I submit, therefore, to Señor Molina, an article which I have prepared, which, in case he agrees to it, we can arrange to put in the proper place and pass on to discuss the other articles of the treaty or treaties which we are to celebrate."

The article presented by General Herrán is as follows:

"ARTICLE —. The Republics of *New Granada* and *Costa Rica* recognise for common limits between their respective territories a division line, which, starting in the middle of the principal mouth of the *River Doraces*, which empties into the Atlantic, continues up stream, always in the middle of its principal channel, to its source; from thence by the top of the Cordillera to the crest of the range of *Las Cruces*; from thence to the headwaters of the *River Golfito*, and from thence by the middle of the principal channel of the latter river to its outlet into the *Gulf of Dulce*. The Republic of *Costa Rica* renounces in favor of *New Granada* the right which it may have to any part of the territory which is left to the East of this line, and *New Granada* renounces in favor of *Costa Rica* and *Nicaragua* the right which it may have to any part of the territory that is left to the West of this line, excepting from such renunciation the Islands of *San Andrés*, *Providencia*, *Santa Catalina*, *Mangle Grande*, *Mangle Chico* and the others that belong to the district under the name of Canton of *San Andrés*, which shall continue to belong to *New Granada*."

Thereupon General Herrán went on to say:

"I attribute great importance to this negotiation as to boundaries; but I am very far from considering it important because of the extent of territory which may be the immediate object of the inquiry. In my opinion its importance springs from the consequences and I consider the settlement of boundaries in itself as the removal of an obstacle which is now obstructing the road

in order to reach a favorable position. I regret to see the positive evils which this question has caused and is causing, from the fact that it has prevented the parties interested from coming to a fraternal understanding in order to take up matters of common interest which may not be neglected without serious injury resulting. Even now new dangers are threatening that can not be disguised and give us cause for alarm. So, then, I have not examined the question as to boundaries with a view to finding means for cutting away any portion of the territory of *Costa Rica* in behalf of *New Granada*; but I have rather sought for some way to contract the limits of *New Granada* without failing in my duty and for reasons with which I might demonstrate to *Costa Rica* that there is upon our part a religious respect for its rights. I will first consider the legal question and then that of convenience.

The article as to boundaries which has been proposed does not make any new concession of territory to *New Granada*, inasmuch as the latter Republic now actually possesses what has been designated and because it has belonged to it and does belong to it by virtue of legitimate, sufficient, clear and subsisting titles.

In accord with these titles, also, is the testimony of the persons who are most competent in the matter, either from their recognised authority or from their profession.

The division line proposed is the one that is the best suited to the parties.

To prove these assertions I will confine myself to make a summary of the documents which favor the rights of *New Granada*.

On March 4, 1825, the Republic of *Colombia* and that of *Central America*, by common accord, through their respective plenipotentiaries, recognised the *uti possidetis* of 1810, as that which was best for the American Republics of Spanish origin and that which had generally been adopted in that epoch by an instinctive analogy to that which had moved the greater part of the colonies to declare themselves independent of the dominion of Spain and constitute themselves independent States.

The *Cédula*¹ issued at San Lorenzo on November 30, 1803,

¹ It is not a "*cédula*" but a Royal Order. M. M. P.

by which the resolution of the King was communicated, that “* * * the islands of *San Andrés* and the part of the *Coast of Mosquitos* from *Cape Gracias á Dios*, inclusive, towards the *River Chagres*, shall be segregated from the Captaincy-General of *Guatemala* and be dependent upon the Viceroyalty of *Santa Fé*, * * *” is a legitimate title, because it emanated from the only authority which at that epoch could issue it in the use of the authority which it exercised; it is a sufficient title to prove the rights of *New Granada* over the Atlantic coast, because it not only embraces the limit to which *New Granada* is now restricted, but it passes beyond that; in virtue of which the cession or renunciation contained in the proposed boundary article is neither a problematical one nor one of mere form, but it is a transfer of a right over a definite and useful thing for *Costa Rica*. It is a right of equal and of like importance to that which the King of Spain ceded to the United States upon the coast of the Pacific, which, if at the beginning it seemed insignificant, in the course of time became fraught with a great result, benefit and most important consequences. It is by its precision a clear title, by the significance of its words, by the absolute way in which it is stated and because it admits of but one meaning, since to give to it any other it would be necessary to add new words to it. It seems to have been drawn as if it were to solve the question which now occupies us, and the simple reading of this title is a positive demonstration of its clearness; it is a subsisting title because there has been no other act subsequent of a legitimate origin which modified or changed it.² The subsistence of this title was recognised by *Central America*, as appears from the minutes of the conferences held for the negotiation of the treaty celebrated with *Colombia* in the year 1825.

And just because this title is so clear, I will not try to amplify the significance of its language; nor to make it worth more than it expresses itself. Definitely as it speaks regarding the coast, it says nothing about the interior territory, and for this reason it is that I make use of this title, not to prove the right of *New Granada* to the territory which would be left limited by the proposed division line, but only for two objects: to prove that *New*

² These assertions are not correct. M. M. P.

Granada has a right to the point where the said line begins and to demonstrate the value of the renunciation or cession offered of the Atlantic coast in favor of *Costa Rica* and *Nicaragua*.

Whatever may be the extension as to width which may be attributed to the expression "*Coast of Mosquitos*," of which the Royal *Cédula* makes use, it is very certain that it is an extent of land situated upon the shore of the sea, without which the contiguous territory would be of very little value. Without forcing the language of the *Cédula* cited it would be understood, in accord with the report which led up to it, that the Spanish Government, in imposing upon the Viceroyalty of *Santa Fé* the onerous charge of defending the *Coast of Mosquitos*, conceded to it an extent of territory of sufficient width for the establishments that ought to be set up, in order that the defense of such coast might be made effective and the territory utilized; but without it being necessary to so understand the said expression, it is evident that, even restricting as much as possible the sense of the said *Cédula*, it concedes, taking it even in the least favorable interpretation that may be wished, a very valuable right, the importance of which was recognised in the very fact of *Costa Rica* and Great Britain being so eager to have *New Granada* partially renounce it, for the purpose of facilitating the settlement of boundaries. It is said that the right of the latter Republic over the *Coast of Mosquitos* as far as Cape *Gracias á Dios* is not in proportion to the territory that it holds in the interior, which is a very good reason to show that it is desirable to make an arrangement as to boundaries advantageous to both parties; but it is not an argument against the conditions of the legitimacy of the right.³

The British Government, which is the only one beside that of *Costa Rica*, with which that of *New Granada* has had any dispute on account of the *Coast of Mosquitos*, did not make any observation as to the *Cédula*, but as to the dominion which Spain had at times held over the territory of the so-called "*Kingdom of Mosquitos*,"—an observation which *New Granada* does not apprehend on the part of *Costa Rica*, because it would be against its own interests, and it is to be noted that the pretensions of

³ All these reasonings of the Minister of *New Granada*, Señor *Herrán*, are demolished by those of Señor *Fernández Madrid*. M. M. P.

Great Britain were not declared as soon as it had knowledge of the *Cédula*, but many years afterwards. When the Republic of *Colombia* negotiated the treaty of friendship with Great Britain in the year 1825, the British plenipotentiaries proposed an article having for its object to prevent *Colombia* from claiming the territory of *Belize*, and then it was stated, with the map before them, that in virtue of the *Cédula* of 1803 the territory of *Colombia* did not go beyond Cape *Gracias á Dios*, and not being contiguous to *Belize* the proposed article was unnecessary. With this explanation the British negotiators were satisfied, without the rights of the King of *Mosquitos* being mentioned, nor putting in question the dominion which Spain had exercised over all that territory, nor the right which *Colombia* had acquired over the *Coast of Mosquitos*. It was from the year 1838 that the British Government showed an anxiety to sustain the so-called "*Kingdom of Mosquitos*," and even then it did not absolutely disregard the rights of *New Granada*, as it finally declared on the 4th of May, 1848, that it had recommended to the *Mosquito* King that he should confine his claim on the South side to the eastern branch of the River *San Juan*, with the express purpose of reaching an agreement with *New Granada*. This recognition on the part of Great Britain, when it had every interest in sustaining and enlarging the *Kingdom of Mosquitos*, while I would not say that it gave greater force to the Royal *Cédula* of 1803, since it has in itself all that could be desired, still I would say that it was a tribute paid to the rights of *New Granada* and a demonstration of the validity of its titles.⁴

I have no information that the division line between the Viceroyalty of *Santa Fé* and the Kingdom of *Guatemala* was ever at any time laid out, throughout its whole extent; it is not believed that this was ever done, so that I will now speak of the point as which I propose the line shall terminate, and thereafter take it up throughout its whole extent.

The Gulf of *Dulce* was for a long time in that part the point

⁴ An examination of the despatches of Lord Palmerston and of Mr. Chatfield, show the contrary of what is here asserted by the Minister of *Colombia*. Neither the British Government, nor that of the United States of America, has ever recognised the pretensions of *Colombia* to the *Coast of Mosquitos*. M. M. P.

designated and admitted as one of the ends of the division line, and it could not be otherwise in order that the lands conceded by the King of Spain should be covered, as they were, by the privileges granted to the inhabitants of the Province of *Veraguas*. Thus far the last Viceroys of *Santa Fé* exercised their authority and the settlers who established themselves did so as inhabitants of the Province of *Veraguas* or, to that of *Chiapa*, after the latter was created, by virtue of which they have been and are in the enjoyment of the lands granted.

Señor D. Pedro Molina, Minister Plenipotentiary of *Central America* near the Government of *Colombia*, being in *Bogota*, was directly and specially informed that *Colombia* earnestly believed that its limits on the coast of the Pacific reached to the center of the Gulf of *Dulce*, and that it was exercising it, as long as the projected boundary treaty might not be celebrated; to which Señor Molina assented.⁵

If we come to an agreement as to the two extreme points of the division line, all difficulties can be considered as overcome, because for the designation of the intermediate points attention ought to be given preferentially to a clear and permanent publicity of the line, not with the object of establishing a barrier to separate or estrange the two peoples, but rather on the contrary to perpetuate a bond of union by the settlement of the only reason for dispute that now remains, in such fashion that it will not again arise.

The two titles of which I have made mention will be sufficient to prove the rights of *New Granada* to the division line which we submit, if even there were contradictory evidence thereto and even if *New Granada* had no other titles in its favor, because

⁵ There is no fact nor document which proves that Señor Molina assented to the belief which *Colombia* held as to what its limits were. On the contrary, the note of the Secretary of State of *Central America* to Señor Morales, Minister of *Colombia*, makes it apparent that in 1827 the division line of both Republics started from the *Escudo de Veragua* on the Atlantic and ran toward the South-west as far as the mouth of the River *Boruca* or *Chiriquí viejo*. General Mosquera said, in 1866, in his *Memoria sobre la geografía de Colombia* (Memorial upon the Geography of Colombia), that the limits of the Viceroy of *Santa Fé* reached to *Punta Burica*, and he assigned a like limit to the Republic of *New Granada* in 1852. M. M. P.

they are acts emanating from the King directly, in the exercise of the sovereign power which he held in his hands, having the force of law, until they should be revoked by the authority exercising the sovereignty among us; but if instead of finding any evidence in contradiction everything with but very few exceptions should be found in harmony with said titles, *Costa Rica* will agree that the proposal which I submit arranges the questions in the most equitable manner.

After the Royal *Cédulas* no testimony is more satisfactory than that of the Viceroys, and their relations as to command agree in proving that before 1803 the limits of the Viceroy of *Santa Fé* reached to the Gulf of *Dulce* on the Pacific coast; and to the River *Doraces* upon that of the Atlantic; and these are not the only documents which can be cited, but the acts of authority exercised by the Viceroys Don Antonio Amar y Borbón, Don Juan Sámano and Don Juan de la Cruz Mourgeon, and by the General in Chief Don Pablo Morillo; that is to say, that before and after the years 1803 and 1810 the territory of the Viceroy of *Santa Fé* reached at least as far as the limits I propose, and that the right was accompanied by acts exercised by the Viceroys and down to the very last superior chief of the Spanish Government.

The testimony of the geographers and travellers is so very generally in accord with the limits I propose, that instead of submitting a long list of citations I will refer to them generally, taking into consideration the credit which each one impartially deserves, and in particular I will refer to the maps which had for us an official character down to the year 1810, as having been prepared by order of the Spanish Government, and having in mind that since the year 1825 it would have been an easy and natural thing for the geographers to keep the boundaries which *Costa Rica* fixed in its Constitution, and when they did not do so, notwithstanding the prestige and respect merited by the Constitution of a country, and notwithstanding *Colombia* and *Costa Rica*, instead of fixing boundaries with *Central America* referred to those which the Viceroy of *Santa Fé* had, it was because they deemed with impartiality that neither the legitimate instruments, nor the traditions, nor the state in which things were found in the

frontier territories of *New Granada* and *Costa Rica* justified the boundaries which the latter had fixed in its Constitution.

In default of legitimate titles the opinion of the best accredited geographers could be accepted as the judgment of a competent juror in the matter.

But I would not rest satisfied with demonstrating that the line proposed is the most just one, if I were not also able to show it is the most desirable one for both parties, for I consider it is a duty of the Spanish American Republics, and especially those that are neighbors, to mutually do such good as they may to one another, even yielding a right when concessions may be made without prejudice to the party making them. The arguments for desirability have great weight in the present case, in that, there being no question of honor to intervene, such concessions as may be made by the parties can never be interpreted as acts of weakness. It is not because of disagreements or threats that the negotiation has been taken up, nor has one of the parties been placed in the compulsory situation of acting against its will, but on the contrary the demonstrations of good will and the expressions of civility which have gone before contributed to establish mutual confidence between the parties, and above all they have brought them to a knowledge of how greatly it is to their interest to bind closer their relations.

Let us suppose, then, that there are no titles, on either side, nor traditions, nor evidence from which rights could be derived, and there was no other rule for the demarcation of the boundaries, than that suggested of desirability for both parties, and on the basis of such a supposition I will make some observations.

In the first place, it is very important for the two Republics that they defend their coasts, particularly those upon the Atlantic, from adventurers who are really filibusters, unwilling to submit to modern regulations, constantly becoming more outrageous because they find it so easy to undertake with impunity the most scandalous acts of piracy; and in the second place, it is desirable to utilize that land with such great prospects in view of its topographical situation and its fertility, so that its possession shall not be a burden without advantage as it is at the present time.

Upon the Pacific the portion which is in danger is the shore from the Gulf of *Dulce* for a considerable distance towards the

North-west;—upon the Atlantic from Cape *Honduras* to *Punta Careta*, and a valuable part of this coast is not only in danger of being lost forever but it is under the control of adventurers. The proposed division line would leave to *New Granada* the extent of coast it can settle and defend, and to *Costa Rica* would be left a much greater extent along that coast which requires so much expense and effort for its preservation and defense. If the boundaries of *New Granada* were withdrawn any farther to the South-east, the danger would be greater, not only for the territory which *New Granada* might abandon, but for that which unquestionably belongs to *Costa Rica*.⁶

I have not taken into account in the argument as to desirability in favor of *Costa Rica* the less extent of its territory, because it is not in proportion to its population, and because the fact of *New Granada* being larger does not prove it needs its territory less than *Costa Rica*. The consideration that it would be easier for *New Granada* to defend the Atlantic coast has greater weight in the question of desirability, even without taking into consideration the fact that the means of defense this Republic can employ there would be superior. It would not, therefore, be desirable for *Costa Rica* to demand concessions, worse than useless and prejudicial to both parties. By coming to an understanding our two Republics will secure more efficient support than they would be able to afford from their own resources mutually, and they ought to consider the arrangement of matters in such a fashion as to make it easier to get such support; that is to say, by putting the inhabitants of one in contact with those of the other by means of settlements which might be established at the most advantageous points in those wild regions lying intermediate, to the end that it threatened with dangers as it was at another period, but to attain this condition it was necessary to solicit the co-operation of the United States, and to arouse public interest through the press, bringing the question before the Congress in relation to the American policy and calling the attention of the Cabinet as a last recourse against the plans for

⁶The facts have shown that all these specious arguments of the Minister of *New Granada* should not be applied to *Costa Rica*, which has been able to defend itself from armed intruders with more firmness and ability than from the soldiers of Rhetoric. M. M. P.

usurpation and it also became needful to incur constant expense in order to develop the population of that territory, provide for their protection, sustain the public administration and give to it the special defense that it required.⁷

I can not say, as regards our Pacific coast, that *New Granada* has had to use force or money in its defense, but this was not because the Government felt less interest in the latter than that upon the Atlantic, but for the reason that it was not directly threatened. If it had been the Republic would have done the same as it did in order to defend the territory of *Bocas del Toro*, and it has always been ready to do this. On the other hand, beside the fact that dangers have not been so imminent there, the private interests of the inhabitants of the Provinces of *Veragua* and *Chiriquí* would have made them rise, without the need of being urged by the National Government, in defense of the lands which belonged to them in ownership by the title commonly called "a privilege conceded by the King of Spain."⁸

At the same time that *New Granada* undertook to defend the whole of the *Coast of Mosquitos* from the usurpations by which it had been constantly threatened, it declared that it was not its intention to retain the dominion of the whole of it to the extent that its rights went under its titles; but, in effect, defended it with the consciousness of a duty imposed by the same titles and its own honor, making timely declarations that it was its purposes to enter into arrangements with the States of *Central America* in order to cede to them, under equitable conditions, such part of the coast as might not be required for *New Granada*.

I was the representative of *New Granada* who called the attention of the Government of the United States to the *Mosquito* question, and I acted under the belief that this would redound to the welfare not only of *New Granada* but of *Central America* as well.

⁷ The establishment of *Colombia* at *Bocas del Toro* is still very insignificant (1890), being maintained with the purpose of keeping the exclusive occupation of the litigated territory. M. M. P.

⁸ There is no official evidence of any such kind of titles, which, if they had any value, would be in contradiction to the Royal *Cédulas* that established the demarcation of *Costa Rica* and *Veragua* and to the *uti possidetis* of 1810, so frequently invoked by the Colombian expounders. M. M. P.

At the very beginning I showed to the Government of the United States and to the representatives of the American Governments who were in Washington, that it was not the intention of *New Granada* to keep the *Coast of Mosquitos* as far as Cape *Gracias á Dios*, but that the object of the action which I took in preventing the intervention of foreign Governments was in order that the parties interested might arrange the question solely among themselves. The members of the Diplomatic Corps and those in the Cabinet and in the Congress of the United States, with whom I discussed the matter, were of opinion that the policy of *New Granada* was the best one to prevent the continuous usurpations theretofore undertaken. Although my success was not complete, some good results were secured. Great Britain limited the Kingdom of *Mosquitos*, which had previously extended as far as *King Buppan*, to the southern mouth of the River *San Juan*, with the express object of satisfying the claims of *New Granada*;⁹ and if this Republic had sought only to assure the portion of the coast which it needed, without maintaining the question of right, of honor and principle and the common interest of the Spanish American Republics, it would have been satisfied with such a solution, because so far as it alone was concerned nothing more was needed. A dominion over shores frequently threatened by attacks would have been a useless and unprofitable burden, unless those shores and the contiguous territory could be successfully made useful to our Republics, and to attain this the union and co-operative effort of the two Republics would be very advantageous, as it would also be for their common defense, the purpose being of an analogous character. This is my view concerning what has been already stated.

Let us suppose that *New Granada* should withdraw from and abandon the Canton of *Bocas del Toro*. What would happen? Some company of speculators would at once seize upon it under the authority of some of the many concessions of the *Mosquito* King, true or fictitious, which are held among those people; it would become a colony of another nation or be held by parties of greedy filibusters who are looking for opportunities to make themselves masters of somebody else's property; and what good

⁹The note of Lord Palmerston to Señor Mosquera, Minister of *New Granada* in London, is published in this book.

would result from this to *Costa Rica*? None at all; and, far from any good resulting to it, a bad neighborhood would be established close by which would rise to constant uneasiness. With this prospect in view can it be possible that *Costa Rica* would desire to have *New Granada* draw back its frontier? Would it prefer the neighborhood of these adventurers to that of Granadian citizens? And would it not take into account the expense and the burdens supported by this Republic in developing and protecting the population of *Bocas del Toro* and in preserving over it the sovereignty of the Republic? Could the Government of *New Granada* undertake to compel the residents of the Providence of *Chiriquí* to give up the property rights they have to the privileged lands they hold? We cannot disregard what has taken place in the last few years, nor close our eyes to what is happening at the present time; nor afford an opportunity for the establishment upon our uninhabited coasts of dangerous neighbors, for lack of agreement among ourselves, for want of means to defend them or proper foresight. Unfortunately, the fears I have expressed are only too well founded; and new proofs of this come to our notice daily. If *New Granada* had not maintained the occupation of the Canton of *Bocas del Toro*, *Costa Rica* would not have been the one occupying it today, but the whole of that territory would already have been lost for either of the two Republics.¹⁰

Far from there being any reason for suspicion or lack of confidence between the two Republics, every day more closely identifies their interests and makes still clearer the desirability that they should come to a friendly understanding and make common cause in the attainment of the objects of mutual interest, and happily events in both countries have been gradually developing in this direction.

There is a disposition upon both sides to make liberal concessions in accordance with the principles which guide them and as

¹⁰ This is a gratuitous supposition. From 1855 to this date (1890) *Costa Rica* has consolidated its organization, developed its resources and enlarged the extent of its cultivated territory, and if it had not been impeded by force used by the Government of *New Granada* it would have continued the colonization of *Bocas del Toro* and *Dulce Gulf*, initiated by the Governors of *Costa Rica* in the year 1560. M. M. P.

should be expected between neighboring nations; and I am very glad to announce to the Señor Plenipotentiary of *Costa Rica* that the commercial franchises proposed by Señor Molina to Señor Gual in the negotiation of the treaty between *Colombia* and *Costa Rica* will be accepted now on the part of *New Granada* and they will be stipulated in the treaty if *Costa Rica* still believes it to be desirable, since on the part of *New Granada* the difficulty does not exist which prevented *Colombia* from accepting the stipulation proposed by Señor Molina.

The privileges enjoyed by foreign Governments on the Isthmus of *Panama* are free but they may be restricted or abolished, some at the will of the National Government and others by the State Government. *Costa Rica* can assure itself of these franchises and other privileges which it may deem desirable without their extension to the nations that ought to be considered as the most favored by the treaties of *New Granada*, inasmuch as *Costa Rica* can offer compensations which are not burdensome to it, but which for other nations would be very burdensome or impossible. So, therefore, the ports of the State of *Panama* would at all times be as serviceable for *Costa Rica* as its own ports; and this is a fact which makes the settlement of the boundary question much easier. Between neighboring nations which cannot or do not wish to concede privileges to foreign commerce, or where they would be mutually prejudiced by the competition of their products or manufactures, or where for political reasons there exists mistrust upon one side or the other, the acquisition of a port is a question of vital importance and even every handbreadth of land; but between nations where the ports are mutually open to each other, without the imposition of taxes or restrictions, where free traffic is permitted from to the other by land and where they possess more territory than they need and have nothing to fear from each other, there is no reason which justifies a delay of dangerous consequences in the settlement of their boundaries.

And it is not alone in respect to commercial relations that *New Granada* is disposed to come to an agreement with *Costa Rica* as to whatever franchises are desired; the same is true as regards postal arrangements, respecting the exercise of the learned pro-

fessions as to civil and political rights, and, in a word, respecting all the relations which can exist between two neighboring peoples whose interests are identical.

Some facts, already irrevocable, have occurred to prepare the way for an order of things of great importance, which merit the attention of the Governments of *Costa Rica* and *New Granada*. The Republic of *Central America* being dissolved, *Costa Rica* was left in a position of absolute freedom to dispose of its own destiny in whatever way it saw fit, but at the same time, being a small nation, it was left in a perilous situation, and its relative weakness is not the only cause for the dangers which surround it; there is the importance the whole of that part of America has acquired belonging to the central section; there is the anarchy which is eating up some of the neighboring people; there is the discredit which has fallen upon the Spanish race; there is the bold and impudent covetousness of hordes of adventurers who swarm in the United States and only await an opportunity to strike; there is the power of strong nations, always ready to make demands upon weaker nations whenever they find it desirable, without any regard for their rights; and altogether there are all the causes likely to lead to the dangers to which *Costa Rica* and the other Spanish American States are subject, not the same dangers for each but in proportion to their several circumstances. It is not justice nor right which serves as the rule on the part of strong nations in their treatment of weaker ones, and if the abuses of force are not more frequent, it is because at times the interests or jealousies of those stronger nations intervene and it is for their own convenience they may protect some one or other of the smaller nations:

The discovery of the mines of *California* and *Australia* and the prodigious development that has taken place in the commerce of the Pacific, have increased the importance of the Isthmus of *Panama*. *New Granada* at once recognised that this section of its territory required its own special and complete organization, without other dependence upon the National Government than as to matters purely national, and the State of *Panama* was created, which, while at the same time that it is an integral portion of *New Granada*, has entered upon the exercise of its sovereignty. The peaceful and legal way in which this sovereign

State was created, the advantageous political position in which it has been placed and the fact that it is a neighbor of *Costa Rica*, taken altogether afford a significant hint for the latter Republic to put itself in a similar position to that of *Panama*.

On the part of the Republics of *Venezuela* and *Ecuador* there is a declared tendency to unite themselves with *New Granada* for the purpose of reorganizing the Republic of *Colombia* upon the federal plan, and doubtless the idea will be carried into effect, because it is the only means we have for saving our Republics and our race; but there are circumstances of a transitory character which interfere with the idea being carried into execution at once. This is not a project formed by some small circle or some political party, nor are its tendencies in favor of any person assuming the management, nor for the exclusive advantage of any one State. This instinct for self preservation, their hopes and their needs, these have led to this project; it has been brought about by the same feeling which united the English colonies of North America in the middle of the last century to fight the French; the same instinct that later strengthened that union to become independent of Great Britain, and the same, indeed, which four years after independence was secured perfected that union in order to maintain the independence that had been conquered and to assure their liberty.

The need of this great work has not been overlooked among us, but it is unfortunate that no sure means have been selected for carrying it into effect. At the beginning it was sought to form a league of nearly all of America by means of the American Congress, but this plan broke down because its own magnitude made it unwieldly and because on the part of some governments there was an interest in its opposition.

A confederation composed of *Colombia*, *Peru* and *Bolivia*, which the Liberator Bolívar planned and even initiated, was resisted and opposed from its very inception, because its author did not submit it to the public, and having made use of certain leaders and not of the people in putting it forward, it seemed more like a great conspiracy against the republican system than an honorable political plan.

The Peru-Bolivian confederation was presented afterwards without any plan, or organization, and under a suspicious and unpopular form.

If, after the attempts which the Spanish American Republics have made and the costly experiences they have acquired, without any foreign nations being permitted to take part in their arrangements, they should become progressively confederated into great nations, they would soon vindicate the noble and unfortunate Castilian race from the charge which has been made of having no aptitude for democratic institutions.

While the Spanish-American people continue divided up into small Republics, entirely independent one from the other and without any mutual support, they will lead a precarious existence; and their nationality, often and with impunity insulted, will be for them rather a reproach than a reason for pride. As long as other nations can arbitrarily seize upon their rights and dictate in the disagreements that arise the conditions for reconciliation, using threats and force for that purpose, it can not be said that they are enjoying a true sovereignty; and whilst our Republics, in order to shield themselves from some evil by which they are threatened on the part of some powerful government, instead of making their own rights respected, use the interests of the stronger nation to obtain protection, they can not be said to be really independent.

It is hardly credible that such States last as long as they do. Probably, if they do not peacefully unite to form larger bodies under a federal system, they will in the course of time be conquered by other nations, or within their own midst bold and ambitious gangs will rise above the rest, and after bloody struggles, fighting among themselves for supremacy, those who are endowed with a superior genius or those most fortunate will survive, in order to form such great bodies and organize them under a system of Government which can properly be called a democratic one.

Weakness never will be a good argument on the part of a nation in the defense of its rights, and when it will best serve to continue a timid existence, it is allowed as a favor. For a nation to fully enjoy the privileges of sovereignty, it is necessary it ful-

fill certain conditions, one of the principal ones being that it shall have force enough to sustain itself in its position, protect its rights and make itself respected.

As among the nations there is no impartial power which can do justice with a strong hand, it is needful that it be done by the party interested. And this is not an impossible condition for the Spanish-American Republics; by uniting themselves into large bodies they will not, it is true, be strong enough to carry on war upon the territory of other nations, but they will have sufficient to defend themselves upon their own land.

The modern system of federation has solved the problem of giving to a small State the power of a strong nation, without depriving it of the independence which it needs in order to govern itself, and consequently it offers to us the means of solving our difficulties. I believe that from the start of this negotiation it is desirable to keep in mind the relations which will be best for the two Republics hereafter and therefore I have made the foregoing observations.

The Chargé d'Affaires of *Costa Rica* replied:

I have read with attention the proposal made by the Señor Plenipotentiary of *New Granada*. I have followed him carefully in his statement of the reasons by which he has sought to justify it.

I will endeavor to reply to them in the best way I can, with the same candor and frankness with which I shall always expect to be met on the part of General Herrán, with whom I have the honor to treat; and in closing I will state the view which I have formed of his proposal.

Since General Herrán, in one of the interviews prior to this conference, was kind enough to advise me as to the opinion printed over the signature of the Senator Don Pedro Fernández Madrid, stating that this report had been adopted by the Senate of *New Granada*, and taking into consideration the deserved reputation of Señor Madrid and the influence he exercises upon public opinion and affairs, I did not cherish any expectation of reaching an equitable arrangement of the boundary question, except through the contradictions between the admissions and the reasonings

of the clever Granadian Senator and the logical incompatibility of the conclusions with the statements of the report. A person of so much learning and of such exalted views as Señor Madrid could not have done less than recognise the facts I have just stated, nor do I think the honest and learned opinion of the Señor Plenipotentiary of *New Granada* is different. Consequently I have been led to believe that this document is not the *ultimatum* of his Government and that I must attribute to special reasons not only the contradictions of the report but also the manner in which it was communicated to me. I was especially led to hope, as I do hope, that an equitable arrangement may be reached, having in view the communications which Señor Herrán was good enough to make to me in Washington, his high personal character, his learning, his justification and the grand idea of fraternity and union between the Spanish-American peoples, in order to preserve their existence and prepare them for a happy future, which I have no doubt will always be the motive for the diplomatic acts of General Herrán.

The proposition of the New Granadian Plenipotentiary does not reach even to the points to which the resolution contained in the opinion of Señor Madrid extended, and designates with but little difference the same line that Señor Paredes traced upon the map which is found at the end of his Memorial. I do not doubt, therefore, the sincerity or the spirit with which Señor Herrán declares he has studied the question; but keenly feel the opposition to the pleasing hopes that I do not wish to give up, and I regret to state that my profound convictions with respect to the value of the titles alleged by each party and the method of discussion as to mutual convenience are opposed to those which Señor Herrán has expressed.

The great title which, in default of others, *New Granada* has alleged and presented as legitimate, sufficient and clear and subsisting, to give it dominion over the whole coast of the Atlantic belonging to *Costa Rica* and *Nicaragua*—the Royal Order issued at San Lorenzo November 30, 1803—had for its object merely the defense of the coast, at times entrusted to the Naval Station at *Havana* and at other times to that of *Cartagena*, and it would give to *New Granada*, as Señor Madrid frankly says, an onerous

right to protect the coast but did not introduce any change in the limits of the Viceroyalty, properly so-called; defective in its origin, it could not nor can it produce any effect whatever. It was always resisted legitimately by the Captain-General of *Guatemala*, as will be proved by trustworthy documents, by the Federation of *Central America* and by the State and Republic of *Costa Rica*, as appears by repeated acts and official publications and from the diplomatic negotiations which have taken place at different periods. And finally, that Royal Order, in the sense which seems so clear to Señor Herrán, is, to my mind, absurd, null and of no value; it has been a continual germ of discord between fraternal peoples and an insuperable hindrance towards the arranging and strengthening of those ties which for them are to be desired.

In a matter so hackneyed as the present one, I have nothing new to offer. The reasons upon which I based the convictions above expressed are to be found *in extenso* in the Memorial published by my dear brother, the late Don Felipe Molina, as Minister Plenipotentiary of *Costa Rica*, who was authorized to undertake the settlement of the boundary question. But I may be permitted to repeat some of them.

The Spanish Royal Orders always showed, not only by the name but by the object, by the general nature of their provisions, by their duration and by the proceedings prior to their issue, of the laws properly so-called, that they had an obligatory character for all the inhabitants of a kingdom, that they were considered to be perpetual, that they had their origin in the respective Councils and that being headed, "The King," they were signed by him, by the Secretary of the respective Council and by some Minister. The name and form, the want of proceedings and the object and reason for the Royal Order prove its transitory character; and that in committing to the Viceroys of the *New Kingdom of Granada* and to the *Comandantes* of *Cartagena* the defense of the coast and the supervision and development of the small establishments there were within its limits, there was no intention to nor could it transfer the sovereignty.

Supposing, without however conceding it, that any such intent could have existed, the Royal Order would have been wholly

without efficacy and impossible of execution for want of any demarcation of boundaries, indispensable to the character of such a provision, if it was to have the effect, which it never had.

Who took possession in the name of the Viceroy of *Santa Fé* and who gave it away in the name of the Captaincy-General of *Guatemala*? This essential formality is the only method of transferring property between private parties; I have never seen it omitted when it was proposed to transfer jurisdiction, even in the slightest degree. Could it be believed that it was not necessary in order to transfer the eminent domain, the sovereignty over an extensive territory?

Let us suppose, in like manner, that it was not invalidated by any of the defects enumerated and its execution would have been possible, reasons of eternal justice against which the laws of the most absolute sovereign become as nothing and are powerless, would deprive it of all validity. It was clandestine, incompatible with the exigencies of the peoples interested, the configuration of the ground and the demarcations set by nature, and it would have been repugnant to the unquestionable rights acquired from time immemorial by a people who constituted an entity.

Spanish legislation always recognised the invalidity of such dispositions and for this reason they could be legitimately resisted under the well known formula: "*Se obedece, pero no se cumple*" (It is yielded to but it is not executed).

The duty and consequent authority, or it may be the right to defend the coast of *Guatemala*, imposed by the Royal Order upon the Viceroyalty of *Santa Fé*, or more properly upon the Naval Station of *Cartagena*, for at that time communication between those cities was more difficult than it is at the present day to make a voyage to China, could not have passed to *Colombia*, nor to *New Granada*, after the emancipation of the two colonies as free nations, sovereign and independent in themselves. Aside from this authority, nothing can be deduced from the Royal Order that appears to be a right, either permanent or transitory; and so certain is it that it could not be inherited that the Republic of *Colombia* recognised the necessity for the consent of *Central America*, as it was fixed in the Treaty of 1825, to continue to look after the defense of that coast.

Passing from the question of the intrinsic value which the Royal Order mentioned may have, which I stopped to consider, because upon the meaning given to it depends almost entirely the result of the negotiation, I will briefly consider the assertions and the proofs Señor Herrán has submitted in favor of his proposition.

In the first place he says that this does not give to *New Granada* any more territory than it now actually holds. It has been stated positively on the part of *Costa Rica* that *New Granada* was never in possession of the territories in question prior to the Royal Order, nor after 1810, the period to which the *uti possidetis* referred, nor down to the year 1825, when the treaty was celebrated between *Colombia* and *Central America*; and I have never seen any proof that could destroy this possession of *Costa Rica*. Whenever it is presented it must be received at its true value.

It appears that in more recent times *New Granada* established a small garrison at *Boca Toro* and that a little hamlet of New Granadians was formed; but the title failing, as it does fail, and the question of boundaries being pending, this occupation is not possession, but it was an act in contravention to the Treaty of 1825 and an act of violence contrary to the rights of *Costa Rica*, which could not help the cause of *New Granada*.

I do not understand that any value can be given, in the question we are now discussing, to the incident the Señor Plenipotentiary says took place in the year 1825 between the British negotiators and those of the Republic of *Colombia*. With respect to the pretended recognition made in the year 1848, in the name of the British Government, I refer to what has been stated on behalf of *Costa Rica* and confine myself to observing that the expressions used by Señor Herrán differ very greatly from those which were employed by the English Minister; that the fact is a very significant one that Great Britain and the United States carried on negotiations concerning the *Mosquito* question without paying any attention to the rights alleged by *New Granada*, although it might have declared its willingness to cede them; but even admitting that it happened as claimed, still it could not prejudice *Costa Rica*.

Permit me to call attention here to the fact that the most competent authority to determine the value the Royal Order of 1803 could have had or may have is the Government of His

Catholic Majesty by which it was issued,¹¹ and that the latter recognised the independence of *Costa Rica* and its sovereignty over the whole of the America territory situated between the Atlantic and the Pacific oceans, with its adjacent islands previously known under the denomination of the Province of *Costa Rica*, now the Republic of the same name.

The end indicated in the proposal for the division line, towards the centre of *Dulce Gulf*, is based upon a concession called *indulto*¹² (amnesty or privilege), made by the King of Spain to the inhabitants of the Province of *Veraguas*; and upon the assertion that the last Viceroy of *Santa Fé* exercised jurisdiction as far as there, and that the settlers located themselves as inhabitants of said province or of that of *Chiriquí* after the latter was created, by reason of which they were and are in possession of the lands *induitodas* (i. e., granted under such privilege). Without any knowledge of the concession, nor any proof of the possession, *New Granada* can not be conceded to have a title to lands always held by *Costa Rica* and indisputably belonging to the latter. But allowing the concession to *Veraguas* and the settlement of the New Granadians, these would in no way change the jurisdiction of the independent States as between themselves.

Not having before me the protocols corresponding to the Treaty of 1825, I am unable to settle upon the meaning of the assent asserted by Dr. Herrán to have been given by the Plenipotentiary of *Central America* (of venerated memory for the speaker), when he was informed directly and specially that *Colombia* earnestly believed that its limits upon the Pacific coast reached to the centre of *Dulce Gulf*, and that it was exercising its dominion as far as there and would continue exercising it as long as no boundary treaty was celebrated; but I venture to assert that such assent could not and ought not to have been given ex-

¹¹ The Spanish Government abrogated this Royal Order of 1803 by several later Royal Orders and in particular by that of March 31, 1808, by the Decree of the Cortes of 1811 and the Royal *Cédulas* of May 18, 1818. M. M. P.

¹² There is no evidence of any such concession, while many documents prove that the frontier of *Costa Rica* extended to the River *Chiriquí-Viejo* and embraced *Punta Burica*. M. M. P.

cept under the condition that it should be made certain the Republic of *Colombia* was exercising its dominion as far as the place indicated, without determining this question, but leaving it subject, as it evidently did, to the boundary treaty.

Having demonstrated the invalidity of the Royal Order of 1803 to transfer to *New Granada* the dominion claimed by the latter and taking up and discussing the title alleged with regard to the Pacific coast the time appears to have come to record the titles of *Costa Rica*. Referring to the Memorial of my lamented brother and to the evidence which I have in my possession I will briefly enumerate those titles.

The first, the Royal *Cédula* of November 29, 1540, creating the Government of *Costa Rica*, in favor of Diego Gutiérrez, embracing the bay of *Boca Toro* with all its islands and bays, bordering on the southern side upon the Province of *Veraguas*.

In 1574 another title was issued in favor of Diego de Artieda y Chirinos, designating his frontier as upon the Province of *Veraguas*, exclusive, on the North, and on the South extending to the valleys of *Chiriquí*. These points never were changed in fact or in law, as was demonstrated in the Memorial cited.¹³

I have proved that the law was not set aside merely because the Royal Order of 1803 was presented in opposition, and it has been seen moreover that it could not change the territorial demarcation. In order to demonstrate that there was a change in fact, it will be necessary to refer to the gubernatorial and historical annals, and in referring to these I will look at the proofs of a similar character mentioned by Señor Herrán.

It may be observed here that the acts of the Viceroys and authorities of the *New Kingdom of Granada* have no more value than must be given to like acts of the Captaincy-General and the authorities of *Guatemala*, inasmuch as they were independent as between themselves.

It appears by official papers that for more than two hundred years the Governors of *Costa Rica* exercised their authority over the islands and the continent of *Boca Toro*; that they undertook in the year 1601 the conquest of *Talamanca* and founded the city of *Concepción* upon the banks of the *River Estrella*, one of those

¹³ The titles here mentioned by Señor Molina were the most important and decisive ones known in 1855. M. M. P.

which emptied into the bay that is now called the Lagoon of *Chiriquí*.¹⁴

In the Memorial sent to the King by the Governor Salinas de la Cerda in 1652, the borders upon *Veraguas* were marked by the Island of the *Escudo* and the prairies of *Chiriquí*.

The Marquis de *Talamanca* took possession of the bays and the islands of *Boca Toro*, subjecting the Indians who inhabited them in 1659 and afterwards reduced the tribes on the continent and founded many settlements.

In 1719, Governor del Haya, in a report which he addressed to the Court, stated that the bays of *Boca Toro* and of *Almirante* were upon the coast of *Talamanca*.

The Governor Granda y Balbín undertook the reconquest of *Talamanca* and other rebellious tribes and gave an account of the efforts he had made toward the subjection of the Indians of the Island of *Tójar*, which is the one called *Colón*, and also those of *Boca Toro*.

Finally, the Missions of *Talamanca* always belonged to the Captaincy-General of *Guatemala* and they worked in accord and under the authority of the Governors of *Costa Rica*. In an account sent to the King in 1763 by the Missionary Fathers, it appears that *Talamanca* belonged to the Captaincy-General of *Guatemala*, and also the Island of *Tójar*; and it was stated that in 1747 and 1749 the Governor of *Costa Rica* made an entry to subject the Indians by force.

This is a summary of the titles of *Costa Rica*. The Royal *Cédulas* issued in favor of the first Governors were printed in the Memorial cited, and the official papers in which appear the acts of jurisdiction exercised by the authorities of *Costa Rica* over the territory in question may be compared with those of a similar character which the Minister of *New Granada* has been pleased to exhibit, provided such a comparison shall be deemed useful.

¹⁴ The data relating to the conquest of *Talamanca* and the city of *Concepcion* are incorrect. See PERALTA: *Costa Rica, Nicaragua y Panamá*, p. 679 et sequ.

Costa Rica y Colombia, p. 1.

LEÓN FERNANDEZ: *Colección de documentos para la historia de Costa Rica*; (Collection of documents for the History of Costa Rica). Vol. IV, p. 116; see Vol. V, p. 116. M. M. P.

As to the explanatory testimony of the geographers, I will only say that many and very respectable references can be produced in favor of *Costa Rica*; but I do not think they have been actually examined and compared, in order to weed out the contradictions and those who have simply copied one from the other, until it may be agreed what evidence submitted is not sufficient. Let it be observed, that all, with but a single exception, have disregarded the Royal Order of San Lorenzo, since none have given to *Colombia*, nor to *New Granada*, the coast claimed by either of them.

Before passing to consider the reasons as to convenience set forth by Señor Herrán, I will only call his attention to the situation of the settlements of *Boruca* and *Térraba*, lying in front of the centre of *Dulce Gulf*, and to the existence of the other Costa Rican village called "*Golfo Dulce*," situated, as I understand, upon the shore of that bay.

The great desirability of fixing the boundaries between *Costa Rica* and *New Granada* has been at all times primarily recognised on the part of the former Republic. It has always been disposed to make sacrifices and to adopt the means that might lead to the desired end. The same could be said respecting the interest which both Republics have in fixing and binding closer the fraternal relations which they should hold. But, why insist upon points as to which there is no controversy and as to which I have the honor to be entirely in accord with the views of Señor Herrán? As soon as the boundary matter is arranged other treaties will be taken up and it will be seen then that *Costa Rica* is no less liberal than *New Granada* in suggesting the advantages which it is desirable should be reciprocally granted.

Costa Rica has never made of this question a point of honor; it maintains it because it believes in its justice and the question has a vital interest for it, which it does not have for *New Granada*.

Under such a supposition, if there are in this Republic any who have viewed the matter from this wrong standpoint, it would be well for them to heed the just reflections of Señor Herrán, and let them note that it is not the ceding but the demanding of too much which will entail dishonor upon *New Granada*, on account of the disproportion existing in its favor in material strength.

The Señor Envoy Extraordinary has depicted the hypothesis of there being no title in favor of either of the interested parties, so that he might examine the proposition with respect to their common convenience; and he concludes that the proposed division is the most desirable one. In order to follow him in this hypothesis I will endeavor to faithfully state his reasoning in a few words.

If I am not mistaken it is as follows:

Our coasts are in danger of being seized by piratical expeditions, or it may be by modern filibusters or by force on the part of maritime Powers.

New Granada has the power and the resources needful to defend, settle and utilize the deserted shores and territories by which it is separated from *Costa Rica*. The latter Republic is too weak as yet to preserve its undisputed shores, which it seems are conceded to it by *New Granada* as a favor.

Consequently, it is more convenient for both, in order to dissipate approaching dangers, that *New Granada* should enjoy as sovereign all that is of any use upon both coasts, embracing the whole of the territory in question.

The dangers which have been pointed out by the Señor Minister are very apparent but I do not see that they are applicable to the coast in question alone. From *Matamoras* to the *Orinoco*, from the Gulf of *Lower California* to *Cobija*, the shores are defenceless and are threatened because of the natural advantages they offer to commerce and by reason of their litigious condition and their proximity to the absorbing race. None of the Spanish-American States, the principal settlements of which lie in the interior, are strong enough to protect their shores against the armed forces of a maritime Power. Nor even against filibustering expeditions, provided they are covertly favored by some Power, would they be able to defend distant points of their uninhabited coasts. Their national forces are so small, compared with those of the maritime Powers, that the differences between themselves disappear entirely in making the comparison. It is a bitter thing to say, but it is so evident that it needs no demonstration.

The same primitive causes in all of the Spanish American

States produced the same sad situation in each. They do not operate with any less force in *New Granada* than elsewhere; it is not hidden from the discernment of Señor Herrán, nor can they be changed, except slowly, with the lapse of time and by peace and order. I called them "primitive," because they had their origin in the times of the conquest and because they may be confused with the heterogeneous elements of which the Spanish American peoples are composed, scattered at long distances from each other over the interior of vast territories, presenting great obstacles to communications.

Our means of defense, it is true, consist almost entirely of weapons of reason, however impotent they may seem, and in the balance which the interests of the great Powers tend to create. In order to employ the former with good success and maintain the saving balance we need more than anything else peace and order in the interior a set purpose to do away by degrees with the primitive causes of our evils; a uniformity in diplomatic principles and fraternity between the Spanish American States, and well calculated relations, carefully and continuously cultivated with foreign Powers.

The credit and consideration resulting from this conduct will give to our voices the weight and the harmony they now lack; and our rights will be respected, even by those Powers which by abuse and by force have been accustomed to substitute their own interests for principles of eternal justice, because their imperious nature is so strong that everything must bow to them in the ordinary course of things. Such methods are, moreover the only sure ones for us to succeed in gaining the strength we now lack; and they form the basis without which any contribution would be, if not disastrous, at least of no avail.

Referring to the Memorial so often cited and to what has been said with respect to the past defense of the coasts made by *New Granada*; and with respect to the means for the settlement and utilization of its undisputed coasts and those that are in question; I confine myself now to begging Señor Herrán to fix his attention upon those that were and now are the maritime establishments of *New Granada*. They are *Panama*, the key of the interoceanic Isthmus, and *Cartagena*, the strongest and most

central situation upon its coasts, now scarcely shadows of their former grandeur.

From these facts it may be deduced that any territorial acquisition which would diminish the resources of the country and interfere with the development and protection of these most important stations, would be from every point of view ruinous for *New Granada*.

The portion of the coast which the Señor Plenipotentiary says is to go, under his proposal, to *Costa Rica*, is defended by its natural characteristics; covered with swamps, shelterless and unhealthy, it would be a grave for the adventures who might undertake to locate upon it. Those who threaten it are powerless and their clamor is rather an allurement for speculation than a real danger. As long as *Costa Rica* can dispose of nothing but these deadly and open coasts, they will serve as a barrier between its settlements and those of *New Granada*; and if *Costa Rica* is excluded as Señor Herrán proposes, from the places where it would be able to bring itself into contact with them, its population will very decidedly tend toward the port of *San Juan del Norte*.

The anarchy that prevails in *Nicaragua* through the intervention of filibusters is certainly a serious danger. It is to be expected, however, that order and the national cause will be victorious in that State. *Costa Rica* is a small Republic, but made up of a homogenous population, in which the white race, intelligent, industrious and enterprising, has no counterfoil. Its inhabitants occupy a central position and they are grouped within a small district, and with the exception of a few days they have enjoyed uninterrupted peace and good order since the period of their independence. Thanks to these propitious circumstances the country has been enabled to go a long way on the road of progress, while other nations of Spanish America cannot boast of having accomplished so much. Since the independence of this part of the country was attained the population of *Costa Rica* has doubled; its revenues have grown a hundred fold without burdening the people, and after having paid its debt it has accumulated a surplus. Its organized militia numbers more than 7,000 men; and besides it is incessantly striving to improve its ports and its roads.

This progressive movement, it must be said, has made the greatest advance since *Costa Rica* became an independent State, in which character it has made treaties with the principal Powers of Europe and has acquired the good name and the credit which it enjoys. Its good judgment makes no concealment of its weakness; but it is prepared and has the consciousness of its ability to repel the attempts of unauthorized adventurers and by degrees to colonize the territory which it claims under the conviction that it will know how to preserve it.¹⁵

From all that has been said the reasoning of Señor Herrán could be turned in favor of *Costa Rica*; but I do not think it is correct in itself nor legitimate in its conclusions. It is not correct, aside from the facts alleged, because upon the hypothesis of the non-existence of any titles, there is wanting even the slightest shadow of a pretext for disputing *Costa Rica's* possession of the Atlantic coast, the natural continuation of the territories it holds in the interior, but placed in question by continual argumentation and which would be the part ceded to *Costa Rica*. The premises being destroyed, the conclusions can not be maintained; but independently of this, I have said the conclusions were not legitimate, because the natural and just thing to do would be to divide equally the thing in question, and there should be nothing to control the division between two brothers except the consideration of the needs of each and the intrinsic value of the thing, reserving agreement as to the means of defending it by common accord.

On previous occasions I have had the honor to state to Señor Herrán my apprehensions as to the establishment of the State of *Panama*.

It was founded in ignorance of the colored race which makes up the great majority of the population of the *Isthmus*; lacking capable men and other elements needed to constitute a State, and under the peculiar circumstances surrounding that territory. The combination seems to be quite a new one. The ties connecting it with the central government were severed, and while the

¹⁵ The facts have justified the prophetic words of Señor Molina. *Costa Rica* knew how to repel the attempts of the filibusters, it took the initiative for the common defense and contributed very largely to their expulsion from the territory of *Nicaragua* in 1856 and 1857. M. M. P.

principal things constituting the federal system were reserved, it still lacks balance between the component parts, in order for it to bear that name. Not only is the combination anomalous in theory, but it is also in practice, and it will have to be converted into a protectorate or else absolutely emancipated. The condition of *Panama* will be that of a State that is weak, poor and badly administered, under the protection and at the mercy of the rest of *New Granada*, if it should have the strength to protect and conserve it for itself. But if, as I have heard it said, some excusing and others censuring *New Granada*, the establishment of the State had become indispensable on account of the lack of cohesion between the populations of the Isthmus and the rest of the Republic, separated by vast uninhabited regions not yet penetrated by man, by the scarcity, the irregularity and insufficiency of communication by sea, on account of the lack of a marine and commercial relations and by the enormous distance of *Bogota* from *Panama*, it is probable the combination will be converted into the absolute independence of the *Isthmus*, forming a Republic which will not be a Spanish American one.

Please God these apprehensions may not be realized and that the great project of reorganizing the Republic of *Colombia* may be effected with the judgment, care and prudence which are requisite if it is to endure! *Costa Rica* will always regard with interest the progress of its brother peoples, with earnest wishes that they may find and follow the way to prosperity.

But I see in this project another dangerous experiment, because it begins by separating parts that should be united; for I conceive peoples not as such soft substance that they can be moulded and remodeled at will. This is because it has always seemed to me that the federation was the most complicated system of government, the most costly and one requiring the most enlightenment among the masses and a greater number of public men, and because I have in mind the evils which develop under this system as seen in *Mexico*, *Central America* and *La Plata*.

I do not know what opinion the Government and the public in *Costa Rica* will form regarding the change decreed and the reorganization which is projected. I have stated my ideas with the frankness which is due between brother peoples and I have touched upon these serious and delicate points in consideration

of the suggestions offered by General Herrán and upon my own personal responsibility. I know the fraternal sentiments and disposition of *Costa Rica* toward the Spanish American peoples in general and *New Granada* in particular, and I think that to make them effective and bring together the two Republics it is of the gravest importance to conclude the boundary treaty as an act of justice or equity and convenience, independent and antecedent. Unless this is done, it will be very difficult to hereafter make treaties uniting the two Republics as closely as prudence, the distances and their character and commerce now permit. We look for the time when both countries shall have given positive proofs of their fraternal sentiments, when commercial interests of considerable importance will arise between them, when their relations will be frequent and easy and when the destiny of the other States of *Central America* shall have been fixed, as the only opportunity for planning other projects.

From all that has been said I deduce the following conclusions:

(1) That the proposal tends to deprive *Costa Rica* of dominion over all the disputed territories, solely by reason of the Royal Order of 1803, the invalidity of which I believe I have made clear, in the sense given to it by *New Granada*.

(2) That said proposal is neither convenient nor equitable, not even supposing an absolute lack of titles on behalf of each of the parties.

(3) That up to this time *Costa Rica* alone has submitted titles, and, in accordance with them, it is right that it have recognised as the division line the one traced upon the map appended to the Memorial of the late Minister, Don Felipe Molina, running between the Island of the *Escudo de Veragua* and *Punta Burica*.

Lastly, if (to reach a conclusion) the determination must be according to legal titles, I submit as a counter-proposition, the acceptance of the line just indicated.

But guided by the sentiments of fraternity, so earnestly and positively declared in *Costa Rica*, convinced that the settlement would be more fruitful in benefits resulting to both countries if it should be reached in a direct arrangement, in which reasons of equity and reciprocal convenience should prevail, and desirous of not losing time, I propose, assuming a grave personal respon-

sibility, that, taking the fact that the extreme claims of *New Granada* reach to the line proposed by the Señor Plenipotentiary and those of *Costa Rica* to the one which I believe to be just, the territory lying between them shall be divided into two equal portions by another line, which shall be the boundary definitively agreed upon, having it run so far as possible by points that are well marked by their natural character.

Remembering the intimation which I gave to General Herrán, during the visit which he kindly paid me in Washington, which was none other than that his proposal had long ago been rejected, and feeling that, there having been no change in the convictions entertained by *Costa Rica*, and no document having been presented or mentioned that could change them, the present negotiation undertaken by *New Granada* was entirely inofficious. Unless there was an intention to make a substantial change in his proposal, I can only hope that the truly fraternal bargain which I suggest will be duly considered and that the suggestion will lead to the end desired.

If, contrary to my hopes, it shall be thrown aside, no other recourse will be left except to resort to the judgment of a third party, as has previously been suggested. *Costa Rica* will always be ready to adopt any means for arriving at an equitable settlement. It is aware of the increasing dangers incident to the territory in its present situation. It sees no other obstacle in the way of meeting *New Granada* and cementing its relations with the latter; and it seeks to remove by such an arrangement the dangers and obstacles, principally by connecting the two countries by indestructible bonds of fraternity and friendship.

Legation of *Costa Rica*, in the United States of America.
New York, October 24, 1855.

Conference of the 25th Day of October, 1855.

The Plenipotentiaries of *New Granada* and *Costa Rica* having again met on the 25th day of October, for the purpose of continuing the discussion of the settlement of boundaries, begun on the 3rd instant, General Herrán said:

When I invited the Government of *Costa Rica*, in the name of *New Granada*, to a negotiation of the public treaties we are

discussing, I was inspired by the hope that much progress had already been made upon the boundary question, my Government considering it was reduced to an adjustment between the proposals which were recently submitted by the Plenipotentiaries of each Republic.

Señor Victoriano de D. Paredes, who was Plenipotentiary on behalf of *New Granada* in the negotiation as to boundaries, stated to my Government, in an official note dated March 14, 1853, that Señor Don Felipe Molina, Plenipotentiary of *Costa Rica*, had made to him the following proposal:

That the line of demarcation be fixed at *Cape Burica* upon the Pacific side, and at the *River Doraces* or that of *Culebras* upon the Atlantic, on condition that the right of transit be conceded to *Costa Rica*, without any charge of any sort, to enter and depart freely at any port of the *Bay of Almirante* or upon the coast which intervenes between that bay and the *River Doraces*.

Señor Paredes did not deem himself authorized to accept this proposal, and insisted upon the one he had made, marking the division line from the *River Doraces* or *Culebras* to the heart of *Dulce Gulf*. Being, as I am now, persuaded that the boundary plan by him proposed was founded upon the rights of *New Granada* and in harmony with equitable principles, and there being the precedent of the proposal made by the clever and intelligent negotiator of *Costa Rica*, I do not see how I could answer to *New Granada* if I were to agree to the counter-proposal submitted to me by Señor Molina.

In our previous conference I presented a summary of the legitimate titles and the reasons upon which *New Granada* based its rights and the acts which showed the exercise of those rights, continued for a long time; and I considered at length the Royal *Cédula* of November 30, 1803, the main object being to demonstrate that the renunciation proposed by *New Granada* of the right given to it by that *Cédula* was a concession made by it in order to obtain an equitable settlement; but by so doing I did not wish it to be understood that this Republic relied upon it solely for the right which it holds to the territory embraced within the limits proposed by me. The old titles submitted by *Costa Rica*, beside being uncertain and obscure, as it is natural they should be, having been issued during an epoch when the cartographical

knowledge of the territory in question was very imperfect, were reformed and amended from time to time by the King of Spain. The object of those acts was not to mark out provinces which were scarcely planned; the purpose of those titles was to conquer the country, as it was stated in them, and to preserve it subject to Spain. Only in this way can the fact be explained that the Province of *Chiriquí* does not belong to *Costa Rica* at the present day, and it was only by virtue of such reforms and amendments that since the last century the Viceroy of *Santa Fé* exercised authority over the *Bay of Almirante*, its shores and islands and over a part of the coast to the West of it, as appears by the accounts of the rule of the last Viceroy and the reports of the officials of the Royal Armada, which maintained the authority of the Viceroy upon those coasts. So, therefore, from a time prior to that when the Royal *Cédula* was communicated, the Granadian territory already reached the limits I have proposed.¹⁶

But not on this account will I refrain from replying to the observations which the Señor Plenipotentiary makes in contravention to the significance and validity of the said *Cédula*. He says that in committing to the Viceroy of the *New Kingdom of Granada* and to the *Comandantes* of *Cartagena* the defense of the coast and the supervision and development of the small establishments which there were upon it, the intention was not, nor could it have been, to transfer the sovereignty. In order to give this meaning to the *Cédula* it would be necessary to add to it something so as to express it; that is to say, it would have to be modified, and if that were permissible the documents would be of no use. The words made use of in the *Cédula*, “* * * shall be segregated from the Captaincy-General of *Guatemala* and be dependent upon the Viceroyalty,” * * * are so clear and so precise that they do not admit of interpretation.

¹⁶ The notorious errors upon which the assertions of Señor Herrán were based have disappeared in the face of all the documents published by *Costa Rica*. Moreover, the Royal Order of San Lorenzo of 1803, being null and of no value by the express, reiterated and solemn will of the Sovereign, it is only as documents explanatory of the views of the Government of *New Granada* that those acts have been inserted. The Royal Orders, *Cédulas* or Decrees issued from 1804 to 1810 or 1820 by the Spanish Government ought not to have for *Colombia* less value than that attributed by Señor Herrán to the Order of San Lorenzo, which he persists in calling a *Royal Cédula*. M. M. P.

The *Cédula* did not transfer sovereignty, since it was represented only in the person of the King; and its text was not a command for the subjects of the Crown in general nor for those of a Kingdom, but for the Viceroy of *Santa Fé* and for the Captain-General of *Guatemala*. The phraseology of this *Cédula* is that which was customary to use for similar acts which did not have the importance of pragmatics or Royal Decrees, and even these were not always signed by the King, since some were *rubricados* (signed with a peculiar mark or flourish, without writing the name), and others were signed by the Minister alone. The procedure observed in communicating the *Cédula* or Royal Order was also that usually employed and there was no reason for doubt of its authenticity.

The opposition which the Captain-General sought to make against the enforcement of said *Cédula* is a proof that its purpose was not merely to impose upon the Viceroy of *Santa Fé* the duty of defending the *Coast of Mosquitos*, but to segregate it completely from the Captaincy-General, because it may be supposed that his opposition arose to the abridgement of the Captaincy-General and not to the means taken by the King in granting dominion over the *Coast of Mosquitos*. But whatever may have been the motive for his resistance, it had no effect upon the validity of the *Cédula*, nor did it prevent its being carried into execution. The significance of the formula, *Se obedece pero no se cumple* (It is yielded to but it is not executed), alluded to by Señor Molina, was to ask for the revocation of a superior order, though recognising meanwhile the obligation to obey it.¹⁷

Señor Molina considers the occupation of the territory of *Bocas del Toro* as contrary to the Treaty of 1825 and an act of violence against the rights of *Costa Rica*. If *Colombia* or *New Granada* had agreed that such territory did belong to *Costa Rica*, I would have nothing to say; but the fact being quite the contrary there is no reason for qualifying as an act of violence the legitimate use made by *New Granada* of the right and the obligation it had to utilize its own territory.

¹⁷ The Royal Order of San Lorenzo was not carried into effect upon the *Coast of Mosquitos*, and scarcely upon the Island of *San Andrés*. The impotence of the Viceroy of *Santa Fé* to protect that island was made clear in 1806, when it was occupied by the English. M. M. P.

By Art. 9 of the Treaty of 1825 *Colombia* and *Central America* obligated themselves to employ their maritime and land forces to prevent unauthorized adventurers from locating colonization establishments upon the *Coast of Mosquitos* from Cape *Gracias á Dios* to the River *Chagres*, because both parties had an interest in not permitting the residence there of such dangerous inhabitants; but they did not consider the coast mentioned as undivided, nor was it the understanding that it should be, but rather they required that in order to found establishments upon those coasts permission should be obtained from the Government to which it belonged in dominion and ownership. No more than one Government was spoken of, nor were the dubious words *correspondan* or *correspondieren* (they may belong or they should belong) used; that is to say, the language used was in the sense that the whole of that coast belonged to one of the two Republics. Would *Colombia* have permitted a large part of the coast of *Panama* along the Atlantic and the whole of *Veraguas* to be considered as that of the other Republic, or would it have agreed that there was a doubt as to whether these coasts did belong to it or not? And which was the Government that took charge of granting the permissions spoken of in the Article cited and of the establishment of rules for trade with the *Coast of Mosquitos*? *Colombia*,—without the Republic of *Central America* taking any part in it. It was so left, therefore, understood by both parties, and the stipulations of the Article carried out by *Colombia*.

The Señor Plenipotentiary of *Costa Rica*, making allusion to the recognition by Great Britain of the right of *New Granada* over a part of the territory of *Mosquitos*, referred to in the previous meeting, says that my expressions “* * * differ very greatly from those which were employed by the English Minister,” * * * and as this assertion involves the imputation of a lack of veracity, I cannot pass it by in silence. What I said was:

“* * * and even then it (Great Britain) did not absolutely disregard the rights of *New Granada*, as it finally declared on the 4th of May, 1848, that it had recommended to the *Mosquito* King that he should confine his claim on the South side to the eastern branch of the River *San Juan*, with the express purpose of reaching an agreement with *New Granada*.”

I said this, following the sense of the words which the British Minister used, without an insertion of them verbatim; and so that Señor Molina may now compare my words with those which were used by the British Minister, I present to him an authentic copy which I have in my possession of the communication addressed by the said Minister, under date of May 4th, to the Minister Plenipotentiary of *New Granada* near the British Government, in which Lord Palmerston said:

“Her Majesty’s Government have recommended the *Mosquito* Government to confine its claim in a southerly direction to the southern branch of the River *St. John*; and one main reason with Her Majesty’s Government for giving that recommendation, was, that thereby all dispute between *Mosquito* and *New Granada* would, as they trusted, be avoided.”

I trust that Señor Molina will be convinced that my citation was a faithful and accurate one.

As Señor Molina says that he did not have before him the protocol corresponding to the Treaty of 1825, I present to him an authentic copy of it which is filed in the archives of the old Secretaryship of Foreign Relations of *Colombia*, which is preserved in *Bogota* in the care of the Government of *New Granada*, for the satisfaction of Señor Molina and that it may be inserted in the proceedings of this conference.

I submit, also, for the same purpose, a note from the Secretary of Foreign Relations of *Colombia* addressed to the Minister Plenipotentiary of *Central America*.

The document and communication, of which authentic copies were presented by the Plenipotentiary of *New Granada*, are as follows:

To the Honorable Pedro Molina, Envoy Extraordinary and Minister Plenipotentiary of the United Provinces of *Central America*, etc.

MARCH 11, 1825.

SIR:

I have the honor to send to you herewith a certified copy of the original Spanish *Cédula*, of which we spoke yesterday, and the *Gacetas* (official publications), Nos. 145 and 157, containing the Decree of the Executive prohibiting the colonization by un-

authorized adventures upon the unimproved coasts of *Colombia*, especially that of *Mosquitos*, and my response to the Admiral of *Jamaica*, who claimed that traffic upon the petition and in the name of the traders and underwriters of *Kingston*.

By this last communication, to the tenor of which the British Government has up to the present time consented, *Colombia* is not only in possession of the sovereignty and high dominion over said coasts, but practically of the trade and regulations under which it is carried on with its residents by our citizens and foreigners.

I forward this data to you on account of the importance it may have upon the course of the negotiations we have pending.

With sentiments of perfect consideration, I have the honor to repeat to you that I am your very attentive and obedient servant,

PEDRO GUAL.

A faithful copy:

LLERAS.

(Here a copy of the Extract from the Minutes of the Verbal Conference between Señores Molina and Gual on March 4, 1825.)

The Plenipotentiary of *New Granada* continued saying:

“It is to be noted that while it appears in the minutes of the conference of March 4th that the Plenipotentiary of *Central America* acquiesced in the observations of the Secretary of Foreign Relations of *Colombia*, it does not appear in the minutes of any of the conferences held to make the treaty with *Central America*, nor in the communications of the Plenipotentiary of this Republic, that any objection whatever was made against the validity and force of the *Cédula* of 1803, not even a word indicating a doubt concerning it.¹⁸ Neither did the Plenipotentiary of *Central America* make any observations concerning the dominion which *Colombia* was exercising upon the *Coast of Mosquitos*, throughout its whole extent, so that, there can be no doubt, it was in this sense that Article 9 of the treaty was drafted. *New*

¹⁸The Plenipotentiary of *Central America* had no knowledge of the pretensions *Colombia* based upon the Royal Order of 1803, and as the very protocol itself declares he left *Guatemala* unprovided with instructions upon this point. M. M. P.

Granada has a right to expect that *Costa Rica* will concur now in these authentic facts, all the more when it can be said that *New Granada* maintains the *Cédula* in order to renounce the rights which it gives, in favor of *Costa Rica*, in virtue of a compensation which is not a burdensome one upon the latter Republic.

The fact that the Spanish Government recognised the independence of *Costa Rica* does not confer upon the latter Republic any right to hold any part of the territory which belonged to *New Granada* in 1810, and Spain itself has admitted this principle, refusing to fix the boundaries by which the neighboring Republics, which had negotiated for such recognition sought to mark out their frontiers upon *New Granada*.

Señor Molina deems the fact of some significance that Great Britain and the United States had conducted negotiations concerning the *Mosquito* question without taking into account the rights alleged by *New Granada*. The significance of this is that both Governments knew that *New Granada* did not pretend to occupy the portion of the coast which extended to the North of the River *Colorado*; and that the British Government maintained that the portion of the coast last mentioned never was under the dominion of the King of Spain, which in no way favors the rights of *Costa Rica*, and if those Governments did not allege that the part of the coast it claimed to the South of the River *Colorado* should be adjudicated to the latter Republic, it was out of consideration for the rights of *New Granada*. Of the two conventions in which Great Britain and the United States endeavored to arrange the *Mosquito* question, the first one was celebrated in 1850. In this one the *Coast of Mosquitos* was spoken of as not belonging to *Nicaragua*, nor to *Costa Rica*, since in making mention of the region with regard to which the agreement had relation reference was made separately to *Nicaragua*, to *Costa Rica* and to the *Coast of Mosquitos*,¹⁹ both Govern-

¹⁹ "Or other part of *Central America*," adds Art. I, of the Clayton-Bulwer Treaty, to which Señor Herrán refers. If the *Coast of Mosquitos* had belonged to *New Granada* the Article cited would have said, "* * * or other part of *New Granada*."

And still further, the Crampton-Webster Treaty, which was the second one, to which the New Granadian Plenipotentiary alludes, shows that in the view of the Governments of Great Britain and the United States, the *Coast of Mosquitos* belonged to the *Central American Confederation* or to *Nicaragua*, and no mention is made of *New Granada*. M. M. P.

ments agreeing not to erect, nor to maintain fortifications there, nor to occupy or to colonize those countries. The second convention, celebrated in 1852, proceeded upon the understanding that *Costa Rica* had no right to any part of the Coast South of the River *Colorado*, since in discussing the settlement of the *Mosquito* question it would have designated as the point of departure for its southern boundary *King Buppan* and not the mouth of the River *Colorado*.²⁰

The Memorial published by the honored Minister of *Costa Rica*, Don Felipe Molina, has been read and examined by me with all the more care because I was cognisant of the activity, and the praiseworthy perseverance with which its author sought for documents which would favor the claims of *Costa Rica*, and I admired and do admire his talents and patriotism. But still I have not attempted to go into the details of the reasons and the arguments contained in that Memorial, to which the Señor Plenipotentiary of *Costa Rica* refers, because it seemed to me that Señor Victoriano Paredes, my predecessor, had answered them all satisfactorily.

The first time that I had the honor to see the Señor Plenipotentiary of *Costa Rica* in Washington, I intimated to him the hope that we should conclude the settlement as to boundaries, and I so expressed myself because I was under the persuasion that *Costa Rica* having suggested the River *Culebras* or *Doraces* should be fixed as a boundary upon the Atlantic coast, with the condition that a right of transit should be conceded without any charge being made at any port, and being disposed to accede to that condition as it had been suggested, there remained nothing else except the fixing of the point upon the Pacific, which seemed to me an easy matter."

The Chargé d'Affaires of *Costa Rica* stated in response as follows:

"It is with true regret that I now see vanish the hopes that I had cherished, of ending the wretched question as to boundaries

²⁰ In the view of the English Government, or at least of its representative in *Central America*, Mr. Chatfield, the limits of *Costa Rica* extended as far as the *Escudo de Veragua* and the River *Chiriquí* (the old River *Culebra*). M. M. P.

pending between *Costa Rica* and *New Granada* by an equitable bargain which I should have taken great pleasure in signing with Señor General Herrán. But at the same time, while I take pleasure in stating my belief that we have upon both sides brought to the negotiation the same purity of intention, the same sincerity, good faith and identical race interests, still I can not fail to recognise that the ideas of Señor Herrán, Plenipotentiary of *New Granada*, and myself, even though starting from the same principles and directed toward the same objects, are leading us in different directions and to opposite conclusions, or at least to very distant ones.

I observe in each conference, far from getting nearer to the end desired, we are getting farther away from each other, until we get to giving an opposed meaning to the simplest phrases and even to the most common words. I observe also with pain that in the present conference the question is taking a very personal aspect as regards myself, inasmuch as by a rare combination of circumstances I find myself under the necessity of explaining and defending acts of persons who no longer exist and whose memory I guard religiously with affectionate veneration, and at the same time I have to explain my own expressions, which I would retract with pleasure if they were to imply, contrary to my wish, any charge of deceit or intentional inaccuracy against the Señor General Herrán.

I will not evade such explanations, which, happily, I will find easy, but I propose in this contra-replica to be brief and to the point, so as not to follow around indefinitely the vicious circle, on my part, in which this long drawn out matter has become involved. The same arguments must receive the same replies, replicas and contra-replicas. I have no doubt the Señor Minister Plenipotentiary of *New Granada*, fully advised of what has gone before, and especially of each and every one of the facts occurring between our predecessors, recognises the truth of this; and that he will be able to bring to mind anew the communication which on May —, 1853, the Plenipotentiary of *Costa Rica* addressed to that of *New Granada*, giving a complete history of the negotiations. In that communication it is to be noted that no mention was made of the so-called proposition of the Minister of *Costa Rica*, forwarded by Señor Paredes to his Government

in a note which Señor Herrán desired to have spread verbatim upon the minutes of this conference, and I desire to have compared with another note by the Señor Plenipotentiary Paredes to my predecessor, inserting it also in the same manner.

The note produced by the Chargé d'Affaires of *Costa Rica* reads as follows:

Legation of *New Granada* in the United States.

NEW YORK, May 24, 1853.

SIR:

It was then that Your Excellency made to me your last propositions designed to fix as line of demarcation the one which starting from Cape *Burica* on the Pacific should run to end of the mouth of the River *Doraces* or of the *Culebrás* upon the Atlantic, provided that beside this there should be conceded to *Costa Rica* a port upon the *Bay of Almirante* and free transit in order to use it.

VICTORIANO DE D. PAREDES.

Addressed at the foot:

Excmo. Sr. D. Felipe Molina, Envoy Extraordinary and Minister Plenipotentiary of *Costa Rica* and *Guatemala* in Washington.

Nor do I doubt that the Señor Herrán and his Government had full and timely knowledge of the response which the Plenipotentiary of *Costa Rica* made to the communication previously quoted under date of March 28, 1853. In it the Minister of *Costa Rica* states positively that what had been called a proposition was a verbal suggestion, made without special instructions, as he stated, and that afterwards he had received *positive orders not to extend voluntary concessions beyond his first proposition.*

That the suggestion was a verbal one, without precision or formal character, is shown by the various ways in which Señor Paredes states it in his notes, when they are compared. But whatever may be the character or the importance attributed to this incident, it is very certain that it did not bind the Government of *Costa Rica*; and that its determination was the more remarkable the greater authorization the Minister had upon whom the

restriction was imposed, and the greater force it is claimed should be given to the suggestion under discussion.

New Granada ought not, therefore, to undertake the promotion of a negotiation, unless all these antecedents were considered, nor could Señor Herrán expect a settlement entirely contrary thereto. The purpose is very clear, with which *New Granada* persists in maintaining that the Royal Order transferred to it a nameless right over the whole of the *Coast of Mosquitos*; giving to it a title to keep everything it put within the territory which *Costa Rica* had always had and possessed as its own, under Royal titles, perfected at the cost of its blood and its resources, and boasting of its generosity in ceding that portion of the coast which it never could possess nor use and which would give to *New Granada* a most monstrous configuration, a configuration which alone would be enough to show clearly the impossibility of sustaining the meaning that it is pretended should be given to the governmental order referred to, or the position in which *New Granada* was placed.*

Outside of this order, it was long ago stated by *Costa Rica*, I repeated it in the previous conference and I repeat it now, without in any way imputing a like idea to Señor Herrán, no other title has been presented by *New Granada*, except its own assertions without proofs, and pretended recognitions by *Central America*, *Costa Rica* and Great Britain, of the sense which it desires to give to the Royal Order and of the possession which it never had. This is demonstrated by these very writings in favor of *New Granada* and will clearly appear in the response I am giving to what its Señor Plenipotentiary has just said.

He says that the titles of *Costa Rica* are uncertain and obscure; that their object was not to mark out provinces which were as yet scarcely projected, but to conquer the country and maintain it subject to Spain. It is only necessary to read those titles to see that they are minutely clear and definite, and that if on the part of *Veragua* the title of Don Luis Columbus was referred to, it is equally clear and agrees in everything with those of *Costa Rica*; so that by a simple mathematical operation the designation of the whole of the line can be arrived at, as has been done. In accordance therewith, those provinces, as well as those of *Nicaragua* and *Honduras*, were excluded from the conquest

entrusted to the Governors and founders of *Costa Rica* and from the provinces personified in them.

The object of Spain was not to conquer and maintain immense territories under its dominion; it conquered to subject to civilized life, to the Christian religion and to obedience to itself the peoples of the New World; in order to found cities, provinces and kingdoms with new subjects, regenerating them with the blood of its intrepid sons; in order to exploit also the treasures of this continent and increase its own wealth and power. In order to avoid conflicts, of which there were too many instances, among the various conquerors of America, it was indispensable to mark out the limits as soon as each conquest was projected, and certainly it was the most timely epoch to prevent the Spaniards from making war and creating new interests in opposition to the old ones. Spain wisely recognised that in order to found new communities it must begin by determining the field upon which they were to be located and what they could make use of, and by tracing the respective plan thereof. Thus, we see in the *Recopilación de Indias* a multitude of laws establishing regulations for the foundation of new communities, which designated the amount of land for them, divided and determined the use which should be made of each portion.

In the face of the repeated assertion that the Viceroy of *Santa Fé* exercised authority over the *Bay of Almirante*, its shores and islands, etc., I suspend my judgment and I refer to what has been so many times stated; upon the proofs being presented they will be given proper value when confronted by those of *Costa Rica*.

A long time ago there was an old Spanish statute (*Ley de Partida*) that a knowledge of the laws did not consist in knowing the letter of them, but in giving to them their true meaning, and it is well understood that in order to attain this end attention should be given not only to the significance of the words, but also to the reason for the law or to the cause of general interest which may have influenced the legislative authority in its adoption. These rules are applicable to all governmental provisions, and therefore they apply to the Royal Order, which never was and could not be a law.

The word *separar* (to separate) in its direct and primitive

sense, like the greater part of its idiomatic uses, has a meaning materially impossible of application to the case in question. It becomes necessary, then, to take it in the figurative sense, where it can refer to the judicial or politico-military regimen, financial or ecclesiastical. Did the Royal Order refer to all these branches, or only to one of them? It does not state, and in order to ascertain the value of its language it is indispensable to look for their reason, which was, the defense of the coast and not the aggrandisement of one kingdom at the expense of another, by means of new boundaries repugnant to the natural configuration.

It is unnecessary to add new words to the Royal Order to become convinced that it affected only the exercise of the military jurisdiction by reason of temporary circumstances. To assert that it affected the other branches of the administration and made a new territorial division, however, it would be necessary to add to it many other words and provisions, to amplify it by inserting what was not embraced, to the manifest damage of third parties, and to give to it a monstrous meaning, disregarding the only one accommodated to all the facts and the requirements of the case and the one which is not defective. To do this is not simply to interpret the Royal Order but to make it over arbitrarily.

The Royal Order did not transfer sovereignty, the Señor Minister says. What, then, is the right which *New Granada* alleges? I accept this expression, but I cannot agree to the principles from which it appears to spring. According to Señor Herrán, the sovereignty over the territory of one kingdom could not be transferred to another one of the Spanish imperial State, because the King alone represented it. Inasmuch as the King represented the sovereignty, it becomes necessary to look elsewhere for the thing represented and established whether it came from God or from each people having a complete and independent organization, without any further common tie with the others of the imperial State than the recognition of its Monarch. Each Spanish American people determined for itself and by itself this question when it became independent; each one of those that said it was sovereign, had previously submitted to the authority of the sovereigns of Spain, by its own acquiescence and with the choice and right of withdrawing in order to govern itself. King-

doms, provinces, cities and persons always had, under the Spanish domination, rights which limited the power of the Kings, rights which these very Kings recognised it was their duty not to overstep; imprescriptible rights which the most complete absolutism could do no less than respect and which were the justification for their independence. I do not suppose that Señor Herrán can be ignorant of these principles, nor that he can escape the necessary consequences, which entirely destroy the grounds he has given to a sincere proposition; stated and demonstrated by me in the light of the most universally recognised justice.

It can not be maintained that a disposition to change territorial division affects only the superior governmental authority which loses and the one which gains thereby in jurisdiction; it affects all the branches of the administration; it affects sovereignty between independent political bodies and the national and individual rights acquired and it is compulsory upon all the authorities, upon the two communities and all other individuals. Is there, peradventure, any nation in which the interior territorial division does not belong to the legislative power? There can be no more important act of legislation than that which affects the eminent domain of two kingdoms. The legislative power as exercised by the Spanish Monarch was not confused with the executive. The governmental orders differed from the laws, called "*Real Cédula*" or "*Pragmática Sanción*," not only in their form but in their essentially distinct procedure, as has been heretofore indicated. These formalities of procedure were established in order to afford assured guaranties to the legislative acts, rooms for the examination and discussion of the subject in detail, but neither they nor the form had for their object the proof of authenticity.

The argument of the Señor General respecting the resistance to the Royal Order, in the sense which *New Granada* gives to it, opposed at all times by the authorities of *Guatemala* and *Costa Rica*, if it were correct, would show a lack of accuracy on my part; but it would be correct only if the precise significance of the word "resistance" was declared opposition to the superior.—but that is not the case. The Royal Order, or rather its bastard meaning, was "resisted" by its being disregarded in express acts that could only relate to the defense of the coast. I have

not said that resistance was made to the King, nor even that a rivalry was set up against the Viceroy of *New Granada*; and if attention is given to what I said respecting *Central America* and *Costa Rica*, in the same phrase, no doubt would remain that I did not use the word "resistance" in the physical sense. Neither have I confused legitimate resistance with rebellion; necessarily it must be respected, but the execution suspended of the provision which was objected to. The Royal Order never was carried out on the part of *Guatemala*; it was and will continue to be a dead letter so far as conferring any permanent right.

The Señor Plenipotentiary thinks I was wrong in qualifying the occupation of *Boca Toro* as an act contrary to the Treaty of 1825 and one of violence against the rights of *Costa Rica*, because he asserts *New Granada* legitimately exercised the right it had and the obligation incumbent upon it of preserving and utilizing its own territory. To prove his assertion Señor Herrán repeated the interpretation he has sought to give to Art. 9 of the Treaty of 1825, an absurd interpretation on account of the monopolistic sense it gives to that treaty, as was shown by the late Minister of *Costa Rica* in his Memorial, and it is also repugnant to the very antecedents cited by Señor Herrán.

I ought to observe that Art. 9 does not say to (*hasta*) but towards (*hacia*) the River *Chagres*, which destroys the argument that the Government of *Colombia* could not permit its undisputed dominion to be placed in doubt over a large part of the coasts of *Panama* and *Veragua*. The legislative and diplomatic acts of *Colombia* cited, prior to the treaty, were arbitrary ones against the rights of *Central America*, and it is very strange that they should be called in to interpret the treaty. *Colombia* might defend the *Coast of Mosquitos* in virtue of the latter, but it and *New Granada* have infringed it every time that rights of sovereignty have been alleged over the territory in question.

Protesting once more my respect for Señor Herrán, I must state that I had no thought of comparing his expressions literally with those of Lord Palmerston, since I am acquainted with the communication cited and I know how to indicate a literary citation. I will compare the meaning of the one with the other, and it seemed to me and does now that it is very different, that of the Señor Plenipotentiary being very much the stronger. I

would not say this if Señor Herrán had said, "with the expressed or explicit object," but he said, "with the express object," thus meaning, according to my poor understanding, with the precise and only object, which is very far from the expression of Lord Palmerston. If I am mistaken, or if Señor Herrán employed "express" for "expressed," as I have just explained, I do not object to my statement in that regard being considered as not having been made, since I desire the Señor Minister Herrán to be persuaded that I have never had the slightest idea of offending him, directly or indirectly.

I am very glad that the Señor Plenipotentiary submitted for insertion in the minutes of this conference the "Extract from the Minutes of a Verbal Conference with the Minister of the United Provinces of the *Centre of America*, on the 4th day of March, 1825, in pursuance of a prior invitation," and a note from the Secretary of Foreign Relations of *Colombia* to the said Minister Plenipotentiary, as proofs upon which the assertion was based that the representative of *Central America* recognised the pretended rights which *New Granada* alleged over the *Coast of Mosquitos* and *Dulce Gulf*. We are coming at last to see what these proofs are worth, and for this purpose I proceed to analyse them, disregarding their form.

In the extract of the memorandum of the Secretaryship of State of *Colombia* it appears that the project for a treaty was under discussion which had been presented by Señor P. Molina, representative of *Central America*, and they were considering the following points:

1. Concerning the character of the treaty. It was agreed that it would be proper to celebrate it as between two Powers at war against a common enemy, and they adhered to the principles of union, league and confederation, already adopted between *Colombia*, *Mexico*, etc.

2. Concerning recognition of their independence. They agreed to omit this with the Articles 3 and 4 as superfluous.

3. Concerning boundaries. The Secretary of *Colombia* objected to Art. 5, presented by the Minister of *Central America*, conceiving it to be contrary to the titles of *Colombia*, and he exhibited as proofs the Royal Order of 1803, and a Decree of the Executive

of *Colombia* of July 5, 1824. He declared that *Colombia* was resolved not to abandon its rights except in case of mutual concessions being made in a *special boundary treaty*. He made thereupon a monstrous proposition, the exaggerations of which Señor Madrid publicly recognised, with regard to taking up the negotiation if Señor Molina had instructions therefor. Señor Molina replied that he did not have instructions. The response set out in the memorandum of the Secretaryship of *Colombia* is laconic, but it is very expressive and it reveals clearly the position of the negotiators. The Plenipotentiary of *Central America* had instructions to fix the natural boundaries of the two Republics, but he did not propose to do this in accordance with the impossible meaning which it had been sought should be given to the Royal Order. *Colombia* objected to this, exhibiting as titles the said Order and its own Decree; this is to say, a declaration or assertion on the part of the party interested, and it made a monstrous counter-proposition. Señor Molina still had no instructions. They did not get to a discussion of such a proposition, nor did they treat the boundary question, because *Central America* did not admit the possibility of such pretensions. It can hardly be conceived that in good faith anything else can be seen in this except the most polite, positive and energetic rejection of the pretensions of *Colombia* and its so-called titles.

4. Lastly. Concerning means of proceeding with the alliance notwithstanding the question that had been raised. "Well, then," (it being so that you cannot take up the question as to boundaries), said Señor Gual, "it is necessary as to boundaries to hold to the *uti possidetis* of 1810 or 1820, as may be desired." Señor Molina having acquiesced, Señor Gual was charged with drafting the proper Articles. It seems that the Señor Plenipotentiary of *New Granada* makes this expression of acquiescence extend to everything that was proposed and stated in the conference by Señor Gual, as if there had been a long oration with different parts delivered by the Secretary of *Colombia*, to which the Central American Plenipotentiary humbly answered "Amen." But such was not the case, for each proposition had its definite and clear response, that one being energetically negated in which the territorial pretensions of *Colombia* had been set forth. The

acquiescence which seems to have been given as a matter of course by Señor Molina referred only and exclusively to the territorial *statu quo*, until a boundary treaty should be celebrated, otherwise to admit then that it was to be the *uti possidetis*. This extract ends by saying that it was agreed Arts. 7 and 8 were inopportune, in consequence of Art. 5 having been taken out; and it does not appear that it was signed by either one of the negotiators.

Passing on to the note which has been inserted, I say that it has no value, not even as a notice, the response of the Plenipotentiary of *Central America* not being submitted. It is a paper which seems abbreviated on purpose, for where the communication is given the response should also be given.

I confess that if this point did not affect me personally I would have contented myself with replying that the papers inserted are *assertions* on the part of *Colombia*, which in no wise compromise *Central America*, nor *Costa Rica*, since they could only be used as proofs against the Government of their origin, and that it is the first time in my life that I have seen an attempt made by a party to make use of its own *assertions* as if they were clear confessions by the opposing party.

These ought to be clear, made by the one who is to be prejudiced thereby; they should be exhibited and it should not be necessary to demonstrate them by complicated reasonings, for this alone would be enough to show they did not exist save in the subtle interest of the one who undertook a task *contra-producente* (a thing alleged contrary to what it is designed to prove).

I appeal to the clear and straightforward meaning of the extract from the minutes of the conference, of the corresponding Articles in the treaty and the acts of *Central America* and *Costa Rica*, of *Colombia* and *New Granada*, in order that it may be seen, as it will be clearly seen by any impartial person:

1. That the amplification it has been sought to give to the Royal Order of 1803 is so outrageous and impossible to maintain that the Republics of *Colombia* and *New Granada* themselves have so admitted upon all occasions, by the very fact of not supporting it in all its enormity, going to the extent of abandoning it in part, affecting to make concessions which they had no right

to make, in order to cover up the contradictory and insupportable character of their position.

2. That both Republics, *Colombia* and *New Granada*, have used the Royal Order as a weapon against the weakness of *Central America* and *Costa Rica*, measuring their pretensions, always exaggerated, by the sole consideration of their greater relative strength, also exaggerated, as is natural.

3. That in the conferences for the Treaty of 1825, no essential point relating to the boundary question could be adjusted, because the Minister of *Central America* declared positively that he did not have instructions therefor, agreeing only upon the methods for reaching in the course of time a peaceful solution, and, as the main one among these, relying upon the respect due to the *statu quo* of the disputed territory.

4. That, while approving the conduct of its Minister, the Government of *Central America* did not wish to ratify the treaty without adding the word, "naturally," in Art. 5, in order to stipulate that their territories must preserve the natural configuration in accordance with the characteristics of the land and the situation that its settlements had at the time of independence, and this being incompatible with the significance it was sought to give and is pretended should be given to the Royal Order, such significance was excluded forever by agreement of the parties. This did not conflict with the position of the negotiators, since it was a change made subsequently by the Governments at the time of the ratification; it is in accord with the compromise contained in Art. 7, to respect their boundaries as they were at the time of the treaty; it saved *Colombia* from its anomalous position in gauging the extent of the compromise it acquiesced in it, as it is to be believed, and did no more than add one more stroke to the anomalous character of the pretensions of *New Granada*.

5. That Art. 9 of the treaty, evidently of a temporary character, was intended to preserve the *statu quo*, both of the contracting parties employing their forces jointly; that both Governments were referred to, and that the sense of "*corresponden*" (they belong) agreed with the object, doing away with all doubt that dominion could exist outside of them and including the two,

without objection on the part of *Central America*, on account of having left indeterminate the territory towards *Chagres*

6. That *Central America* and *Costa Rica*, in consequence of these very facts and the acts of their diplomatic representatives, have always resisted the bastard significance which *New Granada* gives to the Royal Order, avoiding useless protests scandalous in a question between two brothers, and every act which would be likely to compromise their good relations.

7. That *Costa Rica*, conforming its conduct to the Treaty of 1825, has sought in every way to end the question harmoniously, so that a direct settlement might be attained, proposing real adjustments, beginning by undertaking great sacrifices, and its regrets that the measure of these has been heaped up without there being a reciprocity on the part of *New Granada*; and however disadvantageous the present state of affairs may be, it would prefer it to the proposition of Señor Herrán, which would require a total abandonment of its rights without any compensation. If the announcement of the intention of *New Granada* to take some action in the future has the same effect that the action itself would have, why does it make a merit of cessions which it can only call such, and which if they were such are held as facts? I do not understand, I frankly confess, how *Costa Rica* would be able to gain land by fixing its frontiers with *Nicaragua* or *Mosquitos* at *King Buppan*, nor that designating the River *Colorado* as a boundary, leaving those countries to the North and *Costa Rica* to the South, fixes it that the latter Republic has no right to any part of the coast to the South of the River *Colorado*.

I am of the opinion of the Señor General Herrán that we ought to suspend the conferences, since in the turn that has been given to them and which he deems it is necessary to sustain on his part, no progress can be made. The Señor Plenipotentiary thinks that the treaty celebrated in 1825 between *Colombia* and *Central America* ought to be considered as in force between *Costa Rica* and *New Granada*, and after the explanations I have made I have no objection that it should be so considered.

The fraternal sentiments which *New Granada* and its sons will always meet within *Costa Rica* have a more ancient and noble origin. It will always be a pleasure and an honor for me to serve

in the expression of these sentiments, and the worthy Señor General Herrán, Minister Plenipotentiary of *New Granada*, will find in me, with all the consideration due to his high public and private character, the deference compatible with my duty, in order to contribute toward cementing and developing them, compromising the question of boundaries.

LUIS MOLINA.

P. A. HERRÁN.

REPUBLIC OF NEW GRANADA.

Report of the Secretary of Foreign Relations to the Congress of 1855. Doc. 305

Published at Bogota. Print of the *Neo-granadino* (New Granadian).

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In concluding this brief report I will make a statement of the situation as regards the two most prominent questions of an international character which now agitate *New Granada*, although up the present time in a peaceful and friendly way, and the means by which I hope to see them terminated. I refer to the settlement of the boundaries with the State of *Costa Rica* and the settlement as to boundaries, fluvial navigation and commerce in transit with the Republic of *Venezuela*.

With respect to the first of these questions, the Executive Power has during the past year reflected deliberately, giving to this matter all the importance that belongs to it, by an extraordinary mission to *Costa Rica* and even by a Special Message to you upon this subject. The disturbance of domestic peace during a number of months and the concentration of the entire attention of the Government upon the re-establishment of general good order and tranquillity, prevented the idea from being carried out which had been so favorably received by the representatives of the Nation as well as by public opinion; but as soon as the flag of the regular administration once more waved triumphantly

over this capital, the first care of the Executive Power was to turn his eyes toward our frontier upon the side of *Costa Rica* and meditate upon the method of reaching an early solution of the question pending with that State, respecting the rights of both countries, and which may as far as possible satisfy the desires of each of them, having regard to their mutual convenience. Up to the present time it has not been possible to do anything more than to collect data and documents needed to maintain the rights of *New Granada* in this grave question; while at the same time it has sought to obtain the reports needed to treat this question properly from the point of view of the convenience of both countries; and I am glad now to have in my department the best documents for both purposes, authorized or submitted by distinguished citizens, possessed of valuable knowledge and important facts relating to this subject, and who, animated by patriotic zeal, have hastened to respond to the invitation given them by this secretaryship to offer it their enlightened assistance in so delicate an affair.

This is not the place to set forth the claims of *New Granada* in the question referred to, nor to submit the evidence of its rights, nor to intimate what it may deem desirable. As to all of these points adequate instructions will be sent to the citizen who, either in Washington or in *San José de Costa Rica*, may be charged with the conduct of the negotiations upon our behalf; but if the Legislative Chambers shall desire to know the opinion of the Executive Power as regards the aforesaid points and wish to look over the documents collected in this particular matter, the slightest intimation of their wishes will be sufficient. Moreover, we ought to expect that the Government of *Costa Rica*, as soon as our titles are exhibited, will hasten to do justice to the unquestionable rights of *New Granada*, and that, as regards the question of convenience, it will cooperate in the adoption of such a line as will favor the interests of both countries, interests which, like all those of an international character, it is not difficult to reconcile when the parties well understand what is desirable and take up the negotiations with frankness and in good faith.

Protocol of the Conferences Held Between the Plenipotentiaries of New Granada and Costa Rica, for the Purpose of Bringing the Two Republics Into Closer Relations and Fixing Their Boundaries by Means of a Treaty. Doc. 30

CONFERENCE OF APRIL 2, 1856.¹

Having met in the Palace of the Government in *San José de Costa Rica*, the Señores General Pedro Alcántara Herrán, Plenipotentiary of *New Granada*, and Don Joaquín Bernardo Calvo, Minister of Foreign Relations and Government and Plenipotentiary of *Costa Rica*, they reciprocally exhibited their respective powers and finding them sufficient and in due form, they declared the negotiation open.

General Herrán proposed that before drawing up any draft or drafts of a treaty for discussion, the conference be confined to two points which it was necessary to arrange in the first place; one as to the desirability of celebrating a compact of federation between the two Republics, and the other respecting the territorial boundaries that were to be fixed; and he adduced some reflections and observations to demonstrate the advantages which would result from the union proposed and the necessity that there should be a settlement as to the boundaries.

Minister Calvo stated that he was in accord as to the advantages that would accrue to both countries from such a union and that the invitation was a very honorable one for *Costa Rica*, but it would be necessary before entering into such an important compact to submit a like invitation to the other States of *Central America*, or at least to bring to the attention of their Governments the project in question. He further said that he was ready to take up the discussion in regard to the settlement of boundaries so as to prepare a treaty which should include all the stipulations which might be desirable for the two Republics.

The two Plenipotentiaries finally agreed that General Herrán should draw up a draft of a treaty for discussion at the subsequent conferences.

¹ Archives of the Department of Foreign Relations of Costa Rica.

This ended the present meeting and it was signed by both of the Plenipotentiaries.

JQ. BERNARDO CALVO.
P. H. HERRÁN.

CONFERENCE OF APRIL 5, 1856.

The Plenipotentiaries of *New Granada* and *Costa Rica* having met in the Palace of the Government, the former submitted a draft of a treaty which he had drawn up in accordance with the understanding had at the conference on the 2nd. Señor Calvo took it in order to examine it and stated that he would advise General Herrán of the day that they could come together for its discussion.

Thereupon, the present conference was concluded and the two Ministers signed.

JQ. BERNARDO CALVO.
P. A. HERRÁN.

CONFERENCE OF APRIL 11, 1856.

The Plenipotentiaries of *New Granada* and *Costa Rica* having come together in the usual place, the latter asked the former for some explanations respecting the Article as to boundaries, submitted in the draft of the treaty. The explanations having been made the conference was ended and both Ministers signed.

JQ. BERNARDO CALVO.
P. A. HERRÁN.

CONFERENCE OF MAY 29, 1856.

The two Plenipotentiaries having met at the usual place, Señor Calvo said, that the boundary question could not be settled in virtue of the titles submitted by the parties, inasmuch as those of the one could not be reconciled with those of the other, and still less could the auxiliary proofs and arguments deduced from the testimony of the historians, geographers and travellers be

reconciled, and therefore he proposed that a wide basis be taken for the discussion, having regard to the clear and well-understood advantages of the two parties as a whole and each one of them separately; that the way in which the negotiations had recently been taken up and the very friendly demonstrations *Costa Rica* had just received from *New Granada* filled him with confidence that by adopting such a method of discussion a good result could be reached; and that if the most favorable opportunity now offered for securing the settlement desired was lost it would be necessary to give up all hope of ever reaching any agreement.

General Herrán accepted the proposal of Señor Calvo.

Under this understanding they took up the examination of the titles, proofs and arguments of each party, mutually respecting the value of them with an impartial judgment, and thereupon, after a comparison of the rights and motives of convenience on the part of each one of the Republics with those of the other, the plenipotentiaries undertook to seek an equitable conclusion which should make those of one compatible with those of the other; and with this object Señor Calvo and General Herrán mutually and successively made various propositions, until they came to the agreement they sought, adopting by common accord as the boundary between *New Granada* and *Costa Rica* a divisional line which, beginning upon the coast of the Pacific (at *Punta Burica*) at $83^{\circ} 13'$ longitude West of the meridian of Greenwich, and running along in a straight line to the sources of the River *Agua Clara*, at the highest place where its waters have their origin; from thence continuing by another straight line to the North-east one-quarter North, until it reaches the crest of the Cordillera of *Las Cruces*, which is found in this direction, and from thence continuing along the crest of the same Cordillera to the headwaters of the River *Doraces*, and thence down-stream in the middle of the main channel of this river to its outlet into the Atlantic.

The difficulty as to an agreement in regard to boundaries having been overcome, which was the only one that presented itself, as regards the negotiations of the treaty, the Plenipotentiaries went over each one of the Articles in the full draft, and having

approved them they declared the treaty finished, promising to sign it as soon as it was drawn up in the usual form.

JQ. BERNARDO CALVO.

P. A. HERRÁN.

CONFERENCE OF JUNE 11, 1856.

The Plenipotentiaries having met in the Hall of the Department of Foreign Relations, for the purpose of signing the treaty of friendship, commerce, navigation and boundaries, which had been drawn up with forty-five Articles, in the terms agreed upon at the conference held on the 29th of May last, and the two copies of the treaty being compared and finding them with the usual exceptions alike in all respects, they signed them and placed thereon their private seals.

JQ. BERNARDO CALVO.

P. A. HERRÁN.

Doc. 307 Extract from the Treaty of Friendship, Commerce and Boundaries Between the Republics of New Granada and Costa Rica (Calvo-Herrán).

SAN JOSÉ, June 11, 1856.

ART. 41. The Republics of *New Granada* and *Costa Rica* recognise as common boundaries between their respective territories a division line which, beginning on the coast of the Pacific Ocean, at *Punta Burica*, at 82° 13' longitude West of the meridian of Greenwich, proceeds in a straight line to the source of the River "*Agua Clara*," at the highest place where its waters have their origin; thence continuing by another straight line to the Northwest quarter North, until the summit of the *Cordillera de las Cruces* is reached, which is found in this direction; thence continuing by the crest of the same Cordillera to the source of the River "*Doraces*," and from thence down stream by the middle of the principal channel of this river until it empties into the Atlantic.

The Republic of *Costa Rica* renounces in favor of *New Granada* the right which it may have to any part of the territory which is left on the East of said division line, and *New Granada* renounces

in favor of *Costa Rica* the right which it may have to any part of the territory that is left on the West of the same line, not including in this renunciation the Islands of *Providencia*, *Santa Catalina*, *San Andrés*, *Albuquerque*, *Mangle Grande*, *Mangle Chico* and the others that belong within the district known by the name of Canton of *San Andrés*, which shall continue to belong to *New Granada*.

The ports of the *Gulf of Dulce* on the Pacific shall at all times be free for the importation of merchandise the destination of which is *New Granada*, and for the exportation of articles proceeding from this Republic; and the ports of *Almirante Bay* on the Atlantic shall be at all times free for the importation of merchandise destined for *Costa Rica* and for the exportation of articles proceeding from this Republic. In either case prompt despatch will be allowed for land transit for the merchandise until the frontier is crossed, and no import, export or transit dues can be imposed thereon, being only required to pay those taxes levied as compensation for the use of the works constructed to facilitate the loading, unloading and land transit thereof, such as wharves, canals, roads and bridges.

Instructions Sent by Secretary of State Marcy to Mr. Dallas, at London, in Regard to the Claim of Great Britain to the Bay Islands and the Mosquito Territory. Doc. 308

DEPARTMENT OF STATE,
WASHINGTON, July 26, 1856.¹

SIR:

I proceed now to communicate to you the principles by which the President desires you to be guided, and the manner in which those principles are to be applied to the definite subjects of controversy in your negotiations with Her Britannic Majesty's principal secretary of state for foreign affairs, for the purpose, if possible, of disposing of the questions in regard to *Central America*.

¹ Senate Document No. 74, 58th Congress, 2d Session, Page 2.

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Such are the separate, specific, and substantive stipulations of the convention, all of which you are instructed to inform the Earl of Clarendon the President stands ready to execute on the part of the United States.

* * * * *

When he entered on the duties of his present office he found that Great Britain had recently, and since the ratification of the convention, established a colonial government at the *Bay Islands*. He found that the British settlement at the *Balize* was in the process of being extended indefinitely into the State of *Guatemala* or *Honduras*, and that Great Britain, as the assumed protector of a small band of Indians in the State of *Nicaragua*, was continuing to assert, in their name, an authority which, whatever it might be in form, was in substance absolute dominion over the entire Atlantic coast of the three *Central American* States of *Honduras*, *Nicaragua*, and *Costa Rica*. All these acts were, in his judgment, palpable infringements of that primary and all-essential stipulation of the convention which excluded both governments from the occupation of any part of *Central America*. It became his imperative duty in the first instance, and before making or entertaining any proposition for the execution of the treaty in other respects, to call on Great Britain to execute it in this the foundation of all its other stipulations.

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You are aware of the progress and termination of the negotiations which ensued. After protracted discussion between the Earl of Clarendon and your predecessor touching the nature and justice of the pretensions of Great Britain in *Central America*, the negotiation was abruptly cut off by the declaration of Lord Clarendon that the British Government, regarding the stipulations of the treaty in the disputed matter as prospective only, declined to continue further discussion of the main question, the true interpretation of the convention, but at the same time he intimated that the difficulty might still, by means not distinctly stated, be susceptible of amicable adjustment.

* * * * *

My first prefatory observation is this: The United States regard it as an established principle of public law and of international right that when a European colony in America becomes independent, it succeeds to the territorial limits of the colony as it stood in the hands of the parent country. That is the doctrine which Great Britain and the United States concurred in adopting in the negotiations of Paris, which terminated this country's War of Independence. It has been followed by Spain and Portugal in regard to their former colonies in America and by all those colonies as between one another and the United States. No other principle is legitimate, reasonable or just.

* * * * *

When a colony is in revolt, and before its independence has been acknowledged by the parent country, the colonial territory belongs in the sense of revolutionary right to the former, and in that of legitimacy to the latter. It would be monstrous to contend that in such a contingency the colonial territory is to be treated as derelict, and subject to voluntary acquisition by any third nation. That idea is abhorrent to all the nations of right which constitute the international code of Europe and America.

* * * * *

And yet the assumption that, pending a war of colonial revolution, all territorial rights of both parties to the war have become extinguished and the colonial territory is open to seizure by anybody is the foundation of most of the disputed pretensions of Great Britain in *Central America*. Her pretensions are the more untenable in this respect in consideration of the fact of her amicable relations with both parties during the whole period of the war between Spain and her colonies.

* * * * *

As between her and Spain she was bound, by treaty upon treaty, to respect the territorial rights of Spain in *Central America*, according to which treaties Great Britain distinctly renounced all territorial claims in that quarter, including either

by express mention or unequivocal reference, the *Belize*, the *Bay Islands*, the *Mosquito Indians* and the small district of their actual occupancy in *Nicaragua*. Great Britain could not, in any period of time subsequent to the year 1814, touch either of these points without infringing her treaty engagements to Spain. On the other hand, if during that period she treated the *Central American* Republics as independent States, she was equally bound to respect the territorial sovereignty, which if it did not belong to Spain, belonged to them. In either point of view, no part of it could be taken by Great Britain without usurpation of the rights in litigation between Spain and *Central America*, and appertaining incontestably either to Spain or *Central America*.

* * * * *

My second prefatory observation is this: The United States regard it as an equally well-established principle of public law and of international right that no tribe or nation of Indians on the American continent can be treated as a sovereign state, people, or independent power, but each and every one of them is by the public law of Europe and America the subject of some European government, or of some American government the successor of an European government, within whose territorial limits such tribe or nation of Indians may happen to be. No third power can lawfully enter into political relation with any such tribe. The United States may as well undertake to maintain and hold political relations with the country of Galway, in Ireland, or the shire of Perth, in Scotland, as for England to maintain or hold such relation with any tribe of American Indians outside of her own colonial possessions in America.

* * * * *

We, the United States, grew up as colonies of England in the possession of this elementary doctrine of the public law, not only of England herself, but of Spain, Portugal, France, and of every other European government having possessions in America. I refer to the cases¹ with which you are familiar, adjudic-

¹ Johnson, v. McIntosh, VIII Wh., 543; Mitchell v. the United States, IX Peters, P. 711; Cherokees Nation v. Station of Georgia, V. Peters, P. 1; Worcester v. State of Georgia, VI Peters, P. 515.

cated in the Supreme Court of the United States, in which this subject has been discussed, for the proof that this doctrine is no revolutionary innovation or modern invention of the United States, but that we received it, complete in all its parts and relations, in common with representative institutions, trial by jury, rights of property, and all the rest of the muniments of public and private law, at the hands of Great Britain herself.

It has heretofore, on several most important occasions, been the province of the United States to discuss this question with England, and to have the principle distinctly admitted by her. That occurred in the negotiations of Paris, when the territorial sovereignty of the United States was first formally acknowledged by Great Britain; it occurred in the supplemental negotiations during the administration of President Washington; and, finally, during the negotiations at Ghent, when the British ministers, urging, as the Earl of Clarendon now does in the case of the *Mosquito Indians*, ancient ties of obligation, proposed that the United States should admit British protection of certain tribes of Indians within our limits, the American ministers replied that sooner than concede for a moment any such pretention they would break off at once all further negotiation and counsel the United States to proceed in the prosecution of the war. Whereupon that pretention was abandoned by the British commissioners. I refer you to those negotiations for more full statement of the unalterable conviction and policy of the United States in that respect.

* * * * *

It is by keeping the eye steadily directed to these two great principles of public law and by following the light which they afford, and in no other way as the President conceives can the present question between the United States and Great Britain be honorably and amicably adjusted.

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We see, in the first place, that England can have no rights of possession or jurisdiction in *Central America*, except such as her treaties with Spain of 1786 and 1841 accord to her, or except such as she may have acquired by voluntary concession

from some one of the Republics of *Central America*. Anything beyond that will be incipient conquest only, not yet consummated into full right by treaty recognition.

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We see in the second place that all the matters in dispute between the United States and Great Britain are primarily questions of the sovereign rights of some one of the republics of *Central America*. We can not give to Great Britain nor she take from us that which neither has to concede. Either of us may agree with the other not to claim anything in *Central America*, but neither can legitimate any claim of the other there. And if either of us, having asserted claim there, is to relinquish the same under conditions, the ultimate decision of those conditions appertains solely to the interested Republic of *Central America*. We may separately, or in common, use our good offices with such republic to influence its determination, but we can not of ourselves make the determination.

* * * * *

Thus we arrive by incontrovertible deduction from the settled principles of public law controlling the subject-matter, to one of the leading stipulations of the convention, which is, that both Governments will use whatever influence they respectively exercise with any state possession or claiming to possess jurisdiction or right over the territory which the proposed canal shall traverse, or the waters adjacent thereto, which may be called for by the exigencies either of the construction or neutral use of said canal; and also that we will jointly and severally employ our good offices with any such state to promote the settlement of any differences of right or property in said territory—in order, as the convention proceeds to say, “to strengthen the bonds of friendship and alliance which exist between the contracting parties.”

* * * * *

Acting under the influence of these high inducements, the President directs you to proceed upon the following premises in reference to the specific point of controversy.

1. THE MOSQUITO INDIANS.—THESE PERSONS, IT IS UNDERSTOOD, HAVE NO ACTUAL OCCUPANCY, SAVE IN A VERY LIMITED

DISTRICT, WITHIN THE BOUNDS OF THE UNDOUBTED SOVEREIGNTY OF THE REPUBLIC OF NICARAGUA. CLAIMS HAVE INDEED BEEN PREFERRED IN THEIR BEHALF EXTENDING NORTHWARDLY AND WESTWARDLY INTO HONDURAS AND EASTWARDLY INTO COSTA RICA AND EVEN NEW GRANADA; BUT IT IS NOT SUPPOSED THAT ANY SUCH CLAIMS ARE SERIOUSLY PERSISTED IN AT THIS TIME. IT IS A QUESTION, THEREFORE, OF THE RIGHT OF NICARAGUA.

The president proposes, in execution of the convention, that the United States and Great Britain use their influence and employ their good offices with the REPUBLIC OF NICARAGUA to induce that Government to enter into arrangement with the *Mosquito Indians* for the ascertainment and fixation of proper limits of occupancy for them and for their personal protection in the enjoyment of municipal rights within such territorial reservation, and with the payment to them of proper indemnity, in cash or in annuities, and with regulation of private land grants, on the precise principles and substantially in the same manner which we ourselves observe and follow in our daily transactions with the Indians subject to the United States.

The President can not himself admit as true, and therefore can not under any possible circumstances, advise the REPUBLIC OF NICARAGUA to admit that the MOSQUITO INDIANS ARE A STATE OR A GOVERNMENT any more than a band of Masoons in the island of *Jamaica* are a state or government. Neither, of course, could he admit that any alliance or protective connection of a political nature may exist for any purpose whatever between Great Britain and those Indians.

But the Earl of Clarendon alleges that ancient ties of this nature do in fact exist. I had supposed that the relations referred to had their origin in the buccaneer practices and system of smuggling of the sixteenth and seventeenth centuries and that they could confer no rights or impose any obligations on Great Britain as a government. I had also supposed that the treaty of 1786 between Great Britain and Spain had disposed of that point, it containing stipulations by which Great Britain renounced its connection with the *Mosquito Indians* by name, and they were in consideration of that fact admitted to pardon by the King of Spain.

I apprehend that the point of honor, which labors, in the mind of the Earl of Clarendon, arises out of the fact of these relinquished pretensions regarding the *Mosquito Indians* having been without due reflection revived in modern times.

While the President desires you to be possessed of his views on this point he does not wish to have them urged by you unnecessarily or at any time so presented, either in substance or manner, as to obstruct the negotiations. They are communicated to you; first because in the judgment of the President they constitute the truth of the case, and in the second place, in order to secure a careful avoidance either in the correspondence, or in any treaty which may be made, of any admission express or implied, to the contrary on the part of the United States.

What the President proposes to have done in this respect, is not to concede any principle, but only to make an arrangement which under which proper guaranties on the part of the United States and Great Britain, will, as a mere fact, accomplish by unexceptionable means, everything which the latter has declared that it feels bound in honor to for the personal protection of the *Mosquito Indians*.

2. *San Juan de Nicaragua*.—The questions on this point are somewhat connected in fact with those of the *Mosquito Indians*, because the original seizure of *San Juan* was made by Great Britain in the name of or for the *Mosquito Indians*, and the municipality of *Greytown* (so named as it is understood after the existing governor of *Jamaica*) professed to exist under the authority and the flag of the *Mosquito Indians*? But the occupancy of those Indians NEVER IN FACT REACHED TO SAN JUAN. If it had done so, it never could have constituted the groundwork of municipal or political organization there. The very idea of a commercial seaport is totally incompatible with the tribal condition and the habits of American Indians. The ascription of the title and state of King to the petty chief of a petty band of such Indians can with difficulty be reconciled to any respectful consideration of royalty as an institution of government. Solemnly to crown such a person as King has an air of mockery rather than of dignified earnestness. At any rate no rights of sovereignty can reside in such a person. OF COURSE, THE PRESIDENT CAN NOT ADMIT THAT THE MOSQUITO INDIANS HAVE ANY

RIGHTFUL CONNECTION WITH SAN JUAN DE NICARAGUA. And they will cease to have any such connection in fact so soon as their case shall have been disposed of in the manner already suggested.

THERE WILL REMAIN AS TO SAN JUAN THE QUESTION OF LIMITS BETWEEN NICARAGUA AND COSTA RICA TOUCHING BOTH THE RIVER AND THE HARBOR, AND THE QUESTION OF THE FUTURE POLITICAL CONDITION OF THE PORT OF SAN JUAN.

The convention engages the United States and Great Britain to a definite line of action on each of those points. They stipulate to exercise their influence and employ their good offices to promote the settlement of all such differences between *Costa Rica* and *Nicaragua*. They also stipulate to use their good offices to procure the establishment of a free port at each end of the proposed canal; and that stipulation was designed unquestionably to cover the case of *San Juan del Norte*.

In regard to each of these points you are instructed to say that the President is prepared to enter into such arrangement as the treaty contemplates, and to employ the good offices of the United States with the *Republics of Nicaragua* and *Costa Rica*, in order to accomplish the proposed objects.

* * * * *

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

George M. Dallas, Esq.

The Secretary of Foreign Relations of New Granada to That of Costa Rica, Concerning the Ratification of the Boundary Treaty of June 11, 1856. Doc. 309

BOGOTA, April 23, 1857.

SIR,

I have the honor to address Your Excellency, for the purpose of bringing to your knowledge the fact that by the legislative action of the 20th instant, sanctioned by the Executive Power on the 21st, there was approved the Treaty of Friendship, com-

merce, navigation and boundaries between *New Granada* and *Costa Rica*, signed by the respective plenipotentiaries in the city of *San José* on June 11, 1856; and likewise approved by the Congress of your Republic on the 18th of September of the same year; and that in consequence thereof the Executive Power is ready to prepare and send to Washington the Act of Ratification which should be duly exchanged.

In advising Your Excellency of this agreeable news, I must add that the legislative action approving the said Treaty contains in the Article 2 thereof three "Declarations," which must be included in the instrument carrying out the exchange of the ratifications, and without the acceptance of which by the Government of *Costa Rica* it cannot go into effect, these being considered as essential and that they should virtually form an integral part of the Treaty.

Your Excellency will be advised as to these "Declarations" by the authentic copy of them which I have the honor to enclose in the present note, and at the first glance at them Your Excellency will be convinced of the necessity for their adoption and of their unquestionable utility for both of the contracting parties.

These "Declarations" were passed after a careful examination of the stipulations of the Treaty, for its greater clearness and because they will tend to prevent future disputes growing out of private rights acquired in good faith a long time previous and will smooth away any difficulties which might hereafter arise by reason of different interpretations as to the boundaries between the two nations, an object which Your Excellency will at once agree is in the interest of both.

I trust that Your Excellency will be pleased to communicate the contents of the present note to H. E. the President of your Republic and make the arrangements necessary on the part of your Government so that the exchange may take place as soon as possible; it being understood that under Art. 4 of the Decree referred to, as Your Excellency will observe, *New Granada* will extend indefinitely the term within which it is to be done, in accordance with Art. 45 of the Treaty, a term which will expire on the 11th of June next. I refrain from urging upon Your Excellency the necessity that your Government also agree upon such exten-

sion in order to avoid in advance the embarrassment which would follow from the approaching expiration of the term fixed for the exchange.

This Department will duly forward to Washington the respective instruments for such exchange, trusting that no difficulty will arise in the consummation of the compact which is so important to both countries, and the stipulation of which will firmly bind together their reciprocal interests and unite still closer the ties which naturally connect them.

I take this opportunity to reiterate to Your Excellency the assurance of my high and distinguished consideration.

J. A. PARDO.

DECREE.

The Senate and House of Representatives of New Granada in Congress assembled:

Having considered the Treaty of Friendship, Commerce, Navigation and Boundaries, between *New Granada* and *Costa Rica*, concluded by the respective plenipotentiaries at San José on the 11th of June, 1856, the literal tenor of which, word for word, is as follows:

(Here follows the Treaty.)

THEY DECREE:

ART. 1. Let the foregoing Treaty be approved in all its parts, so that it may be ratified and exchanged in accordance with this decree.

ART. 2. The Executive Power will arrange that at the time of making the exchange of the instruments for the ratification of the aforesaid Treaty, the Granadian plenipotentiary who is charged with this duty shall submit to that of *Costa Rica* the following declarations, in the name of *New Granada*:

FIRST: That the *River Doraces, Dorces* or *Dorados*, designated by Art. 41 of the foregoing Treaty as the terminus of the divisional line of the two Republics upon the Atlantic, is the first river which is found at a short distance to the South-east of *Punta Careta*;

and that the questions arising at any time upon this point shall be determined in accordance with this declaration and what is shown by the hydrographic chart which was used during the negotiation of said Treaty, the title of which is: Spherical Chart of the Sea of the Antilles and of the Coast of *Tierra-Firme*, from the Island of *Trinidad* to the *Gulf of Honduras*; prepared in the Hydrographic Bureau and published by official order at Madrid, year 1805. Corrected in 1809.

SECOND: That the concessions of land or other valuable rights in the neighborhood of *Dulce Gulf*, legally made in favor of corporations or private individuals by the municipalities (*corporaciones*) or authorities of *New Granada* before the celebration of the Treaty, shall be as valid thereafter as if they had been made by the Government of *Costa Rica*; and that consequently those interested in such concessions shall not be disturbed at any time in the enjoyment thereof.

THIRD: That, in general the private titles to property which are existant as to lands and other valuable rights embraced within the dominions acquired by *Costa Rica* under the said Treaty, shall be respected by the Government of that Republic, whether said titles are founded upon a strict legal basis or upon simple principles of equity.

ART. 3. The Executive Power shall take care that the exchange of ratifications of the foregoing Treaty shall not be effected until the declarations set out in Article 2 of this Decree shall have been accepted by the respective plenipotentiary of *Costa Rica*.

ART. 4. The exchange of the instruments of ratification of this Treaty shall take place even in case the term may have expired which was fixed in Art. 45.

GIVEN at *Bogota*, April 20, 1857.

The President of the Senate: MANUEL ANTONIO BUENO.

The President of the House of Representatives: MIGUEL GUERRERO.

The Secretary of the Senate: M. M. MEDINA.

The Secretary of the House of Representatives: MANUEL POMBO.

Bogota, April 21, 1857.

Let it be executed:

The President of the Senate: (L. S.) MARIANO OSPINA.

The Secretary of Foreign Relations: J. A. PARDO.

Report of the Committee on Foreign Relations to the Congress of Costa Rica. Doc. 310

SAN JOSÉ, September 30, 1857.

To the Committee in charge of the matter:

N. TOLEDO.

TO THE HONORABLE CONGRESS:

There has been referred to the legislative committee the official despatch dated September 30th last past, which the Executive Power addressed to you by the Minister of the Interior, accompanied by a certified copy of the act of ratification of the Treaty celebrated between *New Granada* and *Costa Rica*. The Committee has read this document, not only once but many times, and after having given it careful attention, cannot comprehend the reasons which could have led the Congress of *New Granada* to pass the said authorization with conditions which it could not have supposed would be admissible.

In approving the aforesaid Treaty during the past year, the legislature was well aware of the great advantages which the Republic of *New Granada* obtained, acquiring a portion of territory to which its rights were not clearly proven, but it was desirous of giving to the latter neighboring Republic a proof of its consideration and deference, suppressing on its own behalf the obstacles which were opposed to a friendly settlement of the questions as to territorial boundaries. The Committee, therefore, in view of these facts, could not suppose that there would be a moment's hesitation on the part of *New Granada* in regard to the clear ratification of the agreement referred to, without any further demands.

Now, when the question comes up again, and when the additional articles are read, to which an effort is made to give the title of explanations to be made at the time of the exchange, which articles are really nothing more than an actual change of the Treaty, there can be nothing but surprise that such articles should

have been suggested and with expressions which leave the divisional line uncertain and the rights of this Republic exposed, even as regards the new demarcation which had been established by common accord between the high contracting parties.

Besides, Señores, it should be observed that this act is condemned by the common opinion of the principal publicists, and that if at any time it could be used as a criterion, the results of such an example would always be harmful, for they would make interminable questions already decided by the plenipotentiaries authorized to state them in a treaty. In such a case the right remains in the Governments to approve the agreements made by their respective representatives.

The Committee notes the disagreeable impression which this incident has left upon the mind of the Government, for notwithstanding the occasion which is presented by this action to open anew the negotiations, it has sought to give an example of noble uprightness and firmness, leaving its approval subsisting, notwithstanding the fact that the additional propositions on the part of *New Granada* ought to be interpreted as a negative to the ratification of said Treaty.

In view, however, of the substantial reasons which appear in the despatch accompanying the said act of ratification and the reasons stated by the Committee, it is the opinion that you will declare:

The declarations 1, 2 and 3 are disapproved in every particular, as submitted by the Congress of *New Granada* and signed at *Bogota* on April 21, 1857, as being conditions inadmissible for the ratification of the Treaty signed June 11, 1856, in the capital of the Republic of *Costa Rica*.

ART. 2. Within ten months, counted from the date of the present Decree forward, the ratifications shall be changed without the additional articles and in the terms agreed upon in the said Treaty.

Given, etc.

The arrangement which is proposed has been suggested to

the Committee by serious considerations which it is expected will be presented in the debate upon the said arrangement.

To the Hon. Congress:

Committee Hall, *San José*, October 19, 1857.

NAZARIO TOLEDO.

PEDRO SABORÍO ALFARO.

JUAN M. CARAZO.

MIGUEL MORA.

San José, October 19, 1857.

Having been discussed for the first time, it will be discussed the second time at the next session.

SÁENZ.

Discussed the second time, the third is fixed for the next session.

San José, October 23, 1857.

GONZÁLEZ, Secretary.

San José, November 4, 1857.

Discussed for the last time, it was approved in every particular.

BARROETA, Secretary.

The Minister of Foreign Relations of Costa Rica to the Congress of the Republic, Concerning the Ratification of the Boundary Treaty of June 11, 1856.

Doc. 311

SAN JOSÉ, September 30, 1857.

TO THE HON. CONGRESS:

The Executive Power has directed me to forward for the information of Your Excellencies the Decree of April 20th last, by which the legislative bodies of *New Granada* were pleased to approve the Treaty concluded in this city on June 11th, 1856, by the plenipotentiaries of that and of this Republic. The Executive Power submits for the consideration of Your Excellencies a copy of the explanations which the New Granadian plenipotentiary is to present at the time of the exchange of the Treaty and also of the letter of transmission of the Minister of *Bogota* of April 23, and proceeds to state his opinion about the matter.

In his view, such declarations substantially changed the text of the clauses of the Convention of June 11th of the year last past

and did not contribute to the greater clearness of the stipulations therein as regards the matter of territorial boundaries.

The Executive Power, being desirous of settling a question which is one of the most important for the Republic, like that of boundaries upon *New Granada*, was sure that it had been well accomplished by the Treaty which Your Excellencies approved by Decree No. 12 of September 18, 1856; but the declaration made by the legislative body of *New Granada* that the *River Doraces, Dorces* or *Dorados* is the first one which is met with at a short distance to the South-East of *Punta Careta*, changes the Treaty and leaves the demarcation of the boundary uncertain in that part.

Respecting the second and the third declarations, the Executive believes that they involve a pretension much beyond the rights which *New Granada* could allege and are a variation prejudicial to the interests of *Costa Rica* made in what was agreed to and equitably concluded with the New Granadian plenipotentiary.

By reason of the foregoing, the Executive begs that Your Excellencies will be pleased to examine with the greatest care the declarations and decide in such a way as Your Excellencies shall deem best for the interests of the country. It may not be too much to suggest that it would be well, if Your Excellencies should refuse to give your approval to the Treaty with the declarations proposed, to grant an extension of one year, so that if *New Granada* should be disposed the question of territorial boundaries may be concluded as it was by the Treaty of June 11th of the year last past.

San José, September 30, 1857.

J. B. CALVO.

Doc. 312 **Treaty of Limits Between Costa Rica and Nicaragua, Concluded April 15th, 1858.**¹

We, Máximo Jerez, Minister Plenipotentiary of the Government of the Republic of *Nicaragua*, and José María Cañas, Minister Plenipotentiary of the Government of the Republic of *Costa Rica*, having been entrusted by our respective Governments with

¹ Moore's International Arbitrations, Vol. 5, Page 4706.

the mission of adjusting a treaty of limits between the two Republics, which should put an end to all the differences which have obstructed the perfect understanding and harmony, and having exchanged our respective powers, which were examined by Hon. Señor Don Pedro R. Negrete, Minister Plenipotentiary of the Government of the Republic of *Salvador*, exercising the functions of fraternal mediator in these negotiations, who found them to be good and in due form, as we on our part also found good and in due form the powers exhibited by the said Minister, after having discussed with the necessary deliberation all the points in question, with the assistance of the Representative of *Salvador* who was present, have agreed to and adjusted the following Treaty of Limits between *Nicaragua* and *Costa Rica*.

ARTICLE I. The Republic of *Nicaragua* and the Republic of *Costa Rica* declare in the most solemn and express terms that if for one moment they were about to enter into a struggle for reason of limits and for others which one of the high contracting parties considered to be legal and a matter of honor, now after having given each other repeated proofs of good understanding, peaceful principles, and true fraternity, they are willing to bind themselves, as they formally do, to secure that the peace happily re-established should be each day more and more affirmed between the Government and the people of both nations, not only for the good and advantage of *Nicaragua* and *Costa Rica*, but for the happiness and prosperity which, to a certain extent, our sisters, the other Central American Republics, will derive from it.

ARTICLE II. The dividing line between the two Republics, starting from the Northern Sea, shall begin at the end of *Punta de Castilla*, at the mouth of the *San Juan de Nicaragua* river, and shall run along the right bank of the said river up to a point, three English miles distant from *Castillo Viejo*, said distance to be measured between the exterior works of said castle and the above-named point. From here, and taking the said works as centre, a curve shall be drawn along said works, keeping at the distance of three English miles from them, in its whole length, until reaching another point, which shall be at the distance of two miles from the bank of the river on the other side of the castle. From here the line shall continue in the direction of the *Sapoá* river,

which empties into the *Lake of Nicaragua*, and it shall follow its course, keeping always at the distance of two miles from the right bank of the *San Juan* river all along its windings, up to reaching its origin in the lake; and from there along the right shore of the said lake until reaching the *Sapoá* river, where the line parallel to the bank and shore will terminate. From the point in which the said line shall coincide with the *Sapoá* river—a point which, according to the above description, must be two miles distant from the lake—an astronomic straight line shall be drawn to the central point of the *Salinas Bay* in the Southern Sea, where the line marking the boundary between the two contracting Republics shall end.

ARTICLE III. Such surveys as may be required to locate this boundary, whether in whole or in part, shall be made by Commissioners appointed by the two Governments; and the two Governments shall agree also as to the time when the said survey shall be made. Said Commissioners shall have the power to somewhat deviate from the curve around the castle, from the line parallel to the branch of the river and the Lake, or from the astronomic straight line between *Sapoá* and *Salinas*, if they find that natural land-marks can be substituted with advantage.

ARTICLE IV. The Bay of *San Juan del Norte*, as well as the *Salinas Bay*, shall be common to both Republics, and, therefore, both the advantages of their use and the obligation to contribute to their defense shall also be common. *Costa Rica* shall be bound, as far as the portion of the banks of the *San Juan River*, which correspond to it is concerned, to contribute to its custody in the same way as the two Republics shall contribute to the defense of the river in case of external aggression; and this they shall do with all the efficiency within their reach.

ARTICLE V. As long as *Nicaragua* does not recover the full possession of all her rights in the Port of *San Juan del Norte*, the use and possession of *Punta de Castilla* shall be common and equal both for *Nicaragua* and *Costa Rica*; and in the meantime, and as long as this community lasts, the boundary shall be the whole course of the *Colorado* river. It is furthermore stipulated that, as long as the said port of *San Juan del Norte* remains a *free*

port, *Costa Rica* shall not charge any custom duties at *Punta de Castilla*.

ARTICLE VI. The Republic of *Nicaragua* shall have exclusively the dominion and sovereign jurisdiction over the waters of the *San Juan* river from its origin in the lake to its mouth in the Atlantic; but the Republic of *Costa Rica* shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from *Castillo Viejo*, said navigation being for the purposes of commerce, either with *Nicaragua* or with the interior of *Costa Rica* through the *San Carlos* river, the *Sarapiquí*, for any other way proceeding from the portion of the bank of the *San Juan* river, which is hereby declared to belong to *Costa Rica*. The vessels of both countries shall have the power to land indiscriminately on either side of the river, of the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments.

ARTICLE VII. It is agreed that the territorial division made by this treaty cannot be understood as impairing the obligations contracted whether in public treaties or in contracts of canalization or public transit by the Government of *Nicaragua* previous to the conclusion of the present treaty; on the contrary, it is understood that *Costa Rica* assumes those obligations, as far as the portion which corresponds to its territory is concerned, without injury to the eminent domain and sovereign right which it has over the same.

ARTICLE VIII. If the contracts of canalization or transit entered into by the Government of *Nicaragua* previous to its being informed of the conclusion of this treaty should happen to be invalidated for any reason whatever, *Nicaragua* binds herself not to enter into any other arrangement for the aforesaid purposes without first hearing the opinion of the Government of *Costa Rica* as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of thirty days after the receipt of the communication asking for it, if *Nicaragua* should have said that the decision was urgent; and, if the transaction does not injure the natural rights of *Costa Rica* the vote asked for shall be only advisory.

ARTICLE IX. Under no circumstances, and even in case that the Republics of *Costa Rica* and *Nicaragua* should unhappily find themselves in a state of war, neither of them shall be allowed to commit any act of hostility against the other, whether in the port of *San Juan del Norte*, or in the *San Juan* river, or the *Lake of Nicaragua*.

ARTICLE X. The stipulation of the foregoing article being essentially important for the proper custody of both the port and the river against foreign aggressions, which would affect the general interests of the country, the strict performance thereof is left under the special guarantee which, in the name of the mediator Government, its Minister Plenipotentiary herein present is ready to give, and does hereby give, in use of the faculties vested in him for that purpose by his Government.

ARTICLE XI. In testimony of the good and cordial understanding which is established between the Republics of *Nicaragua* and *Costa Rica*, they mutually give up all claims against each other, on whatever grounds they may be founded, up to the date of the present treaty; and in the same way the two contracting parties do hereby waive all claims for indemnification of damages which they might consider themselves entitled to present against each other.

ARTICLE XII. This treaty shall be ratified and the ratifications thereof shall be exchanged, at *Santiago de Managua* within forty days after it is signed.

In testimony whereof we have hereunto subscribed our names to the present instrument, executed in duplicate, together with the Hon. Minister of *Salvador*, and under the countersign of the respective secretaries of Legation, at the city of *San José*, in *Costa Rica*, on the 15th day of April, in the year of Our Lord, 1858.

MÁXIMO JEREZ.

JOSÉ M. CAÑAS.

PEDRO RÓMULO NEGRETE.

MANUEL RIVAS,

Secretary of the Legation of *Nicaragua*.

SALVADOR GONZÁLEZ,

Secretary of the Legation of *Costa Rica*.

FLORENTINO SOUZA,

Secretary of the Legation of *Salvador*.

The Secretary of Foreign Relations of New Granada to Doc. 313
That of Costa Rica.

BOGOTÁ, January 25, 1859.

SIR,

I have the honor to enclose to Your Excellency a copy of the communication which I made to you under date of June 19th of the previous year relating to the Treaty of Friendship, Commerce, Navigation and Boundaries between the two Republics and of territorial possession, until a new agreement could be made.

Without any response from Your Excellency, caused doubtless by the difficulties which have presented themselves as to the safe forwarding of correspondence, there has come to my hands, sent by the Señor Governor of the State of *Panama*, the official communication of which I enclose a copy to Your Excellency.

The President of the *Granadian Confederation* is confident that simply bringing to the knowledge of the Government of *Costa Rica* the facts which are complained of in this paper will be sufficient for the latter to cause the offenses to cease which are being committed against the territorial rights of sovereignty of *New Granada*, and he cherishes the firm belief that this disagreeable incident will afford an opportunity to bind still closer the friendship and the cordial ties between the two Nations.

No one knows better than the wise Government of Your Excellency that courses of action only tend to produce other courses of action; and that between civilized and brotherly peoples there should be a fair and frank debate, based upon what is convenient and just, which will lead to the peaceful settlement of all differences.

With sentiments of the highest consideration and appreciation I am Your Excellency's very obedient servant.

J. A. PARDO.

Doc. 314 Circular. Places the Settlement of Matina Under Military Regulation and Adds to the Jurisdiction of Moín the Coast Situated Between the Tortuguero and the Bocas del Toro.¹

Republic of Costa Rica. Ministry of the Treasury.

No. 1. NATIONAL PALACE, SAN JOSÉ, March 10, 1859.

Circular:

The repeated complaints which have been presented to the Government relating to the disorder into which the administration of justice has fallen in the settlement of *Matina*, in police matters and in other branches, the good conduct of which constitutes public order; as well as the reports which have been received respecting the outrages and oppressions which have been inflicted upon the unfortunate savages who inhabit the coast and islands near the Port of *Moín*, have led His Excellency the Captain-General President of the Republic to issue the following resolution:

1. From the date of the publication hereof, the settlement of *Matina* shall be subject to military regulation and added to the jurisdiction of the Port of *Moín*.

2. There shall be likewise added to the same jurisdiction the other points of the coast which are found to be settled between *El Tortuguero* and the *Bocas del Toro*, as well as the immediate islands.

3. Consequently, the Governor and Military Commander of *Moín* shall see, as far as circumstances will permit them to do so, that there is order and regularity at the above points; being authorized hereby to appoint military and police judges, to remove them whenever just cause demands it and to expel wicked persons who come there without any useful purpose or with only the object of injuring the settlers under the pretext that they are savages.

4. The present resolution shall be laid before the Honorable Congress at its first meeting.

I communicate this to you for your information and for other purposes.

May God guard you.

CAÑAS.

¹ Collection of Laws of Costa Rica; vol. xvi, p. 16.

Constitution of Costa Rica.

Doc. 315

December 26, 1859.

* * * * *

“ART. 4. The territory of the Republic is embraced within the following limits: upon the side which borders upon *Nicaragua*, those fixed by the treaty made with that Republic on the 15th of April, 1856; upon that of *New Granada*, those of the *uti possidetis* of 1826, except so far as determined by subsequent treaties with that Nation; and upon the other sides, the Atlantic and Pacific.

* * * * *

Treaty Between Great Britain and Nicaragua Relative to the Mosquito Indians and to the Rights and Claims of British Subjects. Signed at Managua January 28, 1860.¹ Doc. 316

* * * * *

ART. I. On exchanging the ratifications of the present Treaty, Her British Majesty, subject to the conditions and engagements specified therein, and without prejudice to any question of boundary between the Republics of *Nicaragua* and *Honduras*, will recognize as belonging to and under the sovereignty of the Republic of *Nicaragua* the country hitherto occupied or claimed by the *Mosquito* Indians within the frontier of that Republic, whatever the frontier may be.

The British protectorate of that part of the *Mosquito* territory shall cease three months after the exchange of the ratifications of the present Treaty; in order to enable Her Majesty's Government to give the necessary instructions for carrying out the stipulations of said Treaty.

ART. II. A district within the territory of the Republic of *Nicaragua* shall be assigned to the *Mosquito* Indians, which district shall remain, as above stipulated, under the sovereignty of the Republic of *Nicaragua*. Such district shall be comprised in a line, which shall begin at the mouth of the river *Rama*, in the

¹ Extracts from Senate Ex. Doc. No. 194, 47th Congress, 1st. sess.

Caribbean Sea; thence it shall run up the mid course of that river to its source, and from such source proceed in a line due west to the meridian of $84^{\circ} 15'$ longitude west from Greenwich; thence due north up the said meridian until it strikes the river *Hueso*, and down the mid-course of that river to its mouth in the sea, as laid down in Baily's map at about latitude from 14° to 15° north, and longitude 83° west from the meridian of Greenwich; and thence southerly along the Caribbean sea to the mouth of the river *Rama*, the point of commencement. But the district thus assigned to the *Mosquito* Indians may not be ceded by them to any foreign person or state, but shall be and remain under the sovereignty of the Republic of *Nicaragua*.

* * * * *

ART. VII. The Republic of *Nicaragua* shall constitute and declare the port of *Greytown*, or *San Juan del Norte*, a free port under the sovereign authority of the Republic. But the Republic, taking into consideration the immunities heretofore enjoyed by the inhabitants of *Greytown*, consents that trial by jury in all cases, civil or criminal, and perfect freedom of religious belief and worship, public and private, such as hitherto been enjoyed by them up to the present moment, shall be guaranteed to them for the future.

* * * * *

(L. S.)

(s) CHARLES LENNOX WYKE.

(L. S.)

(s) PEDRO ZELEDÓN.

Decree XXVII. Authorizing the Executive Power to Doc. 317
 Make a Contract with Mr. Thomas Francis Meagher for
 a Railway Between Bocas del Toro and Dulce Gulf.¹

SAN JOSÉ, July 9, 1860.

*The Senate and House of Representatives of Costa Rica in
 Congress assembled:*

Under the authority granted by Clause 4 of Art. 90 of the Con-
 stitution,

THEY DECREE:

Sole Article: The Executive Power is authorized to make with
 Mr. Thomas Francis Meagher, the representative agent of Mr.
 Ambrose W. Thompson, a citizen of the United States of the
 North, a contract for the construction of a railway between *Bocas
 del Toro* and *Dulce Gulf*, respecting in everything the approved
 bases which are annexed.

To the Senate:

Given in the Session Hall in the city of San José on the 9th day
 of the month of July, 1860.

JULIÁN VOLIO, President.

ANDRÉS SÁENZ, Secretary.

Let it be sent to the Supreme Executive Power:

Senate Chamber; San José, July 13, 1860.

MANUEL J. CARAZO, President.

JOSÉ SANTIAGO RAMÍREZ, Secretary.

FRANCISCO MONTEALEGRE, Secretary.

National Palace, *San José*, July 18, 1860.

Let it be executed:

JOSÉ MARÍA MONTEALEGRE.

The Secretary of State in the Department of the Treasury:

VICENTE AGUILAR.

¹ Collection of Laws of Costa Rica; vol. xvi, p. 198.

Doc. 318 Lieutenant Jeffers, U. S. N., to Captain Engle, Commanding Chiriquí Commission, U. S. N.

WASHINGTON, January 22, 1861.¹

SIR: Having been charged with the survey of the harbors at the termini of the proposed road across the Isthmus of *Chiriquí*, I have the honor to submit the following report, accompanied by a chart of the harbor of *Golfito*, the Pacific terminus.

In the prosecution of the duties assigned me as hydrographer to the *Chiriquí* commission, I submit the following plan of the objects of my survey:

On the Atlantic side: 1. An examination of the *Bocas del Toro*, *Drago*, and *Tigre*, to see if any changes had taken place in the twenty years elapsed since the survey of Commander (now Captain) Barnett, R. N., in 1838. 2. A detailed survey of such points as should be indicated as suitable termini for the proposed road. 3. Whenever the ship should be moved, to verify the general chart of the lagoon.

The distinguished reputation of Captain Barnett as a surveyor was a sufficient guarantee of the fidelity of the original surveys; I was therefore content to recover several of the prominent points of the survey, and from them fix the positions of the additional soundings, which I plotted directly upon his published chart.

These soundings were principally taken upon the leading lines and ranges in, and I find that no material changes have taken place at either of the entrances into the lagoon, and that his original ranges still afford excellent marks for entering the various harbors. Indeed, these were so prominent and well marked, and so satisfactory were the very first examinations, that the United States steamer *Brooklyn*, under the command of Captain Farragut, was, with perfect confidence, run into every part of the lagoon without the aid of a pilot.

In the absence of any information as to the probable terminus of the proposed road, I made a detailed survey on a large scale of the portion of the coast between the mouths of the *Guaromo* and *Róbaló* rivers, the only point suitable in a hydrographic

¹ 36th Congress, 2d Session, House of Representatives, Ex. Doc. No. 41.

point of view. The most favorable spot is at the mouth of *Frenchman's* creek, where an indentation of the shore-line forms a small bay, 800 yards in width, which has been named *Toucey Bay*.

At this point, five fathoms water is found at a cable's length from shore; three fathoms within thirty yards. Piers could then be run out to sufficient depth of water at a small expense. The average rise of the tide is one foot five inches. The anchorage unexcelled. This anchorage is open to northerly and easterly winds; but from the best information I was able to obtain, they never blow with sufficient force to raise an injurious sea.

In order to obtain an anchorage of undoubted security, I also examined *Shepherd's* harbor, to which point the road could, without difficulty, be taken. This is a completely land-locked basin, with great depth of water everywhere sufficiently near its shores for the formation of piers at small expense.

In short, no finer harbors than these can be found, and they are so faithfully laid down by the English surveys that a consultation of the charts will give a better idea of them than any description.

After completing the surveys on the Atlantic side, I proceeded to *Panama* to await transportation to the *Golfito* in the *Golfo Dulce*, the Pacific terminus. Owing to various causes heretofore reported on, it was not until after a delay of upwards of a month that I was enabled to reach *Golfito*, to which place myself, assistant, and a boat's crew from the United States ship *St. Mary's*, were, by the liberality of the Panama Railroad Company, conveyed gratis in their steamship, the *Guatemala*, which touched off the port for me on her return. I would here express my acknowledgments to the superintendent of the company, and to Mr. Wm. Nelson, their commercial agent at *Panama*, also to Captain John N. Dow, of the *Guatemala*, for their kind attention and assistance. Also to Commander Wm. D. Porter and Lieutenant Balch, executive officers of the United States ship *St. Mary's*, for the complete and careful equipment of the boat furnished by that ship.

As the *Golfito* had never been regularly surveyed, it became

necessary to make a complete trigonometrical survey, which, with the aid of Second Assistant Engineer G. B. N. Tower, United States navy, was successfully accomplished by the time fixed for the return of the Guatemala.

This beautiful harbor, situated twenty miles from the *Punta del Banco*, on the eastern side, and midway between the entrance and bottom of the *Gulf of Dulce*, is unsurpassed in natural facilities.

Favorably situated for entering with the sea breezes and leaving with those from the land, both of which are regular, there is no bar or other obstruction at the entrance, which is upwards of half a mile (1,200 yards) wide and about a mile in depth, with an excellent anchorage on good holding ground, in five, seven, and twelve fathoms; having the chart, no other guide than the eye is necessary. This outer harbor is separated by a sand spit, a mile in length by a few feet in width, (around the northern extremity of which there is an excellent channel, eight hundred yards wide, with upwards of five fathoms of water,) from the inner harbor, four miles in length, with an average breadth of one mile.

The inner harbor has about a square mile of anchorage, with a depth of five fathoms, (sufficient for the largest ships,) and about three square miles of anchorage for vessels of a smaller size.

On the northeast side of the harbor opposite the entrance; there is a range of hills several miles in length, parallel to the coast line, of an average elevation of about fifteen hundred feet, leaving a strip of level generally of but a few yards in width between their bases and the shore line. On this side of the harbor and for a distance of upwards of three miles, not less than five fathoms of water is found within half a cable's length of shore, affording ample room for wharves sufficient to accommodate any probable number of vessels frequenting the harbor, if the proposed road should be built.

Three streams—the *Golfito* at the eastern, and the *Corisal* and *Cañaza* at the northwestern extremity—empty into the harbor;

neither of these navigable, but either affording an ample supply of fresh water for the proposed town.

There is one level spot sufficient for the site of a large town; but the several valleys running back from the shore, in the aggregate, would give about a square mile of suitable building sites. The whole surface, to the tops of the highest hills, is densely wooded, excepting the sand spit and a small spot of about three acres near the entrance, under cultivation. A great variety of these woods are valuable for ship building or for other constructions; different woods excelling in the qualities of durability, hardness, and strength.

The cocoa-nut and caoutchouc or India-rubber trees are abundant. One family resides at the harbor, but on the opposite side of the *Gulf of Dulce*, at *Punta Arenas*, there is a village of some thirty families, and small settlements exist at several other points.

The survey was commenced in the worst month of the rainy season; but as it seldom began to rain before 3 p. m., I experienced no difficulties in the prosecution of the work from this cause. From 3 p. m. until midnight the rain was usually heavy and continuous, but the mornings were clear and pleasant, the temperature cool and agreeable—average, 6 a. m., 74°, meridian, 83°, 3 p. m., 84°, 6 p. m., 78°.

Shortly after my arrival at *Golfito*, Lieutenant Morton, United States army, in charge of the topographic party, arrived in a state of destitution—in want of money and supplies—both of which I furnished in sufficient quantity to enable him to continue his reconnoissance.

I was also applied to by the governor of *Gulf of Dulce*, requesting me to render him assistance in apprehending some lawless characters at *Punta Arenitas* who defied his authority. I did not consider that it would be expedient to assist him further than by a loan of arms and ammunition, the mere sight of which in his hands caused them quietly to submit and be shipped off in irons to *Punta Arenas*, in the *Gulf of Nicoya*.

It is, perhaps, as well to mention that the whole of the GULF OF DULCE, as far as POINT BURICA, is under the political juris-

diction of COSTA RICA, and that eighteen political prisoners, comprised in the late attempt at revolution under ex-President Mora, had been banished to, and were daily expected at, *Punta Arenitas* when I left.

The only remaining point to be considered is the grant of land to the United States government, under the contract with the Chiriquí Improvement Company. If the road should be opened, I am of the opinion that the lands would become very valuable. Without that condition they are valueless, as large tracts of vacant land can be obtained by the process of denouncement, gratis.

Very respectfully, your obedient servant,

WILLIAM N. JEFFERS,

Lieutenant, Hydrographer of Chiriquí Commission.

CAPTAIN FREDERICK ENGLE,

Commanding Chiriquí Expedition, United States Navy.

Doc. 319 **The Minister of Foreign Relations of Costa Rica to the Minister of the Republic at Washington, Don Luis Molina, Concerning the Usurpations of the New Granadian Authorities of Chiriquí.**

SAN JOSÉ, October 15, 1862.

The anomalous position in which General Herrán is placed¹ is to be regretted, and we also deplore the prolongation of the civil war in *New Granada*, for the position of that Government is embarrassing by reason of the acts which the authorities of *Chiriquí* are committing upon our territory. Those authorities, instigated, perhaps, secretly by the General Government or by the faction which now dominates at the *Isthmus*, have occupied the shores of *Burica* upon the Pacific, and overstepping the ancient

¹ General Don Pedro A. Herrán, Minister of the Granadian Confederation in Washington, who occupied the same position in *Costa Rica* in 1856, and whose powers were really ended by the entry into power of the liberal party, headed by General Mosquera and Señor Murillo. M. M. P.

bounds of the River *Chiriqui-viejo* they have established public officials fifteen leagues beyond that line.

This Government would like to suggest the arbitration of *Chile* to terminate this matter, as soon as there is a government definitely constituted in *New Granada*. What is the opinion of Your Excellency as to this?

I am with the greatest consideration,

FRANCO. M. IGLESIAS.

The Minister of Foreign Relations of Costa Rica, Don Julián Volio, to the Minister of the Republic at Washington, Don Luis Molina, Concerning the Usurpations of the New Granadian Authorities of Chiriquí.

Doc. 320

SAN JOSÉ, July 31, 1863.

The following despatch has been forwarded to me by the Ministry of the Interior:

No. 11. National Palace, *San José*, July 29, 1863.

To the Hon. Secretary of State in the Department of Foreign Relations and Public Instruction:

The Governor of the District of *Puntarenas* has forwarded to this Secretaryship the following note, which the Political Chief of *Dulce Gulf* addressed to him under date of the 24th instant:

"Señor: I am assured by different reliable residents that the Assembly of the State of *Panama* has passed a law providing for the leasing of the cocoanut groves on the Coast of *Burica* as far as the River *Esquinas* within this Gulf, having included under the rental the following points: *Banco*, *Coto*, and *Golfito*, inhabited now by a third part of the residents of this Canton; in which localities there are public officials appointed by this Authority.

"Also, there are embraced *San José* and *San Joseíto*, places where different plantations and agricultural operations are conducted by these residents.

"As there is no doubt that this is purposely instigated, inasmuch as already there are public announcements and bids being made, I trust that the Citizen Governor will be pleased to point out for me the line of conduct that should be observed with the

one or more purchasers to whom the places to which I have referred appear to have been knocked down.

"This scandalous act on the part of the State of *Panama*, without any true demarcation having yet been made between the Republics of *New Granada* and *Central America*, should be brought to the knowledge of our Government. For these reasons I inform you of it, for such purposes as you may deem proper.

"I ought also to state to you, Señor Governor, that upon the shores of *Burica* there are officials on the part of that Government, and that the distance from the location of the beaches of *Banco* is ten leagues more or less. This part of the land is the only one that is not inhabited on the part of the two Nations."

By supreme order I have the honor to transmit it to Your Worship for your information and the proper purposes, subscribing myself your obedient servant,

JUAN J. ULLOA.

Therefore, the Señor President desires to know your opinion, as to whether it would be best to send to Your Excellency special powers, suggesting at the same time to the Government of the United States of *Colombia* that they should do the same thing as regards their Minister at Washington, and that there the rights of each one of the two Republics should be discussed, signing a treaty which should put an end to so troublesome a question.

I am, Your Excellency, etc.

J. VOLIO.

Doc. 321 **The Minister of Foreign Relations of Costa Rica Don Julián Volio, to the Minister of that Republic in Washington.**

SAN JOSÉ, September 30, 1863.

Notwithstanding the opinion expressed by Your Excellency in your esteemed despatch No. 44 of the 2nd instant, that this Government should address to that of the Colombian Confederation, promptly and energetically, a note with proper proofs, concerning the usurpations which the agents of that Republic have committed

upon our frontiers, in order to prevent any act which might change the *statu quo* and maintain the *uti possidetis* until the respective boundaries can be fixed by negotiation, the Government, knowing the tendencies which have always been manifested by the neighboring State, its constant endeavor to appropriate the valuable ports of *Bocas del Toro* and *Dulce Gulf* and the steady refusal to recognise the rights of *Costa Rica* over the territories in question, believes that not only would no progress be made by such a note, but that it would be more likely to excite animosity and impede the peaceful and equitable solution; for which reason it is deemed better to at once invite the Government of the Confederation to end, either by a settlement or an arbitration, this annoying question, without making reference to the abuses recently committed by the Legislature of *Panama*.

It would be proper in such case for Your Excellency to suggest to Señor Murillo that he ask from his Government the instructions and powers necessary to take up that matter and determine it by one of the methods proposed.

If, notwithstanding what I have stated, Your Excellency believes that it should be preceded by the note making a claim indicated in the despatch to which this is an answer, the Government will listen to the substantial reasons upon which Señor Molina is always accustomed to base his opinion.

With the greatest consideration, etc.

J. VOLIO.

Protocol of Conferences Between the Minister Plenipotentiary of Costa Rica, Dr. Don José María Castro, and the Plenipotentiary of the United States of Colombia, Dr. Don Teodoro Valenzuela.

Doc. 322

BOGOTÁ, 6 to 30, March, 1865.

I. In the city of *Bogota*, on the 6th of March, 1865, being the time fixed previously for the beginning of the meetings, the Plenipotentiaries, Dr. José María Castro, Envoy Extraordinary and Minister Plenipotentiary on the part of the Republic of *Costa Rica*, and Dr. Teodoro Valenzuela on behalf of the United States of *Colombia*, met at the place agreed upon and having exchanged authentic copies of their respective full powers and finding them

sufficient and in good and due form, the Plenipotentiary of *Costa Rica* said:

That with the purpose of an orderly discussion and upon a proper basis, he had the honor to submit for the consideration of the Colombian Plenipotentiary a draft of a treaty, containing stipulations relative to the different points of friendship, commerce, navigation and boundaries, which are to be the object of the conferences.

The Colombian Plenipotentiary stated that he accepted it as a basis for discussion and that upon carefully examining it as the importance of the matter required he would have the honor to submit his views concerning such draft at the next conference, which was fixed by mutual agreement for Saturday, the 11th of the present month, at the hour of 12 and at the same place.

JOSÉ MARÍA CASTRO.

TEODORO VALENZUELA.

DRAFT OF A TREATY, TO SERVE AS A BASIS FOR DISCUSSION AT THE CONFERENCES OF THE PLENIPOTENTIARIES OF COSTA RICA AND COLOMBIA, PRESENTED BY THE PLENIPOTENTIARY OF THE FORMER.

ART. 39. The Republic of *Costa Rica* and the United States of *Colombia* fix and irrevocably recognise as the common, perpetual and exclusive boundary of their territories throughout the part where they border upon each other, a straight line which, starting from the *Punta de Burica* upon the shore of the Pacific Ocean, terminates at the most extended point of the East shore of the Island "*Escudo de Veraguas*," in the Atlantic Ocean. Consequently, *Costa Rica* irrevocably and forever renounces in favor of the United States of *Colombia* all right which it may have to any part of the territory which remains to the East of such line so fixed; and the United States of *Colombia*, in the same manner, renounces in favor of *Costa Rica* all the right it may have to any part of the territory which is left to the West of the same fixed line, with the exception of the Islands of *Providence*, *Santa Catalina*, *San Andrés*, *Albuquerque*, *Mangle Grande*, *Mangle Chico* (Big and Little Corn Islands) and the rest that make up the District known under the name of "*Canton of San Andrés*," which shall continue to belong to *Colombia*.

It is to be noted that for the determination of the localities referred to in this Article the names have been used which have been given respectively thereto upon the Chorographic Map of the State of the *Isthmus of Panama*, prepared by order of the Government, by the Colonel of Engineers Agustín Codazzi, in 1854, the original of which has been examined.

DRAFT OF A TREATY SUBMITTED BY THE COLOMBIAN PLENIPOTENTIARY TO THE LIKE REPRESENTATIVE OF COSTA RICA.¹

ART. III. The two Republics fix as common boundaries between their respective territories a line which, beginning upon the coast of the Pacific Ocean at *Punta Burica* at 83° 13' West longitude of the meridian of Greenwich, proceeds in a straight line to the sources of the River *Agua Clara*, at the highest point where its waters take their origin; from thence, continuing by another straight line to the summit of the Cordillera of *Las Cruces*; from thence along the crest of this same Cordillera to the source of the River *Doraces*, *Dorces* or *Dorados*; and down this river in the middle of its main channel to its outlet into the Atlantic Ocean. In consequence, the United States of *Colombia* renounces in favor of *Costa Rica* the right which it may have to the territory which is left upon the West of the line stated, not including in this renunciation the coast embraced between the River *San Juan del Norte* and Cape *Gracias á Dios* upon the Atlantic, nor the Islands of *Providence*, *Santa Catalina*, *San Andrés*, *Albuquerque*, *Mangle Grande*, *Mangle Chico* and the others that belonged to the old Province of *Cartagena*, under the name of "*Cantón de San Andrés*," the territories of which shall continue to belong to the *United States of Colombia*.

ART. IV. In order that these boundaries may be fixed with physical precision, the two Republics will appoint a commission

¹This draft is the same as the Calvo-Herrán Treaty of 1856, with the additions made by the New Granadian Congress of 1857 and with a new aggravation, since it included the coast embraced between the River *San Juan del Norte* and Cape *Gracias á Dios* as belonging to the United States of *Colombia*; an assertion contrary to the facts, to the agreed principle of the *uti possidetis* of 1810, created and invoked by *Colombia* and to positive International Law. This draft was not accepted by the Plenipotentiary of *Costa Rica*. M. M. P.

which shall do this within the period of two years, which shall have for a basis the following declarations:

1. That in no case shall there be left within the limits of either one of the two Republics, settlements of establishments which at present may belong to the other.

2. That the *River Doraces, Dorces* or *Dorados*, fixed by the preceding Article as the terminus of the division line upon the Atlantic Ocean, is the first river which shall be found towards the South-east from *Punta Carreta*, commonly called *Punta Monos*; and

3. That the private concessions made by the Colombian authorities in the neighborhood of *Dulce Gulf* shall be inviolate, and the parties interested in them shall not be disturbed in their possession, but in a general way the same rule respecting titles of private property shall be respected in the territory as in that which is left embraced within the limits of *Costa Rica*, under the present treaty.

II. In the city of *Bogota*, on the 15th of March, 1865, it having been agreed upon previously by the Plenipotentiaries to postpone until this day the meeting for the 11th of March, they met in the same place at the hour fixed, and the Colombian Plenipotentiary said:

That he had carefully examined the draft of a treaty which Señor Castro had done him the honor to submit to him, and that although he did not reject it wholly, he deemed it best instead of discussing it section by section, to present another draft for the consideration of the Plenipotentiary of *Costa Rica*, especially so that the latter should understand the point of view taken by the Colombian Government as to the questions involved in the negotiations.

Thereupon, he made various indications in reference to the principal articles of his draft, upon the idea that his Government considered points as prominent therein; one relating to the principles which it was desired *Costa Rica* should exhibit as a means of strengthening the friendly relations between the two countries and founding a rule of polity which, starting from a common basis, should serve as the foundation for the identity of their institutions; and the other relative to the territorial

boundaries which, for the United States of *Colombia*, were in a certain sense secondary, believing that the true interest of *Colombia* lay in favoring *Costa Rica*, giving to it the territory that it would need upon the Atlantic, provided there should not be included therein any city, town or municipality which should be administered by the Colombian authorities or under its laws.

The Plenipotentiary of *Costa Rica* said that as regards the principles, he would accept very willingly all those which did not conflict with the Costarican Constitution; and that as to the boundaries, those of the draft being the same as those fixed by the treaty of 1856, which had not been changed, he considered them upon the whole as not acceptable on his part.

The Colombian Plenipotentiary stated that those boundaries were not definitive ones for him but that he submitted them, in a certain sense, as subordinated to the questions as to principles.

After various observations along this line by each of the Plenipotentiaries, the one on behalf of *Costa Rica* said:

That he reserved the right to make in the subsequent meetings the indications or modifications which he might deem desirable in the Articles of the draft of the Colombian Plenipotentiary, doing so in accord with the instructions of his Government and without leaving the ground upon which the draft placed the questions, for as far as he was concerned it was satisfactory to disregard the old dispute concerning the legal boundaries and treat upon a footing of fraternity and mutual desirability for both countries.

Thereupon, it was agreed that the next meeting should be later fixed and by common accord.

JOSÉ MARÍA CASTRO.

TEODORO VALENZUELA.

III. In the city of *Bogota* on the 17th day of March, 1865. Having met by previous and common arrangement, at 11 a. m. this day, at the same place where the former meetings were held, the Plenipotentiaries of *Costa Rica* and *Colombia* proceeded in their third meeting as follows:

The Plenipotentiary of *Costa Rica* stated; that he had examined the above draft; that it was not possible for him to accept Arts. III, IV, and V, because it was not allowed by his instructions, because what was contained in them was that which, also

contained in the Calvo-Herrán Treaty, caused *Costa Rica* to decline to accept that treaty, and because it was not in accordance with the right which the Republic believed it had, nor what was expedient, according to many reasons which he stated.

Also he said that upon the basis of Arts. III, IV, and V mentioned he could not accept the VI and VII because they would require a change in the Constitution of *Costa Rica* which could only be accomplished by considerations of greater import.

He also said that he noted in the draft referred to a lack of stipulations relating to the extradition of criminals for ordinary offenses and that he insisted upon what was proposed by him concerning the matter in Art. V of his own draft, as well as what was contained also in XXXIX of the same referring to boundaries. In conclusion, he said that once having agreed upon the cardinal points, he would accept the other Articles proposed by the Colombian Plenipotentiary with some slight modifications based upon reasons that he would set forth in due course.

The Colombian Plenipotentiary said, that since the Congresses of both Republics had accepted the Treaty of 1856, the boundaries stipulated therein ought not to be considered as wholly inadmissible; and that in the same way that *Colombia* did not seek to reproduce its old claims, but took as a basis the draft of 1856, it would seem but natural that *Costa Rica* should do the same on its part; but that he had already had the honor to state at the previous meeting that his Government did not insist upon such boundaries as final, but his cardinal thought was otherwise; and that he would refer to the questions of principles and to the desire of favoring *Costa Rica* as much as possible, as an efficient means of assuring the friendship of that Republic and giving an example worthy of imitation in the relations of the American peoples.

Respecting Arts. VI and VII he observed, that they contained what was in the view of his Government the true and desirable basis for American union, which consisted in the support of the republican system or union recognised as indispensable for the security of the Continent; and that *Colombia* in honor ought to insist upon them, inasmuch as they showed that it gave due importance to moral considerations since it preferred their triumph to the attainment of material advantages.

And finally, that if *Costa Rica* had a Constitution which was irreconcilable with the principles of liberty established in *Colombia*, it was to a certain extent impossible for it to treat with the latter Republic, which could not be supposed.

As regards the stipulations relating to the extradition of criminals for ordinary offences, he said it was left out of the draft with a deliberate purpose, since his Government adhered to the principle that a delinquent upon whom was imposed the grave penalty of expatriation, when he had to breathe the air of a foreign country and a different moral atmosphere from that which he had transgressed, was by that very fact severely punished, and it was better to leave him far from the scene of his offenses, where he might feel himself rehabilitated in his own eyes, than to reach out to prosecute him in a foreign country with an implacability like that of ancient justice, but foreign to the ideas which the modern criminal law has introduced into civilized countries.

The Costarican Plenipotentiary said, that always respecting the constitutional principles of his country, he would at the next meeting propose various articles which in his opinion would meet the exigencies of the two parties.

Both of the Plenipotentiaries discussed alternately, in this strain, the ideas previously stated, and by common accord the next meeting was set for 12 o'clock on the next day, thus closing this meeting.

JOSÉ MARÍA CASTRO.
TEODORO VALENZUELA.

Doc. 323 Treaty of Friendship, Commerce, Navigation and Boundaries Between the Republic of Costa Rica and the United States of Colombia.

BOGOTÁ, March 30, 1865.

ART. 1. There shall be perpetual and loyal friendship between the Republic of *Costa Rica* and the United States of *Colombia*.

ART. 2. The two Republics fix as common boundaries between their respective territories, a line which, beginning upon the coast of the Pacific Ocean, at *Punta Burica*, at 83° 13' of longitude West of the meridian of Greenwich, shall run along the hills from that point toward the peak of *Limoncito*; from thence, in a straight line to the source of the "River *Chiriquí-viejo*" at the highest point where its waters take their origin; from thence in an easterly direction along the crest of the Cordillera which separates the waters of the two oceans, passing by the peak of "*El Picacho*," that of "*El Horqueta*," that of "*La Cumbre de la Playita*," the peak of "*El Hornito*," as far as the hill of "*Santiago*"; from this hill in a straight line toward the North to the source of the River "*Cañaverál*"; thence by the main channel of this river to its outlet in the Atlantic Ocean. Consequently, the United States of *Colombia* renounces in favor of the Republic of *Costa Rica* its rights over the territory which is left on the West of the line indicated as far as the River "*San Juan del Norte*," which empties into the Atlantic Ocean; not including in this renunciation the Island of "*Escudo de Veraguas*" and those of "*Providence*," "*Santa Catalina*," "*San Andrés*," "*Albuquerque*," "*Mangle Grande*," "*Mangle Chico*," and others that belonged to the old Province of *Cartagena*, under the name of "*Cantón de San Andrés*," the territory of which shall continue to belong to the United States of *Colombia*.

ART. 3. In order that these boundaries may be fixed with physical precision, the two Republics shall appoint a mixed commission, which shall undertake this one year after the request is made by either one of them. This commission shall proceed to discharge its duty governed by the chorographic map of the *Isthmus of Panama* prepared under the order of the Granadian

Government by the Colonel of Engineers Agustín Codazzi in 1854, the original of which has been examined for the stipulations of Art. 2.

The Minister of Foreign Relations of Costa Rica, to the Secretary of State of the Government of Panama, Concerning New Invasions by the Colombian Authorities Within the Territory of Dulce Gulf. Doc. 324

SAN JOSÉ, January 25, 1870.

Under date of the 31st ultimo a communication was received in this department from the Political Chief of *Dulce Gulf*, in which he gives an account that in the month of November last a commission composed of four persons, sent by the authorities of *Chiriquí*, presented itself at the little village of "*Esperanza*," and announced that from that date not only the village but also the territory embraced as far as the middle of the Gulf was the declared territory of *Panama* under the provision of the legislature of that State.

He also says that this commission undertook to take the census of the cattle owned by the residents for the purpose of collecting the tax imposed by a State law upon them; and lastly that several residents being frightened and afraid have abandoned crops and have sought refuge in the interior of this Republic.

The Captain of the Port of *Moin* also reports that from "*Bocas del Toro*" officials have been stationed at the outlet of the *Sixola*, a territory like that of *Dulce Gulf not disputed to Costa Rica* in any of the negotiations which have been carried on with *Colombia* concerning boundaries, a procedure which is all the more prejudicial to *Costa Rica* inasmuch as that River is the key of communication with settlements of the Republic and one of the arteries of its commerce.

The undersigned has not been able to give entire credit to such reports, because he can not conceive that the officials of the State of *Panama* would undertake a procedure so contrary to the principles of the most ordinary usage of International Law.

For this reason and before directing a claim to the General Government of *Colombia*, which under the Federal compact has

charge of international relations, he desires to ascertain through Your Honor the truth as to these acts, as to whether such measures may have been executed by order of the authorities of the State, or whether the fact of the existence of the commission being admitted and the latter not having received any order from the Government of the State for such an irregular procedure, those who have thus sought to disturb the peace and good understanding which happily exist between *Costa Rica* and *Colombia* shall be duly punished.

The undersigned relies upon the wisdom of the members who compose the Government of the State of *Panama*, in the expectation that the harmony will be maintained which should exist between brotherly and neighboring peoples; and that at all events their action will bear the stamp of the rules which govern among civilized Nations.

The undersigned takes this opportunity to offer to Your Honor the assurance of his distinguished consideration.

A. JIMÉNEZ.

Doc. 325 **The President of the State of Panama, to that of the Republic of Costa Rica, Concerning the Colombian Invasions at Dulce Gulf.**

United States of Colombia.

Sovereign State of Panama.

Presidency of the State.

PANAMA, May 21, 1870.

SIR,

Under date of February 4th last and in a note numbered 59 of the Department of Government an acknowledgement was made to the Minister of Foreign Affairs of your polite official note dated January 25th previously in the city of *San José*, which was for the purpose of stating that a communication had been received from the Political Chief of *Dulce Gulf* making a report that in the month of November, 1869, a commission composed of four persons, sent by the authorities of *Chiriquí*, presented themselves at the little village named "*La Esperanza*," and an-

nounced that from that day not only that village but the territory to the middle of the Gulf was declared territory of this sovereign State of the *Colombian Union*, by the provision of its legislature; the same commission undertaking to take a census of the cattle of the residents in order to collect the tax due thereon to this State, and that various inhabitants frightened and afraid had abandoned their crops and sought refuge in the interior of the Republic.

In this note it is also stated that the Captain of the Port of *Moin* reports to your Department that from "*Bocas del Toro*" officials have been stationed at the mouth of the river *Sixoula*, a territory, like that of *Dulce Gulf*, not disputed to *Costa Rica* in any of the negotiations which have taken place concerning boundaries between *Colombia* and the said Republic.

Notwithstanding, while it is properly stated in his note by the Señor Minister, that the General Government of the Union is charged with everything concerning the foreign relations of our neighboring and friendly nationalities, as an act of deference toward the Supreme Government of your Republic as well as like interest respecting ours, reports in detail were asked for from the Prefects of the Departments of *Chiriquí* and of *Colón*, to the latter of which is annexed the District of *Bocas del Toro*.

The officials to whom I have referred have made such reports and it is with no little concern that I must tell you that they do not correspond with what was communicated in the despatch to the Señor Minister by the Political Chief of *Dulce Gulf* and the Captain of the Port of *Moin*.

Both settlements appear to be situated upon Colombian territory, if attention be paid, as it should be, to the ancient and modern boundaries which separated *Colombia* from the Republic of *Costa Rica*, and in both settlements the officials of this latter Republic appear as exercising improper acts and those contrary to the principles and the most ordinary usage of international law.

It appears that the Political Chief of *Dulce Gulf* appointed as the head authority in an old cattle ranch developed by Colombian citizens and abandoned by its late holder the Priest José del Carmen Villamar y Arna a person named Mariano Tello, who

took possession of that location, exercising thereupon functions of simple authority in a settlement to which the name was given of the hamlet of *La Esperanza*. Some of the residents of the District of *Alanje* took refuge there with their cattle, taking advantage of this method of acting to evade the payment of the tax levied by the State law which is placed in the Isthmus upon the cattle-breeding industry.

The Captain of the Port of *Moin*, it is asserted, is doing the same, invading the Colombian village of "*Siroula*," situated upon the Eastern side of that river, and the persons José María Figueroa, one named Don Juan employed upon the road which is being constructed from *Limón* to *Cartago*, Serapio Obando and other Costaricans, entered therein, they removed the Colombian *Corregidor* Francisco Aguirre and appointed Señor Th. N. as principal *Alcalde* and Señor Thomas Downes as deputy, imprisoning the *Corregidor* and his wife, etc.

The information collected shows serious assaults upon the persons and property of those established in said village under the shelter and protection of the liberal laws of *Colombia*, greatly outraged by the so-called authorities of *Costa Rica*, among whom appears the name of one of the highest in the administrative hierarchy of its Government, the Vice President of the Republic, who had just arrived at the Port from *Limón* when it was talked of whipping the one commissioned by the Colombian authorities to undertake the census of the population of the village, and who having been seized therein was conducted bound to *Moin*, in the jail of which place he was afterwards put in the stocks. The citizen Vice President of the Republic, brother of Señor José María Figueroa, prevented the whipping, taking the Commissioner V. Aguilar out under the condition that he leave Costarican territory.

The Executive Power of the State would not credit what has been above stated and other acts which are said to have been committed by persons of *Costa Rica*, if it did not have before it an official proof that the invaders of the *Siroula* proceeded under the express authorization of your Government, as was declared to the highest political authority of *Bocas del Toro* by the Governor and Military Commander of the District of the Port of

Limón, from *Old Harbour*, on the 30th of April last, in a note which together with the despatch will be duly considered by the Supreme Government of *Colombia*. On the part of the Executive Power of the State, while regretting the occurrences upon the *Sixaola*, there would be now the best disposition to settle these matters promptly and satisfactorily, if, as has been said, there was not a prohibition against acting in anything relating to international affairs. But I think that the view expressed in the note of the Señor Minister should not be allowed to pass unnoticed, respecting the territory of the Gulf and that of the hamlet in question. Up to the present time the Executive Power has considered that the divisional line separating at this place the Republic of *Colombia* from that of *Costa Rica* did not give to the latter the ownership of the whole of the Gulf, nor consequently, of the and Cape *Blanco*.¹

It will be well to recall that *Colombia*, as the legitimate successor of the rights which the Crown of Spain held over the whole of the territory of which it is today constituted, has possessed and does possess it in an actual, effective and permanent manner, during the course of the years that have elapsed since the creation of the Viceroyalty of *Santa Fé* and the Kingdom of *Guatemala*, with their respective Audiencias and Chancelleries, without any one having disputed down to the present the limits fixed as the limit of both countries by the Spanish Government, on the Atlantic the River *Culebras*, called also *Doraces* or *Dorces*, and upon the Pacific the Gulf of *Dulce* between *Punta del Banco* and Cape *Blanco*.¹

¹These assertions have no foundation and are contrary to the documents even which emanate from the very authorities of *Panama*. It appears, however, that the President of the State of *Panama* considers the River *Culebras* to be the same as the River *Doraces*, *Dorces* or *Dorados*, and that he differs from the opinion of Dr. Fernández Madrid, who believed the *Doraces* to be one river and the *Culebras* another. Let there be noted also the important modification introduced into the designation of the southern frontiers. Already *Punta Burica* is no longer the point of departure or the termination of the jurisdiction of *Panama*, but the point of *Banco*, toward the North-west from *Punta Burica* and Cape *Blanco* (for Cape *Matapalo* ?), so as to select between these two extremes the most desirable boundary. Señor Fernández Madrid wanted the boundary to be selected in *Dulce Gulf*, between *Punta Burica* and *Punta Mala*, which are the two extremities that ALCEDO indicates for said

The modern limits are reckoned upon the ancient ones, according to the most highly esteemed geographers of both periods and according to the topographical charts of best repute. And if in any of the negotiations had been *Colombia* and *Costa Rica*, during the years from 1856 and 1865, there could have been conceded upon the South the territory that embraced the Gulf, and something beyond the *Doraces* on the northern side, none of these agreements having been ever carried out in fact, not one of them having been raised to the category of compacts obligatory upon *Colombia*, such concessions² could not damage its acquired rights to the part of that Gulf which it possesses, or its titles of proprietorship over the whole embraced by the *Bay of Almirante* and its extensive territory as far as the *Doraces* referred to, which rights it kept and will keep in view of the legal *uti possidetis* of 1810, adopted by *Colombia* as the regulating principle in its boundary questions with the neighboring and adjoining Nations.

So much as regards the legitimate titles of *Colombia*; while as regards the reciprocal interests of the two nationalities, the harmony that should exist between the two countries and the sentiments of true brotherhood which should inspire Costarican citizens as well as those of *Colombia*, this boundary question should be decided in accordance with the principles of justice and mutual convenience, by means of agreements which never leave behind them the evils that flow from violent and forcible acts.

In the meantime, and until the General Government, to which I have addressed myself, and given an account of these matters, shall have determined what is best to be done, I trust that listening to the counsels of prudence your procedure in this affair will

Gulf, and it is well known that Dr. Madrid considered ALCEDO to be "a most respectable authority in everything concerning the political geography of those regions. If ALCEDO is also one of the geographers of the President of *Panama*, he will be compelled to admit that the River *Chiriquí* is the divisional line between *Costa Rica* and *Veragua* and that *Dulce Gulf* and the peninsula and point of *Burica* belong to *Costa Rica* as the legitimate successor of Spain. M. M. P.

² *Colombia* never made any concession, and hardly recognised the right of *Costa Rica*. The very "*Carta Esférica*" (Spherical Chart) of 1809, cited by the Granadian Congress of 1857, excludes *Veragua* from the *Gulf of Dulce*. M. M. P.

be commensurate with the dignity of the worthy nation you represent and of your honored precedents.

With sentiments of consideration and respect I have the pleasure of remaining your obedient servant.

B. CORREOSO.

The Minister of Foreign Relations of Costa Rica, to That Doc. 326
of the United States of Columbia.

SAN JOSÉ, June 11, 1870.

A matter of importance affords me today the honor of addressing myself to Your Excellency.

The agricultural and commercial traffic which is transacted upon the frontiers of *Costa Rica* and the United States of *Colombia* has brought up new difficulties in respect to the boundaries of the two Nations.

My predecessor in this department directed to the President of the State of *Panama* a note of which I enclose a certified copy.

The President answered the provisional head of this Republic by a letter, of which I also enclose a certified copy.

According to that letter, the Gulf of *Dulce* and *Bocas del Toro* belong to *Colombia*.

It is not possible for me to have the pleasure of coinciding in this matter with the belief of the high official to whom I have referred.

I submit to the wise consideration of Your Excellency the reasons which I have for holding a different opinion.

In 1540 the Government of *New Cartago* was created, that is to say, *Costa Rica*, and the title of Governor was issued to Don Diego Gutiérrez.

According to this title the jurisdiction of Gutiérrez extended as far as the River *Belén* on the Atlantic.¹

¹This is an error. Alcedo also presents the River *Belén* to *Costa Rica*. The jurisdiction of Gutiérrez stopped at a distance of twenty-five leagues to the West of the River *Belén*; but this error leaves the argument of Dr. Montúfar subsisting, because the *Bay of Almirante* and the whole of the *Gulf of Dulce* as far as the great river of *Chiriquí* remained under the jurisdiction of Gutiérrez. M. M. P.

In 1574 the King Don Phillip II issued another title in favor of Don Diego de Artieda and indicated for him as the limit of his jurisdiction toward the North the Province of *Veragua*.

In a Memorial addressed to the King of Spain in 1652 by Don Juan Fernández de Salinas, Governor of *Costa Rica*, it is stated that the limits of this country are on the North the *Escudo de Veragua* and on the South a strip of *Nicoya* and plains of *Chiriquí*.²

In 1659 Arias Maldonado, successor to Salinas, explored the whole coast, including *Boca de Drago* and *Boca de Toro*; he visited the adjacent islands, took possession of them and subjected the Indians who inhabited them.

Another Governor of *Costa Rica*, in 1719, tells what he had done in *Boca del Toro* and the *Gulf of Dulce*.

A series of data, taken from the annals of the discovery, the conquest and the settlement of the frontier provinces, from the works of the historians and from the maps and geographical charts, have led me to the full conviction that on this occasion the opinion of the President of *Panama* is in no way in entire consonance with the fact.

It would afford me much pleasure as well as satisfaction to beg that Your Excellency will be pleased to give your attention to all that could be said regarding the matters mentioned, if the question of boundaries between the two Republics was now to be discussed; but there being no persons sufficiently authorized to decide it now, I only beg to propose to Your Excellency that you may be pleased to secure the adoption in *Bogota* of a resolution which, in the meantime and until the matter may be definitively settled, may avoid difficulties between the subordinate officials who are located on the frontiers of each of the countries.

The treaty celebrated between *Colombia* and *Central America* declares that both parties mutually guarantee the integrity of their respective territories, on the same footing that they were naturally found before the war of independence.

² From the year 1605 there are documents in which it explicitly appears that the *Escudo de Veragua* is the boundary of *Costa Rica* and that is implied by the *Capitulación* of Artieda and the Royal *cédula* of August 30, 1576. M. M. P.

The limits at that time are known.

The bases remained fixed by consent upon the natural boundaries; upon the boundaries that then existed, which was equivalent to recognizing the *uti possidetis* adopted by all the American States. It was a considerable time afterwards that *New Granada* ordered the establishment of a settlement at *Boca del Toro*; but at the same time *Central America* authorized Colonel Galindo to establish also a colony of Irish there.

The draft of a treaty, made by the plenipotentiaries Don Joaquín B. Calvo and General Don Pedro A. Herrán, recognized as the boundary toward the Pacific, *Punta de Burica*.

The same point was recognized as the boundary in the treaty made between the plenipotentiaries Señores José M. Castro and Teodoro Valenzuela.

The first of these two drafts fixed as the boundary on the North the mouth of the *Doraces*.

And the second, the channel of the River *Cañaverel*,³ as far as its outlet in the same Sea, without including the Island called "*Escudo de Veragua*."

Neither of these two drafts ever became a law, but they all agreed upon *Punta Burica* as the boundary on the Pacific.

And the *uti possidetis* before mentioned indicated the *Escudo de Veragua*, with which demarcation the very intelligent and learned Colombian, Teodoro Valenzuela, was in perfect harmony.

A provisional and immediate measure seems to be indispensable in order that the *statu quo* may continue to which I refer.

While writing the last word there was received in my office a note addressed to the Secretaryship of Government, by the *Alcalde* of *Térraba*, and another annexed from Señor Santiago Mayas, "King" of *Viceita*, in which it is stated that an attack is being made by men from *Panama* at a point which has always belonged and does belong to *Costa Rica*, the *River Sixoula*.

There is no doubt that such attack has not been determined upon by the President of the State of *Panama*, still less by Federal Government of the United States of *Colombia*.

³The River *Cañaverel* figures upon the Spanish maps with the name of "*River Cañas*." In the map of Kiepert and in the English ones it reads "*River Cana*." It empties to the South-west of the island of *Esucudo*, at 9° 1' North latitude and 81° 44' West longitude from Greenwich.

Also it must be that when the fact reaches the notice of the Colombian authorities it will be disavowed by them.

But this incident shows once more the urgent necessity that precautionary measures be provided in the interim of which I have had the honor to speak to Your Excellency herein.

I am, etc.

L. MONTÚFAR.

Doc. 327 **The President of the Republic of Costa Rica, to the President of the State of Panama, Concerning the Colombian Invasions Into Dulce Gulf.**

SAN JOSÉ, June 11, 1870.

I had the pleasure of receiving your esteemed letter dated the 21st of May, regarding the difficulties which have recently arisen in regard to the boundaries between *Costa Rica* and the United States of *Colombia*.

In view of it I gave instructions to the Secretary of Foreign Relations to address to the Secretaryship of State of your Republic the despatch of which I enclose a copy.

In that despatch you will observe the serious difficulties that are presented and the care taken to prepare a provisional measure, to the end that the *uti possidetis* of 1810 may be preserved, while the question is being settled by competent plenipotentiaries from both countries or by means of arbitration.

I make a like request of you, that you will be good enough, in the part with which you may be concerned, to take the steps necessary for that purpose. The affair demands that both parties try to settle it as quickly as possible.

I have reason to trust this arrangement will be as friendly as it will be beneficial for the two Republics. With this pleasing hope I take pleasure in assuring you that I am your obedient servant.

B. CARRANZA.

The Minister of Foreign Relations of Colombia to That of Costa Rica. Doc. 328

BOGOTÁ, August 10, 1870.¹

Secretaryship of the Interior and Foreign Relations.

BOGOTÁ, August 10, 1870.

The undersigned, Secretary of the Interior and of Foreign Relations of the *United States of Colombia*, has the honour to address the Minister of Foreign Relations of *Costa Rica* with the object of calling his attention to several events lately occurred and which the Colombian Government cannot overlook on account of their very serious character.

At the beginning of the month of April last an expedition which was armed in that Republic by Costa Rican officials, headed by José María Figueroa and formed, among other individuals, by a Don Juan, an employee of the railroad which is being built from the Port of *Limón* to the Pacific, Serapio Obandó, Francisco Morá, Pablo Terraba and Baltazar Nango, arrived at the Colombian hamlet of *Sixola* which was entirely defenseless, deposed its *Corregidor*, Señor Francisco Aguirre, appointing in his place as Principal *Alcalde*, Señor William Broson, and as his substitute Señor Thomas Dosones. They made prisoners the same Señor Aguirre and his wife, expropriated several pieces of property belonging to the former and to Señor Víctor Aguilar, who was a commissioner for the making of the census of the hamlet; gave order to the *Alcalde* they had appointed there to arrest said Señor Aguilar, who in fact was arrested and conveyed as a prisoner to *Moin*, where by order of the Captain of the Port he was kept in jail for several days and was going to be whipped, when the Vice-President of that Republic intervened to set him free; and at last he sent also as prisoners to the authority of *Old Harbour* Señores Darío N. and Cayetano Garay, whose whereabouts are unknown until the present.

A few days later, in the same month of April, a part of the men of the expedition headed by Horacio Mac Nish, as it seems, returned to the hamlet, seized some other goods of Señor Aguirre and when they left they threatened that they would make a third

¹ Archives of the Department of Foreign Relations of Costa Rica.

invasion with the object of committing similar depredations, especially on the few goods still left to that man.

In fact, this invasion took place in the following May. Nicolás González and one Figueroa, doubtless the same one who has been mentioned, with eighty Costa Rican soldiers occupied again the village of *Sixola*, hoisted there the flag of *Costa Rica*, fired a salute to it with their guns and during the days they remained there they committed to jail, without any known reason, the Colombian citizen Robert Jongh upon whom they also imposed the penalty of one hundred lashes, which was not executed because Señor Thomas Dosones interposed his pledges in his behalf.

Such scandalous offences which, as asserted by the very men of the expedition and also, in an official manner, by a high official of that Republic, the Commandant of the District and Port of *Limón*, were carried out by order of the Government of *Costa Rica*, have maintain in a state of alarm the Colombian villages of the frontier and have deeply surprised the Government of the Union, as having taken place whilst the two Republics were at complete peace and because it is ascribed as its only cause the recovery of territories which, it is pretended, have been usurped by *Colombia*, without this offences having been preceded by a claim or even by a notice, thus omitting all the rules prescribed for such cases by the International Law.

Your Excellency doubtless already knows most of those facts by the documents forwarded to you by the President of the State of *Panama*; but as they are depressive to the sovereignty of *Colombia* over the territories of which it has been in possession since a long time ago and which belong to it, and as they have given rise to serious damages inflicted upon Colombian citizens, it is the duty of the Government of the Union to state them to that of *Costa Rica* in order to protest, as in fact it does protest, against such acts, and to state the confidence it has that that Nation will prevent the repetition of those offences, which would make impossible the harmony between the two Republics, and will make the compensations that *Colombia* is entitled to demand for those already committed.

The Colombian Government, who desires to settle peacefully this matter, as well as all other matters actually pending with *Costa Rica*, will accredit within a short time a Legation in that

country and has no doubt that it will be benevolently received by the Government of Your Excellency.

The enclosed documents prove the facts stated in this despatch and although some of them are the same that the President of *Panama* forwarded to Your Excellency, the undersigned has deemed it convenient to send them as a complement of it.

With sentiments of my distinguished consideration, the undersigned has the honour to be Your Excellency's courteous servant.

FELIPE ZAPATA.

His Excellency the Minister of Foreign Relations of the Republic of Costa Rica.

San José.

The Minister of Colombia in San José to the Department of Foreign Relations of Costa Rica, Concerning the Colombian Invasions in Talamanca. Events on the Sixola and Changuinola. Doc. 329

Legation of the United States of Colombia,

SAN JOSÉ, October 20, 1871.

SIR,

On the 10th of August, 1870, the Colombian Department of Foreign Relations addressed to the Department of the same character of this Republic, a note in which a protest was made and a claim for certain acts committed at *Sixola*, in the month of April and May of the same year, by some individuals who, as it appears, were employees of the Government of *Costa Rica* or acting under its authorization.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of *Colombia*, does not know if the said note was answered and he has instructions to pursue the claim. With this purpose he has the honor to address himself to H. E. the Señor Dr. Don Manuel Alvarado, Minister of War in charge of the Department of Foreign Relations, in order to state to him that he hopes that this Legation may be advised of what the Government of *Costa Rica*, in view of such note, may have resolved or deems it proper to resolve.

The undersigned has, besides, instructions to present to the Government of this Republic another claim.

A person called Santiago Mallas or Mayay, entitling himself

an agent of the Government of *Costa Rica*, has pretended to exercise acts of jurisdiction in the village of *Changuinola*, which, as Y. E. knows, is located on the West of the *River Doraces*, the boundary between this Republic and that of *Colombia*, as the Government of the latter maintains.¹ *Colombia* has at all times been in the possession of *Changuinola*; and although *Costa Rica* also thinks it has a right to the territory in which this village is situated, such possession ought to be respected, not only because by Art. 7 of the treaty celebrated between old *Colombia* and *Central America* on March 15, 1825, the two Republics were obligated to respect their boundaries, as they then were, but also because it is the interest of both, in order to avoid complaints and reciprocal claims, to recognize their respective possessions in the condition in which they are now found, as long as their boundaries are not definitely fixed.

The jurisdictional acts which the aforesaid Mallas or Mayay has pretended to exercise tend to discredit the possession which *Colombia* has had and holds of the settlement of *Changuinola*; and therefore the Government of the Union has deemed that it should not let them pass unnoticed but that it is a matter in which the Government of *Costa Rica* be requested to disapprove them and issue orders tending to prevent their repetition.

And the undersigned, who has no doubt that Y. E. will find this claim a just one, has the honor to enclose a copy of the documents in which the facts appear of which the Colombian Government complains and takes pleasure in repeating that he is of H. E. the attentive and obedient servant.

ANTONIO M. PRADILLA.

United States of Colombia.
The Sovereign State of Panama.
Political Tribunal of the Region.
No. 117.

BOCAS DEL TORO, June 27, 1871.

SEÑOR PREFECT OF THE DEPARTMENT OF COLÓN:

The Señor José Isabel Guerra, Commissary (*Comisario*) of the settlement of *Changuinola* appointed by my authority, has

¹ The Minister of *Colombia* says in this passage that the *River Doraces* is the boundary between *Costa Rica* and *Colombia*, as it is maintained by his Government. What about the *Culebras*? M. M. P.

come to me with the information that an Indian of a white tribe, called Santiago Mayay, who among them is called Governor, appointed by the Government of *Costa Rica*, threatens his settlement, making thereon serious impositions, with alarming demonstrations, telling them that the aforesaid Government has authorized him to govern as far as the said river inclusive, for which he pursues the *Terbes* Indians who do not belong to him, seeking to subject them to his jurisdiction, which they resist, since they are earnest Colombians. He is constantly disturbing the Colombian subjects established in *Changuinola* and attempting to hinder their authority, as you will see by one of his orders which I have the honor to enclose herewith, referring to a Colombian called Matías Romero and his wife, inhabitants of the aforesaid settlement, who have presented themselves before me in corroboration of the report of the Commissary, and by this you will see the authority which has been usurped. If a stop is not put to such abuses, the time will come and not very far off when our Colombian citizens may have to abandon the place, with the loss of their interests and even their lives, for unless they submit themselves (which is impossible) he will invade the settlement by force, as he has said that he would do.

That the River *Changuinola* belongs to the sovereign State of *Panama* there is no doubt, its mouth being situated only eight miles to the West of that of the *Drago* and thirteen to the East from that of the *Sixoula*,¹ where the controversy was last year with *Costa Rica*; so that if the latter does not belong to it farther than the Western slope of its mouth, then the *Sixoula* is the same river *Culebra* which marked the boundaries with *Costa Rica* in the time of the former *Colombia*, and with much more reason

¹ The distance from the River *Changuinola* or *Chánguene* to the River *Sixoula* is not thirteen but seven and a half miles.

According to this Colombian authority, the River *Changuinola* or *Doraces* is not the River *Culebras*; but according to his chief, the President of the State of *Panama*, the *Culebras* and the *Doraces* are one and the same river, as also for the official geographer, Señor Felipe Pérez and for the cartographers and officials, Señores Ponce de León and Paz, who locate and draw their river *Culebras* or *Dorados* 32 miles to the West of *Punta Gorda de Tirbi* and 25 miles from the mouth of the *Changuinola*, *Chánguene* or true *Dorados*. M. M. P.

the one called *Changuinola*, which is distant from the former thirteen miles to the East, as has been stated; so that Santiago, authorized as he says by the Government of *Costa Rica*, is seeking to rule within the territory of the State, causing thereby troubles of the most serious character in that region.

A man of coarse manners and not known in the place, who was here shortly before the arrival of the Commissary of War, without the object of his visit being known, called José María Coronel, passed through *Changuinola* on his return, and he said that he was the Secretary of the Governor Santiago Mayay, appointed by the Government of *Costa Rica*, with orders for his conduct in his proceedings, and that these were to subject the *Terbes* Indians and to extend his dominion over the mouth of the *Changuinola* inclusive, everything to be under his orders including the settlement referred to; that this would be only for the present and that later the Government of *Costa Rica* would take possession further as far as the *Escudo de Veragua*.

In view of all that has been stated and being desirous of knowing what measures are to be taken in these cases in order to avoid their bad consequences, I apply to you in order that through you all this may be brought to the knowledge of the Citizen President of the State and the measures dictated which he may desirable.

I am your obedient servant, R. IGLESIAS.

This is a copy:

The Secretary: A. RAMIREZ.

This is a copy: The Secretary: J. MENDOZA.

NATIONAL PALACE OF INSPECTION; June 8, 1871.

SEÑORA MARÍA COLI:

You and your husband are to present yourselves within the district, in order that some matters may be settled.

And in case you do not comply with this my order I shall send a guard to bring you at your own cost. SANTIAGO MALLAS.

This is an exact copy of the order to which the Political Judge of *Boca de Toro* refers in his foregoing official communication.

The Secretary of State:

J. MENDOZA.

This is a copy:

The Chief Clerk of the office of the Secretary of Interior and Foreign Relations:

FLORENTINO VEGA.

This is a copy:

The Secretary of the Legation of Colombia in Costa Rica:

TEODOSIO CASTRO.

The Minister of the Government and ad Interim of Foreign Relations, to the Minister Plenipotentiary of Colombia.

Doc. 330

SAN JOSÉ, October 28, 1871.

There was duly received in this Department the communication dated the 20th instant, of H. E., Señor Dr. Don Antonio Ma. Pradilla, envoy extraordinary and minister plenipotentiary of the United States of *Colombia*.

H. E., Señor Pradilla, referring to a despatch of the Secretaryship of Foreign Relations of *Colombia*, dated August 10, 1870, renews the claim which the despatch of the Cabinet of *Bogota* contains, for acts exercised on the *Sixola* by persons who as it appears were employees of this Government or proceeding under its authority.

For this reason H. E. desires to know the course given to that negotiation and asks it of the undersigned.

The note of H. E., the Minister of *Colombia*, also contains another claim.

H. E. states that one Santiago Mallas or Mayay, describing himself as an agent of the Government of *Costa Rica*, has pretended to exercise acts of jurisdiction in the settlement of *Changuinola*, which as Y. E. states is situated to the West of the River "*Doraces*," boundary between this Republic and that of *Colombia*, as the Government of the latter maintains.

For the latter reason H. E. states at length arguments in favor of the position taken by the Government of *Colombia* and concludes by referring to the copy annexed of documents in which

the facts appear of which the Government of *Colombia* complains.

The undersigned, after bringing to the knowledge of the Sr. General President of the Republic the contents of the despatch of H. E., the Sr. Minister of *Colombia*, has been authorized to answer H. E., as he proceeds to do.

Regarding the first claim, relating to the *Sixola*, the Government has deemed that it would be more convenient and expeditious to discuss it with H. E., he having as he has the full powers that are necessary.

The distance at which we are from the Cabinet at *Bogota* would delay indefinitely, if it would not make impossible, the despatch of this negotiation.

Nothing, then, could be more desirable for both Governments than that of ending it through their respective plenipotentiaries.

As regards the second claim, the Government of the undersigned, without assenting nor accepting as just boundaries between the two Republics those which the Government of H. E. designates, since it cannot recognize any others than those fixed by the public treaty celebrated in *Bogota* by the plenipotentiaries of *Central America* and of the former *Colombia*, on March 15, 1825, is confident that this and all other difficulties will be dissipated upon getting to the bottom of the question of limits between the two nations and defining these in a just way, that will be honorable and desirable for both Republics.

He takes pleasure in assuring H. E., the Sr. Dr. Pradilla, of the best disposition of the Government for reaching a just solution, friendly and honorable, and takes great satisfaction in subscribing himself his most obedient servant,

M. ALVARADO.

Señor Pradilla to Señor Alvarado.

Doc. 331

LEGATION OF THE UNITED STATES OF COLOMBIA.

SAN JOSÉ, November 3, 1871.

SIR,

This Legation has received the note of October 30th last,¹ in which H. E., the Señor Dr. Don Manuel Alvarado, is pleased to answer that of the undersigned of the 20th of the same month, relating to the claims of the Colombian Government for certain acts committed at *Sixola* and *Changuinola* by the persons said to be agents of this Republic.

The undersigned is quite in accord with H. E. as regards the desirability of treating with this Legation the claim which the Colombian Government directly made for the *Sixola*, acts in the note of August 10, 1870. To clear up this question, in case it should not be already settled, was precisely what the undersigned proposed in stating to H. E. that he had instructions concerning the matter and that he hoped there would be brought to his knowledge the resolution which the Government of *Costa Rica* should have taken or would deem it well to dictate. The undersigned has, then, only to add that he would desire that H. E. take this matter into consideration in order to treat it from the bottom.

In the claim for acts committed in *Changuinola*, the undersigned has not claimed that the Government of *Costa Rica* recognizes different limits from those which the Treaty of March 15, 1825, indicated, but rather that this compact is the one that has been alleged as the basis of the claim. The Government of *Colombia* considers that according to the limits therein expressed the settlement of *Changuinola* was left included within the territory of the Union.²

The undersigned thinks that it should not be necessary to await the taking up of the negotiation of the treaty in order to settle

¹ This refers to the one of October 28th, which has been given above.

² The Minister of *Colombia* does not allege as a title the fact of actual possession by his country of the territory claimed by *Costa Rica*, but that which the Treaty of March 15, 1825, gives to it. This compact, however, does not indicate any limits and only requires the parties to respect those they had in 1825 and *Colombia* had not then overstepped its borders of *Veragua*, which took place, as an infraction of said treaty, in 1836. M. M. P.

this claim. It only has for its object to prevent a repetition of such acts as those committed by Santiago Mallas or Mayay, which might go so far as to compromise the friendly relations of the two countries; and to maintain, as regards the territorial possessions of both, the condition in which they were in former times, provided that the recognition which may now be made of certain territory being in the possession of one of the two countries shall not be a reason for not adjudicating it in the boundary agreement to the other, if the latter presents the best titles. With the entire omission of that negotiation and without any trouble whatever, the undersigned believes that this matter can be treated.

On the other hand, this claim arising out of a fact analogous to those which led to the note of the Secretaryship of Foreign Relations of *Colombia*, dated August 10th, it seems natural that if it is settled before the boundary treaty is celebrated, the other may also be settled.

With sentiments of his very distinguished consideration the undersigned has the honor to again assure H. E., the Señor Dr. Alvarado, that he is his most obedient servant,

ANTONIO M. PRADILLA.

Doc. 332

Señor Pradilla to Señor González.

LEGATION OF THE UNITED STATES OF COLOMBIA.

SAN JOSÉ, December 13, 1871.

SIR,

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of *Colombia*, has received the note which H. E., the Señor Don Salvador González, has had the honor of directing to him on the 9th instant, concerning claims for acts performed at *Sixola* and *Changuinola*.

As the declarations which H. E. makes in said note, as well as the general sense thereof, are not at all explicit, the undersigned has deemed it best to forward that document to his Government, so that it may resolve whether said claims are to be pursued, or whether he is to disregard them and enter upon the question of boundaries.

With sentiments of the most distinguished consideration, the undersigned has the honor to be of H. E. the very attentive and obedient servant.

ANTONIO M. PRADILLA.

Sr. González to Sr. Pradilla.

Doc. 333

SAN JOSÉ, December 9, 1871.

The undersigned, Secretary of Foreign Relations of *Costa Rica*, has the honor to acknowledge the receipt of the despatch of H. E., the Señor Dr. D. Antonio María Pradilla, envoy extraordinary and minister plenipotentiary of the United States of *Colombia*.

H. E. states that he is in accord with the undersigned as regards the desirability of treating with the Colombian Legation the claim which that Government made directly for the acts at *Sixola* on August 10, 1870, and adds that H. E. has nothing additional to offer in this matter, except his desire that it may be taken into consideration in order to treat it from the bottom.

With respect to the acts at *Changuinola*, H. E. insists upon making a preferred claim of them, and is pleased to add that under the Treaty of March 15, 1825, the Colombian Government considers that the settlement of *Changuinola* is embraced within its territory.

H. E. continues by stating that the settlement of this claim ought not to await the entering into the negotiation of the Treaty of Boundaries, because that claim only had for its object the prevention of acts like those committed by Mallas or Mayay, those which might go so far as to compromise the friendly relations of the two peoples, and because the recognition which might be made now of one of the two Republics being in possession of certain territory would not be a reason for refusing to adjudicate it in the agreement as to boundaries to the other, if it should be that the latter presented the better titles. Therefore H. E. thinks that with the entire omission of the boundary negotiation, and without any trouble whatever, this matter can be treated.

H. E. concludes with the indication that this claim arising out of facts analogous to those which led to that which was made

in the note of the Secretaryship of Foreign Relations of *Colombia*, dated August 10, 1870, it seems natural that if the same be settled before the Boundary Treaty be celebrated, the other may also be settled.

The undersigned, after having brought to the knowledge of the Señor General President the contents of the despatch of H. E. has received instructions (to answer?) as he proceeds to do.

H. E. will clearly understand that, there existing between *Costa Rica* and *Colombia* properties, or more properly speaking territories, which have not been duly marked out, it is easy for reasons to be frequently offered for mutual claims, by reason of one party or the other considering itself with a just title in possession of the unsurveyed territory.

This improper condition of affairs has aroused the most earnest desire for entering into a definitive arrangement of the boundaries. For that purpose the Government of *Colombia* has constituted here and authorized representatives with that important end in view; and *Costa Rica* has always shown its disposition and been animated with a proper willingness to put an end to such a state of uncertainty, as regards its boundaries with the Colombian nation, by means of an equitable agreement.

If such are the antecedents, there is no reason to assume not for one moment, that *Costa Rica* has sought to act violently, trampling under foot foreign rights, and still less when such rights may be those of the Colombian Nation, with which ours is united by so many ties, among which may be counted as the greatest the consideration and sympathy which the Government and people of *Costa Rica* profess for the Government and people of *Colombia*.

To make now of the incidents of the *Sixola* and *Changuinola* a preferred question, subordinating what is essential and permanent to what is imaginary and transitory, would be at once to put an obstacle in the way of a friendly settlement of boundaries, a thing which is not desirable nor is it in accord with the desires of the two countries.

In the view of this Government, as long as there is no definitive settlement of the boundaries, the Treaty of 1825 assures and guarantees the possession which both countries respectively had in the territories of each other, upon the same footing in which

they were naturally found before the independence. Since that time this Government, resting in its faith upon the treaty, considered itself in the tranquil possession of all the places occupied by the various settled tribes of *Viceita* and *Talamanca*, whose settlements and dwellings it is known extended as far as the *Escudo de Veraguas*, the limit of the Republic upon that side. The authorities established by one party or the other, at the epoch of the treaty, within such limits, and the territorial extension of their jurisdiction, should be mutually preserved and respected on the part of *Costa Rica*, without any changes which could improperly affect the right acquired and sanctioned by the agreement of the year 1825.

Costa Rica believes that it has at all times been in harmony with the principles of the treaty, and its Government could never have authorized acts, as in fact it never has authorized any in a contrary sense, unless it was previously provoked to it and placed under the necessity of making use of the means which have been customary in such cases.

To discuss from the bottom the acts of *Sixola* and *Changuinola*, which this Government disapproves, would be to enter fully into the investigation of the territorial question. The claim is based upon the right of possession, and the presumptive possession of those territories,—that of the *uti possidetis*,—belongs to *Costa Rica*.

Therefore, if the incidents of *Sixola* and *Changuinola* are to lead us to the examination of the documents which justify the right and the possession;—and if these documents can be no others than those which accredit the best right to the property acquired and co-existing at the time independence was secured, it would be most natural to omit the question presented and enter at once upon the principal one of boundaries.

The question being considered, as it has been up to this time, from the territorial point of view of each party, H. E. will understand that the duties of the governing authority prescribe the strictest watch over the rights and integrity of the nation, and in this sense the Government of the undersigned complies therewith in doing what they both require.

Nevertheless, the undersigned can offer the assurance that the incidents of the *Sixola* and *Changuinola*, known here through

the documents which accompany the claim, were not only performed without the authorization of the Government, but that they have caused a painful impression, because really those acts were contrary to the sense of fraternity and mutual understanding with which both countries are inspired.

With this statement the undersigned has the honor to subscribe himself of H. E., with the greatest consideration and respect, the attentive and obedient servant.

S. GONZÁLEZ.

Doc. 334 **Boundary Treaty Between the Republic of Costa Rica and the United States of Colombia (Montúfar-Correoso).**

APRIL, 1873.

ART. 1. The two Republics fix as common boundaries between their respective territories the line which, starting from the coast of the Pacific Ocean at "*Punta Burica*," at 83° 13' West longitude from the meridian of Greenwich, proceeds in a straight line by the peaks of the range from the said point until reaching the source of the River "*San Bartolomé*"; from thence a straight line across the Cordillera until reaching toward the North the source of the River "*Bananos*"; and from that point, following the course of said river, to its outlet in the *Bay of Almirante*.

Doc. 335 **Statement Relating to the Boundary Treaty Between Costa Rica and Colombia.**

SAN JOSÉ, August 23, 1873.¹

Department of Foreign Relations. Boundary Treaty Between Colombia and Costa Rica.

Without any intervention by the Ministry of Foreign Relations the Boundary Treaty referred to in this article has engaged the attention of the press.

That Treaty has not been submitted to the Legislative Body for its consideration.

It is expected that Congress will take the matter under advise-

¹ Official Gazette of Costa Rica, No. 40 of August 23, 1873.

ment, so that the official press will be able to give the corresponding reports to the Chamber and the Nation.

But the extra-official debate which has been initiated makes it needful that some data be given out from now forward.

The Minister of *Colombia*, in the conferences which were held in the Secretaryship of State, asked that the Minister of *Costa Rica* point out the line which in his opinion ought to be laid down, and that official very frankly drew a straight line between the *Escudo de Veragua* and *Punta de Burica*.

This was the way of doing it.

Señor Montúfar said that * * *

** * * yielding to the suggestion that he indicate the points by which the divisional line between *Costa Rica* and *Colombia* ought to run, he proceeded to point out the one which in his opinion ought to be fixed.

Law IV, Title XV, Book II, of the *Recopilación de Indias* established an Audiencia and Chancellery in *Panama*.

This Law fixed the boundaries of that Audiencia.

It sets forth that the Audiencia bordered upon that of *Santiago de Guatemala* and that it extended as far as the Government of *Veragua*.

Law VI, of the same Title and Book, established the Royal Audiencia of *Guatemala* and fixed the same boundary.

This clearly proves that under the Spanish administration our divisional line was *Veragua*.

Señor Don Felipe Molina, in his investigation of the boundary question, cited a title issued at Madrid on November 29, 1540, in favor of Don Diego Gutiérrez.

That title granted to Gutiérrez the administration of *New Cartago*. I have in my hands a copy, legally certified, of that title.

It conferred upon the Governor of *New Cartago* the land which was left to the King in the Province of *Veragua*, from a fixed and determined line.

This line was the termination of twenty-five leagues square, which had been given to the Admiral Don Luis Columbus.

The twenty-five leagues of Columbus began at the River *Belén* inclusive, counting by a parallel to the western part of the Bay of *Caravaro* (*Chiriquí Lagoon*).

I have in my possession, certified in the same way, the title that was issued to Don Luis Columbus. Its date is January 19, 1537.

In 1574 another title was issued by Don Philip II. In that title Don Diego Artieda Chirinos was appointed Governor and Captain-General of the Provinces of *Costa Rica*.

The same boundaries were fixed for the jurisdiction of Artieda y Chirinos as in the case of Gutiérrez.

Those boundaries were as follows: from Sea to Sea in latitude; and from the mouths of the *Desaguadero*, which is on the side of *Nicaragua*, to the Province of *Veragua*, in longitude, upon the North side, and from the confines of *Nicaragua* on the side of *Nicoya* to the Valleys of *Chiriquí*.

Taking these facts and knowing the position of the River *Belén*, there is nothing else to do, as Señor Molina says, than to draw upon any map the square of twenty-five leagues which was reserved for Columbus.

This operation having been performed, it is evident that the bay of *Boca del Toro*, with all its islands and coves, lies outside the said square, and consequently in the territory of *Costa Rica*.

Don Domingo Juarros, in his History of *Guatemala*, says that the limits of *Costa Rica* are: upon the North Sea, from the mouth of the River *San Juan* to the *Escudo de Veragua*; and upon the South as far as *Boruca* (Vol. 1, p. 56).

In 1754 Don José Mier y Caballos made a report upon our boundaries. He stated that he had seen in the archives written documents of the year 1522 and that in the same archives he found evidence that to Governor Chirinos there had been indicated as the limit of his jurisdiction: upon the North Sea from the mouth of the River *San Juan* to the *Escudo de Veragua*, and upon that of the South as far as *Boruca*.

In the work of Bonycastle on Spanish America, the Vice-royalty of *Sante Fé* is described as consisting of the following provinces:

<i>Jaén de Bracamoros.</i>	<i>Quirós.</i>
<i>Santa Marta.</i>	<i>Maynas.</i>
<i>Mérida.</i>	<i>Cartagena.</i>
<i>Quito.</i>	<i>Chocó.</i>
<i>Popayán.</i>	<i>Antioquia.</i>
<i>Santa Fé.</i>	<i>S. Juan de los Llanos.</i>

Three Provinces of *Darién*, *Panama* and *Veraguas* in *Tierra Firme*.

In the *Diccionario Histórico y Geográfico de América y de las Indias Occidentales* (Historical and Geographical Dictionary of America and the West Indies) the following statements are made:

"*Chiriquí*. Old district of the Province and Government of *Santiago de Veragua* in the Kingdom of *Tierra Firme*. It is the last district of that province, which separates that Government from that of *Guatemala*, and borders upon the Province of *Costa Rica*.

"*Chiriquí*. River of the province above mentioned, which rises in the mountains to the South and flows into the Sea, serving as a boundary to that province and separating it from that of *Costa Rica* in the Kingdom of *Guatemala*."

In the year 1652 the Spanish Government marked out anew for Don Juan de Salinas the boundaries of *Costa Rica*, from the confines of *Nicaragua* on the North to the *Escudo de Veragua*. The document to which I have reference, certified in due form, is in my possession.

In the year 1792 the Captain-General of *Guatemala* ordered the Naval Lieutenant del Río to explore the islands of *San Andrés* and *Providencia*, by reason of their being under his jurisdiction, and to furnish an account of their inhabitants and political condition.

In 1793 del Río made his report at *Trujillo*, on the 5th of August.

This Naval Lieutenant recommended a project for depopulating the islands, at that time inhabited by English, and the transfer of those who dwelt there to the *Mosquito Coast*, so as to settle those coasts and put an end to contraband trade.

This was a question affecting the Royal Treasury and it could not be treated except by the officials under whose jurisdiction the aforesaid islands belonged.

In 1794 the Captain-General directed the report of del Río to be sent to the Board of the Indies (*Junta de Indias*) and supported the recommendations made by del Río.

In 1794 the inhabitants of the islands mentioned forwarded a contrary petition to Spain. In this they asked that the King con-

stitute a Government subordinate to the Viceroyalty of *Santa Fé*.

This is an evident proof that at that date the islands referred to did not belong to that Viceroyalty, but that they formed a part of the Captaincy-General of *Guatemala*.

Other documents prove this fact with greater force. Let us look at them.

In 1795 the King appointed Don Tomás O'Neille as Governor of those islands; but he positively refused to segregate them from the Captaincy-General of *Guatemala*.

Our limits, therefore, were not in doubt in that year.

Nor were they in question in 1797, for then Don Tomás O'Neille came to *San Andrés*, took command and at once asked the Captain-General of *Guatemala* for aid of men, money and arms for his Government.

The Captain-General of *Guatemala* directed O'Neille to go to the Fort of *San Carlos* to receive the aid asked for.

In 1801 O'Neille sent to Spain another petition by the inhabitants of the islands, asking for their segregation.

In 1803 the *Junta* recommended to the King the segregation of the islands and also of the coast from *Gracias á Dios* as far as *Bluefields*.

By Royal Order of 1803 the Minister of War stated that the King was in accord with the view of the *Junta*.

In 1804 a statement was sent to Spain in which O'Neille stated conditions for taking charge of the Government of *San Andrés*.

In 1805 the conditions of O'Neille were declared to be inadmissible.

No document has been presented by *Colombia* which states that the Royal Order was carried out, making the segregation.

Thus it was that when O'Neille withdrew everything was left as it had been before 1803.

The principal argument, or better said the only argument as regards Spanish law, is based upon this Royal Order of 1803. Many observations may be made concerning it and the first of them is the following.

It is a universal principle of jurisprudence that things are dissolved in the same order in which they were combined.

The border line between the Viceroyalty of *Santa Fé* and the

Captaincy-General of *Guatemala* was marked out by laws inserted in the *Recopilación de Indias*, by Decrees and by *Pragmáticas* (Royal Ordinances). It was necessary to proceed in the same manner in order to change these boundaries.

I have not seen presented by Señor General Herrán, nor by Señor Valenzuela, nor by any of the Honorable Representatives of *Colombia*, any *Pragmática Sanción* (Royal Ordinance) or Decree, nor even a Royal *Cédula*, which changes our borders.

The Royal Orders were temporary dispositions, which were not signed by the King, but merely subscribed by one of the Secretaries of the Department. Serious matters and affairs of importance, such as demarcations of provinces and Kingdoms or States unquestionably are, could not be determined by the simple issue of a Royal Order, which, as before stated, related only to passing affairs and those of little import.

The segregation never went into effect.

The littoral which was spoken of continued to be united to *Central America*.

This was the situation of affairs when *Colombia* secured its independence.

The Spanish authorities, after the independence of *Colombia*, continued in the possession of the territory which *Costa Rica* defends. That territory was not freed from Spain until after *Central America* was emancipated.

Therefore the extension to which I refer was always *Central American*."

Señor Correoso presented again the arguments with which the public is familiar, in favor of the Colombian interests.

They did not contain, as regards Spanish law, any resolution either prior or subsequent to the Royal Order of San Lorenzo. They rested upon that Royal Order alone and the acts of the Colombian authorities.

Señor Correoso declared that in the extent claimed by *Costa Rica*, as its own, settlements that were quite Colombian existed

and which were administered entirely by the authorities of his own country; and that neither the Constitution nor the interests of his Republic would permit the cession of whole settlements.

Being advised of all this, the Chief of the Nation gave instructions to his Minister to trace the line that is indicated in the "Report of Foreign Relations."

On the 1st of May, the President, in speaking of this line, stated as follows:

"*Costa Rica* could have insisted upon the recognition of the boundaries as traced in its ancient titles, as the unequivocal source, and claimed possession of settled territories which have formed for many years back an integral and very valuable portion of Colombian territory; but it has yielded to the necessity of recognising how difficult and even impossible it would be for *Colombia* to cede those settlements, the long and peaceable possession of which has given to it in a certain degree a right which could be set up as against what we could allege as to our documentary titles. Uninhabited territories can be ceded, but it is difficult to impose by force a nationality which compels a change in the habits and ancient customs of a people.

"Nevertheless, the divisional line assures our ownership and the peaceable possession of many leagues of land which were claimed from us unjustly, and of a portion of the *Bay of Almirante*, the largest and most commodious in all the Seas."

The Chamber responded to the Message of the President in very favorable terms.

As yet, however, the Executive Power has not submitted the Treaty as contemplated to the Congress. So that, for the moment, all discussion is premature.

When the Convention in reference to boundaries is submitted to debate in the Legislative Body it ought to be taken up point by point in everything that relates thereto.

But from this time it can be asserted that, even if the Executive Power has initiated what in view of the facts and the situation he may have deemed best for *Costa Rica*, he is not to be

considered infallible, nor will he look with concern upon any modification by the Legislative Body.

The Executive Power is earnestly desirous of the welfare of the Republic and in no event will he be so proud as to feel offended because the first of the powers making up the Government, which is the "legislative," should be the authority to most fully examine the matter and take the greatest interest in it.

Statement of the Minister of the United States of Colombia Concerning the Boundary Treaty With Costa Rica.

Doc. 336

SAN JOSÉ, August 30, 1873.¹

LEGATION OF THE UNITED STATES OF COLOMBIA,

SAN JOSÉ DE COSTA RICA, August 30, 1873.

SIR:

Since, in order to enlighten public opinion it has been deemed proper to publish, in the official Gazette No. 40, the statement made by Your Excellency in support of the divisional line that you proposed to the undersigned, it would seem to be conducive to the same purpose that there should also be published the reply that I made in defense of the interests I represent.

Therefore, I hope that the Honorable Señor Secretary will be pleased to give me space in the next number of that official paper in order that the said reply may be also published.

I am confident that the Señor Secretary will understand that the only purpose I have in this matter—the same that moves this Republic's Government—is to make uniform that opinion and to enlighten it in a matter that engages interests of high importance.

I avail myself of this opportunity to do myself the honor to reiterate that I am the Señor Secretary's

Most obedient servant,

B. CORREOSO.

To the Honorable, the Señor Minister of Foreign Relations of Costa Rica.

¹ Gaceta Oficial of Costa Rica, September 14 and 24 of 1873. Nos. 43 and 44.

Boundary Treaty Between Colombia and Costa Rica.

Upon the publication in the official Gazette of the arguments on which the Señor Secretary of Foreign Relations founds the proposal he made to the Minister of *Colombia* for the marking of the divisionary line between the two countries by means of a straight line from the *Escudo de Veragua* to *Punta Burica* the statement was made that—

“Señor Correoso presented again the arguments with which the public is familiar in favor of the Colombian interests.”

The public is not familiar with those arguments; and in order that it may be able to judge them, they will be published herein-after.

These are not *all* the arguments that can be adduced in this question. The Minister of *Colombia* confined himself to refuting the points that the Señor Secretary discussed.

When the statement of Señor Montúfar was presented, Señor Correoso answered as follows:

“The undersigned, having examined with due attention the statement of the arguments on which the Honorable Señor Secretary of Foreign Relations bases the rights that *Costa Rica* judges it has over an important part of the Colombian territory, hastens to reply thereto, persuaded that Señor Secretary will rectify his ideas by a more accurate examination of the documents that he has presented on behalf of those ideas.

“Law IV, cited by the Señor Secretary, does not provide that the jurisdiction of the *Audiencia of Panamá* reaches *as far as* the Government of *Veragua*; on the contrary, it says that this Government *is a part* of the jurisdictional district of that *Audiencia*. This Law says, in stating the provinces that should form that district:

“* * * Let the *Audiencia* have for its district the Province of *Castilla del Oro* as far as *Portobelo* and its territory; the City of *Natá* and its territory; THE GOVERNMENT OF VERAGUA; and on the South Sea, towards *Peru*, &, &, &.”

“I beg Señor Montúfar to be pleased to consult again the Law cited in his statement (Book II, Title II, Folio 188 of the *Recopilación de Indias*.)

“Law VI, also cited by the Señor Secretary, which states the provinces that should form the jurisdictional district of the *Audiencia* established by it in *Guatemala*, does not mention among them that of *Veragua*; on the contrary, it commands the said *Audiencia* to divide boundaries on the East with that of *Tierra Firme*, in which Law IV, as I have already proved, had included the Province of *Veragua*.

“The report on this Law will confirm what I have just affirmed (Law VI, Title X, Book II of the *Recopilación de Indias*.)

“From the examination of these two laws, I deduce that the citation made by Señor Montúfar, far, very far, from giving the slightest right to *Costa Rica*, gives it all, and in an absolute and indisputable manner, to *Colombia*; and that the denomination of *divisionary* line given to the extension of territory of the Province of *Veragua*, can only be accepted inasmuch as it means that the integrity of that province does not undergo any diminution; that is to say, that what is sought is a line that shall leave it included, as it must be, in the ancient and actual jurisdictions.

“And if it be necessary to support this deduction, I will cite here Law IX, Book V, Title I, Folio 143 of the *Recopilación de Indias* which says in three lines all that we need to know to make this point clear:

“‘Let the WHOLE Province of *Veragua* belong to the Government of *Tierra Firme*.’

“It is dated on March 2, 1537; that is to say, later than the Laws to which I have made reference. Upon being enacted, there were charged on the Royal Treasury the rents that that province had to pay to the Dukes of *Veragua* whose fief it was.

“This Law was expressly issued to invalidate the title formerly granted to the family of Columbus, on which the Señor Secretary relies.

“Later, by the Royal *cédula* of April 29, 1717, Don Antonio de la Pedrosa y Guerrero was authorized to suppress the *Audiencia* of *Panama* and *Tierra Firme*, it being understood, says the *cédula*, that the territory and jurisdiction embraced in it, shall be hereafter aggregated to the Viceroy, *Audiencia* and Accounting office of the City of *Lima*.

“It is well known how *Tierra Firme* came to be a part of the Viceroyalty of *Santa Fé*.

“But if there is still any doubt about this, I will cite, in corroboration of what I have asserted, a comparatively modern document.

“The Royal *cédula* of June 24, 1766, issued in consequence of the disobedience of the Governor of *Portobelo*, Don Manuel de Agreda.

“The King says there:

“I have resolved to declare that the Governors of *Portobelo*, VERAGUA and those of the other provinces OF THE DISTRICT HELD BY THE EXTINGUISHED AUDIENCIA OF PANAMA, shall be subordinated in political and military affairs to the Governor and Commandant General of that Capital, &c.’

“Any doubt that could arise from the antiquity of the measures in which we are searching for the truth in this controversy disappears with this document which is the last that we can consult relating to the point discussed, as coming from the Sovereign himself.

“But it will always be useful to recall here to the Honorable Señor Secretary that according to the Laws and *Cédulas* cited, the agents of the King in the Viceroyalty always extended their jurisdiction over the Provinces of *Veragua* and *Alange*.

“As a proof of this I will cite, as irrefutable documents, the reports of the Viceroys of *Santa Fé* that I am able to furnish to Señor Secretary.

“Señor Don Manuel Guirior, for example, says upon reporting on the garrisons of the *Isthmus*, ‘that those of *Veragua* and *Alange* depend in all matters upon the orders of the Governor of *Panama*.’

“And Señor Ezpeleta, on December 1, 1796, reports that ‘the missions of the *Province of Veragua* had established by that time six settlements with 7834 neophytes, 289 heathens, children of both sexes, and 341 couples of married Indians * * * &c.’

“This same Viceroy ordered that the map of the Viceroyalty should be drawn according to the documents which existed at that time in the Spanish archives and in those of the Viceroyalty, and the boundaries marked on that map between the Province of *Veragua* and the Captaincy-General of *Guatemala* are the River *Culebras* on the Atlantic and the *Punta Burica* on the Pacific.

“The subjection of the inhabitants of this province to the Viceroyalty is proved by its statistics, its contributions of blood and money, its participation in the national defense and by thousands of documents that I will cite if it should be necessary, and that confirm the agreed jurisdiction over *Cañazas*, *Guarumos*, *Alange*, *Potrero de Bugaba*, *Sitio del Arado*, &c, which even today form, obediently to law and to the interests of their mother country, a most interesting part of the State of *Panama*.

“The said jurisdiction is likewise confirmed by the report, in my custody and which the Señor Secretary can consult, of a most respectable personage, the *Fiscal* protector of the Indians of the Royal *Audiencia* and Judge preserver of the Royal rents, Don Francisco A. Moreno y Escandón, who was commissioned by the Viceroy to make the official visitation of the Viceroyalty. He makes the Viceroyalty border on *Mexico* by *Costa Rica* and *Nicaragua* and he mentions the provinces of *Veragua* and *Alange* as a part of the district of its jurisdiction.

“Besides, the Señor Secretary knows well, because it is very notorious, how before that time, in 1787, the English schooner *Nancy* was captured at *Bocas del Toro* and submitted to trial in *Cartagena*, which capture was made by the Midshipman Don Fabián Avances by express order of the Viceroy of *Santa Fé*, who, in the exercise of his jurisdiction had forbidden the fishing for pearls and turtles in those islands. In that time there were established rules for the exercise of that industry and penalties against their violation. * * *

“And I could cite as well many other facts as important as these.

“But what I have stated up to this point in reply to the first affirmation of the Señor Secretary would seem to be enough to convince him that the province of *Veragua* has belonged from time immemorial to the Viceroyalty of *Santa Fé*, now *Colombia*, and has always been under its jurisdiction.

“In order to determine the divisionary line properly so-called, the Señor Secretary cites a title issued at Madrid on November 29, 1540, in favor of Don Diego Gutiérrez.

“A legalized copy of that title exists also in this Legation.

“If we shall accept the principle of universal jurisprudence invoked in the same statement of the Señor Secretary, that * * * ‘things are dissolved in the same order in which they were combined,’ it will be necessary to agree that the laws cited in the statement I reply to and which meaning was fixed at the beginning of this work, issued six years before the title of Gutiérrez, cannot be considered as revoked by a LICENSE of an entirely inferior character than that of the laws.

“This title is only one of those conditional, vague and undetermined LICENSES which in that time were given to hundreds of persons with the purpose of uniting all the efforts of the subjects in behalf of the Sovereign, and which by no means altered the Royal measures that bear the name of laws.

“And this is so true that in the same manner that the title of Diego Gutiérrez was issued in 1540, similar hereto, had been granted to Felipe Gutiérrez in 1534, without this having been considered by the Spanish Sovereign as a hindrance or even a reason to be consulted for the issue of the laws of which I have already spoken and that bear dates in 1535 and 1537.

“Besides, the *capitulación* made with Diego Gutiérrez does not erect a Government nor was it given as a title of Governor of *Nueva Cartago*, which is barely mentioned herein, and then only incidentally; on the contrary, it is a license to go ‘to conquer and settle *Veragua*.’

“The careful reading of this *capitulación* proves that when it was made *Veragua* was considered as an entity separated from that of *Cartago* (whether this last really existed) and that all it says about boundaries relates to the same province and not to *Costa Rica*.

“Thus, for example, the preamble says:

“ ‘Whereas, Diego Gutiérrez, it has been stated to Us on your behalf that, by reason of your great desire to serve Us and for the enlargement of the Crown of Castile, you offer to go to *conquer and settle the land that remains to Us in the PROVINCE OF VERAGUA*, that you will also conquer *the islands that there may be upon the shores of the said land, in the North Sea*, which are not conquered, and to take from these our Kingdoms at your cost and expense the ships, men, &c.’

“And then it says in another place:

“*Item:* Deeming it to be for the service of God, Our Lord, and Ourselves, and to honor your person and to grant you a favor, We promise to make you *Our Governor and Captain General* OF THE SAID LAND AND ISLANDS, for all the days of your life and of an heir.’

“It would be necessary to force the sense of these words to deduce from them anything not relating to the same Province of *Veragua*; and although it is true that in this same title mention is incidentally made to Gutiérrez of the Government of *Cartago*, it is not to be deduced from this that in this Government was included that of the other province which he was allowed to conquer and settle under the promise that he was to be appointed Governor thereof.

“But I hold to be useless any discussion of the title granted to Diego Gutiérrez, because the Señor Secretary must have also in his hands the title to which I have heretofore made reference, and which was granted in 1534 to Don Felipe Gutiérrez, for the said title is in the archives of Spain in the very book, entitled ‘REGISTER OF VERAGUA,’ in which is found the one he has been pleased to cite, and it is natural to suppose that a copy of it has also been made for the sake of justice that must preside over this controversy.

“At all events, a copy of it, duly legalized, is to be found in this Legation.

“That *capitulación*, which makes no mention whatever of NUEVA CARTAGO, gives rise to the certain conviction that it was not intended to establish a new province; that the thing granted was the title of *Governor of the Province of VERAGUA*, to which boundaries were fixed, and which later was annexed to *Tierra Firme*, as I have already proved.

“Therein Felipe Gutiérrez is informed that:—

“* * * ‘We give license to you in order that you, in Our name, may conquer, pacify and settle THE SAID PROVINCE OF VERAGUA, and this you must do within eight months from this date, &c.’

“* * * *Item:* * * * in order to honor your person We promise to make you, and We do make you, OUR GOVERNOR and *Alguacil Mayor* OF THE SAID PROVINCE for all the days of your life.’

"The King expressly denied to Diego Gutiérrez the title of Governor of *Veragua*, in the same manner that he expressly granted it to Felipe Gutiérrez, whose term of office was fixed at ten years. The first named only received the office of *Alguacil Mayor*, and he did not enjoy either the pre-eminence or the powers of the latter.

"The Spanish Government itself never considered those titles as the establishment of a new Government, but only as matters relating to the Province of VERAGUA. I could easily strengthen this affirmation.

"Besides, if we except Herrera, no historian mentions the Government of *Nueva Cartago*, and this same author says:

"'*Nicaragua*: name of the Province of *Cartago*.' (Q. O.).

"The measure of 25 leagues on the map, which the same title recommends, can only be useful to convince us of the false geographical knowledge of that time, as is very well observed by Señor Quijano Otero, enlightened National Librarian of *Colombia*.

"I therefore think that the title cited by the Señor Secretary enables us to demonstrate many facts relating to the establishment, extent, etc., of the Province of *Veragua*; but it does not establish the rights of *Costa Rica* over those territories.

"Besides, it seems to me that Law IX already cited, should give the exact interpretation of those *capitulaciones*, which, as they cannot alter it, must be examined as licenses for conquest that could only refer to the WHOLE province just as it had been annexed by that law to *Tierra Firme*.

"The title granted to Artieda Chirinos as well as that granted to Salinas, are in the same category as that of Diego Gutiérrez, as are probably many others granted at that time and which deserve but scant mention.

"The Señor Secretary cites Don Domingo Juarros as authority. He also cites Don J. M. Ceballos.

"But as Ceballos is the authority on which Juarros relies, this is equivalent to a single authority; and as Ceballos only affirms and does not prove or produce any document, I think that we must ignore both these authors.

"But before doing so, I will note that I consider as *contra producentem* the citation of Bonycastle made by the Señor Sec-

retary, because, as it appears, he puts the Province of Veragua as a part of the Viceroyalty of *Santa-Fé*.

"Likewise, if by citing the Historical Dictionary of America the Señor Secretary refers to that of Don Antonio de Alcedo, I will cite in my turn by way of reply, the words of that same author relating to the most important point of the debate. These words are:

"*Veragua*: Province and Government of the Kingdom of *Tierra Firme*, one of the three that forms it. It bounds by * * * the North and South on both Seas; it is 70 leagues in length and 34 in width, N. S., which is the widest part of the Isthmus.

"*Almirante*: This same name is borne by a bay on the coast of the Province of *Veragua*, Kingdom of *Tierra Firme*, and to the West of the *Escudo*, &c.'

"And in another part of his work:—

"*Dulce*: A large gulf on the coast of the Province and Government of *Costa Rica*, in the Kingdom of *Guatemala* and the South Sea, where its jurisdiction is divided from that of *Santiago de Veragua*, etc. * * *'

"Therefore, the authority of Alcedo cited by the Señor Secretary is not advantageous to *Costa Rica*, nor are either of the following among the Colombian authorities.

"Don Antonio de Ulloa, an authority invoked by *Costa Rica* in a situation similar to this, says in his work: "The Kingdom of *Tierra Firme* begins, on the North side, at the River *Darién* and extending by way of *Nombre de Dios*, *Bocas del Toro* and *Almirante Bay*, ends on the West at the *River of the Dorados* on the North Sea, and on the South Sea, beginning on the West, it extends from *Punta Gorda* in *Costa Rica* by way of the *Punta de Mariato* and *María Puercos* as far as the Gulf of *Darién*." (F. M.).

"The Colonel of Engineers, Pedro Acevedo, confirms this opinion, as also do Doctor Rufino Cuervo and the learned and authoritative Colonel Acosta, who was followed and supported by General Mosquera. (F. M.).

"But as these authorities are Colombians, it could perhaps be thought that they may have some of the defects of Señor Juarros who was a Guatemalan.

“Let us then consult some foreign authorities, geographers and historians—

“*Don Juan de la Cruz Cano y Olmedilla*, in his map of 1775, gives *Bocas del Toro* on the Atlantic to the *Province of Veragua*. (Q. O.)

“The *Carta esférica de la Costa Occidental de América*, a map drawn by several officers of the Royal Navy in 1791 and published in 1800, gives to *Veragua* the Gulf of *Dulce* on the Pacific and *Punta Careta* on the Atlantic. (Q. O.)

“The *Map published by the General Marine Depot* of France in 1821, under the Ministry of Baron Portal, confirms the foregoing. (Q. O.)

“In the map *published by the British Admiralty* in which the coasts of *Central America* are shown the whole Bay of *Almirante* is left to the Province of *Veragua*. (B. C.)

“Another *Map of the British Admiralty*, dated in 1849 and founded on the works of Captain Kellet and Commander James Wood, constitutes a further confirmation. (B. C.)

“In the *Map of Tanner* the divisionary line starts from *Boca del Drago* on the Atlantic and terminates in the midst of *Dulce Gulf* on the Pacific. (B. C.)

“*Brué*, in 1833, locates the line between *Punta Careta* and *Punta Burica*. (B. C.)

“*D’Anville*, *R. Vaugondy*, *Fanden*, *Fidalgo*, *Arrowsmith*, *Arpudia* all confirm the claims heretofore made by *Colombia*. (O. L.—Q. O.—V. P.—B. C.)

“To those already cited may be added by way of confirmation: *Kitchin*, *Captain Owens*, *Lawrise*, *Lawrie* and *Whittle*, *Roberts*, *Wyld*, *Collins*, *Jerónimo García*, *Pedro María Iglesias* and ‘all the historians, geographers, and the ancient classic and modern’ hydrographers, who have worked in this matter, as has been very properly observed by one of my predecessors when discussing this same question.

“And to all of them must be added the map of the Viceroy *Ézpeleta* to which I have already referred and which, as was observed by the learned writer, *Quijano Otero*, must be cited the last of all, because it is the most authoritative and, in my opinion, the most conclusive for *Costa Rica*, although not for *Colombia*, who could alter it in its favor with other historical docu-

ments. This map, as I have already said, places as the boundary a line running between *Culebras* river and *Punta Burica*.

“To this authority of the Spanish Government represented by the Viceroy, I will only add one more which, by itself alone, should settle this controversy:—that of Baron von Humboldt, who fixes the boundaries of the two countries, *Punta Careta* and *Punta Burica*.

“From all that has been stated it is deduced that the divisionary line, far from being the one proposed by the Señor Secretary is another one which must run, with certain unimportant variations, from the *Dorados*, *Dorces* or *Culebras* river to the midst of *Dulce* Gulf, without considering that it might alter in any way the rights of *Colombia* to the littoral of the Atlantic as far as Cape *Gracias á Dios*, inclusive.

“Thus it will be seen that the authority of Señor Juarros cannot be consulted, when we have at hand the rich collection of authorities I have superficially pointed out to the Señor Secretary.

“The Señor Secretary continues by citing several facts that occurred at the end of last century relating to the jurisdiction exercised at that time by *Guatemala* over the Islands of *San Andrés* and *San Luis de Providencia* and he deduces therefrom that in that period the boundaries of *Costa Rica* ‘were not in doubt.’

“I believe that those facts may prove the jurisdiction of which he speaks; but I cannot understand how they can remove the doubts surrounding the divisionary line on the Continent.

“The important fact that they prove, as affirmed by the Señor Secretary, and the only one in my opinion, is the decided will of those inhabitants to be segregated from the Captaincy-General.

“The Señor Secretary says that the King declared that he ‘*was in accord*’ with that will, supported as it was by the Board of Fortifications.

“The King did not declare that he ‘*WAS IN ACCORD*’; he ordered that those islands, with the *Mosquito Coast* as far as Cape *Gracias á Dios*, inclusive, should be segregated from the Captaincy-General of *Guatemala* and should be dependent upon the Viceroy of *Santa Fé*.

“This is proved by the Royal *cédula* of 1803, of which a legal-

ized copy must be in that Department, because, as early as 1825, it was presented to the Minister of *Central America* in *Bogota*, who made no objection to it, in spite of the fact that it was the basis offered for the Treaty that was signed at that time and that determined clearly the *uti possidetis* of 1810—the one it was agreed should be accepted.

“That *accordance* of the King, of which the Señor Secretary speaks, could only exist by his own will; and as what is sought as a basis of the *uti possidetis* of 1810, is that will stated in Royal *Cédulas*, Royal orders, Ordinances and Pragmatics, we see that this *Cédula* is the valid title from which can be derived the rights that we seek to establish.

“To invalidate that *Cédula* it is necessary to produce another title of equal dignity containing a contrary order because, according to the principle enunciated by the Señor Secretary,—‘in jurisprudence things are dissolved in the same order in which they were combined.’

“The interpretation of this *Cédula*, whatever it may be, does not seem to me to be authorized, as only the Sovereign who issued it had the right to interpret it.

“And that Sovereign confirmed it later through his agent, General Morillo, who declared, in 1815, by means of a Decree published in Europe and America and communicated to various Governments, that the blockade of *Colombia* was made, as in fact it was, ‘from Cape *Gracias á Dios*.’

“Furthermore, in jurisprudence as in logic, ‘it is not permitted to interpret what does not need interpretation,’ and that *Cédula* is clear, laconic and decisive. The more is this so when its strained interpretation favors only one of the contractual parties.

“I will not enter into a discussion of the name that must be given to the document, to which I refer, because I consider it incongruous after having accepted the principle of the *uti possidetis* of 1810, which arises not out of certain rights depending on such and such titles, but rather from those titles which express the will of the Sovereign.

“According to this principle of justice and equity, the territorial titles of American nations are valid, not on account of the name they bear, but on account of their origin. All of the *Cédulas*, Ordinances, Royal Orders and Pragmatics have the same value

as to the obedience to be given to them. And this *Cédula* is of the requisite origin and has been duly obeyed.

"It is for these very reasons that the Señor Secretary has not seen other Colombian negotiators present, in addition to this one, any other titles, which, in their opinion, might have a character of legality more definitive, because they consider this to be sufficient.

"The Señor Secretary affirms that 'the segregation never went into effect.'

"If by segregation is meant a change of jurisdiction, I am able to prove to the Señor Secretary, by a great number of official acts, that the Viceroy of *Santa Fé* fulfilled the order, watching and governing those territories and that *Colombia* when it broke the Spanish blockade with its victories, *organized the trade of those coasts and established therein its authorities*, subduing and bringing to trial the corsairs established there without its license and dealing with the diplomatic negotiations that arose therefrom.

"In this Legation are to be found the official documents in support of these well known acts.

"*Central America* never opposed that jurisdiction; on the contrary it acquiesced therein many times. Neither did the Viceroyalty interpose any objection when these same coasts were segregated from it. Because the Señor Secretary knows well that the only aim of the Royal *Cédula* of 1803 was to restore the territories which theretofore had belonged to it.

"It must not be thought that my reply to the Señor Secretary's statement has any other purpose than to effect a generous composition that will comport with the interests of both countries, and that will foster the brotherly sentiments of my Government towards the people of *Costa Rica*, to whose prosperity it is anxious to contribute.

"To establish clearly the rights of the country that I have the honor to represent, and thereby lead to mutual and natural concessions and at the same time respect the equitable principle of the *uti possidetis*, should demonstrate practically the devotion to the interests of brotherhood and union that must preside over the relations of these nations—a consummation desired not only by myself but by the Government and people of *Colombia*."

NOTE.

The foregoing document, though issued under the name of General Correo, Minister of *Colombia* to *Costa Rica*, in 1873, was very likely prepared by his Secretary, Don Francisco de P. Borda, well known for his important works on the question of boundaries between *Costa Rica* and *Colombia*. Most of the views set forth in this matter by Señor Borda are found in this statement. Later, this author with better knowledge of the documents, had the opportunity of avoiding many of the errors contained in this document, but at the same time he forgot some very important truths stated by him in 1873, such as, that the whole Province of Veragua to which refers the Royal *Cédula* of March 2, 1537, was the same province which was a fief of the Dukes of *Veragua*, that is to say the Dukedom of *Veragua*.

Doc. 337 **The Minister of Foreign Relations of Costa Rica, to General Correo, Plenipotentiary of the United States of Colombia, at San José.**

September 20, 1873.

I have had the honor of receiving the esteemed despatch which Your Excellency was pleased to address to me under date of yesterday, declaring that being compelled by the demands of other matters you are about to leave the country, ending for the present the labors of the Legation under your charge; and that as the Sr. General President is in fact now absent from this capital and you are required to depart at once, you are therefore obliged to forego the honor of presenting yourself in person and in the usual manner to take leave of him.

Your Excellency is pleased to add that you cherish the confidence that the ties created, the principles established and the political, moral and economic bases which the Government of *Costa Rica* has brought forward prominently in the negotiations with my predecessor, Señor Dr. Montúfar, will be the foundations of the most sincere friendship and fraternal relations between the two Republics, whose identity in sentiments and in beliefs cannot be destroyed by any irrational egotism.

In conclusion Your Excellency indicates that you have no doubt that the treaties celebrated will receive the approval of the

Nation you represent, and that the divisional line which has been fixed will always show that peoples with sentiments of sincere brotherhood know how to form with such lines a bond that will bind them and make a sacrifice of their own convictions if it is demanded by the honor of America and the fulfillment of our history.

In due course, upon the return of the Sr. General President, I will perform the duty of bringing to his knowledge this despatch which, I am sure, he will duly appreciate, on account of the high ideas of a true American which it contains as well as the sincere and fraternal friendship it expresses between the Republic of the *United States of Colombia* and that of *Costa Rica*.

My Government, as Your Excellency knows, desires of such real union between the various States of *Central* and of *South America*, has never hesitated in putting aside rights arising out of titles, in its judgment legitimate, in the desire to permanently establish upon bases of reciprocal convenience the most sincere friendship with the Nation which Your Excellency has so worthily represented.

It is not really the possession of these more or less insignificant parcels of uncultivated territory that which constitutes the greatness of a Nation, but it is the spirit of progress which animates them and the principles of true equity and justice upon which they are founded, not only in their domestic policy but in their relations with other nations. With peoples which touch each other, like the Republics of the *United States of Colombia* and that of *Costa Rica*, and each moreover belonging to the same race, the frontier lines ought to indicate, not an absolute separation but rather a bond of union which identifies and mingles their interests in the common aspirations of progress.

Such is the idea that has prevailed in the counsels of the Government of *Costa Rica* in preparing the boundary treaty with Your Excellency. It also hopes that the Congress, to which at the proper time this and other treaties will be submitted, the subject of the negotiations with Your Excellency, assured of the value of these principles, will not refuse to them its sovereign approval.

Although, I have not, for the reason above referred to, any instruction from the Sr. General President, I can assure Your

Excellency the pleasure it has been for the Government to have maintained with Your Excellency relations of the most frank cordiality and the regret which is felt at your retirement and still more your departure from the country, in the society of which your absence will mean a real loss on account of the kind feelings which have been aroused by your courtesy.

Upon returning to your own country to make a report to your Government of the result of your high mission, Your Excellency can take with you the assurance on the part of the Government and the Costarican people of the sentiments of true fraternity which animate them and their wishes for the prosperity of the Colombian Government and people.

Desiring that Your Excellency may have a pleasant return, I have the honor to assure you once more that I am your obedient servant.

V. HERRERA.

Doc. 338

UNITED STATES OF COLOMBIA.

Report of the Secretary of the Interior: Foreign Affairs: Addressed to the Congress of 1874.

Published at Bogota: print of Medaro Rivas, 1874.

Report of the Prefect of the Territory of San Andrés: San Luis de Providencia.

United States of Colombia. Prefecture of the National Territory of San Luis de Providencia.

No. 280.

SAN LUIS, November 29, 1873.

Señor Secretary of Interior and Foreign Affairs:

In compliance with the law and your instructions and for the information of the Congress, I submit to you a report of the progress made in this territory during the time it has been under my administration, as well as the result of the observations suggested to me by a practical acquaintance with it.

The Island of *San Andrés* and that of *Providencia*, which formed a part of the sovereign State of *Bolívar* down to the year 1868, when they were ceded to the Nation, are now embraced within that district which the Law of the 4th of June of that year, accepting such cession, called the "*Territory of San Andrés and San Luis de Providencia*." That territory was divided for the purposes of its administration into three *Correjimientos* (the district of a *Correjidore* or Magistrate), that is to say: *San Andrés*, *San Luis* and *Providencia*, having a total population of 3,530 inhabitants, according to the census taken in 1871.

The Island of *San Andrés* embraces the *Correjimicnto* of that name and that of *San Luis*, having a superficial area of seven miles long North and South and two wide at its broadest part. It is situated at 18° N. E., at an elevation of 150 feet above the level of the sea. Its mean temperature is 85°, rising to 98° and falling to 78° by the Fahrenheit thermometer. Its port affords excellent anchorage over an extent of four miles, with three or four deep arms and sheltered from the winds. It is distant 220 miles from *Colón*, only 60 from the *Mosquito Coast* and 140 from the Port of *Limón*, to which point the railroad comes that the Government of *Costa Rica* now has in operation.

The population of the island may be said to be divided into two classes. The first is made up of the descendants of some colonists from *Jamaica* and a few from *Curacao*. These are the fewest in number but they have kept possession of the best properties. The second consists of the descendants of the slaves, nearly all of them African negroes and those that came from *Jamaica*. Both classes live in a state of complete fusion, and the latter are very proud of their liberty and jealous of their rights; they preserve the strength of their race and are quite as much negroes as their ancestors. In general they are of good stature, well formed and muscular.

They cultivate small plots, scarcely sufficient for their subsistence, of yuca, bananas, maize and sugar cane, with which and the help of some fishing and the pigs of which they breed a small number, they meet their necessities during the intervals between the landings of the vessels that provide them with salt meats, flour, rice, etc., and all the articles they use.

Their principal industry, or it might be said their only one, is the cultivation of the cocoanut palm, which they extend day by day, owing to the increasing demand for its product. They live in wooden houses, most of them imported from the United States of America, and both these and the people who dwell in them are always exquisitely clean and decent. The Baptist religion is the dominant one among them, and this is the only one that prevails in the territory. There are three ministers who attend to the religious services, having edifices erected for such purpose, the one erected in *San Andrés*, in the central portion of the island, being noteworthy for its capacity, comfort and the good condition in which it is kept.

* * * * *

Beside the two islands mentioned of *San Andrés* and *Providencia*, *Colombia* possesses some keys and islets in this part of the Caribbean Sea, which together with them constitute the "*Archipelago of San Andrés*"; and therefore it seems proper to refer to the principal ones, more especially inasmuch as they must be considered as included in the territory which I administer.

Curtown, distant 15 miles from the Island of *San Andrés*, down to the year 1839 had a considerable number of cocoanut palms, which were destroyed by the great floods and a heavy storm that occurred in that year. This is a point of great danger to vessels, especially those coming from New Orleans. Several shipwrecks have taken place there.

Albuquerque is an islet situated 20 miles to the South of *San Andrés*. Until some years ago it had some guano, but this has all been carried away by vessels coming there for that purpose from England or the United States of America. At present that article is entirely exhausted, there being left only a few cocoanut trees, planted by fishermen, which have been rented out for account of the National Government in accordance with the Law of April 24, 1871.

Roncador is situated between 30° 30' and 13° 37' North latitude and 80° 6' West longitude. Toward the N. W. of this key there is a island of very small extent, with an elevation of only six feet above the sea level. This a very favorable place for turtle fishing.

The bank of *Serrana* is distant 45 miles N. N. W. from *Roncador* and 80 from *Providencia* and has an elevation of eight feet above sea level. There is a large quantity of guano here, notwithstanding the constant shipments made by the Philadelphia company of that article during the past few years.

Quitassueños is a bank situated to the West of *Serranna*, and owes its name to the danger which vessels run in approaching it. Nothing of importance exists upon it.

There are, besides, other banks and reefs, such as *Bajonuevo*, *Serranilla*, etc., a knowledge of which is only important to navigators, since they are of no commercial interest.

* * * * *

With sentiments of distinguished consideration I subscribe myself, Señor Secretary, your very obedient servant,

EDUARDO MAMBY.

The Minister of Foreign Relations of Costa Rica to that of the United States of Colombia. Protest. Doc. 339

SAN JOSÉ, June 11, 1875.

By a report made to this Secretaryship by the Political Chief of *Dulce Gulf* it has come to the knowledge of my Government that the *Cabildo* (common council) of *Alanje*, in the jurisdiction of *Chiriquí*, has leased the cocoanut groves upon the shores of *Burica* which front upon the Gulf mentioned; it has levied taxes upon the inhabitants of the place called *Corredor* and it has leased and even undertaken to alienate a ranch belonging to the same neighborhood.

My Government is desirous of believing that these facts emanating from the *Cabildo* of *Alanje* are wholly without any authorization from the Government of Your Excellency and that they rather grow out of a mistake as to the jurisdictional boundaries between your Republic and that of *Costa Rica*; but my Government cannot allow to pass unnoted acts which may later be invoked as precedents that could be used to diminish the territorial rights of the Republic of *Costa Rica* and it has received instructions from H. E. the First Deputy in the exercise of the Executive Power to make a protest, as I in fact do by this pres-

ent, against such acts done by the authorities of *Chiriquí*, which imply the exercise of a jurisdiction which my Government denies.

Your Excellency knows that there exists and is pending before the legislatures of both Republics a Boundary Treaty, in which it was agreed between the two Governments, through their legitimate representatives, to decide finally, by principles of a true fraternity, the ancient question of boundaries. If such Treaty has not been approved by either one of the legislatures, neither has it been rejected in a definitive way.

This Treaty having been initiated, the matter as yet not being settled, both Governments are left on the footing that this question is to be determined by diplomatic measures and in the interests of both countries, which cannot but consider themselves bound by the ties of family and friendship they have never failed to profess, and therefore it appears that prudence counsels the maintenance of the *statu quo* until a peaceful solution is agreed upon for their antagonistic claims.

At the place called *Corredor* the Government of this Republic has maintained, heretofore, a peaceful jurisdiction, keeping there a Justice of the Peace by appointment from the Political Chief of *Dulce Gulf*.

Consequently the jurisdictional acts which the authorities of *Chiriquí* have undertaken to exercise in that territory ought to be considered as a real infringement of the *statu quo*.

My Government trusts that the Government of Your Excellency, which has shown such marked evidences of the spirit of harmony and conciliation which has animated it toward this sister Republic, will not see in this step which my Government deems it to be its duty to take anything more than the desire to preserve inviolate the good relations existing with that of Your Excellency, removing every cause for conflict which could prevent the reaching of an agreement between the two countries respecting their jurisdictional boundaries.

In carrying out the instructions which I have received I take the greatest satisfaction in submitting the considerations of sincere appreciation and respect with which I am honored in subscribing myself Your Excellency's obedient servant.

V. HERRERA.

The Secretary General of the State of Panama to That of the Interior and Foreign Relations of the United States of Colombia. Doc. 340

Sovereign State of Panama.

Executive Power. General Secretaryship of State.

Section of Government.

Bureau of General Affairs.

No. 61.

PANAMA, April 19, 1876.

Señor Secretary of Interior and Foreign Relations,
Bogota.

In possession of the facts asked for from the Department of *Chiriquí*, I can now properly answer the note of your office, dated the 25th of January last, marked No. 555, of Section 1, in which you were pleased to send me a transcript of the communication of H. E. the Minister of Foreign Relations of the Republic of *Costa Rica*, protesting against certain acts which that Government considered as an actual infringement of the *statu quo* between the two countries.

One of these acts, as to which the Government of our sister Republic of *Costa Rica* has thought it to be its duty to call the attention of the Government of *Colombia* is the leasing of the cocoanut groves (*cocales*), situated upon the shores of *Burica* and which face upon the Gulf of *Dulce*.

I understand that *Costa Rica* exercised acts of jurisdiction at various points of the zone whose sovereignty it disputes with us; and I understand it because *Colombia* has always tolerated it with a negligence truly deplorable; but I do not understand, Mr. Secretary, that *Costa Rica* also claims to find any change in the *statu quo* on account of the rental of some properties situated in the

territory as to which there is no dispute and properties which have belonged to the State of *Panama* since its creation.¹

The cocoanut groves of *Burica* have been administered from time immemorial by the municipal officers of the ancient Canton of *Alanje*, later by the government of the extinguished Province of *Chiriquí*, and later by the Government of the State, since 1855.

These cocoanut groves have always been leased by public competition, they have appeared in the catalogue of the properties of the State of *Panama* and their products formed a part of our public revenues until 1873, when by Law 14 of that year they were turned over to Public Instruction, the administration of which branch being separate is in charge of a special board. Since then the cocoanut groves in question have been administered by the sub-director of Public Instruction of the District of *Alanje* and their revenue has been applied to primary instruction.

The other of the acts against which the Government of *Costa Rica* protests is the imposition of taxes by the *Cabildo* of *Alanje* upon the inhabitants of the place called *Corredor* and the rental of a cattle ranch belonging in the same neighborhood.

According to the reports received from the Department of

¹ The State of *Panama* was created by the legislative act of February 27, 1855, an addition to the Constitution of the Granadian Confederation of 1853. As the laws of *Colombia* are not obligatory upon *Costa Rica* and the question of boundaries is prior to the creation of the State of *Panama*, the arguments of Señor Ardilla have no foundation. The laws of *Colombia* are not under discussion and the only question up for decision is the territorial demarcation of *Costa Rica* and *Veragua* under Spanish Laws and the *uti possidetis* of the year of the emancipation of *Central America* and *Panama*.

It has been seen that the Commission of *Chiriquí*, in an official report addressed in 1861 to the Government of the United States, recognized that the coasts of *Dulce Gulf* as far as *Punta Burica* were under the political jurisdiction of *Costa Rica* and that in 1862 the Minister of Foreign Relations of this Republic complained for the first time of the occupation of the shores of *Burica* by the Colombian authorities. The date of the usurpation, therefore, of the shores of *Burica*, is not immemorial.

In 1852 and 1855 Señor Fernández Madrid simply advised their acquirement, which was not yet a consummated act in 1862, when the "Geography of Panamá," of Señor Felipe Pérez was published. Codazzi had only taken possession of that territory with his pencil. M. M. P.

Chiriquí, and to which I alluded in the beginning, the small settlement of *Corredor* was begun in 1868 by cattle men from *Alanje*, who, fleeing from the effects of the political revolts which at that time disturbed the State of *Panama*, sought in that locality the security which was lacking in the settled regions. The colony of emigrants was established there, and, the better to shelter themselves from the persecutions of which they were afraid of being the victims, or believing that they had crossed the border of the Costarican territory, they submitted to the first Political Chief of the first frontier section, which was that of the Gulf of *Dulce*, and, says the *Alcalde* of *Alanje*, "it is from that time that the Government of *Costa Rica* has taken possession of that locality, where it has an official known as a *Regidor* without any other authority than the acquiescence of the emigrant people from *Alanje*."²

The hamlet of *Corredor* is situated at seven *myriameters*³ from the headquarters of the District of *Alanje*, toward the frontier of *Costa Rica*, and in the Northeast direction; and as the Señor Secretary may observe at five *myriameters* this side of the division line which *Colombia* maintains as in accord with the *uti possidetis* of 1810.⁴

This little hamlet so frequently referred to being, therefore, upon Colombian territory, it would not be strange if the *Cabildo* of *Alanje* should have levied local taxes upon its inhabitants;

² If the cattlemen of *Alanje* moved to *Corredor*, fleeing from the political insurrections of *Panama*, it is more likely it was because they believed that between *Alanje* and *Corredor* lay the frontier of *Costa Rica*, as was really the fact, and it was popularly known that to the West of the River *Chiriquí-Viejo* the territory of *Costa Rica* began. M. M. P.

³ A measure of 10,000 metres, equal to 6.21 miles.

⁴ The *uti possidetis* of 1810,—supposing that this conventional principle had any obligatory value as regards *Central America*, in the sense that *Colombia* announced it in 1823,—does not confer any right upon *Veragua*, *Panama* or *Colombia* to the West of the River *Chiriquí-viejo* and of the line of division between the ancient Captaincies-General of *Guatemala* and *Panama*; that is to say,—a straight line which, starting from the Island of the *Escudo* upon the Atlantic, terminates at *Punta Burica*. This is the line of the *uti possidetis* of 1810 and 1821, according to the very doctrines of *Colombia*, and in conformity with Law I, Title I, Book V of the *Recopilación de Indias*. M. M. P.

nevertheless, in giving to *Costa Rica* the response which is deemed proper upon this point of its protest, I can assure you emphatically that the *Cabildo* of *Alanje* has not imposed any tax upon the inhabitants of *Corredor*, and that although it is true it proposed to give a lease of a cattle ranch located in the vicinity of this hamlet it desisted from its purpose simply in order to avoid all complication with the Government on the other side of the *Cor-dillera* of *Las Cruces*.

I trust that the contents of this note will enable you to make the proper reply to the Minister of Foreign Relations of the Republic of *Costa Rica*.

I am, Señor Secretary, with the greatest consideration, your very obedient servant and compatriot.

FRANCISCO ARDILLA.

Doc. 341 **The Secretary of Foreign Relations of the United States
of Colombia to That of Costa Rica.**

Secretaryship of Interior and Foreign Relations.

• BOGOTA, May 16, 1876.

Under date of July 29th of the year last past I had the honor to advise Your Excellency of the receipt of your despatch of July 11th of the same year, relative to various acts of the *Cabildo* of *Alanje*, in the jurisdiction of *Chiriquí*, in the sovereign State of *Panama*.

Immediately upon the receipt of the note of Your Excellency concerning this matter, the Government of said State was requested to make a report as to the points to which Your Excellency made reference; and response was made in the language of the copy annexed.

The report in this matter could not be sent immediately on account of the local disturbances which occurred upon the Isthmus during the last four months period of the past year.

It is a fact to be brought to the knowledge of His Excellency the President of *Costa Rica*, through the worthy hands of Your Excellency, that the Senate of Plenipotentiaries of *Colombia* refused their approval to the Treaty of Friendship and Boundaries recently celebrated with your Republic; and consequently

the negotiations in that matter have in no way changed the *statu quo* to which Your Excellency refers.

As the action of the Senate of Plenipotentiaries may have been influenced by the report which was presented to it by Señor Joaquín María Vengoechea, Senator Plenipotentiary for the sovereign State of *Magdalena*, I deem it proper to send to you a copy of the *Diario Oficial* (Official Journal), No. 3723, in which said document is published.

I take this opportunity to offer to Your Excellency the assurances of my highest and distinguished consideration.

M. ANCÍZAR.

The Minister of Foreign Relations of Costa Rica to That of the United States of Colombia. Fixes the Territorial status quo and Proposes Arbitration. Doc. 342

SAN JOSÉ, July 25, 1876.

I made a report to H. E. the President of this Republic, with the esteemed despatch of Your Excellency of the 16th of May last, and with copy annexed of the report submitted by the Señor Governor of the Sovereign State of *Panama*, and I have been directed to respond in the following terms.

The Congress of *Costa Rica* has not approved the Treaty of Friendship and Boundaries lately made between this Republic and yours. The opinion here was that it was unduly onerous as regards the interests of *Costa Rica* and the legislative authority has refrained from taking any action upon it.

The negotiations, then, as Your Excellency states, have not changed the *statu quo* and *Costa Rica* under its oldest, most positive and legitimate titles must be considered to be in possession of its own territory, maintaining and protesting that its boundary with your Republic is a straight line which starts from *Punta de Burica* upon the Pacific and runs to the *Escudo de Veragua* upon the Atlantic. The attitude of the Senate of Plenipotentiaries of the United States of *Colombia*, the sentiment of the Costarican people and the inaction of its Congress with respect to this affair, indicate to us clearly that for both parties it is diffi-

cult to come to an agreement, as should be done by civilized and sister nations; moreover, the considerations of both civilization and fraternity, as well as those of convenience, show that these difficulties between the two governments should not be permitted to continue, much less should there be war between brotherly peoples on account of the failure to reach an agreement, so that the arbitration of a friendly nation should be considered. My Government, therefore, proposes as Arbitrator that of the Republic of *Chile*.

Trusting that the method suggested may be accepted by the Government of Your Excellency as the most just, obvious and prudent one to elucidate and determine the pending boundary question, I have the honor to repeat that I am with the highest appreciation and regard Your Excellency's obedient servant.

JUAN RAFAEL MATA.

Doc. 343 The Secretary of Foreign Relations of Colombia to the Secretary of Foreign Relations of Costa Rica.

United States of Colombia
Secretaryship of the Interior
and
Foreign Relations.

BOGOTÁ, September 5, 1877.

SIR:

The war in which the Republic has been engaged during a year and of which Your Excellency is aware, has prevented me from replying in due time to that Ministry's note of July 25 of the present year, in which Your Excellency referred to the dispatch addressed to you by this Secretaryship on May 16, ultimo, relating to the boundary question between the two Republics.

Your Excellency concludes by indicating that in order to settle this matter the system of arbitration may be adopted, and you

propose on your part, as arbitrator, the Government of the Republic of *Chile*.

The Executive Power being now free from the grave situation of war, it will give to Your Excellency's dispatch the necessary examination and will take care of communicating to you the resolution that may be taken.

With the expression of my distinguished consideration I am Your Excellency's courteous servant,

EUSTORGIO SALAZAR.

His Excellency the Minister of Foreign Relations of the Republic of *Costa Rica*.

The President of the Sovereign State of Panama to That of the Republic of Costa Rica. Doc. 344

July 29, 1879.

United States of Colombia:
Sovereign State of Panama.
The President of the State.

MOST EXCELLENT SIR:

Difficulties have very frequently arisen in America, by reason of the fact that the boundaries have not been clearly defined, and a disagreeable incident of this character has just occurred between the Political Chief of *Dulce Gulf* and the Prefect of the Department of *Chiriquí*.

The administrative authority of the Republic over which Your Excellency worthily presides, declaring that it acted with the authority of its Government, has disregarded the property right held by *Colombia* to the territory wherein are located the "*Cocales de Burica*" (cocoanut groves of *Burica*), as well as the officer placed there by the *Alcalde* of *Alanje*, which officer was replaced by another of its own appointment.

These acts, as Your Excellency cannot but observe, wounding the national sentiments, have produced a profound indignation among the Isthmian people.

The Government of this State, representing generally that of the Republic, having been given cognizance of the acts which have been referred to, the first impression having passed, limited itself as was natural and its duty to taking such precautionary measures as would satisfy the eager desires of a people strongly aroused by the offence which an agent of the Government of Your Excellency inflicted upon the national honor.

But, the antecedents being known to Your Excellency and other reasons which show to Your Excellency the indisputable justice of the Colombian view, I am led to hope with much reason that the action of the Costa Rican authorities at *Dulce Gulf* will be disavowed, and that Your Excellency will take the steps which are dictated by prudence to the end that new acts of hostility may be avoided within the territory which up to the present time has been in the peaceful possession of the Department of *Chiriquí*, embraced within this State.

In this way the Government which I represent working in a like manner, there would be no fear of any change in the friendly and cordial relations which have existed until now between the Governments of the two Republics, while the annoying question of boundaries pending between them reaches a friendly and satisfactory solution.

I take advantage of this opportunity to reiterate to Your Excellency the sentiments of my high esteem and respectful consideration, with which I have the honor to subscribe myself Your Excellency's humble and obedient servant.

GERARDO ORTEGA.

To the Most Ex. Señor General Don Tomás Guardia, President of the Republic of *Costa Rica*.

Notes Exchanged Between the Secretary of Foreign Relations of Colombia and That of Costa Rica, Concerning the Fixing of the Territorial status quo and the Settlement of the Boundary Question by Means of Arbitration. Doc. 345

Señor Rico to Doctor Machado.

Department of Interior and Foreign Relations.

BOGOTÁ, August 19, 1879.

Mr. Minister:

Under date of the 4th instant, by telegram sent to the Secretary of Government of the State of *Panama*, I had the honor to address to Your Excellency the following communication:

"The Secretary of State of the Government of *Panama* advises this department, under date of July 18th last past, that the Government of the Republic of *Costa Rica* occupied a portion of Colombian territory and in the cocoanut groves of *Burica* (*Cocales de Burica*), Department of *Chiriquí*, disregarded the official in charge and replaced him with another appointed by the *Jefatura* of *Dulce Gulf*."

The Executive Power of *Colombia*, being desirous of maintaining good relations with that of *Costa Rica*, is willing to believe that such acts, which have been carried out without previous notice, constitute abuses which the Government of your Republic will have corrected or will be ready to correct; and consequently it confines itself to solemnly protesting against such acts and demanding for the punishment of those responsible therefor, as also that efficient measures be taken to avoid the repetition of any acts of this character.

On the other hand it does not doubt that your Government will take into account the circumstance that, under the last notes exchanged between the Departments of Foreign Relations of the two countries, respecting boundaries, they both agreed to respect the *statu quo*, and therefore changes in the actual jurisdiction ought to be effected by common accord.

The attitude of this Government in so delicate a matter will show that of Your Excellency how keen is the desire which

Colombia feels that its friendship with your country should not suffer any interruption, a sentiment which I have no doubt will be met by the just measures for justice that are indicated on the part of *Costa Rica* in this matter with the fraternity that should bind together the nations of America.

In the former communication which, as above stated, was forwarded by telegraph, the other considerations were not taken up on account of the lack of time. I will proceed to state them to Your Excellency.

The correspondence exchanged between your Ministry and this Department in 1876, respectively, left the principle established that the *statu quo* should be respected in the boundary question pending between the two countries. The Colombian Government, proceeding in this matter as it has done in other analogous ones, accepted very willingly the idea of submitting the question mentioned to the decision of arbitrators and will not hesitate in coming to an agreement with your Government, in order to reach, by such means, a definite solution of that delicate matter. Moreover, I trust that the incident occurring upon the frontier, and which has led to this correspondence, will not give rise to the dangerous situation which it was feared might develop between the two nations.

With sentiments of distinguished consideration, I subscribe myself Your Excellency's obedient servant.

LUIS CARLOS RICO.

To H. E. the Minister of Foreign Relations of the Republic of *Costa Rica*, *San José*.

Doc. 346

Doctor Machado to Señor Rico.

National Palace.

SAN JOSÉ, October 27, 1879.

Sir:

I have the honor to acknowledge the receipt of the despatch of Your Excellency, dated at *Bogota* the 19th of August of the present year, and to reply thereto in conformity to the instructions which I have received from the Most Excellent Señor General President.

In the first place, I must state to you the satisfaction which my Government has felt at the good disposition shown by that

of Your Excellency, and it is to be hoped that it will never be otherwise, in view of the bonds of friendship, of contiguity and so many others which connect and tie together the two Republics.

Allow me to advise Your Excellency that the Government of *Costa Rica* has not occupied any portion of the territory of *Colombia*.

If any misunderstanding has arisen between the officials of *Dulce Gulf* and of *Chiriquí*, it has been on account of the lack of a material demarcation of the frontier; but the only instruction which the Costarican officials have received from the Government has been that they should respect the *statu quo*.

Besides, an investigation has been directed to be made concerning the acts to which Your Excellency has alluded, and in this matter the Government will proceed animated by sentiments of justice and fraternity.

If the Government of *Colombia*, as Your Excellency intimates to me, shall desire to submit the question as to boundaries with this Republic to an arbitration, there will be no difficulty in doing so; and the head of the nation has given me instructions to suggest to Your Excellency the President of the United States, the King of Belgium, or some other competent person whom the Government of Your Excellency shall be pleased to designate.

I take pleasure in offering to Your Excellency for this purpose the assurances of the appreciation and high consideration with which I have the honor to subscribe myself Your Excellency's obedient servant.

RAFAEL MACHADO.

To the H. E. Sr. Minister of Foreign Relations of the United States of *Colombia*.

Bogota.

Señor Rico to Doctor Castro.

Department of Interior and Foreign Relations.

BOGOTA, December 18, 1879.

MR. MINISTER:

With the interest which the subject demanded, the citizen President of the Union has taken note of the despatch of Your

Excellency, dated October 27th last past, in response to that of this Department of August 19th last.

The terms in which Your Excellency expresses, in the name of the Government you so worthily represent, the friendly sentiments which it harbors toward that of *Colombia*, can be appreciated by this Government as no less than an evidence that it is desired to preserve on a footing of perfect understanding the relations which have hitherto existed between the two Republics, and as a guaranty that in the future their rights and their legitimate interests, as neighbors and adjoining each other, shall be reciprocally respected and their differences decided in accordance with equity and justice.

The Colombian Government has viewed with satisfaction the fact that, as that of *Costa Rica* is imbued with the sentiments above enunciated, it may be agreed that the boundary question which is now pending between the two nations shall be decided by means of arbitration, as being the most conciliatory method and affording, moreover, the assurance of perfect impartiality, and it feels that the designation of arbitrator would be of the highest character if it should fall, as suggested by Your Excellency, upon the Most Excellent Señor President of the United States of America, H. M., the King of the Belgians or any other of the sovereigns or governing authorities of the nations friendly to both Republics; but in order to make such designation, upon its part, the Executive National Power requires the consent of the Congress of *Colombia*, to which this matter will be referred at its next session, during the month of February, recommending that special attention be given thereto.

In the meantime the Colombian Government promises that, in view of the orders which Your Excellency states have been issued to the Costarican authorities along the frontier for the preservation of the *statu quo*, this will be maintained without any change whatever.

I repeat to Your Excellency the protestations of the distinguished consideration with which I have the honor to subscribe myself Your Excellency's obedient servant.

LUIS CARLOS RICO.

To H. E. the Sr. Secretary of Foreign Relations of *Costa Rica*.

Testimony of Witnesses Concerning the Intrusions of the
Colombian Authorities into the Region of Dulce Gulf,
Costa Rica. Doc. 348

FROM NOVEMBER 1ST TO 6TH, 1879.

Jefatura Política of Dulce Gulf.

At 11 o'clock on the 1st day of November of the year 1879, this office having received an order, dated the 9th of September last, from the Honorable Señor Minister of Government, to take an inquest for the purpose of showing the outrages committed upon Costarican territory by the Prefect of the Department of *Chiriquí*, which consisted in placing a picket of troops upon this side of *Punta Burica*, with the purpose of supporting the lease of the cocoanut groves which are to be found situated upon this side of said Point, which was done by the *Alcalde* of the District of *Alanje* of that Department.

Therefore, let the Señores Don Bonifacio Aráuz, Nicolás Caballero, José Gómez Rodríguez and Ruperto Caballero, be and appear at this office and make their declarations as to what they know in this respect, which appearance shall be three days from this time; and let the witnesses be notified.

FRANCISCO GÓMEZ.
P. CASTRO Q.
MANUEL GALLEGOS.

Jefatura Política of Dulce Gulf.

On the same day notices were served concerning the above matter upon the witnesses, Don Bonifacio Aráuz, Nicolás Caballero, José Rodríguez Gómez and Ruperto Caballero.

FRANCISCO GÓMEZ.
CABALLERO.
CABALLERO.
RODRÍGUEZ GÓMEZ.
ARÁUZ.

Jefatura Política of Dulce Gulf.

At 10 o'clock on the 3rd day of November of the year 1879, there appeared Nicolás Caballero, to whom the oath was administered after the previous reading of the provisions of the penal law concerning false witness and perjuries; he took it by God, Our Lord, and the sign of the cross, by which he promised to tell the truth as to what he knew and should be interrogated, and under said provisions he was asked his name, age, condition, business, nativity, residence and religion; and he answered, that he was called Nicolás Caballero, that he was of age, married, a native of *Chiriquí*, a resident of this Canton and professed the Catholic religion.

Being asked if he knew that during the first days of the month of July of the present year the Prefect of the Department of *Chiriquí*, Doctor Bernardo Ballarino, ordered a picket of troops to be located upon this side of *Punta Burica*, Costarican territory, with the object of supporting the lease which had been made by the Señor *Alcalde* of the District of *Alanje*, of that Department, (of the cocoanut groves) which were found to be situated upon this side of said Point, he answered, that it is true that the Prefect of the Department of *Chiriquí* ordered a picket of troops, which was composed of fifteen men under the command of the officer Federico Delgado, which picket was stationed more than a league on this side of *Punta Burica*, and it remained in that place fifteen days, with orders to arrest those who went to gather cocoanuts under authority from *Costa Rica*, because those cocoanut groves had been leased by the *Alcalde* of the District of *Alanje, Chiriquí*, for the period of two years, to the Señores Manuel Morales and Gregorio Gallardo, who are continuing up to now exploiting the said cocoanut groves, under the lease made by the *Alcalde* of *Alanje*; and beside this, both the officer of the squad as well as the soldiers stated that they had orders from the Prefect of *Chiriquí* to bring away bound the one who should have accepted the position of Deputy in that locality on behalf of *Costa Rica*.

Being asked if he knew or had heard it said that the Political Chief had ever done anything to cause the Prefect of *Chiriquí* to place a picket of troops there, or that the former had ever

in any way violated *Colombia's* territory, he answered that he had never heard it said but quite the contrary, because the principal people of *Chiriquí* were surprised at the action of the Prefect, without knowing the reason for it.

Being asked if he knew or had heard it said that upon the shores on this side of *Punta Burica* there had ever been at any time any authority exercised on behalf of *Colombia*, he answered that he had never seen it, nor had he ever heard of any such thing; that he is acquainted with all those localities and that there had not been any Colombian authority exercised in any part thereof, except it was in the place called *San Bartolo*.

He stated that what he said and declared was true, under his oath; and his declaration having been read to him, he affirmed and ratified it and signed it with me as evidence thereof.

FRANCISCO GÓMEZ.

J. CASTRO Q.

NICOLÁS CABALLERO.

MANUEL GALLEGU.

At *Dulce Gulf*, at 1 p. m. on the 3rd day of the month of November of the year 1879, there appeared at this office the Señor Ruperto Caballero, who was sworn in legal form and took the oath by God, Our Lord, and the sign of the cross, by which he promised to tell the truth as to what he knew and should be interrogated, and being advised of the provisions of the penal law concerning false witness and perjuries, he was asked as to his name, condition, business, nativity, residence and religion. He answered, that he was called Ruperto Caballero, that he was fifty years of age, married, a sailor by trade, a native of *Chiriquí*, a resident of this District and of the Christian religion.

Being asked if he had heard it said that the Prefect of *Chiriquí* placed a picket of troops upon this side of *Punta Burica* by which the division line passes between *Colombia* and *Costa Rica*, he answered, that he knew that in the last days of the month of July of the current year, the Prefect of the Department of *Chiriquí* directed there should be stationed at a distance of about two leagues on this side of *Punta Burica* a squad composed of fifteen

men, under the command of Señor Federico Delgado, which squad remained there for the period of ten or twelve days.

Being asked if he knew or had heard it said what the object was which the Prefect of *Chiriquí* had in placing the said squad there, he answered, that he knew positively that the Señor *Alcalde* of the District of *Chiriquí* had leased, for the period of two years, the cocoanut groves which are to be found on this side of said Point, to Señores Manuel Morales and Gregorio Gallardo, and that the Prefect of *Chiriquí* in placing the said squad there did so with the purpose of supporting the action of the *Alcalde* of *Alanje*.

Being asked if he knew or had heard it said that at any time, upon the shores on this side of *Punta Burica*, there had been known any authority placed there on behalf of *Colombia*, he answered, that this had never happened; that he only knew that the Political Chief of *Dulce Gulf* appointed Señor Tomás Cubillo as Deputy there, who was ordered to be carried away bound by the Prefect of *Chiriquí*, if he should have accepted the appointment, but as upon the arrival of the squad Señor Cubillo became frightened, he denied to them the said appointment and in this way he escaped being carried away bound.

Being asked if he knew or had heard it said that the Political Chief of *Dulce Gulf* may have at any time taken an armed squad in order to pursue some criminal or in any way may have gone over from that side of *Punta Burica* or may have in any manner gone into Colombian territory, doing any act with authority, he answered, that he had never heard it said that there had ever been an armed squad at *Dulce Gulf*, either to pursue any criminal or for anything else, that the authority at *Dulce Gulf* never had used any squad, not even for the guard of the settlement.

He said that his statement and declaration was true, under his oath, and his declaration being read to him, he approved and ratified it.

FRANCISCO GÓMEZ.
MANUEL GALLEGO.
R. CABALLERO.
JOSÉ CASTRO Q.

At *Dulce Gulf*, on the 4th day of the month of November, of the year 1879, there appeared at this office Señor José Rodríguez G., who was sworn after the previous reading of the provisions of the penal law concerning false witness and perjuries, and under the said provisions he was interrogated as to his name, age, condition, business, nativity, residence and religion. He answered, that he was called as above stated, that he was of age, a bachelor, a sailor, a native of Portugal, a resident of this Canton and of the Apostolic Roman Catholic religion.

Being asked as to what he knew as to a squad, which the Prefect of *Chiriquí* directed to be stationed upon this side of *Punta Burica*, upon Costarican territory he answered, that during the first days of the month of July it arrived upon the shores of *Burica*, at a considerable distance on this side of the Point of *Burica*, which was respected as the *statu quo* between the two nations of *Colombia* and *Costa Rica*, and that the reason for it was that the Señor *Alcalde* of the District of *Chiriquí* gave a lease for a term of two years to Señores Manuel Morales and Gregorio Gallardó of the cocoanut groves which are found on this side of the Point mentioned; that he knew also that the Political Chief of *Dulce Gulf*, upon being notified of this action, sent a note of request to the Señor Prefect of the Department of *Chiriquí*, asking that he prevent this abuse by the *Alcalde* of the District of *Alanje*, and that upon receiving this note the Prefect of *Chiriquí* ordered the squad mentioned to go thither with the purpose of supporting the lease which had been made by the *Alcalde* of *Alanje* and at the same time to prevent cocoanuts being taken away under the authority of *Costa Rica*.

Being asked if he knew or had heard it said that on this side of *Punta Burica* there had ever been known any Colombian authority, he answered that none such had ever been known there.

Being asked if he knew that Señor Tomás Cubillo was appointed as Deputy at that place, which appointment was sent to him by the Political Chief of *Dulce Gulf*, he answered, that he knew this positively, and that while the squad ordered thither by the Prefect of *Chiriquí* brought definite orders to bring Señor Cubillo away bound as the Costarican Deputy, still the chief of the squad, Señor Federico Delgado, did not make the arrest of Señor Cubillo, the latter having denied that he was such

Deputy, and that this was surely done because of his fear of the violence with which the squad came there.

He said that what he stated and declared was the truth under his oath and his declaration being read to him he affirmed and ratified it and signed it with me as evidence thereof.

FRANCISCO GÓMEZ.

JOSÉ CASTRO Q.

JOSÉ RODRÍGUEZ GÓMEZ.

MANUEL GALLEGO.

Jefatura Política of Dulce Gulf.

At 12.30 on the 4th day of November of the year 1879, there appeared at this office Don Bonifacio Aráuz, who was legally sworn and he took the oath by God, Our Lord, and the sign of the cross, by which he promised to tell the truth as to what he knew and should be interrogated.

Being asked his name, age, condition, business, nativity, residence and religion, he answered, that he was called Bonifacio Aráuz, that he was of age, a widower, a native of *Chiriquí*, a resident of this District and professed the Apostolic Roman Catholic religion.

Being asked what he knew respecting a squad which was ordered to be stationed upon the shores of *Burica*, during the first days of the month of July of this year by the Prefect of the Department of *Chiriquí*, he answered, that it is known that the *Alcalde* of the District of *Alanje*, *Chiriquí*, made a lease, for a term of two years, of the cocoanut groves which are found upon this side of *Punta Burica*, by which the division line passes or that is to say the *statu quo* between *Colombia* and *Costa Rica*; that the lessees of the said cocoanut groves were and are Señores Manuel Morales and Gregorio Gallardo, and also that the Prefect of *Chiriquí* undertook to support the action of the *Alcalde* of *Alanje*, simply because the official at *Dulce Gulf* asked him to put an end to the lease which had been made by the said *Alcalde* and that this was enough to cause the Prefect of *Chiriquí*, Doctor Bernardo Ballarino, to order fifteen men, under orders

of the officer Federico Delgado to take his station at a distance of two leagues more or less upon this side of *Punta Burica*, with instructions to arrest whoever might be in authority there appointed on the part of *Costa Rica*.

Being asked if he knew or had heard it said that at any time there had been known upon the shores which are on this side of *Punta Burica* any official appointed there on the part of *Colombia*, he answered, that it had never been known, except it was at the place called *San Bartolo*; that he, as a native of the Department of *Chiriquí*, is perfectly well acquainted with all of these localities, and that even in *Chiriquí* itself from this side of the *Chiriquí-viejo* it was all reputed to be Costarican territory.

Being asked if he knew or had heard that any of the authorities of *Dulce Gulf* ever put a Deputy or in any way invaded Colombian territory, he answered, that he had never had heard it said but that on the contrary the authority at *Dulce Gulf* had given guaranties to all the Colombians who were found in *Dulce Gulf*.

He said that what he had stated was the truth under his oath which he had taken and his declaration being read to him he affirmed and ratified it and signed it as evidence thereof.

FRANCISCO GÓMEZ.

JOSÉ CASTRO Q.

BONIFACIO ARÁUZ.

MANUEL GALLEGO.

Jefatura Política of Dulce Gulf.

NOVEMBER 6, 1879.

These declarations having been taken, let them be forwarded as requested by the Honorable Señor Minister of Government for the due effect thereof.

FRANCISCO GÓMEZ.

MANUEL GALLEGOS.

J. CASTRO Q.

Thereupon, and on five sheets these proceedings were forwarded to the Honorable Señor Minister of Government.

GÓMEZ.

Doc. 349 Señor Rico, Secretary of Foreign Relations of the United States of Colombia, to That of Costa Rica.

Secretaryship of Interior and Foreign Relations

BOGOTÁ, November 28, 1879.

In the official communication of August 19 last I had the honor to address to Your Excellency a despatch which stated as follows:

“Under date of the 4th of the present month, by a telegram sent to the Secretary of Government of *Panama*, I had the honor to address to Your Excellency the following communication:

“The Secretary of State of the Government of *Panama* advises this Department, under date of July 18th last, that the Government of the Republic of *Costa Rica* occupied a portion of Colombian territory and in the cocoon groves of *Burica* (*Cocales de Burica*), Department of *Chiriquí*, disregarded the official in charge and replaced him with another appointed by the *Jefatura* of *Dulce Gulf*.”

“The Executive Power of *Colombia*, being desirous of maintaining good relations with that of *Costa Rica*, is willing to believe that such acts, which have been carried out without any previous notice, constitute abuses which the Government of your Republic will have corrected or it will be ready to correct; and consequently it confines itself to solemnly protesting against such acts and demanding for the punishment of those responsible therefor, as also that efficient measures be taken to avoid the repetition of any acts of this character.

“On the other hand, it does not doubt that your Government will take into account the circumstances that, under the last notes exchanged between the Departments of Foreign Relations of the two countries, respecting bound-

aries, they both agreed to respect the *statu quo*, and therefore changes in the actual jurisdiction ought to be effected by common accord.

"The attitude of this Government in so delicate a matter will show to that of Your Excellency how keen is the desire which *Colombia* feels that its friendship with your country should not suffer any interruption, a sentiment which I have no doubt will be met by the measures for justice that are indicated on the part of *Costa Rica* in this matter with the fraternity that should bind together the nations of America."

"In the former communication which, as above stated, was forwarded by telegraph, the other considerations were not taken up on account of the lack of time. I will proceed to state them to Your Excellency.

"The correspondence exchanged between your Ministry and this Department in 1876, respectively, left the principle established that the *statu quo* should be respected in the boundary question pending between the two countries.

"The Colombian Government, proceeding in this matter as it has done in other analogous ones, accepted very willingly the idea of submitting the question mentioned to the decision of arbitrators and will not hesitate in coming to an agreement with your Government, in order to reach, by such means, a definitive solution of that delicate matter.

"Moreover, I trust that the incident occurring upon the frontier and which has led to this correspondence, will not give rise to the dangerous situation which it was feared might develop between the two nations."

As I have not had the honor of receiving a response from Your Excellency to the above inserted note, it has seemed to me for that reason desirable to transcribe it.

It having been agreed between the two nations some two years ago that the *statu quo* should be maintained, it can but appear strange to the Government of *Colombia* to see the determination upon the part of that of *Costa Rica* as regards the jurisdiction which it claims to exercise over the ancient Canton of *Alanje*.

According to the last communications received from the Gov-

ernment of *Panama* in reference to this matter, the authorities of *Costa Rica* insist upon exercising jurisdiction over various points of the Colombian territory, respecting which there is no doubt whatever as to their being included within our territorial limits under the tenor of the *statu quo* already mentioned; and I have received instructions from the Citizen President to reiterate to your Government the protest of that of *Colombia* against the commission of such acts, which it persists in hoping have not been authorized by the Executive Power of your Republic.

With the greatest consideration, I subscribe myself Your Excellency's very humble servant.

LUIS CARLOS RICO.

Doc. 350 **The Secretary of Foreign Relations of Costa Rica to That of Colombia.**

National Palace,
SAN JOSÉ, March 12, 1880.

MR. MINISTER:

The satisfaction which was felt by my Government at the courteous note of Your Excellency of November 18th last, concerning the good disposition of that of Your Excellency as to submitting to arbitration the boundary question existing between the two nations, and its purpose to preserve meanwhile the *statu quo*, corresponds to the feeling with which I now address myself to Your Excellency, with the accompanying certified copies, by which it appears that the officials of *Chiriquí* continue their advances and their abuses, with a view to the exploitation of the cocoanut groves located upon this side of the *Punta de Burica*.

The Government of this Republic at once decided that Your Government did not have even a knowledge of such acts and that when they were brought to its notice the necessary measures would be at once taken to the end that the authorities of *Chiriquí* keep within their proper limits, respecting, as they should, the traditional *statu quo* which has been observed by both countries.

Under this attractive idea, founded upon the high probity of your Government, I forward the documents referred to in the honorable care of Your Excellency.

I take this opportunity to renew to Your Excellency the assurances of my appreciation and of my very distinguished consideration.

JOSÉ MARÍA CASTRO.

To the Excmo. Sr. Minister of Foreign Relations of the Republic of *Colombia*.

Bogotá.

Inquisition Held in Chiriquí, by Dr. Don José de Obaldía, Relating to the Territorial Claims of Colombia to Punta Burica. Doc. 351

(Annex to Instructions of Dr. Holguín).

DAVID, April 14, 1880.

Señor Don Manuel Antonio Herrera.

My esteemed friend and compatriot:

In order to fulfill the desires of the Chief of the National Government relative to the orders (of which without doubt you are not ignorant) dictated by the President of *Costa Rica*, disregarding the territorial right of *Colombia* over *Punta Burica*, I beg that you will respond, as it were under the solemnity of an oath, to the following queries:

1. Do you possess, or can you get, so as to forward to me, an exact copy, even though it may not be certified, of the orders to which I have just referred, and the notes which passed between the authorities of the two countries and which have been published in the official periodicals?

2. Have you any knowledge that subsequent to these publications any step was taken on the part of the Government of *Costa Rica*, or of the employees of that Republic, with the object of preventing Colombians from gathering cocoanuts from the shores denominated *Burica* without the permission of Costa Rican officials?

3. As a native of the State of *Panama*, and for many years resident in this Department of *Chiriquí*, do you know positively that the authorities of this Republic have sold at public sale with-

out contradiction, since our independence from Spain, in 1821,¹ as a municipal asset, the right to gather cocoanuts from the shores of *Burica*?

And 4. Have you any knowledge that such sales were continued, or that they were suspended, subsequently to the orders of the Government of *Costa Rica*, referred to in the first question? In the second case, have you received any information as to the reason or reasons for the suspension of such sales?

I hope that you will permit me to make such use of the response which you may be pleased to give me in pursuance of this letter as I may deem desirable, thanking you now for the trouble that I may occasion you.

I remain your very cordial friend and servant.

JOSÉ DE OBALDÍA.

SEÑOR DON JOSÉ DE OBALDÍA,
Present.

My esteemed friend and compatriot:

I would have liked—such was my desire—to have given you sooner a response to your letter of the 14th of April last past, with which you were pleased to honor me; but domestic events on the one hand and official engagements on the other, have compelled this involuntary delay, for which I beg that you will excuse me.

I will begin at once my response to your kind communication, stating to you my regret that I do not possess the official documents which are indicated in the first point of your letter, and that although I have taken some steps for the purpose of getting them, so as to have the pleasure of sending them to you, it has not been possible for me to obtain them, notwithstanding my diligent efforts.

¹Let it be noted that Dr. Obaldía, an important personage in the extinguished State, now the Department of *Panama* (1890), and former Vice President of the Republic of *New Granada*, fixes the independence of *Panama* (and of its Province of *Veragua*) in 1821, the same year in which that of *Guatemala* was secured and of *Costa Rica*; and therefore the *uti possidetis* of 1821 is the only one which, under the most elemental principles of Public Law, can be accepted in the boundary discussions between *Costa Rica* and *Colombia*. M. M. P.

Taking up now the second point of your letter, I will say to you that notwithstanding the official publications of the Government of *Costa Rica*, to which you refer, it is a matter of public notoriety that the Political Chief of the region of the Gulf of *Dulce* has issued orders, since the last year, preventing Colombians from gathering cocoanuts from the shores of *Burica*, when *since our independence from Spain, in 1821*, the authorities of this Republic have always sold publicly without contradiction, as a municipal asset, the right to gather cocoanuts from the said shores of *Burica*; so that the said cocanut groves form a part of the State properties, under clause 3 of Art. 668 of the Administrative Code, and its revenue is now applied for the public instruction of the district of *Alanje*.

Referring now to the final part of your letter, I can assure you that notwithstanding this was sold by the respective Colombian authorities, the Political Chief of *Dulce Gulf*, who is said to act under instructions from the Cabinet of *San José*, has prevented the Colombian purchaser from gathering the fruits of those cocanut groves, by threats, in scandalous violation of Colombian territory.

Having thus answered your esteemed letter, you are at liberty to make any use of this response that you may find desirable.

With sentiments of the highest consideration, I have the honor to subscribe myself your cordial friend and servant.

M. A. HERRERA.

David, May 1, 1880.

DAVID, April 14, 1880.

SEÑOR DON SIMÓN ESQUIVEL.

My esteemed friend and compatriot:

In order to fulfill the desires of the Head of the National Government, relative, etc. (Here follows letter as above to Don M. A. Herrera, with single change of question 3, which reads as follows: "As a native of the City of *Panama* and an old resident in the Department of *Chiriquí* * * * etc.," and it then proceeds as in the one referred to).

JOSÉ DE OBALDÍA.

SEÑOR DON JOSÉ DE OBALDÍA.

My distinguished friend and compatriot:

As if it were under the solemnity of an oath, I am glad to respond to the enquiries which you have been good enough to send to me in the prior letter, in the manner following:

1. I have not the orders which may have been issued by the President of *Costa Rica*, or any of his agents, disregarding the right of *Colombia* over *Punta de Burica*; but you can get such orders from Señor Manuel Morales, a resident of the district of *Alanje*, to whom they were directed, on account of that gentleman being the lessee of the cocoanut groves of *Burica* during the year last past, to whom the Prefect of the Department presented them as proof that the authorities of that Republic prevented him from exercising his right to gather the cocoanuts which had been given to him by the Subdirection of Public Instruction of the district of his residence. The notes exchanged thereupon between the President of the State of *Panama* and that of *Costa Rica*, you will see in Nos. 465 and 467 of the "Gaceta de Panama," which you will find annexed hereto.

2. Since these publications I have heard it said that the Governor of *Dulce Gulf* has not only prevented the gathering of cocoanuts on those shores by the one to whom the lease was made by the Sub-directions of the district of *Alanje*, but that, usurping the cocoanut groves entirely, he has leased them for the account of his own Government.

3. The cocoanut groves of *Burica*, belonging to the extinguished Province of *Chiriquí*, were incorporated as one of the properties of the State of *Panama* by the Law of May 30, 1863, and ceded to the Public Direction of the district of *Alanje* in the Law 14 of 1863, and for that reason the Sub-direction of that district has always leased them in order to obtain the yield upon its investment.

4. In the year 1874 or 1875 the Governor of *Dulce Gulf* addressed himself to the Prefecture of this Department, stating that the cocoanut groves of *Burica* belonging to that Republic in virtue of a treaty concerning boundaries, they had been improperly leased by the authorities of the district of *Alanje*; but the undersigned, who had at that time the honor to fill that position, an-

swered it showing his error and the disapproval the Congress of *Colombia* gave to the treaty upon which he planted himself; and since that time he has not again touched upon this question directly or indirectly, until now that the Government of *Costa Rica* has dictated the orders we have mentioned.²

You may make such use of this reply as you find desirable and consider me at all times as your true friend and obedient servant.

SIMÓN ESQUIVEL.

April 18, 1880.

DAVID, April 14, 1880.

SEÑOR DR. DON AGUSTÍN JOVANÉ,

Present.

My esteemed friend and compatriot, etc.

Here is a literal reproduction of the letter addressed to Don Simón Esquivel.

SEÑOR DON JOSÉ DE OBALDÍA.

My distinguished friend:

With pleasure I answer the foregoing interrogatory by you, if I can in any way contribute to clearing up the rights of *Colombia* to the territory of *Punta de Barica* and its cocoanut groves, as follows:

1. I do not possess, nor have I been able to obtain the orders dictated by the Government of *Costa Rica*, nor the notes exchanged between the authorities of the two countries concerning this point; but I suppose that the last dispositions of the Governor of "*Dulce Gulf*," are now in the possession of the Secretary of Foreign Relations, prohibiting the lessee of *Alanje* from gathering cocoanuts to which he had the right, and declaring that he had leased the cocoanut groves by order of his Government.

²The Governor of *Dulce Gulf* went outside of his attributions in addressing himself to a foreign authority concerning matters within the exclusive cognizance of the Secretary of State; and besides he committed an error in saying that the cocoanut groves of *Burica* belonged to *Costa Rica* in virtue of a treaty of boundaries. This treaty, which remained as a project, only sanctioned a part of a legal fact which had subsisted since 1540 and was notorious in 1861, without the slightest objection on the part of *Colombia* or *Veragua*. M. M. P.

These documents were forwarded to the Secretary of State, and the latter replied that he had sent them to the Secretary of Foreign Relations of the Nation.

2. It was after the publication in the year last past of the notes exchanged between the Prefect of this Department and the Governor of *Dulce Gulf*, and the one addressed by the President of the State to the one of like rank of *Costa Rica*, that that Government took a decided interest in preventing Colombians from gathering cocoanuts on the shores of *Burica*. without the permission of those officials.

3. As a native of the State of *Panama* and an old resident in this Department, I am sure that the authorities of this Republic have sold, without contradiction, since our independence, as a municipal asset, the right to gather cocoanuts from the shores of *Burica*.

4. I do not know whether the sale may have been suspended recently, made by the Cabildo of *Alanje* in favor of Señor Manuel Morales, resident of that district, but I fear so, because the authorities here have not taken any measures to protect him in his rights, although he came in due time to ask them.

You can make such use as you may deem desirable of this answer and dispose of the sincere regard of your friend and servant.

AGUSTÍN JOVANÉ.

David, May 9, 1880.

Doc. 352 **The Secretary of Foreign Relations of Colombia to That of Costa Rica.**

United States of Colombia,
Department of Foreign Relations,
BOGOTÁ, April 20, 1880.

MR. MINISTER :

In addition to the note of my Department, dated September 25, 1877, replying to that of Your Excellency of the 25th of July of that year, I am instructed by the President of the Republic to state to Your Excellency that while it is very clear that it is the intention of the Government of *Costa Rica* and of that of *Colombia* to submit the settlement of the questions pend-

ing between the two nations as to boundaries to an arbitral decision, as it behooves civilized and sister peoples to do, and to preserve in the meantime the *status quo* until it is carried out, it is no less certain that the demarcation of the boundary between your Republic and that of *Colombia*, which Your Excellency sets up in the note mentioned of July 25, 1877, that is to say, following a straight line from *Punta de Burica*, upon the Pacific, to the *Escudo de Veragua*, in the Atlantic, is not, nor can it be, the divisional line between the two Republics, and much less can it serve as a basis for the preservation of the *statu quo*.

In view of the fact that Your Excellency has not yet been given the answer promised in this Department's note of September 25th, 1877, touching upon the *status quo* of the pending questions relating to the boundaries between the two countries—a *status quo* which has not been altered by the negotiations entered upon at different times, and which the two governments are in accord in not altering—I should say to Your Excellency that on that date the Government of *Colombia* did not find it convenient to protest against that demarcation of territory which Your Excellency proposed in your above mentioned note, for the reason that it was not imagined that the government of that republic, in fixing upon the boundaries mentioned between the two nations, could have had in mind anything more than the prompt formulation of its claims, with no thought, however, of attempting in any way to enforce them as it has succeeded in doing, in flagrant violation of the rights of this country and without awaiting the reply of this government. By virtue of the *uti possidetis* of 1810, and firmly based upon authentic and irrefutable documents, the boundaries of *Colombia* extend on that side as far as Cape *Gracias á Dios*, embracing all of the *Mosquito Coast* on the Atlantic, and as far as the *Golfo* river on the Pacific; but for the preservation of the *status quo*, which both governments have agreed not to alter pending the arbitral decision, my government maintains and insists that the boundary line that should separate the two republics during the period in which the boundary questions remain pending is the following, on the Atlantic side: The main course of the *Culebras* river as far up as its sources, following a line along the summits of the *Las Cruces* range to the mouth of the *Golfo* river in the Gulf

of *Dulce* on the Pacific. This government looks upon any act of jurisdiction by *Costa Rica* on the farther side of that boundary as an act of usurpation. My government purposes to take the necessary measures to bring these questions to a settlement in the shortest time possible and by means of the dignified and conciliatory method proposed by Your Excellency's government and accepted by mine, and it purposes also to issue such orders as may be requisite to avoid any conflict between the two republics pending the determination of the arbitration; but my government ventures to express the hope that the Government of *Costa Rica*, justly acknowledging the moderation and good feeling of the Colombian government, will spare no efforts to preserve and make more binding—if this be possible—the ties of cordial friendship that have always united the two republics.

With sentiments of the highest and most distinguished consideration, I subscribe myself your devoted and obedient servant,

LUIS CARLOS RICO.

To His Excellency,

The Minister of Foreign Relations
- of the Republic of Costa Rica,
San Jose.

Doc. 353 The Secretary of Foreign Relations of Costa Rica to That of Colombia. Protest.

National Palace,
SAN JOSÉ, May 15, 1880.

SEÑOR:

Among the printed matters brought by the mail today to this capital there has been received No. 398 of "*La Estrella de Panama*," (The Panama Star), dated the 6th of the present month.

Under the heading of "Important Telegram," it was stated in that number that the general Government of *Colombia* had addressed to the State of *Panama*, under date of April 20th, a telegram ordering that the suggestion be conveyed to the Captains of the North American war vessels "Kearsarge" and "Adams," if they were still to be found within Colombian waters, that they suspend the operations they were carrying on in the

Chiriquí Lagoon and in *Dulce Gulf*, and that the "Adams" should immediately withdraw from this latter port, it not being opened.

Such an order as that, taken without the express assent of *Costa Rica*, and without relying upon any of its rights, violently exercising authority over its territory, on the part of the first Magistrate of an American people, of a large and cultured nation, which the Costaricans have treated as a sister, and whose sons have received in this country assured protection—that order is of such a questionable character that the Government of this Republic does not dare to give to it full credit. Nevertheless, the mere possibility that such action might be carried out, makes it a duty to repel it, under the hypothesis that it might become effective.

This is not the time to enter into an estimation of the titles which give to *Costa Rica* an unquestionable ownership of the zone in which the bay of *Dulce Gulf* is found. The immemorial and continuous possession is sufficient, in which that territory and those waters have been held—a possession till now quiet, peaceful and notorious, a possession recognised by all the administrations of *Colombia* and respected by the present one in agreeing upon the maintenance of the *statu quo*, until the decision of an Arbitrator or the determination in some other diplomatic way of the pending boundary question; all that is sufficient, I repeat, for the proceeding which *La Estrella* attributes to the Colombian Government to constitute in itself a flagrant violation of the territorial dominion of *Costa Rica* and a breach of the faith pledged.

Your Excellency will very well understand that these acts, which would be as unjust for all the world as vexations for whoever knows the solidarity of the Latin American countries, never could be the object alone of the moral action of a Government which rises to the height of its mission, and which, like that of *Costa Rica*, is determined to make whatever sacrifices are demanded by its national honor.

Under the inspiration of these reasons and protecting the dignity and the legitimate interests of this Republic, my Government protests formally and solemnly against the Colombian Union and before all the Governments of the civilized nations on account

of the proceeding so many times referred to and on account of any other act by which the Government of *Colombia* violates the territorial rights of *Costa Rica*, declining all responsibility therein for the consequences.

I beg that Your Excellency will see fit to bring this present protest to the knowledge of the Supreme Head of your Federation and to accept the assurance of the high consideration with which I subscribe myself Your Excellency's very obedient servant.

JOSÉ MARÍA CASTRO.

To the Excmo. Sr. Minister of Foreign Relations of the United States of Colombia.

Bogota.

Doc. 354 Report of the Secretary of State in the Department of Government, Don Rafael Machacho, to the President of Costa Rica, General Don Tomás Guardia.

SAN JOSÉ, June 10, 1880.¹

TO HIS EXCELLENCY THE GENERAL PRESIDENT:

* * * * *

By reason of the lack of a material demarcation between *Costa Rica* and *Colombia*, some difficulties have occurred between the local authorities of *Golfo Dulce* and those of *Chiriquí*.

In the month of May, of last year, individuals who pretended to have been authorized by the Prefect of *Chiriquí*, began to work the cocoanut groves located within Costa Rican territory, and for the first time appeared the pretention to establish a Colombian authority on this side of *Punta Burica*.

The Political Chief of *Golfo Dulce* was then instructed to take prudent steps, to the end that the exploiters of the natural products of the country should not enter into our territory without obtaining the necessary authorization; to not permit the establishment of foreign authorities within his jurisdiction; and lastly to fulfill the inevitable duty of defending the integrity of our territory, in case of a stubborn resistance against his orders.

¹ Published by the National Printing Office. San José de Costa Rica, 1880.

The authorities in *Panama* gave an immoderate importance to this matter, as it appears; but the press explained it and the President of that State forwarded to you a communication relating to the incident, and you replied to it from *Puntarenas* on August 5, 1879.

Your answer, to which I refer, states and resolves, the question with entire clearness in the following terms:

“Are there any boundaries fixed between *Colombia* and *Costa Rica*?—There are none, because we have not been able to settle this point.

“Are there any limitaneous territories of disputed ownership, in which respectively exist possessions ruled by authorities of the one and the other Governments, by reason of the recognized *statu quo*, according to practice established by the new Law of Nations?—Yes.”

“Therefore, with regard to an occurrence of this kind, the question has to be resolved in a natural way, awarding the deserved punishment to the local authority who has violated the *statu quo*, or by supporting his conduct, in case that such violation may not have occurred. And for either one or the other of these proceedings a previous and peaceful understanding between both Governments must take place.”

Things being in such a state, the Political Chief of *Golfo Dulce* reported on September of last year new encroachments of *Chiriquí's* authorities upon the Costa Rican territory, these authorities having placed a small detachment of soldiers on this side of *Punta Burica*. That official added that the commander of that detachment, Señor Federico Delgado, brought with him a rope with the object of taking prisoner and lashing Señor Tomás Cubillo or whoever might be the official appointed for that place, pretending to establish therein a Justice of the Peace appointed by the authorities at *Chiriquí*; and lastly, that the Señor Manuel Morales and Gregorio Gallardo were prosecuting their work on the cocoanut groves of *Burica*, relying on a contract of hiring made with the local authority of *Alange*.

By reason of this and besides confirming the instructions given to the Political Chief of *Golfo Dulce*, the Secretaryship in my charge reported the matter to that of Foreign Relations.

The fixing of the boundaries between *Costa Rica* and *Colombia* is at present being discussed in due diplomatic form; and while there may be obtained a settlement convenient and useful for the interests of both Republics, which are neighbors and friends, it is not doubtful that the Colombian Government can no less than duly consider the inquest that has been made on the occurrences that I have stated.

In that inquest not a single Costa Rican has deposed. All the witnesses are Chiricans, and that inquest evidences all that is necessary to make perfectly clear the indisputable rights of *Costa Rica* and the encroachments committed by the limitaneous authorities.

And I say indisputable rights, because the boundaries of *Costa Rica* towards the South, according to old titles, reached as far as the plains of *Chiriquí*, and according to the *statu quo* consecrated by time, *Punta Burica* has been considered as an indisputable limit between the two countries.

Let us hope that the Government of *Colombia*, acting in a just manner and with full knowledge of this matter, will not raise difficulties of an international character.

* * * * *

A disorder has just taken place in *Talamanca*. This distant canton is little known and appreciated, notwithstanding its abundant natural riches. Not long ago the Chief of Police of *Limón*, Señor Cuéllar, made an official visit to *Talamanca* and this visit has been rather useful, because that official took several measures relating to all the branches of administration, and the Government, judging them proper, has approved them.

It happens that the said district is not inhabited by people of the good race who populate most of *Costa Rica* and who by being civilized and industrious have been able, under the rule of the Government to make the Republic reach to a degree of grandeur very superior to what might be expected from the number of its citizens and the size of its territory.

Talamanca, excepting a few Chiricans and some other individuals belonging to other countries, is exclusively inhabited by the descendants of the aborigines of those regions. These in-

genuous and ignorant people, who vegetate far away from the civilized center of the country, still preserve many of their primitive habits, though the beneficent action of authority begins to be felt therein.

The disorder which lately took place in *Talamanca* was occasioned by the Political Chief, who committed a murder and afterwards declared a sort of rebellion, which caused a great scandal among the inhabitants, who divided themselves into two factions.

The Governor of the Province of *Limón* organized without delay a small military force and placed it under the Police Chief Señor Cuéllar, to whom he gave prudent and well considered instructions, and sent the expedition by the steamer Heredia.

By these means, order has been restored in *Talamanca* and the expedition has come back after having fulfilled well its commission. Señor Antonio Saldaña, a man possessing the required qualities, has been appointed Political Chief, and the offender who caused the disorder, although having fled to *Térraba*, will probably be seized.

The most needed things in *Talamanca*, in order that that part of the Republic may get the same civilization and progress like other places are a good Priest and schools.

There are not more efficient means for the civilization of primitive people as the holy and beneficent influence of Christianity. In Spanish Government time and even after Independence was declared, the Monks of the *Propaganda Fide* used to go as missionaries to *Talamanca*. Those Monks were in the duty of doing that by the rules of their Institute, and the fulfillment of this duty was dangerous, because then the *Talamanca* Indians were much less civilized than they are now, and could be compared to the indomitable *Lacandones*. A good Priest would do much good in *Talamanca*, but he must be a really evangelical Priest, who would only seek as a reward for his work, the Christian civilization of the Indians. The Government has been endeavoring to secure such welfare for the inhabitants of those distant places, and it must be considered that many of them have stated the need they have of a Priest.

With regard to schools I will say nothing, as you know perfectly well how important is popular instruction and as you have increased to such an extent the number of schools that, excepting

in the places to which I refer, there is one wherever are pupils. Very well known difficulties have prevented *Talamanca* to enjoy also the great welfare of the liberal disposition of your Government for the establishment of schools in every place; but perhaps the time has come for *Talamanca* to partake, in the matter of public instruction, the same benefits that other places owe to you, and in which you have been the first one to plant that fruitful seed.

* * * * *

RAFAEL MACHADO.

National Palace. San José, June 10, 1880.

Doc. 355 **The Secretary of Government and Police of Costa Rica
to That of Foreign Relations.**

SAN JOSÉ, July 16, 1880.

The Governor of the District of *Puntarenas*, in note No. 258, dated the 14th instant, states to this Department, as follows:

"In note No. 179, dated the 4th instant, the Political Chief of *Dulce Gulf* advises me as follows:

"Yesterday on the 3rd instant, at the hour when the mail-post left the Gulf, there arrived at this port Señor León Bastos, a native and resident of *Chiriquí, United States of Colombia*, in command of a vessel which contained such articles as powder, lead, fulminate, cigars, leaf tobacco and some dry-goods. This person is Deputy to the Assembly at *Panama*, as he attended this year and expects to attend the next and it is only a few days ago that he was Secretary of the Prefect of *Chiriquí*. This office feels no doubt, from the antecedents in its possession and knowledge of the individual, that he is nothing but an explorer and that his mission is nothing more than to prepare the residents here having the same origin for the moment when the time shall come. This office is informed that this person, together with Miguel Olmus and others, are nothing but birds of rapine and that they have gone through the settlements of *Riochico* and *Bugava* sounding various people and come to *Dulce Gulf* in the

character of vandals, to throw out their enticements in such a way as not to compromise their Government and it is possible that it is not known who they are. This office, therefore, believes that this merchandise is a mask for the mission that brings Bastos; that with these other things he can do harm in this settlement; for which reason this office proceeded to take precautionary measures, giving orders to the Treasurer, as you will see by the text of the copy enclosed, and you will see that this man has not been able to conceal the anger which he feels, but that with all his dissimulation his malice was known, and to cover it up and seeing himself practically discovered he asked this office to grant him passage to *Puntarenas* in the mail-boat, in order to make use of his rights, which was allowed him. The merchandise remains stored in the custody of the Justice of the Peace and the Señor Governor may provide as he deems proper upon receipt of this despatch. At this last moment it has come to the knowledge of this office that the Costarican Deputy, Señor Tomás Cubillo, who acted in that capacity upon the shores of *Burica*, has been arrested by the authorities of *Chiriquí* and carried away as a prisoner. I have the honor to advise Your Honor in order that you may be pleased to decide what is best to be done."

I have the honor to bring this to the knowledge of Your Honor so that you may give the proper course to this grave affair, permitting me to subscribe myself with the greatest consideration your humble servant.

F. CHAVES CASTRO.

Doc. 356 **Conclusions of the Senate of Plenipotentiaries of Colombia.**

BOGOTA, July 13, 1880.

United States of Colombia.
Legislative Power.
Secretaryship of the Senate.

BOGOTA, July 14, 1880.

To the Secretary of Foreign Relations.

The Senate of Plenipotentiaries in the Session of yesterday adopted the following:

Conclusions.

“(1) Colombia has, under titles emanating from the Spanish Government and the *uti possidetis* of 1810, a perfect right of dominion to, and is in possession of the territory which extends towards the north between the Atlantic and Pacific Oceans to the following line:

“From the mouth of the River *Culebras*, in the Atlantic, going up stream to its source, from thence a line along the crest of the ridge of *Las Cruces* to the origin of River *Golfito*; thence the natural course of the latter river to its outlet into the *Gulf of Dulce* in the Pacific.

“(2) *Colombia* has titles which accredit its right, emanating from the King of Spain, to the Atlantic *littoral* embraced from the mouth of the River *Culebras* as far as Cape *Gracias á Dios*.

“(3) *Colombia* has been in uninterrupted possession of the territory included within the limits indicated in Conclusion 1.

“(4) In 1874 the Prefect of *Dulce Gulf* claimed that the coconut groves of *Burica* belonged to *Costa Rica* under the Correo-Montúfar Treaty, and officially demanded the product of the lease. Such a pretension was rejected in an official manner by the Prefect of *Chiriquí*, who called the attention of the claimant to the fact that the treaty upon which it was based was not approved. Things continued as before, *Colombia* possessing the

cocoon groves and collecting the amount of the rentals thereof.

"(5) With the previous approval of the Senate of Plenipotentiaries, the Government of *Colombia* has required from that of *Costa Rica* that the jurisdictional *statu quo* to which reference is made in Conclusion 1, be respected, until the boundary question is decided by arbitration or in some other friendly method, and stated that it would consider any administrative act, beyond that demarcation, as a violation of its rights, or in other words, a usurpation.

"(8) Any further step to put an end to the controversy as to boundaries with *Costa Rica* must be preceded by the evacuation of any portion of territory in which that nation may have established its authorities beyond the limits marked out in Conclusion 1.

"(10) The Senate deems it desirable to suggest to the Executive Power that a Legation be at once accredited to *Costa Rica* and another in the other Republics of *Central America*, to the end that, by such measures as prudence may indicate an immediate and definite settlement may be had of the boundaries between *Colombia* and the first of the nations mentioned.

"(11) The Executive Power will publish such of these Resolutions as may be desirable and at such time as may be propitious, for which they will be communicated in a confidential note."

Will you be good enough to bring this note to the knowledge of the Citizen President of the Republic.

I am your obedient servant,

JULIO E. PÉREZ.

Department of Foreign Relations.

BOGOTÁ, July 15, 1880.

Let the foregoing communication be published save the Conclusions 6, 7 and 9."¹ RICO.

¹The Conclusion 6 was later published by the Colombian Government, but not complete. It reads as follows:

"*Costa Rica*, it is asserted, has made a settlement in *Dulce Gulf* in territory embraced between the River *Golfo*, reputed international boundary, and *Punta Burica* * * *."

Doc. 357 **The Secretary of Government and Police of Costa Rica
to That of Foreign Relations.**

National Palace.

SAN JOSÉ, June 15, 1880.

I have the honor to bring to the knowledge of Your Excellency the fact that the Political Chief of *Dulce Gulf*, in Note No. 170, dated May 30th of the present year, has forwarded to this Department a report, relative to the new advances of the authorities of *Chiriquí* into Costarican territory, demanding from the residents thereof the payment of taxes and going into the interior thereof to capture a criminal.

The grave character assumed by the affair to which I have referred obliges me to send, as I do, a certified copy of said report to the Department of Foreign Relations under the charge of your Excellency, so that you may be able to take the proper action.

I am with distinguished consideration Your Excellency's humble servant.

RAFAEL MACHADO.

Doc. 358 **The Secretary of Foreign Relations of Costa Rica to That
of Colombia.**

National Palace.

SAN JOSÉ, June 10, 1880.

MR. MINISTER:

In addition to the note of September 25, 1877; by which your Secretaryship replied to the one of July 25th of the previous year from this Department, Your Excellency was pleased to address to me, under Number 32, dated April 20th last, the courteous despatch to which I now attend.

In it Your Excellency has stated to me, by order of the President of the Republic, that although the Governments of *Colombia* and *Costa Rica* are desirous of submitting their pending questions as to boundaries to an arbitral decision and to preserve the *statu quo* until that shall be carried out, still the division line which the said note of July 25th fixes is not therefore acceptable, not even temporarily; that line being one which, starting from *Punta Burica*, goes straight to the *Escudo de Veragua*. Your Excellency

adds that, notwithstanding the Government of *Colombia* had not protested then nor later against such a claim, it never had any idea of admitting it; that in virtue of the *uti possidetis* of 1810 and of authentic and irrefutable documents, the boundaries of *Colombia* extend as far as Cape "*Gracias á Dios*," including all of the *Coast of Mosquitos* on the Atlantic, and as far as the River "*Golfo*;" on the Pacific; but that for the effect of the *statu quo* which both Republics have agreed not to change, the Government of Your Excellency maintains and asserts that the border between *Colombia* and *Costa Rica*, whilst the arbitral decision remains undelivered, is, on the Atlantic side, the main channel of the River *Culebras* to its sources, thence by a line along the crest of the range of *Las Cruces* to the mouth of the River *Golfo* in *Dulce Gulf*, upon the Pacific; and that your Government will consider any jurisdictional act of *Costa Rica* upon the farther side of those limits as a usurpation.

His Excellency the Señor General President, to whom I gave an account of the important despatch to which I now reply, although inspired by the greatest fraternity and desire for a friendly solution of the pending difficulties concerning the boundaries between the two Republics, does not admit, on his part, that new division line, which is not justified by any antecedent fact, and which despoils *Costa Rica*, not only on the Atlantic but on the Pacific coast of a great portion of the ground it legitimately occupies; and in accordance with his instructions I proceed to protest against the doctrine and the assertions of Your Excellency.

If the question of ownership, reserved for the arbitration, were to be discussed now, it would be easy for me, Mr. Minister, to produce in evidence the invincible titles which support *Costa Rica* in the dispute; but the proprietorship is not under discussion; the question is simply one of possession, and as the possession is a fact, Your Excellency will permit my expression of surprise that, the *statu quo* having been already accepted for more than a half century, pending the obtaining of definitive dominion by an arbitral decision, Your Excellency now traces fanciful demarcations, having no basis in history, nor in possession, immemorial or even consented to, claiming that the Government of *Costa Rica* should respect them as law, under penalty of incurring the odious designation of a usurper.

Prior to the time that the Royal Order of 1803, issued under circumstances that showed its transitory character, as a war measure and without importance aside from military matters, took away from the Captaincy-General of *Guatemala* a portion of the territory with which it was constituted, adding it to the Kingdom of *Granada*, there could have been no ground for any doubt concerning the limits of both of these Spanish possessions. *Costa Rica* maintains that the said Royal Order, which certainly was not carried out, nor of which was there any account given to the Council of the Indies, did not deprive it of the right to its natural and historical boundaries. *Colombia* pretends to derive from the said Royal Order, which as I have said was never anything more than a mere project, titles to the possession of a considerable portion of the eastern shore of *Central America*.

I am not now going to explain the reasons upon which the conviction of *Costa Rica* is based and which make the pretensions of *Colombia* entirely unacceptable; but it is unquestionable that only two lines of demarcation can be traced between the two countries, in accord with the antecedents of the affair; either the one authorized by the history of the conquest and colonization of the Spanish possessions in the New World and which is also based upon the treaty of peace and friendship signed at Madrid, May 10, 1850, in which the limits of *Costa Rica* were fixed at the recognition of its independence; or the one which, based upon the Royal Order of 1803, *Colombia* states it will claim from the arbitrator, which makes its dominions reach as far as Cape *Gracias á Dios*, depriving these Republics of the whole of their eastern coast. I do not understand, therefore, how, abandoning both methods of demarcation, a new line can be traced which does not arise from the state of affairs at any period of their common history and which cannot, therefore, be declared and recognized as the *statu quo* until the arbitrator shall settle the dispute.

The line which determines the *statu quo* has been traced, not only by *Costa Rica*, but also by *Colombia*; for from the moment that the latter did not claim the immediate and provisional possession of the territory which the Royal Order of 1803 took from the Captaincy-General of *Guatemala*, adding it to the Kingdom of *Granada*, it impliedly accepted as the *statu quo* the regulation

of the boundaries as they were prior to 1803, and which we consider as the only one in existence before and after that date. And it did very well to accept it, because it would have been excessive to claim that a territory which had never ceased to be an integral portion of *Central America* should be considered as having been in the possession of *Colombia* in 1825, when both countries agreed to respect the state of things then existing.

Many acts of possession, for long years, of great importance and which gave rise to no protest, could be cited by *Costa Rica* on behalf of its rights, which the note of Your Excellency disregards—such as the contract for the colonization of *Dulce Gulf*, made with a French Company in 1849; various other contracts for the opening of a suitable means of communication between the said *Dulce Gulf* and *Bocas del Toro*; the establishment upon the littoral of the latter of a settlement with its school and local authorities whose jurisdiction has always included *Punta Burica*; but it does not come within my purview to give to these facts an importance and value equal to the weighty considerations to which I have referred and which consecrate the possession of *Costa Rica*, nor does it come within it to admit, for instance, that the occupation of *Bocas del Toro* carried out by *Colombia*, and tolerated by *Central America*, could change what in legal terms should be called *the state of things*. Not by acts, but by reasons of justice that are invincible, my Government maintains and asserts that the line of the *statu quo* is the one which, *starting from PUNTA BURICA, goes straight to the ESCUDO DE VERAGUA*, and that any act of jurisdiction exercised by *Colombia* on the side beyond those limits, must be considered as an act of usurpation.

I cherish the hope that the arbitration proposed by me and accepted by the Government of Your Excellency, will soon dissipate all the pending difficulties, and that until that happy moment arrives, with the spirit that animates us all, both *Costa Rica* and *Colombia* may avoid with equal earnestness conflicts which would be very deplorable between the two peoples united by so old and loyal a friendship, as well as by the sacred ties of history, religion and language.

With sentiments of the highest and most distinguished con-

sideration I subscribe myself of Your Excellency the cordial and obedient servant.

JOSÉ MARÍA CASTRO.

To H. E. the Minister of Foreign Relations of the United States of Colombia.

Bogota.

Doc. 359 The Secretary of Foreign Relations of the United States of Colombia to that of Costa Rica.

Department for Foreign Relations.

BOGOTA, July 29, 1880.

MR. MINISTER:

I have had the honor to receive the courteous note of Your Excellency of the 15th of May last.

In it Your Excellency states that among the publications arriving upon that date at *San José* was No. 398 of the "*Estrella de Panamá*," (Star of Panama), in which under the head of "Important Telegram," it was alleged that my Government had sent to that of the State of *Panama*, under date of April 20th, a telegram ordering the Captains of the vessels named the "Keersarge" and the "Adams," if they were still to be found in Colombian waters, to suspend the operations in which they had been engaged in the lagoon of *Chiriquí* and in the *Gulf of Dulce*; and that such an order, for the reasons which Your Excellency proceeded to set forth, appeared to you of the most doubtful character, on account of which the Government of Your Republic had not ventured to give full credence to it; but that notwithstanding this the mere possibility that such an act might be undertaken made it the duty of Your Excellency to repel it, under the hypothesis that it might become effective.

The order to which Your Excellency alludes was in fact sent by my Government, by telegraph to that of the State of *Panama*; and in it mention was made of *Dulce Gulf*, because the ownership of a portion of that bay of that name being a subject of dispute between the two Republics, it was the duty of the Government of this one to protest against jurisdictional acts which it was assured were being exercised there by a third Power to the prejudice of its rights. The possession alleged by *Costa Rica*,

even under the presumption that it might have been continuous, would not deprive *Colombia* of the right to oppose the acts of third parties affecting its disputed territorial dominion.

My Government issued that order without having in view anything more than the maintenance of the sovereignty and the integrity of the territory of both Republics, equally interested in preserving each of these; and very far from claiming thereby to make any change in the actual possession, it conformed its conduct to the cherished hope that the Government of *Costa Rica* would agree to maintain the jurisdictional *statu quo*, already respected for many years, until the controversy could be decided by the means which civilization and fraternity might counsel.

My Government trusts that the foregoing frank explanations may entirely satisfy that of Your Excellency and strengthen the ties of cordiality which have always bound the two Republics and which never should fail to unite them.

With sentiments of the greatest respect and consideration I subscribe myself Your Excellency's very humble and obedient servant.

LUIS CARLOS RICO.

Instructions Given to Doctor Carlos Holguín, Envoy Extraordinary and Minister Plenipotentiary Near the United Kingdom of Great Britain and Ireland, Relative to His Mission to Costa Rica.¹

Doc. 360

BOGOTÁ, July-August, 1880.

The question of boundaries between *Colombia* and *Costa Rica* has assumed a new and delicate aspect, because that nation, violating the jurisdictional *statu quo* maintained from the epoch of the independence of the two countries, in July of the year last past occupied the cocoanut groves of *Burica*, disregarding the authority stationed at that place by the Departmental Chief of *Chiriquí*, and after replacing him by another appointed by the *Jefatura* of *Dulce Gulf*, offered the said cocoanut groves upon leases and is exploiting them to the prejudice of the revenues of

¹ Documents relating to the recent occupation of a part of the Colombian territory by authorities of *Costa Rica*. Official edition. *Bogotá*. Printing Office of Echeverría Hermanos, 1880.

the district of *Alanje* (to which the State of *Panama* ceded them), consequently, in flagrant violation of the territorial rights of *Colombia*.²

On the 4th of August, 1879, this office addressed that of Foreign Relations of *Costa Rica* a formal protest regarding the acts before mentioned, and demanded the punishment of those who were responsible, and also that effectual measures be adopted to avoid the repetition of acts of that character.

On the 10th of November following a reply was received by this office from that of Foreign Relations of *Costa Rica*, that its Government had not occupied any portion of the territory of *Colombia*; that if any misunderstanding had occurred between the authorities of *Dulce Gulf* and *Chiriquí*, it had been in consequence of the lack of material demarcation of the frontier; that the only instruction which the Costa Rican authorities had concerning the particular matter was to respect the *statu quo*; that instructions had been sent to take an inquisition as to the material facts of the protest, and that the Government would proceed in the matter inspired by sentiments of justice and fraternity.

As the protest of this Government has a direct relation with the response of the Cabinet of *Costa Rica*, the former was compelled to believe that the latter had not occupied the cocoanut groves of *Burica*; and that if any subordinate authority, exceeding his powers, had usurped the jurisdiction thereof, matters would be immediately put back in the condition they were before; but this has not been done, as appears by the note of the Cabinet

² All the documents published on the part of *Costa Rica* from the Royal *cédula* of January 19, 1537, instituting the Dukedom of *Veragua*, down to the Memorial concerning the Captaincy-General of *Guatemala*, presented to the Spanish Cortes in May, 1821, by Dr. Méndez, prove that *Punta Burica*, and the territory which extended to the East and North-east of this point as far as the River *Chiriquí Viejo*, was found in 1810 as well as in 1821 outside of the jurisdiction of *Veragua*, *Panama* or *Colombia* and under that of *Costa Rica* or *Guatemala* and in its legitimate possession.

The cocoanut groves of *Burica*, under the jurisdictional *statu quo* of the epoch of the independence, belonged by virtue thereof to *Costa Rica*.

The instructions given to Dr. Holguín begin, therefore, by stating a fact that is not correct and contrary to the theories which the Government maintains in other passages of these same instructions. M. M. P.

of *San José* to that of *Colombia*, dated March 12th last, in which it asserts that the jurisdictional *statu quo* locates the aforesaid cocoon groves within its territorial limits; from the information sent to the Citizen President by the Señor Doctor José de Obaldía and from an article published in *Alanje*, in April 1st of the present year. These documents will be sent to you, by copies of the former and a printed copy of the latter.

Also, authentic copies will be forwarded to you of the following despatches:

1. One addressed by this Secretaryship to that of Foreign Relations of *Costa Rica*, in which there was made the following declaration:

"In virtue of the *uti possidetis* of 1810, and with a solid basis of authentic and irrefutable documents, the boundaries of *Colombia* extend upon that to Cape *Gracias á Dios*, embracing the whole of the *Coast of Mosquitos*, upon the Atlantic and to the River *Golfito* upon the Pacific; but for the purpose of the *statu quo*, which both Republics have agreed not to alter whilst the arbitral decision may not be carried out, my Government maintains and protests that the marking of the boundary between the two Republics during the time that their questions concerning limits shall continue pending, is the following:

"Upon the Atlantic side, the main channel of the River *Culebras* to its sources, continuing by a line along the crest of the range of *Las Cruces* to the mouth of the River *Golfito* in the *Gulf of Dulce*, upon the Pacific.

"This Government will consider any act of jurisdiction by that of *Costa Rica*, on this side of those boundaries, as an act of usurpation."

2. One from the Secretaryship of Foreign Relations of *Costa Rica*, in which it persists in maintaining and protesting that the line of the *statu quo* is that which starts from *Punta de Burica* and goes straight to the *Escudo de Veragua*, and adds that any act of jurisdiction exercised by *Colombia* beyond these limits must be considered as an act of usurpation;

3. One from the same Secretaryship, dated May 15th last, in which it protests formally and solemnly against the intimation made by order of the Government of *Colombia* to the North-American vessels "Kearsarge" and "Adams," that they should

suspend the operations they were making in the *Lagoon of Chiriquí* and *Dulce Gulf*; and

4. The conclusions approved by the Senate of Plenipotentiaries on the 12th instant concerning the question of boundaries between *Colombia* and *Costa Rica*.

The documents above cited will inform you as to the claims of both countries and of the difference that exists between them with reference to controverted titles of dominion and possession from time immemorial; or that is to say, between the jurisdictional *statu quo* and the *uti possidetis juris* of 1810 or 1821.

You will observe in the note of June 10th that the Government of *Costa Rica* disregards the immemorial possession exercised by *Colombia* as far as the *River Doraces*, constantly as far as *Punta Burica* and for a long time as far as the *River Golfito*, in order to maintain that the *statu quo*, or that is to say, the actual state of things, is that the former nation possesses on the Pacific side as far as *Punta Burica* and on that of the Atlantic as far as the *Escudo de Veraguas*; that is, that it possesses as much as it disputes with *Colombia*.³

³There is no official authentic document which accredits the immemorial possession which *Colombia* claims to exercise as far as the *River Doraces*, nor are its geographers and publicists in accord as regards the true geographical position of the *River Doraces*, which is sometimes identified with the *Culebras* and sometimes as a different river.

It appears by the very tenor of these instructions and from the documents to which they refer, or others published by *Costa Rica*, that *Colombia* had not occupied in 1860 a single handbreadth of land to the West or North-west of *Punta Burica*, and it further appears that *Costa Rica* was in possession of this territory as far as the mouth of the *River Chiriquí Viejo* in 1810 and in 1821, the years for which *Colombia* invokes the doctrine of *uti possidetis*. It also appears, by the impartial declaration of a singularly well informed witness as to the state of things, the Lieutenant of the United States Navy, Mr. William N. Jeffers, that in 1861 the effective jurisdiction and administration of *Costa Rica* extended as far as *Punta Burica*, and that the first usurpations of *Colombia* date from 1862.

It is no less public and notorious that in 1880, *Costa Rica* was found to be in the actual, quiet and peaceable possession of the port of *Golfito*; that when in March of that year Commander Howell of the United States Steamer "Adams," desired to establish a coal depot there for the Navy of his country, the only authorities who were there and the only ones with whom he arranged and from whom he asked permission to

Such an assertion, contrary to the true state of facts, tends to lead the question of boundaries away from all possibility of an understanding, and to give rise to disputes, which even without any sufficient reason, may start a serious conflict between the two Republics.

carry out his errand were those of *Costa Rica*,—and that was the Political Chief (*Jefe Político*) of *Dulce Gulf*, Don Francisco Gómez. No sooner had the Government notice of the presence in the national waters of that vessel than the President of the Republic went in person to the *Golfito*, on board of the steamer *Alajuela*, and it appears that Commander Howell presented himself on board of that vessel in order to give an explanation of his mission.

This occurred on April 3, 1880.

(See the letter of Commander Howell to the Secretary of the Navy of the United States, dated at *Dulce Gulf, Golfito, Republic of Costa Rica*, in Ex. Docs., No. 46, 47th Congress, 1st Session, *Chiriquí Grant*, Washington, 1882, p. 68).

Some days later, the Secretary of the Navy wrote to the Secretary of State, the following note:

“(Washington), April 19, 1880. (ibid, p. 54).

“Sir: I have received today from Commander Howell, of the United States Steamer ‘Adams,’ a report concerning his operations in the port of *Golfito*, in the *Gulf of Dulce*, relative to the establishment of a coaling station at that point, from which I extract the following:

‘We have cleared a little more than an acre of ground and we have deposited there five tons of coal. On the day we began our work, when some of our men were occupied on shore, the Political Chief of *Dulce Gulf* came on board and I thought it proper to ask his permission to make the clearing and unload the coal, and I added that if this act was approved by the Government of the United States, it would probably establish here a coal depot. The permission was granted without delay and the idea of having a coal station here was accepted with favor. Since then our relations have been agreeable.’

“From this extract you will see that the political authorities of *Dulce Gulf* have made no objection to the operations of Commander Howell.

“Very respectfully,

“R. W. THOMPSON, Secretary.”

In virtue of the orders issued that same day, April 19th, by the Secretary of the Navy, Captain Gillis, of the United States Steamer “Lackawanna” went to *Dulce Gulf* and in a letter to Mr. Thompson, his superior, from *Panama*, June 24, 1880, he informed him that he visited the port of *Golfito, Dulce Gulf, Republic of Costa Rica*, on June 19th.

“On the 20th I was at the small village of *Santo Domingo*. I made a call on the Political Chief and I carefully complied with the instructions

You will observe that the 6th conclusion, approved by the Senate, states as follows:

“Costa Rica, it is asserted, has made a settlement on
Dulce Gulf, in territory embraced between the River
Golfito, reputed international boundary, and *Punta Burica*.
* * *

This settlement has the name of *Isola*, and having been founded and being administered by Costa Rican authorities, it is the one that showed to you before that the jurisdiction of *Colombia* has reached as far as the River *Golfito* for a long time, while in reality the Costa Rican *Jefatura* of *Dulce Gulf*, which formerly came no farther than the River *Golfito*, has extended its jurisdiction as far as the little village of *Isola*, built some six years ago.⁴

of the Department and I received the strongest assurances that the *Government of Costa Rica* was satisfied with the steps taken by the Government of the United States, in order to establish a coal depot at the port of *Golfito*.” (*Ibidem*, p. 72).

The Government of *Colombia*, faithful to the line of conduct that the Senator Fernández Madrid traced for it in his opinion in 1855, but not until three months had elapsed after the appearance of the Steamer “Adams” at *Golfito* and when that steamer had already sailed away, protested against the operations of Commander Howell. But it is also known, as it is revealed in that opinion, that *Colombia*, by means of these protests and these intrusions, sought as its principal object to create for itself titles and *acquired rights*, while the perfect right of *Costa Rica* to the whole of *Dulce Gulf* has been constant since 1540. The documents which are here cited, emanating from a foreign Government, prove that in 1880 *Costa Rica* was found to be in the possession of *Golfito* and exercised jurisdiction there as effective and real as it did in 1861 and 1852.

Therefore, the affirmation to which the “Instructions” of Dr. Holguín refers, was not contrary to the true state of facts. See the various opinions, conjectures and contradictions of Señor Fernández Madrid, all of which demonstrate that the Government of *Colombia*, particularly in the “Instructions” cited, is the one that has strayed away from the truth of the facts, and that it is not from time immemorial nor with a just title that it has made claims to the Gulf of *Dulce*. M. M. P.

⁴ This paragraph contradicts the doctrine of *Colombia* of sticking to the *uti possidetis* of 1810 or 1821. When was the River *Golfito* reputed to be an international boundary? Neither the Spanish Government, nor the Republic of *Central America* (1824-1838), nor that of *Costa Rica*, ever agreed upon any such division line, and it is a matter of public notoriety that at the time of the independence (in 1821) the jurisdiction of *Costa*

The Government of *Colombia* being desirous of giving to the matter such a shape that it may lead to a fraternal solution, has determined that you, instead of going directly to England, will first go to *San José de Costa Rica*, and, after first making the explanations which give rise to this statement, will show to the Government of that country that, as a matter antecedent to any discussion and any action that can bring this disagreeable question to a friendly termination, the Government of *Colombia* proposes that both countries respect the jurisdictional *statu quo*, and that in consequence the *Costa Rican* authorities placed in the cocoanut groves of *Burica* must be immediately withdrawn and the exploitation of the plantations in that region restored to the individual to whom they belong in virtue of the public sale made by *Colombia* officials in the district of *Alanje*.

Respecting the settlement of *Isola*, you will not make such a requirement, because there was no protest made at the time against the establishment of *Costa Rican* authorities in that place; and although this Government does not accept the territorial modification which that act implies, it leaves its arrangement for a definite agreement, since it considers that this tolerated occupation would not now be voluntarily changed by *Costa Rica*, except by virtue of agreements which shall end the discussion in

Rica embraced *Dulce Gulf* and *Punta Burica*, as far as the River *Chiriquí Viejo*.

The first attempts at the appropriation of the territory on the South of the River *Golfo* were the arbitrary work of a Colombian cartographer and date from 1827, the year in which the *Atlas* which accompanies the "History of the Revolution of the Republic of *Colombia*," was published by José Manuel Restrepo, Secretary of the Interior of that Republic. The author in the prologue thus expresses himself:

"The boundaries of *Colombia* with *Guatemala* and *Peru* are still uncertain; we have therefore followed the lines that have seemed to us best suited to the vague dispositions of the Spanish Government concerning the territory of its ancient colonies."

It is not believed that the views of a writer of prologues, nor the lines traced *ad libitum* by a draughtsman, let him be called Restrepo or Codazzi, are the "authentic and irrefutable documents" upon which *Colombia* relies in order to give the River *Golfo* the reputation of an international boundary. The dispositions of the Spanish Government, which the author of the *Atlas* invokes, are not at all vague respecting the frontier of *Costa Rica*. M. M. P.

all its parts; and a break over an act consented to for six years would not be very well justified.

If the Government of *Costa Rica* accepts the proposal of *Colombia*, you will announce to it that a Minister will be promptly sent, who will take principal charge of negotiating and concluding the definite settlement of the boundaries; and that if such settlement shall not be diplomatically possible, this Government has the decided intention of insisting that Congress authorize it to appoint the Arbitrator, who on his part must reach a decision of the controversy, in accord with what has been agreed in various despatches exchanged between the two Governments.

You will communicate immediately to this Department as detailed and exact an account as possible of the responses that are given to you by the Government of *Costa Rica* and of the result of your commission near it.

Bogota, July 16, 1880.

The Secretary of Foreign Relations, LUIS CARLOS RICO.

UNITED STATES OF COLOMBIA.

Legislative Power: Secretaryship of the Senate.

BOGOTA, August 7, 1880. No. 571.

SEÑOR SECRETARY OF FOREIGN RELATIONS:

There having been considered today by the Senate, in secret session, the instructions given to Señor Carlos Holguín, accredited in the character of envoy extraordinary and minister plenipotentiary of *Colombia* near H. Britannic Majesty, they were approved in the following terms:

"The Senate of Plenipotentiaries of the *United States of Colombia*, in the exercise of the authority conferred by clause second of Art. 51 of the National Constitution, approves the instructions given to the Envoy Extraordinary and Minister Plenipotentiary of *Colombia* near the Government of Great Britain, and besides at this time authorizes the Executive Power to appoint on its behalf the Arbitrator who must undertake the decision of the controversy as to boundaries, pending with the Government of *Costa Rica*, if the settlement shall not be diplomatically possible."

I communicate it to you that it may be carried into effect, and as the result of your note, No. 230, dated July 3rd last past.

Your obedient servant,

LINO DE POMBO.

Proclamation of the President of the United States of Colombia to the Nation, Concerning the Boundary Question With Costa Rica. Doc. 361

BOGOTÁ, September 6, 1880.

The Nation is advised that at the session of July 13th last, on account of the occupation having come to its knowledge by Costa Rican authorities of a portion of the Colombian border territory called *Punta de Burica*, the Senate of Plenipotentiaries, after mature examination, approved, among other things, the following five Conclusions:

(1). *Colombia* has a perfect right of dominion and to possession under titles emanating from the Spanish Government and the *uti possidetis* of 1810, to the territory which extends toward the North between the Atlantic and Pacific Oceans to the following line:

From the mouth of the River *Culebras*, in the Atlantic,¹ going upstream to its source; from thence a line along the crest of the ridge of *Las Cruces* to the origin of the River *Golfito*; thence the natural course of the latter river to its outlet into the *Gulf of Dulce* in the Pacific.

(3). *Colombia* has been in uninterrupted possession of the territory included within the limits indicated in Conclusion I.²

¹ The name of "*River Culebras*" was not known in the ancient geography of *Costa Rica*, if allusion is intended to the one which is now called the River *Tiliri*, *Sixaula* or *Sixola* and in the XVIth, XVIIth and XVIIIth centuries the *River Tarire*, since this latter river has always belonged to *Costa Rica*. The Island of *Escudo de Veragua* and the *River Chiriquí*, the old *Culebra* or *Calobébora*, which empties to the South of said Island, was the boundary of *Colombia* or Viceroyalty of *New Granada* in 1810 upon the North Sea; and on the South Sea the River *Chiriquí-viejo*. M. M. P.

² Since when and by virtue of what titles? The Royal Cédulas creating the *Dukedom of Veragua* and the *Province of Veragua* and of *Cartago* or *Costa Rica* contradict the assertion of the Senate of Plenipotentiaries.

(4). In 1874 the Prefect of *Dulce Gulf* claimed that the cocoanut groves of *Burica* belonged to *Costa Rica* under the Correo-Montúfar Treaty, and officially demanded the product of the lease. Such a pretension was rejected in an official manner by the Prefect of *Chiriquí*, who called the attention of the claimant to the fact that the Treaty upon which it was based had not been approved. Things continued as before, *Colombia* possessing the cocoanut groves and collecting the amount of the rental thereof.⁸

(5). With the previous approval of the Senate of Plenipotentiaries, the Government of *Colombia* has demanded of that of *Costa Rica* that the jurisdictional *statu quo* to which reference is made in Conclusion 1, be respected, until the boundary question be decided by arbitration or in some other friendly manner; and stated that it would consider any administrative act, beyond that demarcation, as a violation of its rights, or in other words, as a usurpation.

(8). Any further step to put an end to the controversy as to boundaries with *Costa Rica* must be preceded by the evacuation of any portion of the territory in which the latter nation may have established its authorities beyond the limits marked out in Conclusion 1.

Almost immediately afterwards, and with this last Conclusion in view, my Government sent its distinguished representative to *Costa Rica*, charged with the request to the Government of that Republic that the jurisdictional *statu quo* be respected and consequently the withdrawal of the Costarican officials actually located at *Punta de Burica* at the close of the year previous.

If the evident justice alone which supports us in making this demand be taken into account, as well as the moderation with which it is made and the fraternal spirit of which a proof has been given upon many occasions to the Costarican Government, we may indeed feel assured that our request as expressed will receive a satisfactory response; but as the contrary is not entirely impossible, in which unfortunate event we should, by the necessity for

⁸The cocoanut groves of *Burica* belonged to *Costa Rica* by virtue of the Royal *Cédulas* of November 29, 1540, and December 1, 1573. The Correo-Montúfar Treaty carried with it an important cession of territory on the part of *Costa Rica* and did not confer upon the latter any new right. Moreover, the subordinate authorities upon the frontier are not qualified to decide as to questions of territorial sovereignty. M. M. P.

protecting our honor and our future which cannot be evaded, be compelled to appeal to extreme measures in defense of the national territory, I have deemed it considering everything desirable to proceed immediately to the State of *Panama*, with the Secretary of Foreign Relations and of War and Marine, so as to be ready without delay and with the greatest possible efficiency, to take the measures for carrying out the first of the duties imposed upon every Government by the public trust confided in it.

Even in case, as I hope, of a favorable response, my temporary stay at a distance from the Capital will not be without some advantage, since it will facilitate considerably the satisfactory solution of the regular and troublesome boundary question, which is distinct from that which we are now concerned about, from the simple fact that the distance will be diminished between the two Governments, a matter of itself so embarrassing in every exchange of propositions; and it will contribute as well not only to prevent difficulties arising like the one now before us but also to reestablish, besides, upon an enduring basis that cordial and fruitful concord in which the Colombian people have sought to live with the industrious people of *Costa Rica*.

In leaving the Capital of the Nation, I leave matters so organized that neither the course of ordinary business nor the public peace will suffer any disturbance; but the latter, which is indeed our supreme need, I leave more particularly confided to that sentiment of patriotism which has never been vainly invoked among ourselves.

RAFAEL NÚÑEZ.

Bogota, September 6, 1880.

Doc. 362 The Minister of Foreign Relations of Costa Rica to That of the United States of Colombia.

SAN JOSÉ, September 10, 1880.

SEÑOR MINISTER OF FOREIGN RELATIONS OF COLOMBIA:

In accordance with the understanding between the Government of this Republic and the Confidential Agent of your Government, Doctor Don Carlos Holguín, I have addressed to the Political Chief (*Jefe Político*) of the *Gulf of Dulce*, under date of yesterday, the order of which the text is as follows:

“Señor Political Chief of the *Gulf of Dulce*:

“The Government of this Republic being about to enter into a definitive settlement concerning boundaries with that of *Colombia*, and both having agreed until the desired conclusion is reached that the jurisdictional *statu quo* shall be preserved in the regions where differences may arise, I provide that you may restore things in the territory of *Punta Burica* to the state in which they were before July 1879, without its implying however any recognition of rights upon the part of either of the two Nations.”

In addition to the foregoing transcript, I forward to Your Excellency separately two copies of the *Diario* (official journal) of this date, in which that order appears.

With high consideration, I have the honor to subscribe myself Your Excellency's very humble obedient servant.

JOSÉ MARÍA CASTRO.

Doc. 363 The Minister of Foreign Relations of Honduras to That of Colombia.

Secretaryship of Foreign Relations.

TEGUCIGALPA, November 10, 1880.

SIR:

I had the honor to receive the despatch of Your Excellency dated July 28th last, in which Your Excellency was pleased to state to me that your Government has viewed with sorrow that the recent investigation published by the press, concerning the rights of *Colombia* to the territorial zone which extends on the

Atlantic side between the river *Doraces* or *Culebra* and Cape *Gracias á Dios*, have been considered by various Central American writers as designed to prepare opinion to initiate a policy of recovery with an armed hand, some even going so far as to assert that the debate which had been begun had been suggested by the same Government; and that the state of alarm produced in *Central America* by the said incident was the reason for the despatch, in which were sincerely stated the purposes which animated the People and Government of *Colombia* regarding the People and Government of this Nation. Your Excellency adds that both the Congress as well as the Executive Power of *Colombia* desired that the boundary question referred to may be determined by way of diplomacy and that in case this is not practicable by the arbitral judgment delivered by the Government of a friendly power, designated by mutual agreement.

In reply I am pleased to state to Your Excellency that the Government of *Honduras* is pleased to acknowledge the friendly sentiments which are felt by the people and Government of *Colombia* regarding this country, and its purposes to decide by conciliatory means and by compromise any question or difficulty which may arise between the Governments of the two Nations.

My Government, which has full confidence in the rectitude, wise judgment and the sentiments of justice which have characterized the Government of *Colombia* in its international relations, has not believed, not for one moment, that the boundary controversy, taken up by the press of that Republic, was designed to form opinion for a policy of recovery by an armed hand, and much less that such question was suggested by that Government, which by its honorable antecedents has a perfect right that its intentions should not be suspected. The frank statement of Your Excellency is very satisfactory for my Government which feels confident that the relations of friendship which it cherishes with that of your Republic will not be interrupted by reason of any question which may unfortunately be brought up, which it will be sought to decide by the conciliatory means which the present state of civilization demands, and which, adhering to the wise view of Your Excellency, are obligatory ideas between countries of the same origin united by fra-

ternal bonds which their present position and their future destinies counsel them to strengthen.

Resting in the assurance that Your Excellency, in the name of your Government, has been pleased to present to that of this Republic, I gladly take advantage of this opportunity to subscribe myself with protestations of distinguished appreciation.

Your Excellency's obedient servant.

RAMÓN ROSA.

To His Excellency the Minister of Foreign Relations of the Government of the *United States of Colombia*.

Doc. 364

Treaty Between Costa Rica and the United States of Colombia Agreeing to Arbitrate Their Question as to Boundaries.

SAN JOSÉ, December 25, 1880.

The Republic of *Costa Rica* and the Republic of the *United States of Colombia*, equally inspired by the sincere desire to maintain and consolidate their friendly relations, and believing that in order to obtain this benefit, so important for their prosperity and good name, it is necessary to close up the only source of the differences which arise between them, which is none other than the question of boundaries, foreseen in Articles 7 and 8 of the Convention of March 15, 1825, between *Central America* and *Colombia*, which has recently been the subject of various treaties between *Costa Rica* and *Colombia*, none of which were ratified; and both nations understanding that this antecedent fact shows the need for the adoption at once of some more expeditious means for the designation in perpetuity of a division line, clear and incontrovertible, for the whole extent along which their respective territories are contiguous; therefore, the President of *Costa Rica*, in the exercise of the powers with which he is invested, has conferred full powers upon the Excmo. Señor Dr. Don José María Castro, Secretary of State and of the Department of Foreign Relations, and the President of the *United States of Colombia*, specially and sufficiently authorized by the Legislative Chambers of that nation, upon the Honorable Señor Don José María Quijano Otero, Chargé d'Affaires near this Cabinet, who after having communicated their respective full

powers and having found them in good and due form, have agreed upon the following articles:

Article 1. The Republic of *Costa Rica* and the *United States of Colombia* agree upon the arbitration of the question of boundaries existing between them, and the designation of a line which shall divide for all time and with entire clearness the territory of the former from the territory of the latter, each one remaining in the full, quiet and peaceful dominion, so far as respects the same between themselves, of all the land which is left on its side of the aforesaid line, upon which there is not to remain any charge or special servitude in favor of the other.

Article 2. The Arbitrator who, being pleased to accept the duty as such, shall have to carry out what is stipulated in the foregoing Article, must execute it, in order that it may be valid, within ten months counting from the day of his acceptance, without any hindrance thereto by either of the high contracting parties not concurring in the presentation of their rights by means of a representative or otherwise.

Article 3. In order that the acceptance of the Arbitrator may be held to have been duly notified to the high contracting parties and they may not plead ignorance thereof, it is sufficient that it may be published in the official periodical of the nation of the Arbitrator or of one of the high contracting parties.

Article 4. The Arbitrator, having heard orally or in writing the parties, or the party who may present itself, and having considered the documents which are submitted, or the arguments which are stated, shall deliver his decision; and whatever it shall be it shall from that time forth be held as a treaty concluded, perfect, obligatory and irrevocable, between the high contracting parties, who formally and expressly renounce every claim of whatever nature against the arbitral decision and promise to respect it and comply with it, promptly, faithfully and forever, pledging thereto the national honor.

Article 5. In accord with the foregoing Articles and for their execution, the high contracting parties will appoint as Arbitrator H. M., the King of the Belgians; and if it should unexpectedly happen that the latter may not be pleased to accept, then H. M., the King of Spain; and if in the equally unexpected event that he also shall decline, then the Excmo. Señor President of the

Argentine Republic; in all of whom the high contracting parties have, without any distinction whatever, the most unlimited confidence.

Article 6. That one of the high Arbitrators designated who shall undertake the exercise of the arbitration, may delegate his functions, but shall not fail to act directly in the delivery of the definitive judgment.

Article 7. If unfortunately none of the high Arbitrators designated shall be able to give to the high contracting parties the eminent service of accepting the charge, these shall, by common accord, make new nominations, and thus continue until one shall go into effect, since it is agreed and formally stipulated here that the question of boundaries and the designation of a divisional line between the contiguous territories of *Costa Rica* and *Colombia* shall never be decided by any other means than by the civilized and humane one of arbitration, preserving in the meantime the agreed *statu quo*.

Article 8. The present Convention shall be submitted to the approval of the Grand National Council in the Republic of *Costa Rica*, and to the Legislative Chambers in that of *Colombia*; and shall be exchanged in the city of *Panama* within the shortest possible time.

In testimony whereof the plenipotentiaries above mentioned sign and affix their respective seals, in two originals of the present Convention.

Done in the city of *San José*, capital of the Republic of *Costa Rica*, on the 25th day of December, 1880.

JOSÉ MARÍA CASTRO (L. S.)

J. MARÍA QUIJANO OTERO (L. S.)

Arbitral Award of H. M. the Emperor of Austria, Francis Joseph I, Relating to the Coast of Mosquitos. Doc. 365

VIENNA, July 2, 1881.¹

We, Francis Joseph the First, by the Grace of God Emperor of Austria, King of Bohemia, etc., Apostolic King of Hungary;

Whereas, the Government of His Britannic Majesty and the Government of *Nicaragua* have consented to submit to our arbitration the question in dispute between them of the interpretation of certain articles of the Treaty of *Managua*, signed the 28th of January, 1860, and whereas we have declared our willingness to accept the function of arbitrator in this matter, we have decided as follows, based upon one of the three legal opinions which were prepared and submitted to us at our request.

Art. I. The sovereignty of the Republic of *Nicaragua*, recognized by Articles I and II of the Treaty of *Managua* of January 28, 1860, is not full and unlimited with respect to the territory assigned to the *Mosquito* Indians, because it is limited by the autonomy (self government) conceded to the *Mosquitos* Indians by Article III of that Treaty.

Art. II. The Republic of *Nicaragua*, as a sign of its sovereignty, has the right to hoist the flag of the Republic in all of the territory assigned to the *Mosquito* Indians.

Art. III. The Republic of *Nicaragua* has the right to appoint a Commissioner for the protection of its sovereign rights in all the territory assigned to the *Mosquito* Indians.

Art. IV. The *Mosquitos* Indians shall also have the power of displaying their flag hereafter, but they should at the same time add to it some emblem of the sovereignty of *Nicaragua*.

Art. V. The Republic of *Nicaragua* has no right to grant concessions for the acquisition of natural products in the territory assigned to the *Mosquito* Indians. This right belongs to the *Mosquito* Government.

Art. VI. The Republic of *Nicaragua* has no right to regulate the commerce of the *Mosquito* Indians or impose duties upon merchandise imported or exported into or from the territory re-

¹ See *Nicaragua No. 1. Arbitration Mosquitos Coast. Parliamentary Papers. London, 1881.*

served to the *Mosquito* Indians. This right belongs to the *Mosquito* Indians.

Art. VII. The Republic of *Nicaragua* is obliged to pay to the *Mosquitos* Indians the arrears of the annual amounts assured to them by Article V of the Treaty of *Managua*, which arrears now amount to 30,859 dollars, three centavos. With this object, the sum of 30,859 dollars, three centavos, deposited in the Bank of England, together with the interest accrued in the interim, shall be delivered to the Government of His Britannic Majesty. The Republic of *Nicaragua* is not obliged to pay interest accrued upon said arrears.

Art. VIII. The Republic of *Nicaragua* has no right to impose import or export duties upon merchandise that may be imported or exported into or from the free port of *San Juan del Norte* (*Greytown*).

The Republic of *Nicaragua*, however, has the right to impose import duties upon merchandise in transit from the territory of the free port of *Greytown* to the territory of the Republic and export duties for its transportation from the territory of the Republic to the free port of *San Juan del Norte* (*Greytown*).

Given and signed by our hand and with our imperial seal, in Vienna, July 2, 1881.

FRANCIS JOSEPH.²

Doc. 366 Report Presented by Dr. Don Lorenzo Montúfar, Minister of Foreign Relations of Guatemala to the Congress of That Republic.

GUATEMALA, 1881.

SEÑORES DEPUTIES:

The Constitution imposes upon me the pleasant duty of presenting to you a detailed Report of the matters belonging to the office of Secretary of Foreign Relations and I begin with a statement concerning the *United States of Colombia*.

² The Award of H. M. the Emperor of Austria, based upon the Treaty of *Managua* of 1860, by which Great Britain recognizes the sovereignty of *Nicaragua* over the *Coast of Mosquitos*, adds a new and solemn international sanction to the fact which the documents herein published evidence,—the notorious invalidity of the abrogated Royal Order of San Lorenzo of November 20, 1803, the only title up to this time presented by *Colombia* in support of its territorial pretensions. M. M. P.

That Republic should arouse your sympathies, not only by the grandeur of its history in the epoch of American emancipation, but by the laws which govern it.

It is not possible for a people to be unjust which is ruled by the wise Constitution of *Rio Negro*.

There was some excitement in our press concerning the boundaries between *Central America* and *Colombia*. This excitement is laudable, because it indicates the patriotic spirit which animates the five parts of the dismembered Republic which was our former country.

But events permit this matter to be considered calmly, and the wisdom of the Government of *Bogota* affords a vast field for the purpose.

The Government of *Colombia* addressed to the Nicaraguan Government a note, proposing an arbitration as to boundaries. (Document No. 1.)

Nicaragua did not accede to this, because not bordering on *Colombia*, there could not be any territorial questions between the two countries. (Document No. 2.)

At the same time it addressed a circular to the Governments of *Central America*, stating what had happened, the matter being particularly a Central American one. (Document No. 3.)

The Government of *Guatemala* replied to *Nicaragua* in accordance with its policy in this respect. (Document No. 4.)

In the response the matter was presented briefly, because in a note of that character further extension was not suitable.

But the matter is not settled, and I deem it my duty to present to the Assembly the reasons and refer to the documents in which the statements of the reply are supported.

During the period of the Federal Government there was sent to *Bogota* a Minister Plenipotentiary of very clear understanding: Señor Doctor Don Pedro Molina.

Doctor Molina made with the illustrious Colombian, Don Pedro Gual, on the 15th of March, 1825, a Treaty between the *United Provinces of Central America* and the old Republic of *Colombia*.

Article 7 thereof reads:

“The *United Provinces of Central America* and the Republic of *Colombia* are obligated and formally agree to respect their

limits, as they are at present, reserving to themselves to make in a friendly way, by means of a special Convention, the demarcation of a divisional line of one State from the other, as soon as circumstances may permit it, or as soon as one of the parties indicates to the other its desire to take up this negotiation."

Central America had not made any territorial grant to *Colombia*, nor *Colombia* to *Central America*, after the independence of either one of these two Republics.

It follows from this, that evidently Article 7 of the *Molina-Gual Treaty* referred to the boundaries existing at the period of independence.

Ascertaining what those boundaries were, the question may be decided.

Law IV, Title 15, Book 2, of the *Recopilación de Indias*, established an Audiencia and Chancellery in *Panama*.

Law VI, of the same Title and Book, established the Royal Audiencia of *Guatemala*, and both laws fixed as the end of the one Audiencia and the other, the Government of *Veragua*.

In accordance with that demarcation there is found a title granted in Madrid, November 29, 1540, in favor of Don Diego Gutiérrez, and another title granted to the Admiral Don Luis Columbus, on the 10th of January, 1537.

One other exists, issued by Philip II, King of Spain and of the Indies, in 1574, in favor of Don Diego Artieda Chirinos, Governor of *Costa Rica*.

This latter title confirms the prior ones and indicates the limits in this manner:

"From Sea to Sea in latitude; and from the Mouths of the *Desaguadero* which are on the side of *Nicaragua*, to the Province of *Veragua*, in longitude, on the North side; and from the borders of *Nicaragua*, on the side of *Nicoya*, to the *Valleys of Chiriquí*."

In the year 1652 a new title of the Spanish Government issued in favor of Don Juan Salinas, indicated in the same way once more the limits of *Central America*, as far as the *Escudo de Veragua*.

In 1794 the inhabitants of the Islands of *San Andrés* and *Providence*, belonging to the Captaincy-General, sent a petition to Spain which opposed a project relating to their aggregation to the Viceroyalty of *Santa Fé*.

This evidently proves that said Islands, in the year 1794, belonged to the Captaincy-General of *Guatemala*, as they always had belonged to it.

They are found at 12° 32' North Latitude and 81° 32' West Longitude from Greenwich and at 13° 30' North Latitude and 81° 23' West Longitude of the same meridian.

In the year 1797 Don Tomás O'Neille, Governor of these Islands, under the orders of the Captain-General of *Guatemala*, asked for men and money, which were delivered to him in the Port of *San Carlos*.

In November of 1803 it is said that there was issued a celebrated Royal Order at San Lorenzo, under which it is asserted all the Coast ought to be segregated, from *Chagres* as far as the Cape of *Gracias á Dios*.

Now after all this, is the following: What were the limits of *Colombia* and *Central America* when the two Republics became independent?

The limits never were changed.

They remained always the same as fixed by the Laws of the Indies and the titles of Gutiérrez, of Columbus, of Chirinos and Salinas.

This requires proof and I will present it.

By Royal Decree, issued at the Palace in Madrid on December 17, 1803, the establishment of fixed companies in the frontier ports was approved, as directed by the Royal Order of 1802.

In 1804 the Superior Board (*Junta*) of the Kingdom of *Guatemala* created at *San Juan de Nicaragua* a *plaza de guarda* (guard-house or garrison) for the protection of that port.

A report was made to the King and in 1805 the following resolution was received:—

“The King has approved the creation agreed upon by your Superior Board of a garrison for the Port of *San Juan de Nicaragua*.”

In 1805 it was decided by the authorities of this Kingdom that the impost of *avería* in the River *San Juan* be applied to the benefit of its navigation.

There is one voluminous despatch in our archives. Its pur-

pose was to put the Kingdom of *Guatemala* in a state of defence against the supposed designs of the Emperor Napoleon.

The efforts ended in 1810, and in that despatch, which speaks of the whole of the Kingdom, there is not a single line that indicates that its territory had been diminished.

Between 1803 and 1810 there exist a series of despatches in our archives, which show that there never had been any change in the limits, but there continued coming to the Audiencia and Royal Chancellery all the causes which in the respective stages had been coming during the previous centuries, from the Provinces of *Nicaragua* and *Costa Rica* in all their integrity.

In 1810 Don José Salvador, Brigadier of the Royal Armies, Delegate in the Province of *Nicaragua* of the Captaincy-General of *Guatemala*, sent to this Capital the matters that related to the imposts (*alcabalas*) on imports by the Port and River of *San Juan*, that Port and that River being integral parts of the Kingdom of *Guatemala*, and the same was seen in the years prior to and subsequent to independence.

In 1813, not only had there not been any change but to the Captain-General came the causes proceeded with against the Granadians Pío, José and Juan Argüello, Juan Espinosa, Juan Cerda, Manuel Antonio de la Cerda, Juan Ignacio Marengo and Joaquín Chamorro, then accused of the crime of treason, which was later converted into a title of merit and of glory.

Down to 1815 a number of things occurred which showed the same, one of them being the appointment of the gunboats, given to Don Juan Córdova, to take charge of the River *San Juan de Nicaragua*. In the same year causes came from *Costa Rica*, and among them the proceedings against the *Adelantado* Don Diego Montiel. Even in 1820 there are found matters relating to the case of Montiel.

In 1819 the *Comandante de Armas* of *Cartago* gave an opinion to the Captain-General, concerning the duty of the militia throughout the whole extent of the province. This matter was decided by Don Carlos de Urrutia at the end of the same year.

In June, 1820, the Captain-General acted upon a petition of some members of the Detachment of *Sarapiquí*, that they be given a ration as theretofore, the daily pay not being sufficient.

The numerous causes that kept coming from those provinces

continued down to the day of independence, and in the books that are filed in the Chief Accounting Office (*Contaduría General*) of *Guatemala* will be found the mercantile movement which produced the duties in the Atlantic ports, relating to *Costa Rica* and *Nicaragua*, as they had been produced from the time of the Kings of the House of Austria.

In none of the archives is there any evidence that the Kingdom was diminished by any kind of dismemberment, but everything shows its integrity.

The Federal Constitution, issued in 1824, designated for the Republic the same limits that the Captaincy-General of *Guatemala* had, with the exception, as stated, of *Chiapas*.

The Republic, thus marked out, was recognized by the old *Colombia*, and it was under that recognition when the Molina-Gual Treaty was made.

The State of *Costa Rica* issued its Constitution in 1825, designating as a boundary on the North Sea the *Escudo de Veragua*.

In 1844 *Costa Rica* adopted another Constitution, which designated the same boundary, and the same was done in its subsequent fundamental laws, both as a State and as a Republic.

Nicaragua has designated in all its fundamental laws the limits that the old province had which bore that name.

The Royal Order of San Lorenzo left no trace, neither in the Archives, nor in the Ports, nor in the interior of any of the sections of *Central America*.

The evident deduction from this is that the Molina-Gual Treaty, in speaking of the existing limits, spoke of the limits described and marked on the geographical chart of the Kingdom.

It is not to be wondered at that the Royal Order of San Lorenzo left no traces anywhere, for it is not found among the *cédulas* of the Audiencia, nor in any of our archives, nor was it ever observed, furthermore in the same year that was issued in Madrid a Decree which was much more than a Royal Order, in a contrary sense, and because the limits between the Viceroyalties and Captaincies-General were stated by the Laws of the Indies and the *pragmáticas*; but never by Royal Orders, which were transient and passing provisions, such for example, as permission for registration in certain archives, or the increase of the compensation of an employee.

Between *Nicaragua* and *Colombia* there can be no question as to boundaries, because the two countries are separated by an intermediate space.

This intermediate space is the whole territory of *Costa Rica*.

It is not possible, therefore, to imagine that there could be submitted to arbitral decision any matter relating to boundaries between *Nicaragua* and the *United Colombian States*, and for that reason the reply was made to their Government which is now presented to you.

The same can not be said as to *Costa Rica* and *Colombia*.

Article 7 of the Molina-Gual Treaty says that the *United Provinces of Central America* and the Republic of *Colombia* formally obligate themselves and promise to respect their limits as they were then, reserving to themselves to make in a friendly way, by means of a Special Commission, the demarcation of a divisional line between the two States.

Such demarcation was never made by the *United Provinces of Central America* and the Republic of *Colombia*.

Colombia was divided up and from that division, as you know, there arose three Republics: *New Granada*, *Venezuela* and *Ecuador*.

Central America was also divided and from its division, as you also know very well, there came five Republics, that of *Costa Rica* bordering on that of *New Granada*.

The divisional line which was not fixed by *Central America* and *Colombia* should be fixed by *Costa Rica* and *New Granada*.

This demarcation never was realized, for although various treaties were made, none of them were exchanged.

The Republic of *New Granada* changed its title to that of the *United States of Colombia*. Thus it is that the divisional line referred to in the Molina-Gual Treaty ought now to be traced between the Republic of *Costa Rica* and that of the *United States of Colombia*, without *Nicaragua* having any further interest in the matter than that which inspires a friendly and sister State.

The wisdom of the Colombian Government may resolve the difficulties.

We know with certainty, although not officially, that a treaty for arbitration has been celebrated between the Republic of

Costa Rica and the *United States of Colombia*, and that H. M. the King of the Belgians has been designated as Arbitrator;— and in case of his refusal then H. M. the King of Spain, and if he does not accept then H. E. the President of the *Argentine Republic*.

It can be asserted, without any danger of error, that there will not be submitted to the high authority of the Arbitrator any resolution of the Spanish Government which may change the boundary of the old Captaincy-General on the Pacific Ocean, which is at *Punta Burica*, in North Latitude 8°, and 83° Longitude West of Greenwich.

It can equally well be asserted that neither will there be presented to the Arbitrator any resolution of the Spanish Government, except the Royal Order of San Lorenzo, of which reference has just been made, changing the boundary on the Atlantic Ocean, which is the *Escudo de Veragua*, North Latitude 9° 7' and 81° 32' Longitude West of the meridian of Greenwich.

The *United States of Colombia*, not only has no intention of disturbing the peace of *Central America*, but it has announced the noble and very high purpose of having a Congress meet in *Panama*, composed of representatives of the Nations of the New World, in order to establish as a law for all the Western Hemisphere the arbitration of all international questions. (Docs. Nos. 5 and 6.)

The Government of *Guatemala* can not refrain from taking part in a purpose as just as it is philanthropic and humanitarian, and replied it would send a representative to the *Panama Congress*. (Doc. 7.)

DOCUMENT NO. 1.

BOGOTA, June 28, 1880.

Secretaryship of Foreign Relations of the United States of Colombia.

SEÑOR MINISTER:

The proposed enterprise of the excavation of a canal between the Atlantic and Pacific Oceans, at the Isthmus of *Panama*, or at some other point in *Central America*, has led to some recent investigations, published in the press, concerning the rights of this

Republic in the territorial zone which extends on the Atlantic side between the River *Doraccs* or *Culebras* and the Cape *Gracias á Dios*.

In periodicals of the Nations of *Central America* my Government has been sorry to see that these investigations have been considered by various writers as designed to form opinion in order to initiate a policy of recovery with an armed hand, some going so far as to assert that the debate started by the press had been suggested by the latter Government.

The feeling of alarm produced by this incident in the Republics, friends of *Colombia*, interested in the controversy, is the reason for this despatch, in which Your Excellency will find sincerely expressed the purposes which in fact animate the people and the Government of this country regarding the people and the Government of your Nation.

Both the Congress as well as the Executive Power of *Colombia* are desirous that the boundary question referred to may be decided by diplomacy, and in case this shall not be practicable, then by the arbitral judgment of the Government of a friendly power, designated by mutual agreement.

These measures for its solution are not only those which the present state of civilization suggests, but also those which to a certain extent are obligatory between countries that have been good friends since their independence, being interested in their mutual prosperity and living united by fraternal bonds which their present position and their future destinies make it advisable shall be strengthened in order that they may maintain with glory the important place which the Supreme Being has indicated for them in this privileged portion of the continent.

With the confidence that the foregoing statement will be sufficient to dissipate any fear that may have existed in the country of Your Excellency in regard to the intentions of mine in reference to the question of boundaries, and in the hope that the Government of Your Excellency may accept the measures indicated for a solution, as an expression of the desire that the good understanding which exists between your Republic and this may

never be changed, I have the honor to subscribe myself your
 very obedient servant,

LUIS CARLOS RICO.

To H. E. the Señor Minister of Foreign Relations of the Republic of *Nicaragua*.

DOCUMENT No. 2.

Ministry of Foreign Relations of the Republic of Nicaragua.

MANAGUA, September 16, 1880.

SEÑOR:

I have had the honor to receive the despatch which Your Excellency was pleased to address to me, dated June 28th last, stating that in periodicals of *Central America* your Government has been sorry to see that the investigations recently published by the press concerning the rights of your Republic in the territorial zone which extends on the Atlantic side between the River *Doraces* or *Culebras* and Cape *Gracias á Dios*, have been considered by Central American writers as designed to promote a policy of recovery with an armed hand, some going so far as to suppose that the debate had been suggested by the Government of Your Excellency. Further, that in view of the feeling of alarm which the incident has excited in these Republics, Your Excellency deems it well to state, that both the Government as well as the Congress of *Colombia* desire that the question of boundaries referred to may be determined in a diplomatic way, or by means of an arbitrator if the former is not successful, and concluding by expressing the confidence that such declaration may be sufficient to allay whatever fear might exist in this country regarding the intentions of that of Your Excellency connected with the question of boundaries, and the hope that my Government will accept the measures indicated for a settlement of them, with the expression of the desire that the good understanding which exists between your Republic and this may never be changed.

My Government is gratified to acknowledge the friendly dispositions and the sentiments of conciliation which Your Excel-

lency manifests in the name of that of *Colombia*, on the subject of the alarm excited in the different Central American organs of public opinion by the investigations published by the press of *Colombia*, concerning the territorial rights of that Republic and it cherishes the hope that sentiments of such a nature will always prevail in the relations of the two countries even in the unexpected event that any difficulties should arise between their Governments.

As regards the question to which Your Excellency refers, my Government has not been able to give to it the importance which at first sight its gravity and possible serious character would have, because it never has been presented by that of *Colombia* to the consideration of that of *Nicaragua*, which does not know in any official way the bases upon which any claim of that character could be supported, if it were disposed to formally submit it.

The rights of *Nicaragua* over the territory which extends on the Atlantic Coast, from Cape *Gracias á Dios* to its frontier with the Republic of *Costa Rica*, have been recognized from a far distant epoch by all the nations with whom it has cultivated friendly relations; its extended possession of that littoral, never disputed by any one, and the exercise of jurisdictional acts without opposition by any party who might be supposed to have a better right, constitute a title of such clear and unquestionable character that my Government cannot admit the possibility of it being put in doubt with any colour of justice.

The undersigned feels confident in the enlightened judgment and the high sentiments of justice of the Government of Your Excellency and in the expectation that it will know how to arrange every reason for question that may arise in this respect between the two countries to the prejudice of their present good relations; and takes advantage of this opportunity to express the sentiments of friendship felt by *Nicaragua* for the Colombian people and to offer to it the assurances of appreciation and respect with which he subscribes himself Your Excellency's obedient servant.

AD. CÁRDENAS.

To H. E. the Señor Minister of Foreign Relations of the *United States of Colombia*. *Bogota*.

DOCUMENT NO. 3.

Ministry of Foreign Relations of the Republic of Nicaragua.

MANAGUA, September 21, 1880.

SEÑOR :

I have the honor to forward to Your Excellency an authorized copy of the communication which was addressed on the 28th of June last to this Secretaryship by the Señor Minister of Foreign Relations of *Colombia* and the response which I made to it on the 16th instant.

As the matter discussed in the two documents is of interest to *Central America*, I have deemed it proper to bring it to the knowledge of Your Excellency.

In confirming it, I am pleased to again assure you that I am your obedient servant.

AD. CÁRDENAS.

To H. E. the Señor Minister of Foreign Relations of the Republic of *Guatemala*.

DOCUMENT NO. 4.

Secretaryship of Foreign Relations of the Republic of Guatemala.

GUATEMALA, October 16, 1880.

SEÑOR MINISTER :

I had the honor to receive the esteemed note of Your Excellency, dated at *Managua*, September 21 of the present year. It is confined to advising me that on the 28th of June last there was addressed to the Secretaryship of State of *Nicaragua* a note, of which a copy is given, as well as the response which was made to it in *Managua*. Your Excellency concludes with the statement that the matter which is discussed in the two documents is of Central American interest and that therefore it had been deemed proper to bring it to the knowledge of the Government of *Guatemala*.

The first document is a note of the Secretaryship of State of *Colombia* and it says: that the projects for the excavation of a canal between the two Oceans have given rise to recent investigations as regards the rights of *Colombia* to the territorial zone

which extends on the Atlantic side, between the River *Doraces* or *Culebras* and *Cape Gracias á Dios*; that in *Bogota* it has been regretted that these investigations have been considered by various Central American writers as a prelude to a policy of recovery; that both the Congress as well as the Executive Power of *Colombia* desire that the question of boundaries to which reference is made may be decided by diplomacy or by an arbitral decision given by the Government of a friendly power.

The note goes on speaking of the desirability of these measures and concludes by a statement of the hope that this friendly declaration will calm the fears and pacify the minds excited.

After a notable historical explanation, made in response to the note of *Bogota*, Your Excellency states that the rights of *Nicaragua* in the territory it is claimed is in dispute not being doubtful, there is nothing to arbitrate.

It has been stated and many times repeated, that the King of Spain indicated as to the end of *Central America* the "*Escudo de Veragua*," on the Atlantic side, and the Point of "*Burica*" on the Pacific.

These limits were recognized by the Sovereigns of the House of Austria and the Bourbons, from Philip II down to Fernando VII.

For *Colombia* to have acquired any territorial property on this side of the "*Escudo de Veragua*," it is necessary for it to have a title transferring the dominion, since under the Law of Nations as well as by the Civil Law property can only be acquired by legitimate means.

The Government of *Colombia* has never submitted a title of that character, which changes the limits between the Viceroyalty of *Santa Fé* and the Captaincy-General, marked out by the Kings of Castile.

The Federal Government being persuaded that the extent of the territory of *Central America* was that designated by its titles, made a contract for colonization in the territory of *Bocas del Toro*, which was objected to by the Provisional Governor of *Veragua*, in a note of September 23, 1836, and was sustained by the Government of the Central American Republic.

The Governor of *Veragua* cited a Royal Order issued at San Lorenzo, November 30, 1803.

This is the only one that *New Granada* invoked and which the *United States of Colombia* now invokes.

According to that Royal Order there must be left under the care of the Viceroy the territory included from Cape *Gracias á Dios* as far as *Chagres*.

But the Kings of Spain did not divide their provinces by Royal Orders, which are unimportant directions issued by one of the Secretaries of State, without the signature of the King and without the concurrence of the Council.

The Kings of Spain divided their Provinces by Pragmatics and by Royal Decrees.

The Royal Orders affected transitory matters and had no serious, stable or permanent interest.

The Royal Order of San Lorenzo had for its purpose that our Northern coasts might be watched over by the Viceroy, who had at his disposal ships in the harbor of *Cartagena*; but it was never carried out and after both countries continued to look upon the *Escudo de Veragua* as the boundary.

The Captain-General of the Kingdom of *Guatemala* did not receive it so that it might be executed, and his jurisdiction, as well as the jurisdiction of the Audiencia and Royal Chancellery continued, down to the year 1821, the same that it had been from the time of Philip II, without considering in any way the Royal Order of San Lorenzo.

This Royal Order is not found authenticated in the archives of *Central America*, because it was not communicated to the Captain-General.

This was very well understood by the Governments of *Colombia* prior to the recent investigations concerning the excavation of the Canal, for neither General Herrán, nor Valenzuela, nor Pradilla, nor Correoso, who at various times have celebrated boundary treaties between *New Granada* or the *United States of Colombia* and *Central America* ever made such extreme claims.

Almirante Bay, in whole or in part, has been considered as Central American.

Now then, attention is directed to the idea that two of the Central American States have not a foot of land on the Sea of the

Antilles, since the limits of *Colombia* reach as far as Cape *Gracias á Dios*, which is situated at 15° North Latitude and 83° 10' West Longitude from Greenwich.

According to this two Central American States were not part of the Republic of *Central America*, nor have they existed as sovereign Republics, since their territory is Colombian.

Arbitration is very good, very just and very desirable, when it applies to doubtful matters; but that which does not admit of a doubt cannot be submitted to an arbitral decision, because it would be to put into the scale of justice that to which no one sees any objection.

I cherish the pleasing hope that the reasons stated by Your Excellency may convince the enlightened Colombian Cabinet and that the ideas conveyed in the present note may cause the people and the Government of *Nicaragua* once more to see that the present Government of *Guatemala* does not look with indifference upon any question that affects the interests of *Central America* and tends to diminish its territory, for although a real misfortune divided the country it ought to consider itself as one and indivisible when its integrity or its independence is under discussion.

Happily we ought to think that all the Central American Republics are animated by the same idea, and resting in that confidence I have the honor to assure you once more that I am Your Excellency's very obedient servant,

LORENZO MONTÚFAR.

To the Exmo. Señor Minister of Foreign Relations of *Nicaragua*.
Managua.

UNITED STATES OF COLOMBIA.

Report of the Secretary of Foreign Affairs, Submitted to the National Congress of 1884. Doc. 367

Published at Bogota, 1884:—print of "*La Luz*."

Costa Rica.

Nothing has passed through the Department of Foreign Affairs of importance having relation to this progressive and prosperous nation.

After H. M., the King of the Belgians, excused himself from filling the post of Arbitrator in the question of boundaries pending between *Colombia* and *Costa Rica*, instructions were forwarded to our Minister in Madrid, so that, in conformity with the stipulations of the Arbitration Convention, he should present the petition relating thereto to H. M. the King of Spain.

Up to the present time this has not been done, but this action will soon be taken, and it is to be hoped that an acceptance being received from that wise and benevolent Monarch, his decision will be satisfactory to both countries.

Meanwhile, Señor Francisco de P. Borda continues the compilation of material for the preparation of our *Alegato* (Statement of the Case) as attorney for the Republic. Señor Borda has already shown the country that he is thoroughly familiar with the question and there is no doubt that his work will deserve the gratitude of the nation.

EUROPE.

Spain.

The boundary question pending between *Colombia* and *Venezuela* having been submitted to the judgment and decision of H. M. the King of Spain, in the capacity of Arbitrator, as a judge of law under the tenor of the Treaty of September 14, 1881, for a legal arbitration, celebrated between the two countries, that august Sovereign accepted the delicate and laborious

charge, under date of February 21, 1883, and we submit to him in this memorial, in our behalf, as we have already done directly through our Minister at Madrid, the most explicit and sincere assurance of the national recognition of this act of kindly courtesy. The legal territorial delimitation of the two republics, therefore, will soon be definitively established in a binding manner, and it may be assumed that the arbitral determination will be satisfactory to the common aspirations of these peoples.

Our long continued and bitter diplomatic discussion with the sister republic of *Venezuela* will thus be soon decided by an unappealable sentence and the only cause for difference between them is about to disappear forever, as a subject of common examination and mutual unrest in the departments of both Governments, the last word in this vehement debate being pronounced by the one who can best speak it, having the best data, the most information and even the most affectionate regard,—the Sovereign of the Spanish Nation, our old Mother Country, the depository in its archives of the secular history of the administration of these colonies.

The *Alegato* of *Colombia*, duly forwarded to our Legation in Madrid, is a document of unquestionable juridical and literary merit, responding to the just fame enjoyed by its learned author, Señor Doctor Aníbal Galindo, the present Secretary of Hacienda. Simple in language, clear in its reasoning, vigorous in its analysis of the evidence, this work is the result of a patient and laborious examination that adds a hundredfold to the services rendered to the country by Doctor Galindo as a statesman and political writer, and above all and more especially in the investigation of this very boundary question, treated so masterfully by him upon another occasion. It is with pleasure that I take advantage of this opportunity to make publicly to him this frank statement of my gratitude as a Colombian.

On October 23, 1883, that is to say, three days after the eight months had expired mentioned in the second Article of the Treaty of 1881, referred to above, our Minister in Madrid addressed himself, in conjunction with the Minister of *Venezuela*, to H. M. the King Don Alfonse XII, asking for an audience for the purpose of placing in his hands the *Alegato* of *Colombia*. Down to the 24th of November following no official response had

been received; but H. M. had resolved, after having been advised by his Minister of State, as regards the boundary question between the two Republics, to appoint a Commission to take up the examination of the disputed points, which Commission should, at the proper time, assist him with their explanations in the formation of his opinion.

The statement of the Minister and the Royal Decree appointing the chairman, the members and the secretary of that Commission, are papers of the greatest importance;—the former on account of its plain and clear views, and the latter by reason of the eminent names it contains.

These documents are as follows:

“Ministry of State. Statement.

“SEÑOR:

“Your Majesty having consented to accept the request submitted by the Republics of *Colombia* and *Venezuela*, asking that you may be pleased to serve as Arbitrator of the questions relating to the determination of their frontiers, and the term fixed for the presentation of the pleas having expired, the moment has arrived for arranging the manner of proceeding in regard to the examination of so delicate an affair, and therefore it is proper to state briefly its origin and present status.

“The questions as to boundaries between the Republics of *Colombia* and *Venezuela* are as old as the existence of those countries. Upon proclaiming themselves independent they both agreed to keep those that down to the year 1810 had served to separate the territorial division of the Captaincy-General of *Venezuela* from that of the Viceroyalty of *New Granada*; and starting from this basis they subsequently discussed upon different occasions how to determine them with greater precision. But although animated by the most sincere desire for conciliation and convinced of the importance of living harmoniously together, their efforts to arrive at an agreement have always been unavailing. Sometimes the negotiations undertaken have broken down; at other times the compacts adjusted by the negotiations have not been ratified; and for four years the boundary question has

assumed such a serious aspect that relations have been interrupted and an open rupture has been threatened.

“Nor would it have been strange if this had occurred.

“The Republics of *Colombia* and *Venezuela* occupy an area four times greater than that of Spain, their population being so sparse that it does not exceed five millions of inhabitants, and even these are mainly concentrated along the coast. The interior of the country, unsettled and untilled, is hardly known, and it was much less so at the beginning of the century, at the time of the emancipation. Their border line extends, therefore, for a length of many leagues, across extensive territories, equivalent to large provinces, where complicated questions are presented, either for lack of demarcation or because the names are not certain nor the situation of the pointed dispute. It is very sure that the greater portion of those territories are not yet exploited; but being of a fertile character and rich in all kinds of products, and the country being traversed by large and navigable streams, destined to hereafter serve as commercial highways that will place them in communication with the other peoples of the world, they have an immense prospective future.

“In this situation, the Governments of both Republics being convinced that the simple exhibition and direct examination of the titles upon which they base their claims is not sufficient for them to reach an understanding, they adjusted at *Caracas*, on September 14, 1881, the Treaty, the stipulations of which are submitted to Your Majesty, agreeing to leave to your judgment all the boundary questions, so that you may decide them as the legal Arbitrator, and relying upon the acts of the old sovereignty of the country.

“The difficulties to be met with in the discharge of this important duty are very obvious.

“During the period of Spanish domination the two Republics were colonies of the same State. The differences that arose from time to time as to boundaries only had the character of competitions for jurisdiction between officials; and the dispositions which the Government of the Mother Country adopted for their settlement, except for topographical conditions without importance then, were determined by considerations of a different nature; taking into account, sometimes the origin of the settlers

in the new establishments and sometimes the facility of communication. The very Royal *Cédulas* issued to pacify the contentions, at times contradictory, being made, as has been indicated, with scant knowledge of the localities, gave rise to new confusion. The most distinguished statesmen of these Republics have struggled in vain to explain them and the task will be none the less difficult for those who may undertake it in Spain, if they are to examine only the documents thus far submitted; but, happily, they have a wider scope for their investigation.

“In submitting their disagreements to the arbitration of Your Majesty, the two Republics took care to provide in the Treaty of the 14th of September the desire that Your Majesty should decide what the territorial division was as it existed in the year 1810; and although both parties may have undertaken to present the titles upon which their claims are founded, yet it is evident that to decide with certainty the Arbitral Judge must also consult all the other facts capable of throwing any light upon the subject, and which were not within the knowledge of the contestants, searching for them in the archives of the old Mother Country, as well as in any other collection of papers that may exist, for the Royal *Cédulas* and other governmental dispositions having relation to the matter, and in the narratives, frequently unpublished, of American writers; since in order to thoroughly understand the litigated points it will be necessary to go back into the history of the conquest itself and the reports made by the first explorers in those vast regions.

“And the only way to attain this result being to create a Commission, made up of persons who by reason of their personal studies or by their writings or publications have shown themselves to be best fitted for such a purpose, the undersigned Minister has the honor to suggest that Your Majesty make such appointments. The Commission should investigate the allegations of the contending parties and their proof and collect the other data required to complete their investigation, and should then submit the work to Your Majesty, in order that the decision of the Arbitrator may be supported by such evidence that the reading of it will be sufficient to show that Your Majesty has deserved the confidence reposed in you and the impartiality of your award.

“In the statement submitted to Your Majesty by the Plenipotentiaries of *Colombia* and *Venezuela*, making themselves subject to your arbitration, they declare in noble and cordial terms that by this act they set “for the American family the good example of applying to their common Mother, in seeking from your sovereignty an adjustment of their differences.

“It is to be hoped that the decision Your Majesty may deliver, meeting this frank proposition, will at the same time serve to demonstrate that one of the keenest satisfactions of Your Majesty and of your Government will always be to contribute to the harmony and prosperity of the Republics of Spanish America.

“Relying upon these considerations, the Minister who subscribes this has the honor to submit for the approval of Your Majesty the appended draft of a decree.

“Madrid, November 19, 1883.

“Señor: A. L. R. P. de V. M. (at the Royal feet of Your Majesty);

“SERVANDO RUIZ GÓMEZ.”

Royal Decree.

“In view of the reasons explained to me by my Minister of State:

“I have determined to decree the following:

“ART. 1. A Commission is created, which shall be called ‘Commission for the Examination of the Boundary Questions between the Republics of *Colombia* and *Venezuela*,’ and it shall be composed of a chairman, three members and a voting secretary.

“ART. 2. This Commission shall examine the titles, rights and allegations which the Governments of the two Republics may present to me as the Arbitral Judge in support of their claims.

“ART. 3. The Commission shall have the right to require from the archives of the Kingdom, through the Ministry of State, certified copies and extracts of all documents that may be deemed necessary as evidence in regard to the questions litigated.

“ART. 4. Having all this data before them, the Commission shall submit to me a report, prepared in accordance with the pro-

visions set forth in the Treaty agreed upon at *Caracas* by the Plenipotentiaries of the two Republics on September 14, 1881.

“ART. 5. The Minister of State is charged with the execution of this decree.

“Given at the Palace on the nineteenth of November, 1883.

“ALFONSO.

“The Minister of State:

“SERVANDO RUIZ GÓMEZ.”

Royal Decree.

“In order to make up the Commission for the examination of the boundary questions between the Republics of *Colombia* and *Venezuela*, created by my Decree of this date:

“I appoint: in the capacity of Chairman, Don Carlos Ibáñez é Ibáñez de Ibero, Field Marshal and Director General of the Geographical and Statistical Institute;—as members, Don Cesáreo Fernández Duro, Fleet Captain in the Navy, Academician of History, Vice-President of the Geographical Society; Don Justo Zaragoza, Administration Chief of the First-Class, Member of the Governing Board of the Geographical Society and author of works upon history and American geography;—and Don Marcos Jiménez de la Espada, a member of the Spanish Commission in the Pacific, American Historiographer and Academician elect of History;—and as voting Secretary Don Gaspar Muro, Chief of the Archives in the Ministry of State.

“Given at the Palace, on the nineteenth of November, 1883.

“ALFONSO.

“The Minister of State:

“SERVANDO RUIZ GÓMEZ.”

Contract Made With Señor José María Quijano Otero, for the Preparation of a Work Concerning Boundaries.

The undersigned, to wit: Pablo Arosemena, Secretary of the Interior and Foreign Affairs, in the name of the Executive Power of the Nation, and José María Quijano Otero, acting for himself, agree to make the contract contained in the Articles following:

ART. 1. Quijano Otero agrees to prepare and deliver for publication, to whomsoever the Government may direct, a work bearing the title of *Límites de los Estados Unidos de Colombia* (Limits of the United States of Colombia); taking as a model therefor the *Memoria histórica sobre límites con el Imperio del Brasil* (Historical Memorial as to Boundaries upon the Empire of Brazil), prepared by the said Otero in 1869.

ART. 2. This work is to contain:

(1) the official documents, such as *Cédulas* issued by the Spanish Sovereigns, as well as the Public Treaties celebrated between the Spanish and Portuguese Crowns, which are the basis and evidence of the territorial rights of the Republic.

(2) All the data taken from the doctrine of the Public Law or from negotiations of international character, that it be possible to gather confirmation of our rights.

(3) the historical narrative of the negotiations undertaken between *Colombia* and the neighboring nations, as regards the demarcation of their respective territories; down to the present time, showing the situation in which they now are; and

(4) the deductions that are to be drawn from such antecedents for the purpose of determining the frontier lines.

ART. 3. The work is to be divided into the following sections:

- (1) the bases upon which *Colombia* plants its rights;
- (2) the boundaries upon the Republic of *Venezuela*;
- (3) the boundaries upon the Empire of *Brazil*;
- (4) the boundaries upon the Republic of *Ecuador*;
- (5) the boundaries upon the Republic of *Costa Rica*;
- (6) the *Mosquito Coast*; and
- (7) a general summary.

ART. 4. Quijano Otero is charged with the proof-reading of the work; and he undertakes to deliver it completed, save for unforeseen and unavoidable circumstances, within the term of two years, at the latest, counting from the date upon which this contract may be approved by the Executive Power.

ART. 5. In this work no citations or assertions are to be made, unless they are of some fact of public knowledge, the documents in proof of which cannot be submitted.

ART. 6. The Government leaves and confides to the discretion

of Quijano Otero the extent to be given to the undertaking, it being understood that it is desirable to have the work as complete as possible.

ART. 7. The Government, on its part, agrees:

(1) To issue the necessary orders, so that not only the National Archives but in the Library also documents and works shall be furnished as required, for which he will leave receipts in case they are taken to his own private workroom, the same to be cancelled upon the return thereof;

(2) To pay to Quijano Otero the sum of 200 pesos during each month, for the two years within which the work is to be finished; and 200 pesos more upon the delivery thereof, as compensation for the labor of the proof-reading; and

(3) To give to Quijano Otero fifty copies of the work.

ART. 8. Quijano Otero undertakes to deliver every four months one of the parts into which the work is divided; and if, by reason of his serious ill-health or death he shall not be able to complete it, there shall be left as the property of the Government, by reason of the monthly payments he may have received, all the data copied and the documents relating to "boundaries," in his possession. On the other hand, if the work shall be finished or delivered before the expiration of the two years stipulated, in addition to the monthly payments which Quijano Otero may have received there shall be allowed to him the sum of 5,000 pesos for his work of preparation and correction; and he shall be given 1,000 pesos more in payment for the documents in his possession connected with the matter that is the subject of the work.

ART. 9. Quijano Otero, in order to assure the fulfillment of this contract, submits as a guaranty the personal bond of Señor Roberto Quijano, who signs in token of his assent.

ART. 10. This contract shall be submitted for the approval of the President of the Republic and the final action of the National Congress at its next session.

In testimony whereof it has been signed at Bogota, on the fifteenth day of January, 1879.

PABLO AROSEMENA.

JOSÉ MARÍA QUIJANO OTERO.

ROBERTO QUIJANO.

Executive National Power:

BOGOTA, January 10, 1879.

Approved.

The President of the Union. JULIAN TRUJILLO.

The Secretary of Interior and Foreign Affairs:

PABLO AROSEMENA.

Doc. 368 **The Cabinet Council of Costa Rica Fixes the Boundaries of the Litigated Zone With Colombia.**SAN JOSÉ, November 19, 1885.¹

There being assembled under the Presidency of His Excellency the President of the Republic the Secretaries of State Esquivel, Durán, Fernández and De la Guardia, the following was taken into consideration:

The Minister of *Costa Rica* in Madrid, Licenciado Don León Fernández, has communicated that the American Government has made known to His Majesty the King of Spain, Arbitrator appointed by *Costa Rica* and *Colombia* to award the boundary question now pending between them, that the American Government by the Treaty of 1846 guarantees to *New Granada*, now *Colombia*, its sovereign rights in the Isthmus of *Panama* as far as its boundaries with *Costa Rica*, and that being not a party in the arbitration, it shall not be obliged to respect the arbitral award.

In order to remove this difficulty so that the King of Spain can give his award, Minister Fernández has initiated confidential negotiations with the American Minister in Madrid and has proposed *ad referendum* that the American Government should withdraw its intervention and that in case the zone litigated with *Colombia* and not actually possessed by *Costa Rica* should be granted to the latter, *Costa Rica* will grant to the American Government in the said zone the same obligation of guaranteeing the sovereignty and possession in like manner it guarantees it actually to *Colombia*, the said disputed zone not actually possessed by

¹ Archives of the Department of Foreign Relations of Costa Rica. Book of the Cabinet Council of 1885.

Costa Rica, being fixed as follows: On the Atlantic side from the River *Changuinola* exclusive to the *Escudo de Veragua*, and on the Pacific side, from the *Golfito* and River *Coto* to the River *Chiriquí Viejo*.

Being necessary to give instructions to Minister Fernández all present opine that it is suitable to instruct Minister Fernández to continue the initiated negotiations, and if the American Minister in Madrid has not been authorized to treat this affair, there shall be initiated negotiations with the Cabinet of Washington.

This record has been flourished by the President of the Republic and signed by the other members of the Cabinet Council in *San José*, on the nineteenth day of the month of November of the year eighteen hundred and eighty-five.

(Here is a flourish.)

The Secretary of State in the Department of Foreign Relations, ESQUIVEL.

The Secretary of State in the Department of Governments, C. DURÁN.

The Secretary of State in the Department of the Treasury, MAURO FERNÁNDEZ.

The Secretary of State in the Department of War, DE LA GUARDIA.

Additional Arbitration Convention Between Costa Rica and Colombia. Doc. 369

PARIS, January 20, 1886.

The undersigned, to wit: León Fernández, envoy extraordinary and minister plenipotentiary of the Republic of *Costa Rica* in Spain, France and Great Britain; and Carlos Holguín, envoy extraordinary and minister plenipotentiary of the *United States of Colombia* in Spain, desiring to obviate the difficulties that might arise with respect to the execution of the Arbitration Convention concluded between their respective Governments on the 25th of December, 1880, and considering:

1. That His Majesty, the King of Spain, Don Alfonso XII, has been pleased to accept verbally the appointment of Arbitrator

suggested to him by the undersigned in the name of their respective Governments, in order to determine the territorial questions pending between the two Republics, and that, therefore, the execution of the Arbitration Convention of December 25, 1880, has already been begun before the Government of Spain;

2. That it is in the interest of both Republics to continue before it the proposed arbitral proceedings, not only because the greater part of the original documents for deciding with certainty and full knowledge of the matter the pending question of boundaries are to be found in the archives of Spain, but also because there are to be found there a sufficient number of persons especially devoted to investigations concerning America, whose opinion and counsel will efficiently contribute to the adjustment of the award as far as possible to the truth and to justice; and

3. That the very much regretted and premature death of His Majesty, Don Alfonso XII, might give rise to doubts regarding the competency of his male or female successor to continue acting in the aforesaid arbitral proceedings until a definitive judgment;

They have agreed to celebrate the following:

CONVENTION, *ad referendum*, as an addition to the one signed at *San José*, December 25, 1880, by the plenipotentiaries of *Costa Rica* and the *United States of Colombia*, for the settlement of the question of boundaries pending between the two Republics:

ARTICLE 1. The Republic of *Costa Rica* and the *United States of Colombia* recognise and declare that, notwithstanding the death of His Majesty, Don Alfonso XII, the Government of Spain is competent to continue acting in the arbitration proposed by the two Republics, and to deliver a definitive award, of an irrevocable and unappealable character, in the pending litigation concerning territorial boundaries between the two high contracting parties.

ARTICLE 2. The territorial boundary which the Republic of *Costa Rica* claims, on the Atlantic side, reaches as far as the Island of the *Escudo de Veragua* and River *Chiriquí* (*Calobebora*), inclusive; and on the Pacific side as far as the River *Chiriquí Viejo*, inclusive, to the East of *Punta Burica*. The territorial boundary which the *United States of Colombia* claims reaches, on the Atlantic side, as far as Cape *Gracias á Dios*, inclusive;

and on the Pacific side, as far as the mouth of the River *Golfito*, in the Gulf of *Dulce*.

ARTICLE 3. The arbitral award must be confined to the territory disputed which lies within the extreme limits already stated, and it cannot in any way affect the rights which a third party, who has not intervened in the arbitration, may allege to the ownership of the territory included within the boundaries indicated.

ARTICLE 4. If, for any reason, the Arbitrator shall not be able to deliver his award within the period positively designed by Article 2 of the Arbitration Convention of December 25, 1880, the high contracting parties agree to extend said period for ten months longer, which are to be counted from the day upon which the former period shall terminate.

ARTICLE 5. With the exception of the foregoing additions and modifications, the Arbitration Convention of December 25, 1880, shall remain in force in all its parts.

In testimony whereof we have signed two of the same tenor, attested by our respective seals, in the city of Paris, on the 20th of January, 1886.

LEÓN FERNÁNDEZ. (L. S.)

CARLOS HOLGUÍN. (L. S.)

Mr. Bayard to Señor Peralta.

Doc. 370

DEPARTMENT OF STATE,
WASHINGTON, May 26, 1886.¹

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant concerning the submission to the arbitration of the Government of Spain of the long-pending boundary dispute between the Republic of *Costa Rica* and the *United States of Colombia*.

You therewith communicate to me a copy of the supplementary articles of 20th January last to the existing convention between *Costa Rica* and *Colombia*, by which the arbitration was proposed, and invite my attention to the inclusion therein of the points ad-

¹ Foreign Relations of the United States, 1893, p. 280.

verted to in my note to Señor González Víquez, dated 14th November last, touching the effects of such arbitration upon any rights of guarantee or tenure which the Government of the United States or its citizens may be found to have with respect to the territory in dispute.

You also advert to the purpose defined in those supplementary articles of permitting the arbitration to proceed under the umbrage of the Government of Spain, notwithstanding the lamented death of His Majesty Don Alfonso XII, to whom the high office of arbitrator had been tendered by the contracting parties to the convention of arbitration.

The third article of the supplementary convention of 20th January, 1886, reads as follows :

“Article 3. The judgment of arbitration is to be confined to the disputed territory within the extreme limits above described, and can not in any manner whatever affect the rights which a third party not having taken part in the arbitration, may allege to the ownership (propiedad) of the territory comprised within the limits described.”

The Government of the United States, in view of your positive assurance that the article thus cited was intended to meet the points presented in my note of November 14, 1885, accepts this formal declaration as sufficient understanding that the terms “ownership (propiedad)” is employed in no restrictive sense but includes all possessory or usufructuary rights and all easements and privileges which the United States or their citizens may possess in the disputed territory, not only as respects the relation of the United States to each or either of the contracting parties to the arbitration, but also with regard to the relation of the United States or their citizens toward any third government not actually a party to the submission.

This declaration on the part of the United States is proper in view of the fact that the region in dispute, as defined in Article II, not only embraces territory to which the concessions of *Colombia* and *Costa Rica* and the mutual guaranties of the United States with *Colombia* might be found applicable, but also includes territory coming under the purview of the existing arrangements of *Nicaragua* with the United States and with citizens of the United States.

So, accepting the declaration of the supplementary articles of 20th January, 1886, as fully responding to the views and propositions set forth in my note to Señor González Viquez of the 14th November, 1885, I will have pleasure forthwith in carrying out the promise I then made, to announce to the Government of Spain, as the arbitrator accepted by *Costa Rica* and *Colombia*, that, in view of the formal understanding reached by the contracting parties to the arbitration, whereby the scope and effect thereof are defined without impairment of any rights of the third parties not sharing in the arbitration, the Government of the United States withdraws from the notification, made June 25, 1881, that it would not hold itself bound by the results of such arbitration.

In so doing the Government of the United States feels, that it is consistently lending its countenance to the general promotion of the policy of arbitration which it has itself advocated and adopted on important occasions as a means of adjusting international differences or disputes, and aiding a resort whereby the peace and welfare of the South American States can be secured and the losses and demoralization attendant upon costly and useless warfare be prevented.

I have addressed a communication in a similar sense to the envoy of the *United States of Colombia* at this Capital.

Accept, sir, the renewed assurances of my highest consideration.

T. F. BAYARD.

Political Constitution of Colombia.

Doc. 371

AUGUST 4, 1886.

Title I. Of the Nation and Its Territory.

ART. 3. The boundaries of the Republic are the same as those which in 1810 separated the Viceroyalty of *New Granada* from the Captaincies-general of *Venezuela* and *Guatemala*, from the Viceroyalty of *Peru* and from the Portuguese Possessions of *Brazil*; and provisionally, in respect to *Ecuador*, those designated by the Treaty of July 9, 1856.

The divisional lines separating *Colombia* from the adjoining nations shall be definitively fixed by public treaties, the latter being based upon the principle of the legal *uti possidetis* of 1810.

ART. 4. The territory, with the public property that forms a part of it, belongs solely to the Nation.

The sections that compose the Colombian Union, known as States and national Territories, shall continue to be territorial parts of the Republic of *Colombia*, keeping the same actual limits and under the designation of Departments.

Doubtful divisional lines shall be settled by demarcatory commissions appointed by the Senate.

The old national Territories remain incorporated in the sections to which they belonged originally.

Doc. 372 **The Government of His Catholic Majesty Accepts the Position of Arbitrator. Terms and Conditions of His Acceptance.**

1. *The Ministers of Colombia and Costa Rica to the Minister of State.*

MADRID, May 19, 1887.

EXCMO. SEÑOR:

We have the honor to enclose herewith to Y. Ex. a copy of the Convention subscribed in Paris by the plenipotentiaries of *Colombia* and *Costa Rica*, as an addition to that of December 25, 1880, signed at *San José*, by which our Governments have submitted to the decision of H. M., the King of Spain, the questions pending with regard to boundaries between the two countries. Our Governments being fearful lest the unhappy decease of the noble Prince who ruled the destinies of Spain at the time the Convention of *San José* was concluded, might throw doubt upon the jurisdiction of his worthy successor to carry on the affair to its termination, they desired that a new Convention be signed, which we now submit approved and ratified, expressly declaring that the Spanish Government is competent to deliver its decision and that both countries seek for it in the wisdom of this Government.

Believing that the Government of H. M., the Queen Regent, will be animated by the same cordial disposition as was that of H. M., the King Don Alfonso XII (may he rest in peace), we submit the aforesaid Convention, to the end that, when our Governments undertake to assume their rights, there may not be the least doubt as regards the jurisdiction of the Spanish Government.

Trusting that on the part of the Government of H. M., the Queen Regent, there will be an express acceptance of this duty, we assure Your Excellency in advance of the most earnest thanks of our Governments.

CARLOS HOLGUÍN.

MANUEL M. DE PERALTA.

II. *The Excmo. Señor Don Segismundo Moret, Minister of State of H. C. M., to Señor Peralta, Minister of Costa Rica. Conditional Acceptance of the Arbitration.*

Doc. 373

Ministry of State,

Palace, June 12, 1887.

EXCMO. SEÑOR:

I have received, with the courteous note which Y. E. jointly with Señor Don Carlos Holguín, representative of *Colombia*, has been pleased to address to me, under date of May 19th last, the Convention subscribed in Paris by the plenipotentiaries of *Costa Rica* and *Colombia*, as an addition to that of December 25, 1880, signed at *San José*, by which the two Governments of the two Republics had submitted to the decision of H. M., the King of Spain, the question pending concerning the territorial boundaries between the two countries.

The differences which it appears existed in this affair between the two signatory Republics of that international compact, and that of the United States, being satisfactorily arranged by said Convention, I deemed the moment had arrived to make a statement to the Government of H. M. of the desires expressed by Y. E. and your worthy colleague the representative of *Colombia*.

The Government of H. M., which views with the greatest in-

terest and predilection whatever relates to the Spanish American States, accepts with pleasure the duty of rendering an arbitral award which is offered to it; but considering it very desirable that the investigation of the question which may be submitted to its arbitration, in view of the special conditions which it presents, be allotted to the Commission which is at present occupied likewise with the question of the boundaries between *Colombia* and *Venezuela*, which will greatly facilitate the new mission that may be entrusted to it, I have the honor to bring it to the knowledge of Y. E., to the end that it may be submitted to the Government which you so worthily represent; adding further that the investigation of the matter mentioned will begin as soon as the Commission to which I have above referred concludes its work, which work is already well advanced, and the termination of which I am urging may be hastened as much as possible.

With pleasure I take this opportunity of again assuring Your Excellency of my most distinguished consideration.

S. MORET.

Doc. 374 III. *Señor Peralta, Minister of Costa Rica, to Señor Moret, Minister of State.*

LEGATION OF COSTA RICA,
MADRID, June 23, 1887.

EXCMO. SEÑOR:

I have had the honor of receiving the note of Your Excellency, dated the 12th instant, replying to the one from this Legation and that of *Colombia* of May 19th last.

Your Excellency is pleased to bring to my knowledge the fact that the Government of H. M. accepts with pleasure the charge which is offered to it of rendering an arbitral award, and that the matter submitted to its arbitration will be allotted to the Commission which is occupied with the question of the boundaries between *Colombia* and *Venezuela*, as soon as its labors may be concluded.

It has been a great pleasure for me to communicate such satisfactory news to my Government, and in its name I am greatly honored in most cordially thanking the Government of H. M.

and of Your Excellency, who so worthily represents it, for so marked an evidence of friendship and cordiality.

I have the honor, etc.

MANUEL M. DE PERALTA.

Señor Peralta to the Minister of Foreign Relations of Doc. 375
Costa Rica.

PARIS, October 5, 1888.

SIR:

I have the honor to acknowledge receipt of your note of September 7 ultimo, and of the copies of documents that you were pleased to attach thereto.

The information that you give to me concerning the territories measured by the engineers of the Panama Canal Company in the territory of *Talamanca* is altogether exact and in accordance with the information given to me this very day, and on the 2nd instant, by M. Gaston Crozes, an engineer of the said Company who visited the said region and ordered the measurement of the territory, relying on the official map of the State of *Panama*, published in 1865 by Manuel Ponce de León and Manuel María Paz. Monsieur Crozes entered by the mouth of the *Sixaola* and travelled upstream for a day and a half. Upon reaching the mouth of the *Yurquin* the Señores Bravo and Arango, who were charged with the special mission of making the measurement, met a Costarican guard, the officer of which informed them that they were in territory of *Costa Rica*.

Wherefore the said gentleman went no further but continued the measurement on the right bank of the *Yurquin*, upstream, as far as it can be navigated. From there they continued by a path to the *Changuinola* or *Tilorio River*, until near a spot named *Brushik*, on Gabb's map of *Talamanca*; from there they went by a straight line as far as the peak of *Róbaló*; from this peak, following its slope and the course of the *Róbaló* River they went to the mouth of this river in *Chiriquí Lagoon*; this measurement embracing an area of 170,000 hectares.

On the eastern part of *Chiriquí Lagoon* the measurements made by the Panama Canal Company extend from a River *San*

Pedro (called *Chuatara* in the country) to the East of *Chiriquí* River and to the South-east of the Island of *Escudo de Veragua*, as far as the neighborhood of *Cricamola* River, to the East of this river, embracing *Valiente* Peninsula. This area measures 10,000 hectares.

The Panama Canal Company is not yet in possession of these 280,000 hectares that have been measured; but it has the intention of requesting the Government of *Colombia* to adjudicate them to it.

Monsieur Charles de Lesseps and the Engineer Crozes say that the Company has acted in good faith. As the question is not one with the Company, I have seen the Minister of *Colombia*, who has already stated to me on three different occasions that his Government respects the *status quo*; that the Company has been able to measure the lands referred to, because *Colombia* thinks that she possesses in good faith, and that the Colombian engineers Arango and Bravo, as soon a Costarican authority notified them that that place (the mouth of the *Yurquin*) was a territory of *Costa Rica* yielded and did not go further; that furthermore the approval of the Government of *Colombia* was necessary in the case and, lastly, that it was necessary to abide by the decision that may be made by the arbitrator.

Monsieur Crozes stated, in the presence of the Minister of *Colombia* and of the undersigned, that the area marked out with red pencil in the map of *Talamanca*, which is included and which I have traced according to the information contained in your note of September 7, is exact.

The Costarican officer of the guard above mentioned stated to Señores Bravo and Arango that he was the *Alcalde* of a small village of six houses located near the outlet of the *Sixaola* on the right bank of this river in the part claimed and occupied by *Colombia*. The inhabitants call themselves Colombians, but the authorities of *Colombia* are located so far away from there, that they give obedience to the Costarican officer referred to.

I exhibited the map of *Central America* by James Wyld, geographer to the Queen, Charing Cross, etc., to make apparent to Monsieur Crozes and to the Minister of *Colombia* which is the territory in dispute and which marks out the claim of *Costa Rica*.

I did not deem it necessary to enter into discussion of the matter, but it is evident, as you have been pleased to state, that the Government will make to the Government of *Colombia* the observations that it may deem proper.

Monsieur Crozes went to see Señor Aycardi, Governor of *Panama*, and gave him an account of the encounter he had at the junction of the *Yurquín* with the Costarican guard. At first the Governor did not pay any attention, but afterwards he sent a messenger on board the French steamer upon which Monsieur Crozes came and asked him to delay his voyage, as he wanted to secure information in regard to this encounter. Monsieur Crozes, however, could not wait; but from *La Guayra* he wrote at length to the Governor in regard to the occurrence. Moreover, Señores Arango and Bravo could furnish him the most minute details and doubtless this was done by them, so that the Colombian authority must have been well informed about the affair to which this dispatch refers.

I have communicated to the Minister of *Colombia* the telegram that I had the honor to send to you on October 3rd and which read as follows:

“Minister Zeledón, *San José, Costa Rica*: Colombian Minister assures his Government respects *status quo*. Canal Company has measured 280,000 hectares in *Talamanca*, but approval *Bogota* is lacking. Your information exact. PERALTA.”

General Posada has repeated to me the same assurance and believes that any question like the present one will be amicably settled between the two Governments.

I have the honor to reiterate to you the expression of my highest consideration.

MANUEL M. PERALTA.

Señor Peralta to the Excmo. Señor the Marquis de la
Vega de Armijo, Minister of State.

LEGATION OF COSTA RICA,

MADRID, October 23, 1888.

EXCMO. SEÑOR :

I have the honor to bring to the knowledge of Your Excellency that some doubts have arisen concerning the time within which the Government of H. C. M. should take up and decide the question of boundaries between the Republics of *Costa Rica* and *Colombia*, submitted to its arbitration under the Treaty of *San José* of December 25, 1880, and the Additional Convention of Paris of January 20, 1886.

This latter instrument provides that the award must be delivered twenty months after the acceptance by the Government of H. M., and the latter, through the worthy predecessor of Y. E., was pleased, under date of June 12, 1887, to notify the representative of *Colombia* and the undersigned that it accepted with pleasure the duty of rendering an arbitral award which was offered to it, but deeming it very desirable that the investigation of the question submitted to its arbitration be allotted to the Commission, which was at that time also occupied with the question of boundaries between *Colombia* and *Venezuela*, the study of the matter now under consideration would begin as soon as the said Commission finished its work.

In my view, from its text as well as its spirit, the despatch of that Ministry of State, beside being an actual and definite acceptance, contained a conditional and tentative acceptance, a formal promise to accept for such time as the Commission in the arbitration between *Colombia* and *Venezuela* should have concluded its work, and that only when it was officially known that said Commission had finished its tasks should the term of twenty months begin to be counted as running, within which the Government of H. C. M. was pleased to accept, in a definitive way, the duty of investigating and deciding by the rendition of an arbitral award the question of boundaries between *Costa Rica* and *Colombia*.

This was the understanding of the worthy predecessor of Y. E. and I so communicated it to my Government; also I so stated it to Señor General Cuervo, the last Minister of *Colombia* at this court, when in April and June of the present year he expressed to me his fears in this respect; and to the end that the doubts which the Government of *Costa Rica* as well as that of *Colombia* may feel shall be dissipated, I beg Y. E. may be pleased to explain the meaning of the acceptance of your Government, so that it may be known in a definite manner when the term of twenty months will begin to run which was fixed by the Additional Convention of Paris, of January 20, 1886.

I have the honor to be, etc.

MANUEL M. DE PERALTA.

The Excmo. Señor Marquis de la Vega de Armijo to Señor Peralta. When the Acceptance of the Arbitration Will Begin to Run.

Doc. 377

MINISTRY OF STATE. No. 9.

PALACE, October 30, 1888.

EXCMO. SEÑOR:

My Dear Sir: I have taken note of the communication which Your Excellency was pleased to address to me under date of the 23rd instant, in which, referring to that of my worthy predecessor of the 12th of June of the year last past, you communicated your desire that the meaning be explained of the acceptance by H. M. of the post of Arbitrator in the question of boundaries pending between the Republics of *Costa Rica* and *Colombia*.

Your Excellency has interpreted correctly the view taken in this particular by the Government of H. M., since the work relating to the question of a similar character existing between *Venezuela* and *Colombia*, of which Y. E. is advised, not yet having been definitively ended, until the award is delivered therein and the appointment of a new Commission is undertaken, the acceptance will not begin to run of the arbitration with which the Government of H. M. has been honored by that of *Colombia* and that which Y. E. so worthily represents.

I trust that this explanation will dissipate the doubt which Your Excellency had and I take advantage of this opportunity to reiterate the assurances of my most distinguished consideration.

EL MARQUÉS DE LA VEGA DE ARMIJO.

To the Señor Minister Plenipotentiary of *Costa Rica*.

Mr. Bayard to Mr. Phelps.

Doc. 378

DEPARTMENT OF STATE.

WASHINGTON, November 23, 1888.¹

SIR: On the fifteenth ultimo Dr. Horacio Guzmán, the minister of *Nicaragua* at this capital, in pursuance of instructions received from his Government, left at this Department a copy of a note addressed by Mr. J. P. H. Gastrell, the British minister in *Central America*, to the minister of foreign affairs of the Republic of *Nicaragua*, a copy of which I inclose herewith.

In this note Mr. Gastrell complains that the Government of *Nicaragua* "has established a post-office at *Bluefields*, that intervening in the domestic affairs of the reservation;" that, "troops and a police force have been stationed, and forts, arsenals, and military posts have been established, or are about to be established, by *Nicaragua*" within the *Mosquito Reservation*, and that the Nicaraguan commissioner residing in the reservation sustains these acts. He states that, in the opinion of Her Majesty's Government, the erection of forts, arsenals, or military posts, the establishment of postoffices by *Nicaragua*, or the exercise of military or police authority within the territory of the reservation can not be reconciled with the spirit of the treaty of *Managua* of 1860, as interpreted by the award of the Emperor of Austria. And he refers to certain questions touching the precise boundary of the reservation, as to which some dispute exists.

Touching the inquiry in regard to the demarkation of the boundaries of the reservation, I have no observations to offer. The matter is one in which the Government of the United States feels at least an equal interest with that of Great Britain, inas-

¹ Foreign Relations of the United States, 1888. Page 759.

much as a number of our citizens are now engaged in business within the reservation and by far the larger part of the foreign commerce of that region is at present carried on between the ports of *Bluefields* and New Orleans.

But with respect to the other subjects mentioned by Mr. Gastrell the case is different. The subjects involved are, as you know, of deep interest to the people of the United States, and have heretofore been the subject of prolonged and voluminous correspondence between this Government and that of Great Britain. It is not needful to recapitulate at this time the whole of the earnest and protracted discussion in which the questions relating to the *Mosquito* territory constitute an important part; but it will be conducive to a clear understanding of the President's view in regard to the particular points suggested by Mr. Gastrell's note if a statement of these views be prefaced with a brief historical review of the acts and declarations of the several powers concerned.

The *Mosquito coast* was a name bestowed in the last century upon a tract of country of considerable but imperfectly defined extent, stretching along the shores of the Caribbean Sea to the southward and westward of Cape *Gracias á Dios*, and was inhabited by a sparse population of wholly uncivilized Indians, between whom and the inhabitants of British colony of *Jamaica* some relations are said to have early existed. The meaning and character of these relations have been the subject of elaborate and careful consideration in correspondence between my predecessors and the ministers of the United States in England and *Central America*, especially in a despatch from Mr. Abbott Lawrence to Mr. Clayton, of April 19, 1850, and in numerous other documents long since given to the world by the Governments both of the United States and of Great Britain. It is enough for my present purpose to point out that this Government has at all times maintained that the title to the whole of the *Mosquito coast* was, in the last century, vested in the Crown of Spain; that the native inhabitants were never more than a mere savage tribe, having at best only possessory rights in the region they occupied; that the sovereignty of Spain was distinctly recognized by Great Britain in the treaties concluded with the Spanish Government in 1783 and 1786; and that the

rights of Spain became vested in her revolting colonies when they secured their independence.

These views were not accepted by the British Government, which insisted upon regarding the *Mosquito* Indians as an independent nation, entitled to full recognition as such. The chief of the tribe was described in the British correspondence as the *Mosquito* King, and Great Britain was designated as his protecting ally. Acting upon this view of the case, two British frigates, on January 1, 1848, took forcible possession of the town of *San Juan del Norte*—subsequently known as *Greytown*—which had a peculiar importance to the people of the United States as being situated at the Atlantic mouth of the projected *Nicaragua* inter-oceanic canal. For upward of twelve years the protectorate of Great Britain thus established continued.

These pretensions on the part of Great Britain excited marked interest and opposition in the United States, and, together with other circumstances, became the cause of the negotiation of the Clayton-Bulwer Treaty of April 19, 1850. By the terms of that instrument, as you will remember, the Governments of the United States and Great Britain agree that they will never “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 accords or may afford, or any alliance which either has or may have to with any state or people, for the purpose 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.”

Into the irritating controversies to which this treaty gave rise I do not desire to re-enter, but it is enough to point out that the continuance of the protectorate of Great Britain over the *Mosquito Territory* was regarded throughout by the United States as being in conflict with the provisions of that agreement.

The arrangements to be entered into upon the cessation of this *Mosquito* protectorate were, however, the cause of considerable embarrassment to the British Government, as was frankly pointed out in two instructions addressed by Lord John Russell to Mr. Crampton, under date of January 19, 1853, from which I quote the following passages:

"It is evident that since Great Britain first assumed the protection and defense of the *Mosquito* Indians the position of all parties has changed.

FIRST. Spain, instead of exercising absolute sovereignty over *Central America* and prohibiting all commerce on the coasts under her sway, has entirely lost her dominion over the continent from Cape Horn to Florida.

SECOND. The *Mosquito* Indians, instead of governing their own tribe according to their customs, furnish a name and a title to Europeans and Americans, who carry on trade at *Greytown* and along the *coast of Mosquito* according to the usages of civilized nations.

THIRD. Great Britain, instead of having an interest in the defense of the *Mosquito* Indians for the sake of rescuing part of the territory of *Central America* from Spanish control, and obtaining an outlet for her commerce, has no other interest in *Mosquito* than that which is derived from an honorable regard for her old connection with the Indian nation of *Mosquito*.

Her Majesty's Government has for several years endeavored to suit its engagements to the altered circumstances of the case.

The committee of government of *Greytown* are, in fact, the real power which exercises authority in that part of *Central America*. To Her Majesty's Government it would be a matter of indifference whether that authority was exercised in the name of the King of *Mosquito* or in the name of *Greytown* itself; but it is desirable that what is apparent should be made to conform, as far as possible to what is real. What is apparent is, that the King of *Mosquito* exercises sovereignty over *Greytown*; what is real is, that he has no authority whatever, but that a committee of Europeans and Americans carry on the government at that port.

It is the object of Her Majesty's Government to make *Mosquito* a reality instead of a fiction, which it has hitherto been; and provided we save our honor and credit in our treatment of the King of that country, whose title and power are, in truth, little more than nominal, it is a matter of comparative indifference to us how this object is carried out, whether by constituting *Greytown* as the head and pivot of the new territorial establishment which we desire to see formed, or by any other liberal and

practical arrangement which may be thought preferable, on discussing the matter with the United States.

Her Majesty's Government consider that so large and fertile a country as the extensive region denominated the *Mosquito* territory, a region extending from the RIVER ROMÁN on the north to the RIVER SAN JUAN DE NICARAGUA on the south, and whose western boundary is also of vast, though undefined extent, ought no longer to be allowed to lie waste, with thirty or forty thousand wandering Indians forming its only native population, and a few hundred foreigners of various races located, for the purposes of commerce, at different points along its extended line of sea-coast.

Neither would it consist with our notions of expediency that such states as *Nicaragua*, *Honduras*, or even *Costa Rica*, should obtain possession of the *Mosquito* territory."

* * * * *

On January 28, 1860, a convention, sometimes known as the Zeledón-Wyke treaty, was signed at *Managua* by the representatives of Great Britain and *Nicaragua*. By the terms of this treaty Her Britannic Majesty, subject to the conditions and engagements specified therein, agreed to recognize as belonging to and under the sovereignty of the Republic of NICARAGUA the country theretofore occupied or claimed by the MOSQUITO Indians within the frontier of that Republic. The British protectorate was to cease three months after the exchange of ratifications, in order to enable Her Majesty's Government to give the necessary instructions for carrying out the stipulations of the treaty. A district, now commonly known as the *Mosquito Reservation*, was to be assigned to the Indians, within which they were to enjoy certain rights of local autonomy. The Republic of *Nicaragua* was to pay to the Indians \$5,000 a year for ten years. The port of *Greytown*, which was not included in the *Mosquito Reservation*, was to be constituted a free port. And certain grants of land, if made bona fide, in the name and by the authority of the *Mosquito* Indians, since January 1, 1848, lying outside the reservation, were to be confirmed.

* * * * *

I am, etc.,

T. F. BAYARD.

Report of the Minister of Foreign Relations of Colombia, Doc. 379
Addressed to the Constitutional Congress of 1888.

Published at *Bogota*; print of the *Casa Editorial* of J. J. Pérez.
1888.

1. *Additional Convention Concerning the Boundary Arbitration.*

With *Venezuela* also, as was done in the case of *Costa Rica*, a Convention was entered into for the purpose of avoiding the difficulties which the lamented death of His Majesty the King Don Alfonso XII might occasion as regards the boundary arbitration between *Colombia* and the first named. The circumstances in the case were identical and the solution likewise; for even if the original treaty, by virtue of which the demarcation of boundaries was submitted to the arbitration of H. M. the King of Spain, could be interpreted favorably to the continuation of the jurisdiction in the successors of Don Alfonso XII, nevertheless the method was adopted of making an addition to that agreement by a new one in which such jurisdiction was explicitly conferred. For this purpose there was signed in Paris, on February 15, 1886, by Señores Doctor Don Carlos Holguín and General Guzmán Blanco, the respective plenipotentiaries of *Colombia* and *Venezuela*, the following protocol, approved by Law 9 of that year:

"The undersigned, to wit: Doctor Carlos Holguín, Envoy Extraordinary and Minister Plenipotentiary of the *United States of Colombia* in Spain and Great Britain, and General Guzmán Blanco, Envoy Extraordinary and Minister Plenipotentiary of *Venezuela* in Spain and Great Britain, etc., having met in Paris for the purpose of discussing the question as to whether the lamented death of His Majesty Don Alfonso XII in any way affect the jurisdiction which had been conferred upon the Government of the King of Spain by their respective Governments under the Treaty of September 14, 1881, to decide as the legal arbitrator the litigation pending as to territorial boundaries between the two Republics, they had the compact before them, and they were of opinion that

Art. I thereof was sufficiently clear in order to declare that both the spirit as well as the letter of that stipulation conferred upon the present Government of Spain the same jurisdiction that was held in virtue thereof by the Governments existing under His Majesty Don Alonso XII, after the date of the exchange of its ratifications, for the purpose of continuing to act in said matter as to boundaries until an Award be given, which both parties had agreed to respect and to fulfill.

“Therefore, it appearing that in said Article the two parties designated as Arbitrator, not His Majesty Don Alfonso XII, but the Government of Spain, without expressing who it might be at the time, as if to imply whatever Government there might be in Spain, whether presided over by Don Alfonso XII or by some one of his successors, was to have sufficient jurisdiction to act in and to decide the disputes submitted to its jurisdiction; and the fact was also referred to that the selection of the Spanish Government as the judge in this case was due especially to the circumstance of Spain having been the mistress of the territories as to which the two Republics were contending, and there existed in the archives of the former the documents from which the titles asserted by both of the latter emanated; beside these being in the Peninsula many men learned in these American questions.

“In view of the foregoing they make the present declaration, which they will address to the present Government of Her Majesty, Doña Cristina, the Queen Regent, declaring that, although in the opinion of the undersigned the point is clear, yet they will submit this protocol for the ratification of their respective Governments, for the purpose of avoiding any doubts or disagreements in future as regards the right here recognized.

“It was also agreed by the undersigned that the Arbitrator, in whose charge the matter is placed with this declaration, may fix the line in the way that may be deemed the nearest approximation to the existing documents, if as

regards any point it does not appear with all the clearness desired.

“In testimony whereof they sign this document in Paris, on the fifteenth of February, 1886.”

CARLOS HOLGUÍN.
GUZMÁN BLANCO.

COSTA RICA.

1. *Additional Convention to That of San José, Concerning Arbitration as to Boundaries.*

The deplorable death of H. M., Don Alfonso XII, King of Spain, the Arbitrator designated by *Colombia* and *Costa Rica* to fix the divisional boundary between the two Republics, was the occasion for raising doubts as to the extent of the jurisdiction conferred upon the Arbitrator by the Convention signed in *San José* on December 25, 1880. Although from this compact, considered in conformity with the interpretation of treaties, it may be inferred without violence that the delegation was not personal to Don Alfonso XII, but to whomsoever might be exercising the Government of Spain, nevertheless, in order to assure the validity of the decision and remove every reason for litigation in the future, the interested parties were persuaded of the necessity for an explanation of the original Convention, adding thereto a new one, which was signed in Paris on January 20, 1886, by the plenipotentiaries of *Colombia* and *Costa Rica* in Spain.

Such was the reason for the Convention approved by Law 9 of the same year, and formulated in the terms following:

* * * * *

2. *Objection of the United States to the Arbitration Compact.*

You know, Honorable Senators and Representatives, that upon the occasion of the Agreement for an arbitration *juris*, to which I have just referred, by which *Colombia* and *Costa Rica* entered into a compact for the delimitation of their frontiers, the Government of the United States raised objections to the acceptance

of the arbitration by the Government that was to deliver the Award. The objections of the United States did not arise from any idea opposed to the sovereignty of the contracting Republics, nor did they argue any pretension of a protectorate exercised by that nation over *Colombia* or *Costa Rica*. They were intended purely and simply to prevent the decision, whatever might be its terms, in changing the ownership of any portion of the disputed territory, from being understood as annulling the prior rights which a third party could show over such territory or over any portion of it. As the Treaty of 1846 between *New Granada* and the United States conceded to this latter nation certain rights and prerogatives in relation to transit across the *Isthmus of Panama*, the Government at Washington sought to make them secure by requiring that *Colombia* as well as *Costa Rica* should declare that such rights would remain intact notwithstanding the decision, which could hardly do more than to change the ownership as regards the contracting parties, but that the territory which might be transferred by them should remain affected by the rights which the United States might have in it.

Without prejudging the right alleged by the Government of the American Union, and considering the case merely as an abstract one, it is obvious that the arbitration, under the circumstances which led up to it, could have no other purpose than that of varying the dominion, possession and property right of the territory as regards *Colombia* and *Costa Rica*; but that it could not in any way affect third parties who were not represented in the suit and who had not delegated any jurisdiction to decide as to their rights.

It would therefore seem to be unnecessary and superfluous to make any declaration in such a case. Nevertheless, as a token of good-will and courtesy toward the Government and the people of the United States, the Governments of *Colombia* and *Costa Rica* agreed in formally declaring, through their representatives in Washington, that the arbitration could not have any effect over any rights which the United States might have, by virtue of prior titles, in any portion of the territory the dominion or ownership of which might be changed by the arbitration. The declaration in this form did not recognise the existence of

such rights, but merely excepted them in case they were proved to exist.

Among the documents annexed to this report will be found the correspondence relating to the objections referred to and concerning the arrangement that caused them to disappear.

The objection that had been raised up to the acceptance of the boundary arbitration between *Colombia* and the Republic by which it was bounded upon its northerly side having been removed, it was then for the Arbitrator to consider the delegation of authority made to him by the Governments interested. It not having been accepted by His Majesty the King of the Belgians, His Majesty the King of Spain was requested to consider it, and upon this occasion, as upon others, he deigned to give to the Government of the Republic, as well as to that of *Costa Rica*, an example of the kindness by which he has been animated toward the South American peoples, who formerly composed with Spain a single nationality. Under date of October, 1887, His Excellency, the Minister of State of His Catholic Majesty communicated to our representative in Spain the acceptance of the post of Arbitrator, in the name of his Government.

Let haste be made, therefore, in following up this business, which has for some time been at a standstill by reason of the objections referred to above. The *Alegato* as to boundaries that we are to submit to the legal Arbitrator in defense of our rights over the territory for which we are contending with *Costa Rica*, is not yet finished. Entrusted to different attorneys successively, the recent troubles have in no small degree been influential in keeping that document still in a state of preparation. The Señor General Don Antonio B. Cuervo, until recently the Minister of the Republic in England and in Spain, undertook and until the last moment, with the zeal and intelligence by which he is distinguished, prosecuted the search for documents and the preparation of the *Réplica* to the investigations which *Costa Rica* had been publishing in regard to this affair. It is to be expected that upon the return of General Cuervo to *Bogota* he will continue his task and will bring it to an early termination.

COSTA RICA.

Correspondence Concerning Objections of the United States of America to the Boundary Arbitration.

DEPARTMENT OF STATE,
WASHINGTON, November 14, 1885.

SEÑOR DON RICARDO BECERRA, &c., &c., &c.

SIR: I have the honor to address you in relation to the pending arbitration for the settlement of the dispute between *Colombia* and *Costa Rica* touching the boundary line between these countries.

By a treaty signed in 1880, the Governments of those countries agreed to submit the question of boundaries to arbitration, and named as arbitrators, in the first place, His Majesty the King of the Belgians; next, in case he should decline to act, His Majesty the King of Spain; and lastly, in the event of both these declining, His Excellency the President of the Argentine Republic.

As you are aware, the Government of the United States, in 1881, addressed the Governments of Belgium, Spain, and the *Argentine* Republic, inviting attention to the tendered arbitration and suggesting that as the ownership of territory in dispute might involve question as to the guarantee, by the United States, under the Treaty with *New Granada* of 1846, of the integrity of the New Grenadian (now Colombian) sovereignty over the territory of the *Isthmus*, for the purpose of transit, the Government of the United States, where either its rights or interests are concerned, would not hold itself bound by any arbitration, where it had not been consulted on the subject or method of the arbitration and had had no voice in the selection of the arbitrator. This declaration was, however, accompanied by a disclaimer of any purpose on the part of this Government to interfere to prevent the accomplishment of such arbitration, or to undertake to express any opinion as to the acceptance, by either of the Arbitrators named, of the invitation tendered.

His Majesty the King of the Belgians declined to act as Arbitrator. The invitation to so act was thereupon extended, by the Governments of *Colombia* and *Costa Rica*, to His Majesty the King of Spain.

It is understood that, in the light of the announcement put forth by the United States in 1881, His Majesty is reluctant to act in the premises; but in the absence of a formal declination on his part, the invitation appears to be still open.

Overtures, in an informal and confidential manner, have been recently made at Madrid, by the Ministers of *Colombia* and *Costa Rica*, to the Representatives of this Government there, looking to the discovery of some basis whereby the arbitration may be accepted by His Majesty the King of Spain; and inquiries made through the like channel by the Spanish Minister for Foreign Affairs tend in the same direction.

It was intimated, on the one hand, by the Minister of *Costa Rica* in Madrid, that he would be willing to negotiate *ad referendum* a formal treaty with Mr. Foster, as the Plenipotentiary of the United States, whereby *Costa Rica* would concede to the United States the same guarantees as those in the treaty of 1846 between the United States and *New Granada*, in respect of any new territory not heretofore possessed by *Costa Rica*, which might pass to it in virtue of the proposed arbitration; and he further proposed to define in such treaty the limits of the territory in dispute as extending no further eastward than the line from the *Coto* River on the Pacific to *El Escudo de Veragua* on the Caribbean Sea.

On the other hand, the Minister of *Colombia* intimated to Mr. Foster that his Government could not regard as coming under the guarantees of territorial integrity and sovereignty found in the treaty of 1846, any territory which the arbitration might decide not to belong to *Colombia*.

Intimation has likewise been made directly here in Washington, tending to show the desire of *Colombia* and *Costa Rica* that the Boundary contention between them should be ended in a manner alike honorable and satisfactory to both of them, and without affecting any just sensibility or impairing any right of the United States in the premises.

I do not understand that these overtures regard the attitude of the United States as one of objection to any arbitration to which they are not an advisory and consenting party; and that it is the desire or expectation of either *Colombia* or *Costa Rica* that such supposed objection should be withdrawn and the con-

templated arbitration permitted to proceed. I assume that the purpose in view is to obtain such modification of the declaration made by my predecessor in 1881 as may remove any embarrassment under which His Majesty the King of Spain may rest, and permit him in the exercise of his own high and free discretion, to accept, if he will, the arbitration tendered to him.

Two closely allied points present themselves for consideration in this connection, namely,—the extent of the disputed territory subjected to arbitration; and the interests or rights of the United States or its citizens in respect of such disputed territory.

The admission of *Costa Rica* that the easterly limit of her claim extends only to the *Coto* river and *El Escudo de Veragua*, appears in my judgment, to remove apprehension that the arbitration may reach or affect the Colombian territory employed for actual or prospective transit across the *Isthmus* from ocean to ocean. I understand the guaranty of the treaty of 1846 with *New Granada* to concern “the rights of sovereignty and property which *New Granada* has and possess over” the *Isthmus* and that the guarantee is given “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 further that this guarantee is given in order to secure to themselves (the United States) the tranquil and constant enjoyment” of the advantages stipulated by the treaty in favor of the citizens and commerce of the United States in respect of the Isthmian transit. It is true that the territory within which the treaty guarantee may apply is defined as comprehending “the part of the Granadian “territory generally denominated *Isthmus of Panama*, from its southermost “extremity until the boundary of *Costa Rica*.” But it may be said that, at the time the treaty was concluded, the surface of the *Isthmus* was seamed with projected routes of interoceanic transit, from the *Atrato River* on the east to the *Chiriquí lagoon* on the west, and that, no route being specified in the treaty, its obligations and rights were made broad enough to comprise any or all practical lines of transit. Were the *Chiriquí* route actually or prospectively occupied for a practicable transit, the direct and positive application thereto of the treaty guarantee of the United States could not be questioned, and the immediate interest of the United States in any issue of

territorial sovereignty which might, by arbitration or otherwise, annul the treaty rights and obligations by changing the ownership of the route, would be evident,—and no derogation of these rights and obligations in virtue of a later arrangement between *Colombia* and a third Power could be acquiesced in.

The *Chiriquí* route, is however, not at present a practical factor in the problem. It was soon abandoned in favor of the transit actually opened by railway between *Colón* and *Panama*; and along the same line a ship-canal is in process of construction.

Admitting the logic of events, whereby the rights and duty of the United States toward *Colombia* in respect of the transit have become restricted, since 1848, to a single portion of the *Isthmus*. I would be prepared to amend my predecessor's statement of 1881, so far as it relates to the guarantee of Colombian sovereignty on the *Isthmus* up to the frontier of *Costa Rica*, provided the Governments of *Colombia* and *Costa Rica* unite in or concurrently make an explicit declaration to this Government that the rights of the United States in the matter of the Isthmian transit are not to be affected in any way by the submission to arbitration which those Governments have agreed upon.

So much for the easterly limit of the territory in dispute. The westerly limit presents no less important questions.

It appears that the claims of *Colombia* extend along the shore of the Caribbean Sea to Cape *Gracias á Dios*, and comprise a coast-wise belt which would exclude *Costa Rica* from an Atlantic frontage, and embrace the *Mosquito Coast* of *Nicaragua*.

No treaty between *Colombia* and *Nicaragua* is known to exist, whereby the question of territorial limits between them might be submitted to arbitration; and no question as between those countries is to be propounded for the consideration of the arbitrator who may be called upon to adjudicate the boundary question. The function and power of the arbitrator is to be distinctly limited to the single fact submitted, i. e., the ascertainment and declaration of the true boundary line between the two States, and his award is to embrace no other fact nor affect the rights of any third party.

The Government of the United States has with *Nicaragua* treaty engagements covering the use of any interoceanic transit through Nicaraguan territory.

Moreover, at various points of the territories claimed by *Colombia*, rights have accrued to citizens of the United States, by grant or otherwise, from the authority in possession.

The impairment of these public or private interests by any result of the proposed arbitration could not be recognized by us.

In short, as to these as with respect to whatever effective guarantees under the Colombian treaty of 1846 may exist in the disputed territory, the Government of the United States must hold and expect that the *status quo* shall be unchanged by the contemplated proceeding.

This Government desires to facilitate the resort to arbitration in peaceful settlement of questions between States whose intercourse for their own sake and in the interest of tranquility on the American continent, should be of the friendliest character. It has on many occasions advocated and resorted to arbitration in settlement of international differences although never in derogation or ignorance of the rights of third parties. It is pleased to see among its neighbors a growing tendency to this resort; and in the present instance it would be especially gratified to have the arbitral function bestowed upon a Power which, in its traditional relations to both the parties as their original mother-country, and in its custody of the historical archives necessary to the examination of the question, has every inducement to reach an impartial decision commanding universal respect and become an accepted finality.

The considerations herein set forth are, however, sufficient to show the necessity of a frank and honorable understanding between the parties to the proposed submission and the Government of the United States whose interests may be affected thereby, to the end that any hesitation of His Majesty the King of Spain to accept the proffered trust, may be removed.

The conditions of such an understanding are these:

First:—that the Governments of *Colombia* and *Costa Rica* make concurrent declaration to the Government of the United States, and to the Arbitrator, defining the territory in dispute and expressly limiting the functions of the Arbitrator to the single issue of the boundary, and affecting no other rights than those of the parties to the submission.

This declaration should so define the easternmost limit of the

contention as to make it clear that no question of Isthmian transit under the Colombian treaty of 1846 can arise.

Secondly:—that this declaration embrace an announcement by the parties that whatever rights the United States or other citizens may possess on either side of the boundary which may be established shall not be affected by the award, but shall pass with the soil and be respected by the new owner as though originating under his grant.

Such a comprehensive declaration seems to me in every way preferable to the proposal made by the Costa Rican envoy at Madrid for a treaty to determine these questions as between the United States and *Costa Rica*.

As I have shown, the claims of *Colombia* involve American rights in the premises, which would likewise require to be made the occasion of treaty stipulations between the United States and *Colombia*. Such a complex treaty adjustment of the matter would amount to a tripartite agreement of submission by including the United States therein,—a situation which this Government deems undesirable, because foreign to its policy which leads it to avoid participation in the domestic concerns of its neighbors. The rights of the United States in the matter are complete in themselves, and while we are entitled to demand respect for them, we are not called upon to share in their submission to the arbitrament of a third Power.

Upon the receipt of such a declaration as I have herein suggested, the Government of the United States will have pleasure in informing His Majesty the King of Spain, or any other Arbitrator accepted by *Colombia* and *Costa Rica* of the fact, announcing that in view thereof, we withdraw the notification, made in 1881, that this Government would not hold itself bound by the arbitration.

A communication similar to this has been addressed by me this day to the Costa Rican Chargé d’Affaires in this Capital.

Accept, Sir, &c.,

T. F. BAYARD.

Doc. 380 **Report by the Minister of Foreign Relations of Colombia
to the Constitutional Congress of 1889.**

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CHAPTER IV.

Costa Rica and Boundaries Between the Two Republics.

During the time that has elapsed since the meeting of the Congress in 1888, our relations with *Costa Rica* have been limited, aside from matters of international courtesy, to the careful observance of the *statu quo* agreed upon between the two Republics as regards the jurisdiction over the litigated territory which exists between them. In passing, it is to be noted that this obligation in the present case is not founded alone upon the recognition and explicit promises of the two interested parties, but it follows from the Arbitration Treaty that they made. After the determination of a right has once been submitted to the decision of a judge, no acts of dominion, subsequent to the delegation of jurisdiction made to the Arbitrator, can have any prescriptive value, and hence the necessity that no change be made in the dominion of the thing disputed. Fortunately, as will be seen by the documents that are appended to this report, *Costa Rica* has explicitly recognised its duties in this behalf.

In 1888 the Government of *San José* called the attention of our Government to the fact that some engineers in the service of the Interoceanic Canal Company had been making land surveys in the territory of *Talamanca*. The Costarican Government stated that such measurements having been made over vacant lands embraced within the zone litigated, it was proper that the adjudication for which purpose they had been undertaken be not carried out. The Government of this Republic responded frankly and fairly that transfers of useful dominion, in case they were carried out, could not lessen the true title of eminent domain which one of the States might have over said lands, and that the decision of the Arbitral Judge would be the one that would finally fix

the character of such title and would adjudicate the right belonging thereto; that therefore the Government of *Costa Rica* ought to rely upon the good faith of *Colombia* and that these operations would not be set up as arguments in favor of the rights of our Fatherland, which rest upon better and more ancient titles.

At the proper place, and in the same note, containing the foregoing explanations, our Government stated to that of *Costa Rica* its surprise and protests against the act, attributed to the last named Republic, of advancing its jurisdiction upon the *Sixaola* at a time prior to the work being done by the canal engineers. This Ministry presented a similar complaint also during the year last past, based upon a report by the Political Judge of *Bocas del Toro* to the Prefect of *Colón*, according to which a special commissioner of the Government of *Costa Rica* had been allowed to exercise jurisdictional acts in Colombian jurisdiction, taking an inventory of the property of the estate of Temístocles Peñaranda. This complaint, repeated on the 3rd of last March, brought an explanation from the Government of *San José*, in which the assurance was given that said Government had not authorized such acts and that it would punish any individual who undertook to disturb, in the name of *Costa Rica*, the *statu quo* obligatory upon the two countries. Said Government also stated that in respect to the Peñaranda estate it had done nothing more than to claim the ownership of some cattle which Peñaranda had conveyed to it by virtue of a sale.

Recently, through some publications made upon the Isthmus of *Panama* and in other places, the Government has had brought to its notice the fact that Señor Rosenberger has made surveys in the territory of *Bocas del Toro* and soundings in Colombian waters without the permission of the authorities, as to which the attention of our neighbor upon the North has been called.

From what has been stated it may be inferred that both Governments are interested in maintaining the jurisdictional situation which existed at the time of the submission of their contest to the arbitral decision of the Government of Spain. It may also be deduced, taking into account the declarations of *Costa Rica*, that the Government of that Republic, following out its traditional fairness, has not sought to trespass upon the rights of *Colombia*,

and that any acts of private individuals that might be presented of a different character were not directed by the Costarican Government. Nevertheless, as it is very difficult, in regions uninhabited and remote from the capital to which they are subordinate, to prevent individual initiative from lessening by degrees the right which the respective nation possesses, our Government has been persuaded of the need of providing an effective safeguard for its sovereignty. For that purpose it has issued orders and instructions to the subordinate authorities, so that in all places subject to the authority of *Colombia* they decisively and promptly forbid any interference by private individuals who may undertake to exercise dominion, with or without the authorization of foreign officials, within territory subject to the jurisdiction of *Colombia*.

If there should be much delay in the final arbitral decision as to boundaries between *Colombia* and *Costa Rica*, serious thought should be given to the adoption of some practical method for avoiding mutual and useless quarrels and real even though perhaps involuntary infringements. Such a method, for example, might be to have both parties agree upon tracing a provisional boundary, but one perfectly well settled, which should serve to settle for the present the *statu quo* as to dominion, which over lands almost deserted must very often be quite uncertain. It is clear that such a temporary limit could not at any time be used for the purpose of determining the true limit the Arbitrator ought to fix and which the parties interested must endeavor to maintain by reasons and arguments derived from other sources. Such a provisional limit would only serve to determine in what part of the litigated zone the two States could exercise certain jurisdictional acts, demanded by the necessities of the inhabitants, until the principal suit was decided, and with the purpose of avoiding troubles, reciprocal and repeated claims. An expedient of that sort would be analogous to the one that *Colombia* proposed to *Ecuador* in order to avoid the personal conflicts occasioned by the gathering of rubber in the mountain regions of the *Pun*. The tracing of the temporary boundary could be undertaken with investigations made by competent experts, who should fix, as far as possible, how far the jurisdiction of each Republic extended in 1880, and in those cases where such determination was im-

practicable other arrangements could be made and amicable compromises.

Respecting our frontier upon *Costa Rica*, it is to be noted that the rights of *Colombia* have an indirect relation to the Republic of *Nicaragua*, on account of the northern limit for the lands of *Colombia* having been fixed upon the Atlantic side at Cape *Gracias á Dios*, in conformity to the Convention of 1886, additional to that of 1880. The Republic defends those rights also before the Arbitral Judge, and so far as regards their prescription, has renewed the protests which some years ago it presented to the Government of *Nicaragua* and which are sufficient to maintain those rights intact.

Costa Rica has continued, on its part, the issue of the *Alegatos* and documents upon which it bases its claims, and so far as its commissioner has published them the Government of *Colombia* has been able to make citations therefrom and prepare the answer on the behalf of this Republic and in opposition to the arguments of the opposing party. When the time comes to present our defense, this circumstance will afford a direct proof of our rights and at the same time confute those alleged by *Costa Rica*.

The eminent boundary Arbitrator has declared on his part that he will not begin the proceedings relating to this matter until the decision of the one pending with *Venezuela*, also submitted to the wise and respected judgment of His Catholic Majesty. The kindness with which Spain has accepted the burdensome and arduous task of the investigation of questions so complex, and of deciding suits for many years the subject and the occasion of disputes with our neighbors, and the spontaneity with which it has assumed this difficult trust in order to serve the peoples who were its children, can yet not correspond to the patriotic impatience we feel, seeking for a quicker decision than that permitted by the thorough investigation of each question. It is undoubted that the Government of His Majesty, impressed with the idea of strengthening its friendly relations with peoples who form a single natural ethnological whole, will take a special delight in seeing that the decisions it may deliver in due course shall be such as justice requires and as are indicated for the convenience and tranquility of the nations interested.

COSTA RICA.

1. *Boundaries between Colombia and Costa Rica.*

Secretaryship of Foreign Relations of the Republic of Costa Rica.

SAN JOSÉ, November 16, 1888.

SEÑOR MINISTER:

I have received instructions from the Vice President in charge of the Presidency of the Republic, to address myself to Your Excellency with the purpose of calling the attention of the Honorable Colombian Government to the recent acts undertaken by the engineers of the Panama Canal Company in the territory of which *Costa Rica* and *Colombia*, have been disputing the sovereignty for more than half a century.

My Government was duly informed that a considerable corps of engineers in the service of the Panama Canal Company had, during the month of May last, entered the territory of *Talamanca*. This Government refrained from making any representation to that of Your Excellency upon that account, because it was thought that the Company, in directing the expedition mentioned, had in view merely a cursory investigation of the topographical conditions in those regions.

By more recent news it has been brought to the knowledge of my Government that those engineers have made detailed and formal surveys over a considerable extent of the disputed territory. Indeed, they entered by the mouth of the River *Sixaola* and ascending to the junction with the *Yurquin* they proceeded with the survey upon the right bank of the said *Yurquin*, going up stream, as far as it was navigable; from thence they went to the River *Tilorio*, near the point known as *Brushirk*; and from this point they proceeded in a straight line to the peak of *Róbalo*, and thence along the course of the River *Róbalo* to its mouth in the Lagoon of *Chiriquí*, embracing in this survey an area of 170,000 *hectares*.

These same engineers have also finished the measurement of another large extent of land, near the Lagoon of *Chiriquí*, embracing in such survey an area of 110,000 *hectares*.

These acts would have little importance if it were not the purpose of the Company to take other steps leading toward an appropriation of those lands, before the judgment be known which at no very distant day must be delivered by the Government of Spain in the capacity of Arbitrator, named by *Costa Rica* and *Colombia* to mark out the border line between the territories of the two Republics. But my Government is informed through an official channel that the Canal Company intends, at once, to petition the Government of Your Excellency that it be adjudicated the ownership of the 280,000 *hectares* of lands above indicated.

This Government believes that the Government of *Colombia*, animated by those elevated sentiments of justice of which it has so many times given evidence, will deny the petition of the Company, since it is evident, in the opinion of my Government, that neither *Costa Rica* nor *Colombia* can grant to third parties definite rights in those localities, inasmuch as such an act would produce serious changes in the disputed territory, changes that would be violations of the *statu quo* stipulated for in the Convention of 1880, celebrated between the two Governments.

In this particular case, *Costa Rica* will not in any way recognise, should the Award be favorable to it, the rights or concessions which might have been granted by *Colombia* to the Panama Canal Company over the whole or any part of the territories in litigation.

For these reasons, it is not doubted that the enlightened Government of Your Excellency, in the observance of the arbitration agreement alluded to, will follow the same line of conduct it has thus far pursued, abstaining from making concessions that might later lead to difficulties between one or the other of these Republics and the Companies or individuals favored.

I am, with the greatest consideration, Your Excellency's most obedient servant.

MANUEL J. JIMÉNEZ.

To the Most Ex. Señor Minister of Foreign Relations of the Republic of *Colombia*, *Bogota*.

Republic of Colombia: Ministry of Foreign Relations.

BOGOTÁ, January 15, 1889.

SEÑOR MINISTER:

I have received the courteous note which Your Excellency did me the honor to address to me on the 16th of November last, designed to call the attention of the Colombian Government to the necessity of maintaining the *statu quo* agreed upon between it and that of *Costa Rica* in the Convention for the arbitration as to boundaries signed in 1880. The said note of Your Excellency was induced by examinations made by some engineers in the service of the Interoceanic Canal Company within the territory disputed by the two nations.

These investigations can in no way affect the agreement referred to, the results of which will be attained independently of anything except effective titles of property as evidence of the true ownership of said territory. Those transfers of economic or individual dominion that may be made in that territory in favor of any individuals or organizations will not infringe the original titles upon which the rights of the interested nations are really founded.

I take advantage of this occasion to state to Your Excellency that the Government of the Republic has recently received news that *Costa Rica* has done some things that charge the *statu quo* agreed upon in Art. 7 of the Convention of 1880. According to such reports the Government of Your Excellency advanced upon the bed of the River *Siraola*, establishing civil and military officials and exercising other jurisdictional acts, evidently incompatible with the continuance of the situation agreed upon in the compact. The Government of *Colombia*, knowing the justice that inspires the actions of that of *Costa Rica*, rather than give credence to these reports, arranged for a careful examination to be made to ascertain their accuracy. If they should be verified, it must have been by reason of some involuntary oversight upon the part of the Costa-Rican Government, but in such a case a prompt rectification would be expected.

Believing that Your Excellency will find this trust of *Colombia* entirely just, since it is the logical consequence of the prin-

principles invoked in the courteous note to which I have the honor to refer, I reiterate to Your Excellency the assurances of my highest consideration.

VICENTE RESTREPO.

To His Excellency the Señor Minister of Foreign Relations of the Republic of Costa Rica.

San José.

Republic of Colombia: Ministry of Foreign Relations.

BOGOTÁ, March 7, 1889

MR. MINISTER:

According to a report forwarded by the Political Judge of *Bocas del Toro* to the Prefect of *Colón* at *Panama*, a certain person named Ildefonso Ulloa has undertaken to exercise jurisdictional acts in the territory of *Colombia*, stating that he acted in the name of and under a commission from the Government of Your Excellency. It appears that this Ulloa authorized Señor Gerardo Hidalgo y B. to examine and take an inventory of the property of the estate of the late Temístocles Peñaranda, located in *Siraola*, a Colombian settlement, which has always been subject to the authorities of *Colombia*.

I have instructions from the President of the Republic to call the careful attention of Your Excellency to this act, which, to state it fully, entails not only an ordinary violation of the territorial sovereignty of *Colombia* but it is an infringement of the *statu quo* agreed upon between this nation and that of *Costa Rica* as regards the boundaries of their respective territories. My Government, with its experience of the equity that has inspired the actions of that of Your Excellency, is confident that such act, in case it was committed, will be taken up and treated by the Government of *Costa Rica* in the manner that justice demands and the friendship of our two countries.

I take advantage of this occasion to subscribe myself Your Excellency's most obedient servant.

VICENTE RESTREPO.

To His Excellency the Señor Minister of Foreign Relations of the Republic of Costa Rica.

*San José.**Republic of Costa Rica: Secretaryship of Foreign Relations.*

SAN JOSÉ, April 8, 1889.

SEÑOR MINISTER:

I have the honor to reply to the despatch which Your Excellency was pleased to address to this department of State under date of the 7th of the month of March of this year.

Your Excellency deemed it proper to bring to the knowledge of my Government, to the end that justice might be done, that, according to the reports from the Political Judge of *Bocas del Toro* to the Prefect of *Colón* at *Panama*, Señor Ildefonso Ulloa, stating that he acted in the name and under a commission from the Government of *Costa Rica*, had undertaken to exercise acts of jurisdiction in territory of *Colombia*, by examining and taking an inventory of the property of the estate of Señor Temístocles Peñaranda, located in *Sixaola*.

For the moment I am unable to state to Your Excellency anything in affirmation or in denial of this allegation, nor to venture to say anything about it, inasmuch as I have not in my possession any reports as to the matter, but I have already asked for them from the Minister of the Government, to whom Señor Ulloa as the political chief of *Talamanca* is directly subordinate. That department of State has not yet been able, however, to furnish me with definite facts as quickly as was desired, by reason of our communications being difficult and delayed with that extreme part of the country.

I confine myself at the present time to asking Your Excellency to be good enough to accept the assurance that my Government has not given, nor will it give any orders contrary to the maintenance of the good relations that happily unite the two countries.

The fact that the settlement of *Sixaola* has been since the year 1870 subject to the officials of your Republic is not unknown to me, and if the Political Chief has really done the act that is attributed to him as infringing the *statu quo* Your Ex-

cellency has been pleased to invoke, my Government is in a situation to hold that subordinate to a strict account for his misconduct.

I beg to thank Your Excellency for the courteous terms in which you have been pleased to indicate to me that your Government, relying upon the experience it has had of the equity that inspires the actions of that of *Costa Rica*, is confident that such act, if it should be found to have been committed, will be taken up and treated in the manner justice demands and the friendship of our two countries.

Promising to give to Your Excellency a definite response as soon as the data expected shall have been received, I have the honor to subscribe myself Your Excellency's very respectful servant.

MANUEL J. JIMÉNEZ.

To His Excellency the Minister of Foreign Relations of the Republic of Colombia.

Republic of Colombia: Ministry of Foreign Relations.

BOGOTÁ, March 3, 1890.

SEÑOR MINISTER:

On the 7th of March of the year last past, my predecessor in this Ministry had the honor to address to Your Excellency a note relating to certain jurisdictional acts which it was declared were perpetrated by Costarican officials in territory subject to the control of *Colombia*. The note referred to the inventory and valuation of the property of the estate of the Colombian Temístocles Peñaranda, situated in *Sixaola*, a settlement of this Republic, which acts my Government understood were undertaken by persons authorized by the Government of *Costa Rica*. It was also stated to Your Excellency that if in fact such proceedings had been undertaken, it would constitute a usurpation of jurisdiction, a violation of the sovereignty of *Colombia* and an infringement of the *statu quo* to which our two countries had

agreed in submitting to the arbitration of Spain the demarcation of our common frontier.

In your brief reply, dated at *San José*, on the 8th of April following, Your Excellency stated that at that time your Government had no reports concerning the matter, which would be asked for without delay and would be used by Your Excellency to take up this subject; that *Sixaola* was indeed embraced within the Colombian jurisdiction in accordance with the *statu quo* agreed upon between the two Governments; that in case the subordinate or private individuals shall have been found to have committed the acts complained of they would be held to strict account for their misconduct and that Your Excellency would honor this Ministry with a definite response as soon as you should be in possession of the necessary data.

Subsequent to the second date the Government of the Republic received further reports relating to the Peñaranda estate, coming from the authorities of *Bocas del Toro*. The Political Judge of that region, in an official communication of December 8th last past, stated to the Prefect of *Colón* that some persons had indeed acted as the agents of the Government of Your Excellency, not only in making an inventory of the property of the estate but they took away the greater portion of it, consisting of cattle, alleging as a pretext the fact, real or imaginary, that the said Government was a creditor of Peñaranda.

The violation of the rights of *Colombia* is evident in this case. Even disregarding the nationality of the deceased, the only law applicable to the estate of that Colombian was the law of this Republic, where his property was located. On account of this elementary principle of international justice not having been respected, the rights of some Colombian creditors have at times been rendered nugatory; judicial action, the only means of taking up the rights of the legitimate heirs, was passed by, and the exclusive right of the sovereign to administer justice within his own domains was practically disregarded. The last is all the more serious, inasmuch as any act, of such a character, being a violation of the *statu quo* so often mentioned, lessens the jurisdiction delegated by *Colombia* and *Costa Rica* to the eminent arbitrator of boundaries.

Having in view the equitable and kind judgment which moves the actions of the Government of Your Excellency, that of *Colombia* is incapable of attributing such illicit proceedings, and unjustifiable under every aspect, to the toleration of the former and much less to its command. My Government continues to be persuaded that this incident, if it has not been already, will be justly and severely dealt with and treated by that of *Costa Rica*. And as it may happen that, on account of the difficulty and delay in communications, Your Excellency may not yet be in possession of the data necessary for the definite response announced in your very courteous letter of April 8th, permit me to express the hope that I shall be honored with an answer as soon as such reason no longer prevents it.

I take advantage of this opportunity to reiterate to Your Excellency the protestations of my highest and most distinguished consideration.

ANTONIO ROLDÁN.

To H. E. the Sr. Minister of Foreign Relations of the Republic of Costa Rica.

Republic of Colombia: Ministry of Foreign Relations.

BOGOTÁ, June 2, 1890.

The undersigned, Minister of Foreign Relations of the Republic of *Colombia*, has the honor to address himself to His Excellency the Minister of Foreign Relations of the Republic of *Costa Rica*, with the object, painful although unavoidable, of calling once more the enlightened attention of Your Excellency to the *statu quo* which must be observed by the two Republics as regards the ownership and jurisdiction over the territory they dispute between them and the property right to which must be decided by the Government of Spain as the boundary Arbitrator.

It has come to the notice of the Colombian Government that one Señor Rosenberger is travelling along the region of *Bocas del Toro*, upon the *Isthmus of Panama*, and making surveys and

soundings in the rivers and upon the coast of the *Bay of Almirante*. It is said that Rosenberger is doing this under a commission from the Government of *Costa Rica*. The inhabitants of those localities have felt much concern, as it is already a public matter in *Colombia*.

In order that the undersigned may be convinced of the reality of such a commission, it would be necessary that the opinion he has hitherto held concerning the Government of *Costa Rica* be dissipated, considering it as a friend and as civilized.

But in view of the necessity for calming the uneasiness of the public and causing everything to vanish that may be antagonistic to the friendship and existing relations between *Colombia* and *Costa Rica*, the undersigned expects that Your Excellency may be pleased to give to him, at the earliest moment possible, the assurance that Rosenberger has not received any such commission.

The Government of the Republic, persuaded that the abuses which may have been committed have originated exclusively in the individual purposes of said traveller, has issued positive orders for the protection of its sovereignty and as violators of the latter it will apprehend and treat those who may be found responsible. It considers that both Governments are under a joint obligation to prevent anything that might disturb the tranquil possession of those dominions without the least change of the situation in which they were found at the time the compact as to the *statu quo* and for a legal arbitration was stipulated.

The undersigned renews to Your Excellency the assurances of his most distinguished consideration.

ANTONIO ROLDÁN.

To H. E. the Señor Minister of Foreign Relations of the Republic of Costa Rica.

Republic of Costa Rica: Ministry of Foreign Relations.

SAN JOSÉ, May 2, 1890 (Received June 12).

MOST EXCELLENT SEÑOR:

In response to the courteous note which Your Excellency was

pleased to address to this department, dated at *Bogota*, on the 3rd of March of the present year, relating to certain jurisdictional acts said to have been done by Costarican officials in territory subject to the control of *Colombia*, for the purpose of making an inventory of the property of the estate of the Colombian Temístocles Peñaranda, located in *Sixaola*, I have the honor to bring to the attention of Your Excellency that from the information had in order to ascertain what proceedings were employed by Costarican officials in making an inventory of the property of said estate and the place where they were carried on, the facts appear to be as follows:

That the Government had bought from Señor Peñaranda, among other things, some cattle and sheep; that the said Señor having died without having made a delivery of what had been sold, the *Comandante* of *Talamanca* was commissioned to ascertain what were located in Costarican territory of those bought by the Government; that this commission was carried out by a police agent exclusively upon the bank of the *Sixaola* which belongs to *Costa Rica*, without transgressing the limits determined by the *statu quo*, and still less exercising there jurisdictional acts of any sort; and that such facts having been ascertained, nothing was touched or disposed of, the property of the estate, therefore, remaining in the same situation as it was found before the inspection to which reference has been made.

From the foregoing, Señor Minister, it appears that there was no impropriety upon the part of our officials in the matter referred to; but if unfortunately the contrary should be proven, Your Excellency may have no doubt that my Government will know how to perform its duty, making such reparation as such a case, in justice, might call for.

I take this opportunity, to offer to Your Excellency the assurances of my most distinguished consideration.

RICARDO JIMÉNEZ.

To H. E. the Señor Minister of Foreign Relations of Colombia.

Bogota.

Doc. 381 The Minister of Foreign Relations of Colombia to That of
Costa Rica.

BOGOTÁ, March 16, 1891.¹

Republic of Colombia.
Office of the Minister of Foreign Relations.

BOGOTÁ, March 16, 1891.

The undersigned, Assistant Secretary of State, in charge of the office of the Minister of Foreign Relations of the Republic of *Colombia*, has the honor to refer to the very courteous communication of December 30th last, in which His Excellency the Minister of Foreign Relations of the Republic of *Costa Rica* proposes to the Colombian Government the adoption and determination of a provisional boundary line between the two countries, without prejudice, it is understood, to the determinate limit which the Government of His Catholic Majesty may fix as Arbitrator.

Colombia is pleased that *Costa Rica* should have responded in so fraternal a manner to the desire expressed upon this question in the document addressed by the Department of Foreign Relations of the Republic to the Colombian Congress of 1890. It is hoped that through this very harmony of desire may be found the means of eliminating mutual and fruitless complaints between the two Governments respecting the *statu quo* of possession which must be observed pending the final determination of the boundaries of the two countries.

The provisional boundary, upon which it is desired to agree, should coincide, in so far as possible, with the line separating the actual possessions of *Colombia* and *Costa Rica* in the zone now in dispute, so that upon the determining of the same the present condition of things will not be disturbed. Another line would not carry out the object of the special arrangement proposed, as altering the present jurisdiction would result in disturbing the tranquility of the inhabitants, interfere with the freedom of action of the administration and with the stability of such acts

¹ Archives of the Department of Foreign Relations of Costa Rica.

and of the settlements as the two Governments may already have or may have begun.

Starting with this reasonable standpoint, the undersigned believes that the determination of the provisional boundary line should be very easy if there is taken into account the explicit recognition given by *Costa Rica* to the jurisdiction of *Colombia* and the conciliatory sentiments which actuate this Republic.

On April 8, 1889, the Minister of Foreign Relations of *Costa Rica* addressed to the Minister of the same branch of the Republic a note in which he recognizes that *Sixaola* has long been subject to the jurisdiction of *Colombia*; so both parties interested are agreed in acknowledging that one of them has actual possession in a certain point of the litigated zone.

So, then, the provisional and transitory boundary cannot be to the East of *Sixaola*, for that would be to disturb the actual possession that *Costa Rica* acknowledges in *Colombia*, and lose sight in the act of settlement of the purposes which impose that settlement.

As to the part West of *Sixaola*, although *Colombia* insists, in accord with the Additional Convention signed in Madrid by the Plenipotentiaries of this Republic and of *Costa Rica* on January 20, 1886, that its rights on the Atlantic extend to Cape *Gracias á Dios*, it does not complain if its actual possession be restricted, fixing the transitory limit nearer than that terminal.

The Republic, then being guided by especial sentiments of conciliation, proposes that the provisional frontier shall be the River *Doraces*, from its outlet in the Atlantic to its sources thence following the Cordillera of *Las Cruces* to the River *Golfito* and thence along the River *Golfito* to its outlet in *Dulce Gulf*.

The line of the Castro-Valenzuela Treaty set forth as an example by His Excellency the Minister of Foreign Relations of *Costa Rica* has the fault already stated respecting the fixing of any limit east of *Sixaola*, because *Costa Rica* already recognizes that this point is within Colombian jurisdiction and *a fortiori* that all the littoral as far as the *Escudo de Veragua* comes under the same conditions. It is also a matter of public knowl-

edge that the Republic governs and administrates peacefully all the territory of *Bocas del Toro* and *Chiriquí*, exercising absolute sovereignty in that region, administering justice, collecting taxes and maintaining it in active relationship with the political and juridical authorities there represented. A provisional boundary which would affect that section of Colombian territory would profoundly disturb the *statu quo* of actual possessions and would be in reality in opposition to the object proposed by both Governments.

The undersigned expresses in the name of his Government the hope that *Costa Rica*, carrying out the conciliatory sentiments which are so much an honor to her, will consider just the desires expressed in this communication and will accept the boundary proposed by *Colombia*. In this hope the undersigned awaits the reply of His Excellency the Minister of Foreign Relations of *Costa Rica* to the end that both Governments may dictate the measures satisfactory for the celebration of a Treaty for the determining of a provisional boundary for *Colombia* and *Costa Rica*, which Act may be carried into effect in *Bogota*, in *San José* or at any other place through the Ministers who may be designated and in the manner which may be considered most satisfactory.

The undersigned has the honor and pleasure of renewing to His Excellency, by this means, the assurances of his most distinguished consideration.

MARCO F. SUÁREZ.

To His Excellency the Minister of Foreign Relations of the Republic of Costa Rica.

San José.

Doc. 382 The Duke of Tetuán to Señor Peralta, Minister of Costa Rica in Madrid.

MINISTRY OF STATE.

ARANJUEZ, May 11, 1891.¹

MOST EXCELLENT SIR: The decision having been pronounced which has ended the arbitration submitted to Her Catholic Ma-

¹ Foreign Relations, 1893, p. 277.

jesty by the governments of *Colombia* and *Venezuela* for the settlement of the boundary question between those two republics, Her Majesty's Government has thought that the proper time has arrived to take up the boundary question which the republics of *Colombia* and *Costa Rica* have, as a fresh evidence of their affection and regard for their mother country, submitted for settlement by arbitration to Her Majesty, who feels so deep an interest in all countries of Spanish origin.

Her Majesty's Government earnestly desires to comply with the wishes of the high contending parties, and thereby to bring about between the two sister republics the amicable and harmonious understanding which their tranquility and their interests demand.

I, therefore, beg your excellency to be pleased to send to this ministry, with as little delay as possible, the argument which *Costa Rica* proposes to present in defense of its rights, and, as soon as the arguments of both parties shall have been received. Her Majesty's Government, in accordance with its promise, will proceed to appoint a commission for the examination of the case, the competence of which commission in the matter will be a guarantee of the reliable character of its work.

I address the representative of *Colombia* to the same effect.

I avail myself of this occasion to reiterate to your excellency the assurances of my most distinguished consideration.

THE DUKE OF TETUÁN.

The Duke of Tetuán, to Señor Peralta, Minister of Costa Rica in Madrid. Doc. 383

MINISTER OF STATE,
PALACE, MADRID, January 22, 1892.¹

MOST EXCELLENT SIR: Under date of to-day I write to Her Majesty's minister resident at *Bogota* as follows:

"By your excellency's Dispatch No. 66, of the 21st of October last, I have been enabled to peruse the note which, under date

¹ Foreign Relations, 1893, p. 278, 279.

of the 19th of that month, was addressed to you by the Colombian minister of foreign relations, requesting you to transmit to Her Majesty's Government the views and purposes of the Government of *Colombia* in reference to the settlement by arbitration of its boundary question with *Costa Rica*, Mr. Betancourt, the worthy representative of *Colombia*, being absent.

"In the aforesaid note the minister of foreign relations expresses the desire of the Government of *Colombia* to conclude a new convention on the subject with the Republic of *Costa Rica*, since, in his view (and he explicitly states), the term within which the arbitrator could pronounce a valid decision has expired.

"This proceeding, which, in view of the antecedents and the history of the case, there was no logical reason to expect, has caused great surprise in the mind of Her Majesty's Government, as it doubtless has in that of your excellency, and in order to explain it, it is sufficient briefly to call to mind the facts of the case.

"While examining the boundary question pending between *Venezuela* and *Colombia*, Her Majesty's Government received, in December, 1884, a note signed by Mr. Holguín, the representative of that Republic, and Mr. Fernández, the representative of *Costa Rica*, whereby, in obedience to the instructions which they had received from their Governments, they submitted to His Majesty King Alfonso XII, as the arbitrator designated by the two Republics, the boundary question pending between them, allowing him a term of ten months in which to pronounce his decision.

"Certain differences having been raised by the U. S. Government in connection with the boundaries of the State of *Panama*, according to article 35 of the treaty of 1846, His Majesty's Government was obliged to leave in abeyance its acceptance of the office of arbitrator until those differences should have been settled, and in the meanwhile the unexpected and premature death of King Alfonso XII took place.

"Subsequently, and by a collective note signed by Messrs. Carlos Holguín and Manuel M. Peralta, of May 19, 1887, they

transmitted to Her Majesty's Government the supplemental treaty signed at Paris, January 20, 1886, whereby the Government of Spain is declared competent, notwithstanding the death of His Majesty King Alfonso XII, to continue to act as arbitrator in the question pending between the Republics of *Colombia* and *Costa Rica* and to pronounce a decision from which there is to be no appeal in the dispute concerning the territorial limits of those Republics. By this treaty the term allowed by the former convention of arbitration was extended for ten months longer.

"Her Majesty's Government replied to the first note by another of June 19, 1887, accepting the office of arbitrator, but referring the examination of the question until the arbitration between *Colombia* and *Venezuela* should have been terminated.

"No objection was made to this clause by the parties interested only the minister plenipotentiary of *Costa Rica* asked for some explanation with regard to it, in order that it might be accurately known when the twenty months were to commence which were allowed to Her Majesty's Government to pronounce the decision, and the Marquis de la Vega de Armijo, who was then minister of state, informed him by a note dated October 30, 1888, that the acceptance of the office of arbitrator would not begin until a decision should have been pronounced in the question between *Colombia* and *Venezuela* and the new commission should have been appointed which was to examine the question pending between *Costa Rica* and *Colombia*. The representative of *Colombia* had official knowledge of this note, since a copy thereof was sent to him by the minister plenipotentiary of *Costa Rica* under date of January 11, 1889.

"Her Majesty's Government thus naturally thought that no doubt whatever was entertained by the parties interested with regard to the manner of her acceptance of the arbitration.

"Furthermore, the decision in the boundary question between *Colombia* and *Venezuela* having been pronounced by Her Majesty, and the first of the clauses which provided for the examination of the question pending between *Colombia* and *Costa Rica* having thus been complied with, I addressed an identical note, on the 11th of May last, to the representatives of both Republics

at this court (a copy of which note was sent to your excellency), requesting them to present to this department, with as little delay as possible, their arguments in support of the rights of the states which they respectively represent, in order that the commission of examination might be appointed.

“Both the minister of *Costa Rica* and that of *Colombia* hastened to inform me, in writing, that they would present their arguments with as little delay as possible. No observation was made by Mr. Betancourt concerning the alleged lapse of the treaties of arbitration. On the contrary, he admitted that a new one had been initiated between his country and *Costa Rica*.

“In this state of things I received from your excellency the dispatch to which I am now replying, and I thereby became acquainted with the views and intentions of the Colombian Government on the subject. As these views and intentions involved, in the opinion of Her Majesty’s Government, a contravention (at least apparent) of what had been agreed upon, I requested Mr. Betancourt to elucidate these views, since in the various conferences which I had had the honor to have with him I had always expressed myself, without any objections being made by him, as understanding that the term allowed for arbitration had not yet commenced. Mr. Betancourt told me that he had received no instructions from his Government to give me the explanations which I asked, but on the day following (the 22d of December last), when in reality, in view of his statement, there was no ground to expect it, he sent me a note referring to our conversation, in which he expressed himself in the same manner as did the *Colombia* minister of foreign relations in the note which he addressed to your excellency concerning the lapse of the convention of 1880 and the desire of the *Colombia* Government to conclude a new arrangement with *Costa Rica*.

“Great as has been the surprise felt by Her Majesty’s Government, and although this surprise is shared by one of the high litigant parties, according to the statement of its representative at this court, the authorized declaration of the Government of *Colombia* is sufficient to induce that of Her Majesty to decline to take any further action in a matter in which it had only consented to act at the request of the two Republics. It took this

course with the noble and lofty desire to lend them a disinterested service, which should be a fresh evidence of the maternal affection which it feels for them. Your excellency is requested so as to inform the Colombian Government, in reply to the note which it has addressed to you, and to transmit to it a report of the facts above stated.

"Her Majesty's Government, which is ever ready to lend its aid, so far as this may be desirable, to the sister states of Latin America, is pleased to acknowledge the deference shown to it by both parties in the progress of the case which was submitted to it for decision by the Republics of *Colombia* and *Costa Rica*, and it only considers itself released from the obligation to conclude the task intrusted to it, in view of the positive declaration of the Colombian Government that the powers conferred upon it are no longer in force, which opinion it respects, and in conformity with which it will act, although it regrets that it can not share this opinion in view of the facts stated.

"Owing to the fact that the friendship of Her Majesty's Government and of the Spanish nation for the states of Spanish America is firm and sincere, it earnestly desires a satisfactory settlement of the boundary question pending between *Colombia* and *Costa Rica*, and if these two friendly states shall succeed in concluding a new arrangement for the settlement of this dispute and shall again honor it with the delicate and onerous office of arbitrator, it will examine the case and determine on its line of conduct in view of the special circumstances."

I have the honor to transmit the foregoing to your excellency for your information and for that of the Government which you worthily represent at this court, to the end that you may be informed of the reasons in virtue of which Her Majesty's Government is obliged, with real regret, to decline to take any further action in the boundary question pending between the Republics of *Costa Rica* and *Colombia*, which was submitted to it for arbitration, and your excellency may assure your Government that that of Her Majesty would have been glad to settle the aforesaid boundary question by means of its noble and disinterested efforts, and that it earnestly hopes that the two sister Republics may, in this important matter, reach an understanding that will conduce to the promotion of their respective interests.

Were Her Majesty's Government, in virtue of a new arrangement, honored once more with the high and delicate mission that was confided to it, it would examine the case with interest and, in view of the special circumstances, would determine on its line of conduct. I avail myself of this occasion, Mr. Minister, to reiterate to your excellency the assurance of my most distinguished consideration.

THE DUKE OF TETUÁN.

REPUBLIC OF COLOMBIA.

Doc. 384 Report by the Under-Secretary of Foreign Affairs in Charge of the Department, Addressed to the Congress of 1892.

Published at *Bogotá*: print of Echeverría Hermanos.

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CHAPTER IV.

Costa Rica. Boundaries Between the Two Republics (pp. 8, 9).

The Government of *Costa Rica* proposed to that of the Republic, on December 30, 1890, the adoption of a provisional frontier between the two countries, which, without prejudging the definitive and legal boundary, should serve to avoid the frequent complaints caused by possessory acts within the litigated zone.

Colombia responded, accepting the invitation, and observing that the provisional frontier ought naturally to coincide as far as possible with the one which separated the actual possessions of the two Republics. It based this observation upon the fact that any other boundary, far from meeting the purpose of the temporary arrangement, would change the *statu quo* and would prejudice the establishments the two Governments might already possess in those regions, as well as the facility of administration and the tranquillity of the inhabitants.

Starting from this unobjectionable basis, it was noted that *Colombia* and *Costa Rica* were in accord as to the possession by the former of *Sixola*, and that therefore the provisional boundary

could not run to the East of that river, since otherwise it would disturb the possession of the Republic. As regards the territory situated beyond the *Siraola*, the Government declared that although its rights extended to Cape *Gracias á Dios*, it had no objection to suggesting that the temporary line be formed by the River *Doraces*, the Cordillera of *Las Cruces* and the River *Golfito*.

As the invitation of *Costa Rica*, by way of an example of a provisional line, suggested the frontier agreed upon in the Castro-Valenzuela Treaty, it must be noted that this is incompatible with the purposes that were intended by the temporary arrangement. The said line, in fact, lies to the right of the *Siraola*, that is to say, in lands where *Costa Rica* recognises the actual control of *Colombia*; moreover, the Republic could not divest itself of the possession of nearly the whole of the territory adjacent to the Bay of *Almirante*, where our possession is as peaceful and complete as our rights of dominion are perfect.

Costa Rica has gone no farther in the discussion of this subject, which as a matter of fact was for the purpose of fixing a *modus vivendi* until a definitive settlement could be obtained. This being the situation of affairs, our Government was invited by that of Spain to submit the *Alegatos* in the boundary suit between the two Republics, committed to the wise arbitration of His Catholic Majesty.

The Republic would have hastened to respond to this respectful invitation, inasmuch as it is now satisfied, as it was before, of the desirability of justly and amicably ending the old boundary question pending with its sister upon the North. But that very conviction and the desires thereby engendered compel it to proceed legally and to perform its duty of seeing that the arbitration will be effective and produce the solution of the matter that is sought. The jurisdiction delegated by the parties to the Royal Arbitrator having expired, and the treaties consequently having lapsed, the Ministry has performed a legal duty, incumbent upon both parties, by replying to the Government of His Majesty that the *Alegatos* could not be submitted nor the proceedings initiated until *Colombia* and *Costa Rica* renewed their treaties and again delegated jurisdiction to the Arbitrator.

The lapse of the boundary treaties between *Colombia* and *Costa Rica* is not a matter of uncertainty. The Convention of 1880 and the declaration of 1886 established the fact that for the arbitral decision to be valid it must be pronounced twenty months after the commission was accepted by the judge. That acceptance took place on June 19, 1887; therefore the jurisdiction ended on February 19, 1889.

It is true that almost sixteen months after the Arbitrator accepted the post, he declared that his acceptance should not begin to run, that is to say, considered as undertaken, until after the suit as to boundaries between *Colombia* and *Venezuela* was ended; but that did not heal the defect of arbitral jurisdiction, nor amount to an extension of the agreement. In the first place, it can not be presumed that the parties, in fixing a short and definite period for the validity of the sentence, would be willing to make the contest an indefinite one, making it depend upon another which had no fixed termination; besides, *Colombia* did not assent to the extension of the jurisdiction and to the renewal of the treaties resolved upon by the Arbitrator. On the other hand, even if the Government of the Republic gave such assent, it would not have been effectual until it was ratified by the Congress, which is the source of authority for our public treaties; and, in the last place, even if it were a matter merely uncertain, it would be the part of prudence to remedy in time what might later frustrate an arduous proceeding and a most deserving judgment.

The Republic, in proceeding thus, acted with the greatest loyalty, since its conduct tended to eliminate every pretext that could invalidate the decision after the cause was decided; and the Colombian Legation in Madrid in 1887 took care to explain these very dangers, although without result, to the Minister of *Costa Rica*.

The Government is of opinion that the boundary treaty with *Costa Rica* should be renewed; that some agreement should be made for securing the temporary frontier above mentioned; and that it is desirable to introduce some very important stipulations, such as those relating to the expenses of the proceeding and to the execution of the award. This opinion will continue while

the Government and the people of *Colombia*, in a natural way, understand how to fitly interpret the attitude of *Colombia*; otherwise any resolution upon our part must be inspired by the sense of national honor.

CHAPTER XII.

Nicaragua.

Colombia having a right to territories extending as far as Cape *Gracias á Dios* and which are disputed by *Nicaragua*; and the opening of a canal being discussed which would traverse them in case it was carried out, it has been deemed necessary to safeguard the rights of the Republic by means of a protest, in which it should be made to appear that no concession or other act of dominion over these territories could affect the titles of *Colombia* upon the *Mosquito Coast*.

In case any Government, other than those of *Colombia* and *Nicaragua*, should take part in the canal enterprise, it would be necessary to repeat to it such protest, the justice of which cannot be questioned. If the Government of the United States felt itself authorized to require that the rights arising out of our Treaty of 1846 should be safeguarded by *Colombia* and *Costa Rica* before Spain should agree to undertake the arbitration of the boundaries between these two countries, with more reason could *Colombia* demand that its rights be respected in the negotiations as to the opening of an interoceanic canal through territories to which it has a right.

Señor Peralta to Mr. Gresham.

(Translation.)

LEGATION OF COSTA RICA,
WASHINGTON, April 12, 1893.¹

The undersigned, envoy extraordinary and minister plenipotentiary of the Republic of *Costa Rica*, has the honor to call the attention of the honorable Secretary of State of the United States of America to the following points, which are of the highest importance as regards the international relations of *Costa Rica* and the United States and with the Republic of *Colombia*.

The boundary question pending between the Republics of *Costa Rica* and *Colombia* which, according to the treaty of *San José* of December 25, 1880, and the additional convention concluded at Paris, January 20, 1886 (Inclosures Nos. 1 and 2), is to be decided by arbitration, was submitted, in pursuance of an agreement with the United States Government (as appears from the communications of Mr. Bayard, Secretary of State of the United States, to this legation, dated Washington, November 14, 1885, and May 26, 1886), to the Government of Spain by the plenipotentiaries of *Costa Rica* and *Colombia* at Madrid, by a note bearing date of May 19, 1887. (Inclosure No. 3.)

The Spanish Government accepted the office of arbitrator *sub conditione suspensiva*, with the proviso that its acceptance was not to begin until after it should have pronounced its decision in the boundary question between *Venezuela* and *Colombia*, which had been submitted to it. This declaration was made by Mr. Moret in his note of June 12, 1887. (Inclosure No. 4.)

The representative of *Colombia* having expressed some doubt with regard to the meaning of the condition imposed by the Spanish Government for its acceptance of the office of arbitrator, the minister of *Costa Rica* at Madrid requested the minister of state of His Catholic Majesty (by a note of October 23, 1888) (Inclosure No. 5) to furnish an explanation of the terms of its acceptance according to the aforesaid note of Mr. Moret. The Marquis de la Vega de Armijo replied, on the 30th of the same

¹ Foreign Relations, 1893, p 270, 271, 272, 273.

month (Inclosure No. 6), "that as the labors relative to the boundary question pending between *Venezuela* and *Colombia* had not yet been finally terminated, the acceptance of the office of arbitrator, with which the Government of *Colombia* and that of *Costa Rica* had honored that of His Catholic Majesty, would not begin until the decision had been pronounced and the new commission appointed."

This sufficiently precise explanation was communicated by the minister of *Costa Rica* to the legation of *Colombia* on the 6th of November, 1888, in a note to Mr. Putnam, chargé d'affaires, and was repeated on the 11th of January, 1889, to Mr. Betancourt, who had succeeded Mr. Putnam. The legation of *Colombia* did not raise the slightest objection, but, on the contrary, the language of the Colombian representative induced His Catholic Majesty's minister of state to believe that not only did *Colombia* not have any objection to the conditions imposed by the arbitrator, but that it was disposed to present its own argument in due time.

In this belief, which was contradicted by no fact and by no official statement of the Government of *Colombia*, and after the decision of the boundary question between *Venezuela* and *Colombia*² had been pronounced, the minister of state requested the parties, by a note bearing date May 11, 1891, to present their respective arguments, reserving the declaration that the arbitration had commenced until the time when these arguments should be in his possession.

Mr. Betancourt, the Colombian minister, replied that he would present the argument of his Government with as little delay as possible. "No objection was made by Mr. Betancourt on the ground of the nullity of the treaties of arbitration; on the contrary, he recognized that the new arbitration had been initiated between his country and *Costa Rica*." (Note from the Duke of Tetuán to Mr. Peralta, dated Madrid, January 22, 1892. Inclosure No. 7.)

The Spanish Government was consequently awaiting the presentation of the arguments, and the minister of *Costa Rica* had repeatedly stated that the argument of his Government was ready,

² Published in the Madrid Gazette, March 17, 1891.

and he desired that the commission which was to take cognizance of the case should be appointed in order that he might transmit that document to the ministry of state.

The Duke of Tetuán, however, being actuated by a lofty sentiment of benevolence, was unwilling that the arbitration should be definitively begun until the argument of *Colombia* (which he thought was likely to be handed in at any moment) should have been presented.

Such was the state of things in December, 1891, when the Spanish Government was informed by a note from the minister of Spain at *Bogotá*, bearing date of October 19, 1891, that the Government of *Colombia* desired to conclude a new treaty of arbitration with *Costa Rica*, because, in its opinion, the time had expired within which the arbitrator could pronounce a valid decision.

Neither the Government of Spain nor that of *Costa Rica* has accepted the declaration of the Government of *Colombia* as being just and well founded, and the Duke of Tetuán has declared that he was very much surprised by the course pursued by *Colombia*. This he did in a dispatch addressed to the representative of Spain at *Bogotá*, and in his communication of the same date January 22, 1892, (Inclosure No. 8) to the minister of *Costa Rica* at Madrid.

As is declared by the arbitrator, through the Duke of Tetuán, the time for taking cognizance of the boundary question had not expired. *Colombia*, which made not the slightest objection to the conditions imposed by Mr. Moret, ought at least to have presented its argument to the arbitrator, or to have signified in some way that, in its opinion, the time allotted for arbitration had commenced before assuming to itself without the assent or notice of the other party, the responsibility of declaring that the time for the legal arbitration of the case had already expired.

Even supposing that the arbitrator had allowed the time fixed for pronouncing his decision to elapse, such negligence on the part of the arbitrator in no way affects the validity or the obligatory force of the treaty of 1880.

The negligence of the arbitrator may at the utmost be considered as a passive form of his desire not to perform the duties

of his office; as a tardy refusal to accept it, or simply as an evidence of his having been unable to render, at the proper time, the eminent service requested of him, and this is the most that can be alleged by *Colombia*; at all events, however, the contracting parties were still at liberty to have recourse to the stipulation contained in article 5 of the treaty of 1880, and in virtue thereof to request the President of the Argentine Republic to accept the office of arbitrator.

The Spanish Government, however, rejected with very good reason, the charge of negligence implied by the declaration of the Government of *Colombia*, and has constantly shown its readiness to perform the duties of the noble and disinterested office which was tendered it by the parties; and if these offer it, and again beg the Government of His Catholic Majesty to accept it, that Government has promised that it will accept it, or that it will, at least, most favorably consider the offer.

Be the case as it may, the treaty of arbitration of 1880 provides, in its seventh article, that the boundary question shall be decided by arbitration only, and until such a settlement has been reached, the validity of that treaty is incontestable.

The additional convention of January 20, 1886, stipulated that, notwithstanding the death of His Majesty Don Alfonso XII, the Government of Spain was competent to continue in charge of the arbitration (Article I). It defined with precision, in accordance with the observations of Mr. Bayard, Secretary of State of the United States of America, the extreme and precise limits of the territorial claims of the parties (Article II), and declared that, whatever should be the decision of the arbitrator, the rights of a third party should remain unimpaired (Article III).

The additional convention, furthermore, extends the period of arbitration, for ten additional months, so that it may last for twenty months, reckoned from the date of its formal acceptance. (Article IV.)

The rights of a third party, as was agreed with the Government of the United States, and as explained by Mr. Bayard in his note of May 26, 1886, to Mr. Peralta, are such as in virtue of pre-existing treaties may belong to the U. S. Government or to citizens of the United States. (Inclosure No. 9.)

The Government of *Costa Rica* has, therefore considered, both in view of the stipulations of Article XXXV of the treaty of December 12, 1846, and of the express declarations of Messrs. Blaine³ and Bayard, both before and after the conclusion of the additional convention of January 20, 1886, that the U. S. Government became a party with *Costa Rica* and *Colombia* to this latter convention, and consequently to the principal convention of 1880, and my Government thinks that, in this state of things and on account of the respect which the high contracting parties owe to each other, it should maintain the arbitration provided for in those instruments and demand that it be maintained in full force without the conclusion of any new treaty of arbitration, for which the Government of *Colombia* has expressed its desire to that of Spain.

The treaties which already exist seem to my Government to be more than sufficient to secure to the parties an equitable and speedy settlement of their differences.

The Government of *Costa Rica* therefore begs the United States Government, in testimony of the friendship existing between it and both *Costa Rica* and *Colombia*, in view of the interest which it has ever manifested in the prosperity and peace of those countries, in view of its duties as a guarantor of the neutrality and of the sovereignty of *Colombia* over the Isthmus of *Panama* as far as the frontier of *Costa Rica*, and as a party to the additional convention of 1886, to exert its most friendly and most earnest efforts to induce *Colombia*, in consideration of the determination of *Costa Rica* faithfully to abide by what has been agreed upon, and of the declarations of the Spanish Government that it does not consider the time for arbitration as having expired, to withdraw its declaration that the period of arbitration has elapsed, and once more to request the Govern-

³ In Mr. Blaine's dispatch to Mr. Putnam, U. S. minister to Belgium, of May 31, 1881 (For. Rel., 1881, p. 70), occurs the following passage: "* * * It can not be a matter of indifference to the United States of America whether the littoral line of either ocean in the neighborhood of any projected interoceanic communication is within the guaranteed territory of the *United States of Colombia*, or within the lawful boundaries of the Republic of *Costa Rica*, with whom its treaty obligations are of a different character."

ment of His Catholic Majesty to accept the office of arbitrator; and in case of the non-acceptance of the Spanish Government, to submit the case to the decision of the President of the *Argentine* Republic.

If the President of the *Argentine* Republic can not accept, it becomes the duty of the parties, in virtue of Article VII of the treaty of 1880, to designate another arbitrator, and in that case the Government of *Costa Rica* will be most happy to come to an understanding with that of *Colombia* and that of the United States of America to tender the office of arbitrator to his excellency Grover Cleveland, President of this Republic.

The Government of *Costa Rica* begs the United States Government to be pleased to submit this proposition with the utmost earnestness, and with as little delay as possible, to the Government of the Republic of *Colombia*, to the end that the final settlement of the boundary question may be no longer delayed, that there may be no necessity of resorting to new treaties, and that the settlement may take place in accordance with those now in force, to which, as has already been stated, the U. S. Government is a party.

The undersigned has the honor to reiterate to the honorable Secretary of State of the United States of America the assurance of his highest consideration.

MANUEL M. PERALTA.

Señor Peralta to Mr. Gresham.

Doc. 386

(Translation.)

LEGATION OF COSTA RICA,
Washington, April 20, 1893.¹

SIR: I have been advised that the Government of the Republic of *Colombia* has informed the Government of the United States of America that it ought to be considered an interested party, with a right to intervene, in all international arrangements whatever relative to the projected Nicaraguan Canal, by virtue of

¹ Foreign Relations, 1893, p. 281.

the rights which, according to the said Government of *Colombia*, are conferred on it by the royal order of San Lorenzo of November 30, 1803, and the Government of *Costa Rica* being concerned in the Nicaraguan Canal and in every interoceanic route by way of the river *San Juan*, not only by virtue of its former territorial rights, but likewise by those conferred on it by the treaty of *San José* of April 15, 1858, the validity of which was recognized by award, as arbitrator, of the President of the United States of America, given at Washington March 22, 1888, in the name of the Government of the Republic of *Costa Rica*, I have the honor to set forth the most solemn and formal protest against the rights that *Colombia* claims or alleges to have in the projected Nicaraguan Canal or in all interoceanic routes through the territories of *Costa Rica* and *Nicaragua* by way of the river *San Juan*.

The Government of *Costa Rica* has never admitted the validity of the title invoked by *Colombia*, and maintains and offers to prove, and in due time to demonstrate, that the royal order of San Lorenzo of November 30, 1803, never had the scope claimed for it by the Government of *Colombia*, and although it might have had it, it lost all its value and force by having been annulled by various royal ordinances, decrees by the Cortes, and royal letters-patent of the Spanish Government subsequent to the year 1803.

A former minister of foreign relations of *New Granada* (*Colombia*) has said that the royal order of November 30, 1803, is of no value, that it is a title of so anomalous and indefinite a character that it may be reduced to the duty of giving to the *Mosquito coast* the maritime protection it needs to guard it from foreign aggressions.²

So states Señor Fernández Madrid in a report made at the request of his Government, notwithstanding that this celebrated public man of *Colombia* did not know and could not account for the titles of *Costa Rica* and *Nicaragua*. Not one of the governments with which the republics of *Costa Rica*, *Nicaragua*, and

² Colombian Repertory, No. XLVIII, June, 1882, Bogota. Dispatch of D. Pedro Fernández Madrid, to the minister of foreign relations of Colombia, Bogota, November 29, 1852. (Inclosure No. 1.)

Colombia are allied by treaties of friendship has ever admitted the claims of *Colombia*, and the first instance that can be cited is the Government of the United States itself, which recognizes that the territory of *Colombia* terminates with the Isthmus of *Panama* on the frontier of *Costa Rica*.

Neither were the claims of *Colombia* ever admitted by the Government of Her Britannic Majesty, which, through the medium of Lord Palmerston, then principal secretary of state for foreign relations, refused to discuss them, as proved by his note of May 4, 1848, to Señor Mosquera, minister of *New Granada* at London. (Inclosure No. 2.)

In consequence of this refusal of the United States and Great Britain to entertain the claims of *Colombia* when the Clayton-Bulwer treaty was concluded, 19th of April, 1850, and later when the Crampton-Webster was signed, April 30, 1852, which stipulates expressly in regard to the river *San Juan* and the Nicaraguan Canal, the name of *Colombia* does not appear, and it speaks only of *Costa Rica* and *Nicaragua* as sole sovereigns of the territory watered by the lake and by the river *San Juan*.

In virtue of that Crampton-Webster convention, and later of the treaty of *Managua* of 1860, Great Britain renounced the *Mosquito* protectorate, and it is well known that that renunciation was made in favor of *Nicaragua*.

Further still, the Government of His Catholic Majesty, former legitimate and common sovereign of *Costa Rica*, *Nicaragua*, and viceroyalty of *New Granada*, recognized *Costa Rica* and *Nicaragua*, respectively, in legitimate and incontestable possession and sovereignty of the *Mosquito coast*, of the river *San Juan*, and of all the territories that formerly constituted the provinces of *Costa Rica* and *Nicaragua*, situated between the Atlantic and the Pacific, with the adjacent islands, as clearly appears in the treaties of Madrid of 1850 with *Costa Rica* and *Nicaragua*.

Considering that by arbitration only has to be decided the question of boundaries pending between *Costa Rica* and *Colombia*, the Government of the former, not being able to establish itself as judge and party at the same time, consented that *Colombia* should present as the extreme limit of its claims *Cape Gracias*

á Dios; but it consented, as is contended in a lawsuit, that adverse party may say what he thinks proper on condition that the judge pass sentence by virtue of the proofs and rights of the litigants. While no decision by arbitration intervenes, the Government of *Costa Rica* sees itself, therefore, obliged to protest in the most formal and solemn manner against all intervention of the Government of *Colombia* in the Atlantic coasts of *Costa Rica*, in the river *San Juan*, and in any interoceanic route that may follow the course of this river, because it considers null and void the abrogated royal order of 1803, never fulfilled in what relates to the *Mosquito coast*.

I think it proper to recall here that the Government of *Costa Rica* found itself bound to protest to that of *Colombia* against the measurements made by the engineers of the Panama Canal Company on territory which is in the actual possession or within the lawful limits of *Costa Rica*, though retained by *Colombia*.

The Panama Canal Company, in virtue of a concession of 500,000 hectares of ground of the public domain of *Colombia* (article 4 of the concession of 1878), thought fit to select nothing less than the territory which is the principal subject of the boundary question, in order to solicit its allotment as a dominion and ownership (of said company) from *Colombia*.

The Panama Canal Company had already measured, in the region washed by the bay of *Almirante* and by the *Lagoon Chiriquí* a surface of nearly 280,000 hectares when the surveyor of said company encountered a Costa Rican guard, who obliged him to desist from his measurements where the guard was stationed; but in such vast and wild solitudes not only measurements of land but acts of occupation may be effected without in a long time coming to the knowledge of the legitimate sovereign.

As soon as the Government of *Costa Rica* had knowledge of said measurements it made friendly representation to that of *Colombia* to the effect that so long as the expected sentence of arbitration had not been pronounced, it should abstain from trespassing on the jurisdiction of the arbitrator, and instructed the minister of *Costa Rica* at Paris and at Madrid to protest before the suitable person and to solicit the kindly mediation of the arbitrator (the Government of Spain) in order to recommend to *Colombia* proper forbearance.

The minister of *Costa Rica* addressed a protest against the mentioned measurement of lands and against their eventual adjudication to the president of the Panama Canal Company, in a letter of December 18, 1888 (repeated 18th of January, 1888, Inclosure No. 3), and appealed to the good offices of the minister of state of Spain in a note of the 19th of the same January (Inclosure No. 4).

The Government of *Costa Rica* has recently learned that before or during the month of November, 1891, there was legally formed in the State of New Jersey a company provided with a concession from the Government of *Colombia* to open a road from *Bocas del Toro* as far as *David*, making besides a rich grant of lands to said company.

As the concession is situated in a portion of the territory in litigation the Government of *Costa Rica* has directed me to protest formally and solemnly against the concessions made to the New Jersey and against the measurements of the Panama Canal Company, in order that it may be known and understood that if it is disposed to respect truly and religiously the rights acquired in virtue of the common laws and the public treaties anterior to the arbitration treaty of 1880, it will not recognize the validity of any concession later than the year 1880 if it had not been duly executed and confirmed by it, in case of the said concession being situated in the territory adjudged to *Costa Rica* by the decree of arbitration which is to determine the boundary line of the Republics of *Costa Rica* and *Colombia*.

This I have the honor to communicate to your excellency for the information of your Government and of the citizens of the United States of America whom it may interest.

I avail myself, etc.,

MANUEL M. PERALTA.

Mr. Gresham to Mr. Baker.

(No. 28)

DEPARTMENT OF STATE,
WASHINGTON, July 14, 1893.¹

SIR: You will find on the files of your legation the full record of the correspondence exchanged during the past few years, touching the attitude of the Government of the United States toward the arbitration of the long-pending boundary dispute between *Costa Rica* and *Colombia* under the convention between those States of December 25, 1880, and the additional convention signed at Paris January 20, 1886.

The arbitration so agreed upon was initiated with the acceptance of the office of arbitrator by the Queen Regent of Spain on behalf of His Majesty Alfonso XIII; but a contention having arisen touching the date from which to compute the twenty months prescribed by the convention for the presentation of the cases of the respective parties to the arbitrator it has been alleged by *Colombia* that the cases have not been presented within the stipulated term, and that the power of the arbitrator to act in the premises has lapsed. The cases have not in fact been presented, and the Queen Regent's Government has accepted the position of *Colombia*, although not without expression of its view that the prescribed period was still open, and with expression of cordial readiness to resume the function of arbitrator should the Governments of *Costa Rica* and *Colombia* compose their difference in this regard and request continuance of the arbitration.

The Government of *Costa Rica* has on several occasions solicited the good offices of the United States toward continuing the arbitration and requested this Government to represent to that of *Colombia* the propriety and advantage of so doing.

The government of the United States, maintaining the friendly and impartial consideration for both parties to the dispute which it has consistently shown since the settlement thereof by arbitration was first broached, is as indisposed to support the claim of *Costa Rica* that the arbitration is still validly open as it is to accept the converse claim of *Colombia* that it has lapsed. Not

¹ Foreign Relations, 1893, p. 202.

being in any sense a party to the arbitration, and moved only by the desire to preserve the rights of its citizens in the territory in dispute and to fulfill the international obligations of existing treaties the Government of the United States has consistently testified its lively interest in the controversy and its earnest desire that a settlement be reached. It is especially led to this course by the fact that the United States are, by the treaty of 1846 with *New Granada*, now *Colombia*, guarantors of the rights of sovereignty and property which *Colombia* has and possesses over the territory of the Isthmus of *Panama* "from its southernmost extremity until the boundary of *Costa Rica*," and this Government is therefore interested in knowing the limits of the guarantee it has so assumed, and regards it as a solemn duty of friendship and good neighborhood to do what it can toward the determination of its own rights and duties in respect to a territory the bounds of which are unfixed and in controversy.

Without, therefore, expressing any opinion touching the merits of the dispute now pending between *Costa Rica* and *Colombia* concerning the continuing validity of the boundary arbitration under the treaty of December 25, 1880, and without relinquishing the stand it has heretofore taken in regard to the rights of third parties in such arbitration, the Government of the United States, in a spirit of complete disinterestedness, feels constrained to represent to the two governments of *Costa Rica* and *Colombia* its earnest desire and hope that they shall waive the comparatively trivial obstacle to the accomplishment of the larger purpose of amicable arbitration which they have both advocated, and that they shall come to an understanding whereby that high aim shall be realized, either by the continuance of the arbitration under Her Majesty the Queen Regent of Spain, or if Her Majesty be indisposed to resume her functions, then by the alternative method already agreed upon, or by resort to any impartial arbitrator.

The President, in directing you to convey these views to the Government of *Costa Rica*, especially desires you to impress upon the minister of foreign relations his sincere conviction that the agreement of arbitration entered into by the two nations constitutes an obligation between them which neither is morally free

to disregard on grounds of technical formality, and his confidence that they will use their concurrent endeavors to promote its successful issue.

I am, etc.,

W. Q. GRESHAM.

Doc. 388

Mr. McKinney to Mr. Suárez.

LEGATION OF THE UNITED STATES,
BOGOTA, August 21, 1893.¹

SIR: I am instructed by the Department of State at Washington, to communicate to you the earnest desire of the Government of the United States for the settlement of the boundary dispute between *Colombia* and *Costa Rica*, as agreed in the convention between the two States, of December 25, 1880, and the additional convention signed at Paris, January 20, 1886.

The Government of the United States, maintaining friendly relations with both the parties to the dispute, is as indisposed to support the claim of *Costa Rica*, that the arbitration is still validly open, as it is to accept the converse claim of *Colombia*, that it has lapsed.

Not being in any sense a party to the arbitration, it is moved only by the desire to preserve the rights of its citizens in the territory in dispute, and to fulfill the international obligations of existing treaties.

The United States are by the treaty of 1846 with *New Granada*, now *Colombia*, guarantors of the rights of sovereignty and property which *Colombia* has and possesses over the territory of the Isthmus of *Panama*, "from its southern extremity until the boundary of *Costa Rica*."

The Government is therefore interested in knowing the limits of the guaranty it has assumed, and regards it as a duty of friendship to do what it can toward the determination of its own rights and duties in respect to a territory the bounds of which are unsettled and in controversy.

Without therefore expressing any opinion touching the merits of the dispute now pending between *Colombia* and *Costa Rica*, the United States, in a spirit of complete disinterestedness, feels

¹ Foreign Relations, 1894, p. 180, 181.

constrained to represent to the Government of *Colombia*, as also of *Costa Rica*, its earnest desire and hope that they shall waive the comparatively trivial obstacle to the accomplishment of the larger purpose of amicable arbitration, which they have both advocated, and that they shall come to an understanding whereby that high aim shall be realized either by the continuance of the arbitration under Her Majesty the Queen Regent of Spain, or if Her Majesty be indisposed to renew the functions, then by the alternative method already agreed upon, or by resort to any impartial arbitrator.

The President, in directing me to convey these views to the Government of *Colombia*, desires me to impress upon your excellency his sincere conviction "that the agreement of arbitration entered into by the two nations constitute an obligation between them which neither is morally free to disregard on grounds of technical formality, and his confidence that both Governments will endeavor to promote its successful issue."

I avail, etc.,

LUTHER F. MCKINNEY.

Mr. McKinney to Mr. Gresham.

Doc. 389

LEGATION OF THE UNITED STATES,

BOGOTA, August 24, 1893.¹ (Received September 20).

SIR: I have the honor to acknowledge the receipt of your No. 6, dated July 14, 1893, relating to the boundary dispute between the governments of *Colombia* and *Costa Rica*.

In accordance with your instructions, I have had an interview with the secretary for foreign affairs and endeavored to impress upon him the importance to all parties concerned of the settlement of this dispute.

He informs me that his Government is at the present time preparing a basis for a new treaty with *Costa Rica* on the boundary question and hopes to be able to present it to *Costa Rica* for their approval in a few weeks.

They propose to submit the question of arbitration to the Government of Spain; that the decision of the arbitrator shall be

¹ Foreign Relations, 1893, p. 266.

final and go into immediate effect; that the governments of *Colombia* and *Costa Rica* shall divide the expenses, etc.

He has promised to forward to this legation a copy of the draft before it is submitted to *Costa Rica*.

I will cable the Department of State when the draft is forwarded to *Costa Rica*, and I would suggest that, if it appears fair to both parties concerned, you urge upon the Government of *Costa Rica* the acceptance of the treaty, to the end that this long disputed question may be finally settled.

I am, etc.,

LUTHER F. MCKINNEY.

Mr. Baker to Mr. Jiménez.

Doc. 390

LEGATON OF THE UNITED STATES,
MANAGUA, September 1, 1893.¹

SIR: I am instructed by the President of the United States to open correspondence with the Government of *Costa Rica* upon the subject of the arbitration of the long-pending boundary dispute between *Costa Rica* and *Colombia*. Under the convention between those States of December 25, 1880, and the additional convention signed at Paris, January 20, 1886, an arbitration was agreed upon and initiated with the acceptance of the office of arbitrator by the Queen Regent of Spain on behalf of His Majesty King Alfonso XIII; but I am instructed a contention has arisen touching the date from which to compute the twenty months prescribed by the convention for the preservation of the cases of the respective parties to the arbitrator. It has been alleged by *Colombia* that the cases have not been presented within the stipulated term and that the power of the arbitrator to act in the premises has lapsed. The cases have not, in fact, been presented, as I am informed, and the Queen Regent's Government has accepted the position of *Colombia*, although not without expression of its view that the prescribed period was still open, and with expression of cordial readiness to resume the function of arbitrator should the Government of *Costa Rica*

¹ Foreign Relations of the United States, 1894, p. 439.

and *Colombia* compose their differences in this regard and request continuance of the arbitration.

The Government of *Costa Rica* has on several occasions solicited the good offices of the United States toward continuing the arbitration, and requested this Government to represent to that of *Colombia* the propriety and advantage of so doing.

The Government of the United States, maintaining the friendly and impartial consideration for both the parties to the dispute which it has consistently shown since the settlement thereof by arbitration was first broached, is as indisposed to support the claim of *Costa Rica* that the arbitration is still validly open as it is to accept the converse claim of *Colombia* that it has lapsed. Not being in any sense a party to the arbitration, and moved only by the desire to preserve the rights of its citizens in the territory of dispute and to fulfill the international obligations of existing treaties, the Government of the United States has consistently testified its lively interest in the controversy and its earnest desire that a settlement be reached. It is especially led in this course by the fact that the United States are, by the treaty of 1846 with *New Granada*, now *Colombia*, guarantors of the rights of sovereignty and property which *Colombia* has and possesses over the territory of the Isthmus of *Panama* "from its southernmost extremity until the boundary of *Costa Rica*," and this Government is therefore interested in knowing the limits of the guarantee it has so assumed; regards it as a solemn duty of friendship and good neighborhood to do what it can toward the determination of its own rights and duties in respect to a territory the bounds of which are unfixed and in controversy.

Without, therefore, expressing any opinion touching the merits of the dispute now pending between *Costa Rica* and *Colombia* concerning the continuing validity of the boundary arbitration under the treaty of December 25, 1880, and without relinquishing the stand it has heretofore taken in regard to the rights of third parties in such arbitration, the Government of the United States, in a spirit of complete disinterestedness, feels constrained to present to the two Governments of *Costa Rica* and *Colombia* its earnest desire and hope that they shall waive the comparatively trivial obstacle to the accomplishment of the larger purpose of amicable arbitration which they have both advocated, and that

they shall come to an understanding whereby that high aim shall be realized, either by the continuance of the arbitration under Her Majesty the Queen Regent of Spain, or if her Majesty be indisposed to resume her functions, then by the alternative method already agreed upon, or by resort to any impartial arbitrator.

The President of the United States, in directing me to convey these views to the Government of *Costa Rica*, especially desires me to impress upon the minister of foreign relations his sincere conviction that the agreement of arbitration entered into by the two nations constitutes an obligation between them which neither is morally free to disregard on grounds of technical formality; and his confidence that they will use their concurrent endeavors to promote its successful issue.

It will give me great pleasure to forward to the President of the United States your favorable reply to this communication.

I am, etc.,

LEWIS BAKER.

Doc. 391 Señor Suárez to the Minister of Foreign Relations of
Costa Rica.

MINISTRY FOR FOREIGN RELATIONS,
BOGOTA, September 6, 1893.¹

MR. MINISTER: I have the honor to answer the note of the 29th of last June, in which your excellency refers to the settlement of the boundary between *Costa Rica* and *Colombia*, an affair which has been a subject for much discussion between the two governments, and which was submitted for arbitration to the Government of Spain until the respective conventions were rejected, because the time had expired within which the decision in regard to the controversy of the boundary limits should have been rendered.

Your excellency is surprised that the Government of this Republic neglected to communicate to the Government of *Costa Rica*

¹ Foreign Relations, 1893, p. 267, 268, 269.

its intention to denounce those acts, and that it confined itself to making its declaration to the arbitrator in person.

The surprise of your excellency would be well founded if the note which this office sent you on the 16th of March, 1891, had been honored with an answer, but having waited in vain for the said reply, this office concluded that the Government of *Costa Rica* no longer considered it necessary to treat directly with *Colombia* in regard to this matter. Moreover, in the notes whereby the Government of Spain was made aware of our intention to reject the conventions, care was taken to inform the Government of *Costa Rica* that they would also be informed of this fact, after the last pending note should be answered, relative to the settlement of a provisional boundary by which mutual and frequent complaints could be avoided, and it was added that every means should be used to renew the treaties and to prolong the jurisdiction of the arbitrator, always provided that he should consent to act in this capacity for the two republics and do them the favor and the honor to study and decide the subject referring to their common frontier.

Your excellency can ascertain this by looking at the notes, of which I have the honor to send an authorized copy.

Your excellency is also surprised that the Government of this Republic should have rejected the treaties after the arbitrator had declared, without any objection on the part of *Colombia* or *Costa Rica*, that the boundary question between these two states should not be touched until after the question between *Colombia* and *Venezuela* had been decided, and until after the acceptance of the arbitrament, and for the same reason the decision regarding the limits should not commence to be reckoned until the decision in regard to that other matter had been rendered.

In order to be able to ascertain the force of the argument it must be remembered that the arbitrator accepted the commission on a certain date; that he at that time decided that this question should be studied after the questions relative to the arbitration between *Colombia* and *Venezuela* should have been decided, a thing which was likely to happen any minute; that sixteen months after having accepted the jurisdiction he stated that the twenty

months' limit allowed him in which to render the decision should not commence to be computed on the date of acceptance, but rather, after the controversy in regard to the boundary between *Colombia* and *Venezuela* had been decided, and that the parties made no objection to such a proposal, although the representative of *Colombia* took care to inform the diplomatic agent of *Costa Rica*, Señor Peralta, of the necessity of rectifying the treaties.

Thus the question which has been discussed is as follows: An agreement was entered into between two nations to determine by arbitration their common frontier; the decision of this serious and important question was to be given within a fixed time. Can the time which is definitely named in these treaties be indefinitely postponed by any other will or authority than that which gives to them force and validity?

This question is so clear that no misunderstanding can arise in the answer. However, supposing its solution were doubtful, this other question would arise, equally important, and worthy of the strictest attention, namely, jurisdiction being doubtful, and the power being given by two states to an arbitrator to decide a controversy so interesting as that in international limits, will it be prudent, just, or right to hazard the success of a decision requiring so much labor, and of a judgment worthy of respect, by neglecting to remove errors from the treaties, or to correct anything which might make them worthless in the future?

Thus the Government of *Colombia*, recognizing, as any just and honorable government must, the necessity of repairing a bad foundation in a costly edifice, has worked for the desired end with the impartiality called for by the rights and interests of both parties, with the frankness and fidelity which the gravity of the situation demands, and with the respect which is owed to the high arbitrator, whose decision ought never to be considered as doubtful. Your excellency thinks it strange that the Colombian Government, whose decision ought never to be considered as doubtful between *Colombia* and *Costa Rica* after Dr. Antonio Roldán and the undersigned then acting minister of foreign affairs, had stated in letters, written after *Colombia* had announced the lapse of such treaties, that it was still hoped that Spain would settle the pending question.

In the first place these opinions alone, expressed before an accurate calculation of the terms had been made, bearing in mind the dates of the letters of acceptance of the arbitrator, and of his declarations to that effect, these opinions, I say, are wanting in that force which would be necessary to continue a jurisdiction which Congress alone has the power to do, in conformity with the public law of the nation. In the second place, if your excellency will have the kindness to look at the notes of October 19, 1891, and March 17, 1892, sent by this office to his Catholic Majesty, through his legation at *Bogota*, you will find that the Government of this Republic, while rejecting the treaties, stated at the same time its intention to renew them if *Costa Rica* should give her consent, and prolong the jurisdiction conferred upon the Government of Spain, provided that this high arbitrator should deign to accept it.

Thus the ideas of Señor Roldán and of the undersigned regarding the decision to be given by the Spanish Government were in harmony with the provision voluntary then, as to-day, that the decision shall have that high origin, because it is scarcely possible that *Costa Rica* will refuse to accept the propositions of *Colombia* in regard to the renewal of the treaties.

From the foregoing I hope that your excellency will see that the Colombian Government, far from rejecting the idea brought forward by *Costa Rica*, in the note which I have the honor to answer, strove to suggest it, in the very act by which it announced the lapse of the treaties. Therefore there will be no unwillingness on the part of the Republic that the negotiations which may be necessary for the renewal of these conventions be held at *Bogota* or Madrid, whereby a treaty may be made, in which the same referee may be named, and in which the boundary limits are clearly and exactly stated, and which contains clauses of obvious advantage, such for instance as those relating to the expenses of the trial, to the carrying out of the sentence, and to the committee which must be named for studying the ground before the decision is given, or to mark the boundary line decided upon by the arbitrator, etc. But to accomplish this it is indispensable that your excellency's Government, as soon as it finds time, answer the above-mentioned note which the Colombian Government had the honor to send you March 16, 1891, and in accord-

ance with this note, do all that is possible to decide upon a temporary boundary, to the end that the frequent quarrels and vexations may be avoided which arise through the trespassing by agents of *Costa Rica* upon territory which is recognized by your Government in the actual possession of *Colombia*. Repeated and friendly complaints have been sent by my Government to that of *Costa Rica* in regard to this matter before commencing, as was right, direct measures to avoid the violation of a *statu quo* which is by common accord perfectly legal until the jurisdiction of the frontiers shall be definitely settled.

Frankly speaking, the note to which I refer was sent in order to obtain an amicable solution of this question, which is urgent in spite of its temporary character. Not only have we waited in vain for a reply to this note, but we have received with increasing wonder the complaints of the authorities of this Government at *Bocas del Toro*, making public new acts of violation of the territorial sovereignty of *Colombia*, committed by citizens or agents of *Costa Rica*.

With such a condition of affairs and while the two governments, animated by brotherly friendship, neglect to put a stop to such irregular proceedings, the Government of *Colombia* does not desire, nor would she be able in fact without injuring her rights and interests, to again renew the arbitration treaties regarding the frontiers. For in all such acts the greatest harmony and good will must prevail between the two parties.

It would be impossible, for *Colombia* to sign an arbitration treaty regarding boundary limits, and at the same time be obliged to repel invasions of territory which is in her possession, her expostulations being disregarded.

I take, Mr. Minister, etc.,

MARCO F. SUÁREZ.

Mr. McKinney to Mr. Gresham.

Doc. 392

(No. 19.)

LEGATION OF THE UNITED STATES,
BOGOTA, September 29, 1893.¹

(Received October 31.)

SIR: In continuation of my No. 12 in answer to your No. 6, I have the honor to say that I, immediately on receipt of your communication, sent an official dispatch to the minister of foreign affairs, in which I expressed the feeling of the Government of the United States in regard to the boundary question between *Colombia* and *Costa Rica*.

The minister of foreign affairs personally requested that I withdraw the official communication on the plea that he preferred to deal with this legation upon such matters in personal interviews.

On his urgent request I withdrew the document and he promised before he sent an official communication to the Government of *Costa Rica* regarding the boundary question he would transmit a copy to me, that I might ask my Government to use its good services to induce *Costa Rica* to accept the propositions of the Colombian Government. It appears that the letter of the Colombian Government was sent to *Costa Rica* on the 6th of September, while we were not given its contents until the 21st of September, when he sent us a copy published in the official organ of the Government, a copy and translation of which I inclose.

I also inclose a copy and translation of his letter to me.

On account of so long a time having elapsed since the communication was sent to *Costa Rica*, I did not deem myself justified in sending a cable upon the subject.

I am, etc.

LUTHER F. MCKINNEY.

¹ Foreign Relations, 1893, p. 266.

Mr. Jiménez to Mr. Suárez.

DEPARTMENT OF FOREIGN RELATIONS,

COSTA RICA, San José, November 18, 1893.¹

Mr. MINISTER: The Government of *Costa Rica* has always desired, and still desires, to put a just and decisive end to the boundary dispute between the two Republics.

Urged not only by motives of mutual advantage to two neighboring states of common origin and of the same historical aspirations, but also by reasons of great economical importance, such as the removal of the obstacles which, on account of the existence of the dispute, drive away, up to a certain point, moral and material progress in the zones of the Atlantic and Pacific of both countries. To this end, every means compatible with the national honor has been tried. Its boundary treaties, its arbitration conventions, and its diplomatic correspondence prove my words.

With this understanding, and based upon the principles of justice which determine the validity of international acts, it has supported, in accordance also with the opinion of the Spanish Government, the judge of this lawsuit, the noncaducity of the arbitration convention celebrated by both States the 25th of December, 1880, and the additional convention of Paris dated January 20, 1886, in regard to which your excellency's Government unexpectedly declared the authority of the arbitrator instable, when the decision, it may be said, was on the point of being given. Having stated my Government's wishes, which I sincerely trust are also your excellency's and the powerful reasons which led to them, I have thought it opportune to reply thus to the communications of your department of March 16, 1891, and September 6th of the present year, for any other reply could but give rise to long and useless discussions between the two cabinets, without obtaining any practical results, or one mutually satisfactory.

In accordance, therefore, with these aspirations, the principal object of the present dispatch, the President of the Republic has instructed me to propose to the honorable and just Government of *Colombia* that the validity or nonvalidity of the above men-

¹ Foreign Relations, 1894, p. 182.

tioned conventions be submitted to arbitration, during which time there is no objection to the appointment of a Costa Rican or Colombian legation, which, with the delegates of the respective Governments, shall try to draw up a boundary treaty, or an arbitration convention, and to decide upon the temporary frontiers of the two countries. With sentiments of high esteem and distinguished consideration, and awaiting your reply, in regard to the proposed point,

I have, etc.,

MANUEL V. JIMÉNEZ.

Mr. Suárez to Mr. Jiménez.

Doc. 394

REPUBLIC OF COLOMBIA,
DEPARTMENT OF FOREIGN RELATIONS,
BOGOTÁ, January 4, 1894.¹

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of November 18, 1893, regarding the boundary question between *Colombia* and *Costa Rica*, a matter which has for some time occupied the attention of our two Governments. The Government of *Colombia*, as well as that of *Costa Rica*, has always desired and still desires to settle this matter in a just and decisive way. The same motives which animate your excellency's Government in this matter, impel also the Colombian Government, for it is urged not only by motives of mutual convenience to the two States, but also by considerations of economical importance such as your excellency mentioned in the note which I now have the honor to answer. The Colombian Government finds itself in similar circumstances as regards *Costa Rica*, in all that relates to the means of accomplishing its wishes, in a friendly and just way, as is proved by the treaties and conventions concluded with this intention, and the correspondence exchanged with your excellency's Government.

This correspondence, from its beginning up to the last notes addressed by this department to that under your excellency's charge, evidently shows a desire to have the boundary question definitely and bindingly settled. For as soon as it became evi-

¹ Foreign Relations, 1894, p. 183, 184.

dent that the validity of the treaties was doubtful, the Government of the Republic hastened to mention it, at the same time inviting *Costa Rica* to renew the said compacts, and giving a practical proof of its desire to prevent the boundary decision from being null and void. Therefore, my Government is certain it has given the best practical proof of its desire for the settlement of this matter, for it has prevented useless work in the accomplishment of this settlement, and at the same time has invited *Costa Rica*, with the greatest good will, to remove in good time any cause of failure in the laborious work of the arbitrator and of the interested parties.

As these sentiments exist, and as it is not to be supposed that the Government and people of *Costa Rica* fail to respond to this friendly and loyal conduct, or willfully misinterpret it, this department thought that the governments were in perfect accord, as regards the ideas (and propositions) referring to the conclusion of a new treaty, and to the establishment of a provisional boundary which would enable the final decision to be calmly awaited. This belief has been confirmed by your excellency's letter, which I now answer; and in consequence, and according to the instructions of the vice-president of the Republic, I take pleasure in renewing to your excellency the invitation contained in my preceding note, as the Colombian Government desires the renewal of the treaties and the establishment of a provisional boundary.

As the two governments agree upon this point, there is absolutely no necessity for wasting time and money in concluding an arbitration treaty referring to the validity of former treaties, a thing entirely unnecessary, inasmuch as the Governments of *Colombia* and *Costa Rica* desire to ratify, without loss of time, those treaties.

Once ratified, there would be no object in discussing the theoretical question of the value of the renewed treaties.

Accept, etc.,

MARCO F. SUÁREZ.

Mr. Jiménez to Mr. Baker.

Doc. 395

MINISTRY OF FOREIGN RELATIONS OF COSTA RICA,
SAN JOSÉ, November 20, 1893.¹

MR. MINISTER: In reply to your courteous communication of September 1 and October 30 last, I have the honor to advise your excellency that the Government of *Costa Rica*, in a communication of the 19th instant, offered to the Government of *Colombia* to submit to arbitration the question of the validity of the convention of arbitration to solve the question of limits existing between both Republics, entered into respectively the 25th of December, 1880, and the 20th of January, 1886, by diplomatic representatives of both countries; this, however, not to prevent the high interested parties to negotiate through legations named for that purpose a treaty of limits of a new convention of arbitration, and to fix the provisional frontiers between both countries.

Having given you the views of my Government on this subject, I hope that your excellency will communicate them to the Government of the United States of America, which we confidently hope will exercise its good and most important friendly offices with that of the Republic of *Colombia* to that effect.

In conclusion, I beg to advise your excellency that your dispatch of September 1 had not been answered before this. The cause of this delay is that this ministry awaited a reply to a communication addressed to the ministry of foreign relations of *Colombia* on the subject of the present dispatch.

I am, etc.,

MANUEL V. JIMÉNEZ.

Mr. Jiménez to Mr. Suárez.

Doc. 396

DEPARTMENT OF FOREIGN RELATIONS,
COSTA RICA, *San José*, November 20, 1893.¹

MR. MINISTER: Amplifying the ideas contained in my note of the 18th of the present month, I have the honor to tell your excellency that this department has just received your excellency's

¹ Foreign Relations of the United States, 1894, p. 440.

¹ Foreign Relations, 1894, p. 182, 183.

dispatch of March 16, 1891, in reply to my Government's note proposing the adoption of a provisional frontier between *Colombia* and *Costa Rica*. Your excellency manifests in your letter the satisfaction with which your Government embraces the idea, but you state that the line which the "Castro-Valenzuela" treaty established is not acceptable to *Colombia*; and propose in its stead the river "*Doraces*," the mountain chain "*Las Cruces*," and the river "*Golfo*."

I have the honor to tell your excellency that the proposition you make is full of obstacles which render it entirely unacceptable, for it would leave on the side of *Colombia* territories which belong to *Costa Rica* not only by right, but by act. Moreover, the question would still remain in regard to the great extension of territory, referring, as the said limit line does, to places about which no two maps agree. The circumstance that the proposition of your excellency's Government was not acceptable to *Costa Rica*, and that, shortly after the receipt of your note of March 16, my Government learned that the "Colombian-Venezolana" boundary question had been settled by the Spanish Government, and that the said Government would immediately take up the boundary question between *Colombia* and *Costa Rica*, led my Government to suspend, as unnecessary, the discussion in regard to an agreement of a *statu quo*.

As the decision had almost been rendered, which would have definitely established the frontier line of our two countries, it was unnecessary to discuss longer a provisional arrangement which had only been commenced in the belief that the date of the final decision was exceedingly remote. Moreover, as the incident in regard to the validity of the time limit within which the Government of His Catholic Majesty was to try the boundary question between the two States according to the treaties in force, serves to prolong the decision in regard to the principal matter, my Government thinks that it would be very acceptable to appoint a Costa Rican or Colombian legation which could proceed to the business mentioned in my dispatch of the 18th of the present month.

I am, etc.,

MANUEL V. JIMÉNEZ.

Mr. Suárez to Mr. Jiménez.

Doc. 397

REPUBLIC OF COLOMBIA,
DEPARTMENT OF FOREIGN RELATIONS,
BOGOTA, January 12, 1894.¹

MR. MINISTER: Once more, and obliged by recent reports received by the Colombian Government, I have the honor earnestly to call your excellency's attention to the grave fact that *Costa Rica*, as is asserted, is performing jurisdictional acts on the right bank of the river *Sixaola*, which river, as that Government has admitted, is to mark the border line of the present possession of our two countries. If this fact is so, the Colombian Government making use of the right which is conferred upon it by the said admission, and complying with the common obligation which has for some time bound the two republics, namely, to respect the *status quo* of the international possession, will be obliged to proceed to positive acts in the defense of the inviolability of the said territory. It is not to be supposed, however, in view of the wisdom and fairness which distinguish your excellency's Government, that it will be necessary to proceed to such extremes. Wherefore, once again, I beg your excellency to do all in your power to stop that occupation, against which, to protect the interests of *Colombia*, I solemnly protest.

I also avail myself of this opportunity, Mr. Minister, to again call your excellency's attention to the need of completing as soon as possible as a practicable demonstration of incontestable force the adjustment of the provisional boundary between *Colombia* and *Costa Rica*. The mutual relations of the two States being so cordial and the inclinations being so sincere in favor of a final settlement of the boundary question by means of arbitration, it is evident that the complaints arising from the want of such temporary arrangement may have a pernicious effect upon these kind feelings.

I beg, etc.,

MARCO F. SUÁREZ.

¹ Foreign Relations, 1894, p. 184, 185.

Mr. Jiménez to Mr. Suárez.

REPUBLIC OF COSTA RICA,
DEPARTMENT OF FOREIGN RELATIONS,
SAN JOSÉ, February 13, 1894.¹

MR. MINISTER: I have had the honor to receive your excellency's communication of the 12th of last January, in which you call the attention of my Government to the fact that *Costa Rica* is committing jurisdictional acts upon the right margin of the "*Sixaola*," in violation of the *statu quo* in force between the two countries. Therefore, my Government, always jealous in regard to the fulfillment of its international duties, feels obliged to inform your excellency that it has not dictated any act in deterioration of the *statu quo*, and that in order to obtain the most accurate solution of this delicate matter, it has requested information from the respective authorities, and hopes that the Colombian Government will have the kindness to expressly state the acts which led to its reclamation, in order to proceed according to the dictates of justice and international law.

I have also the honor to inform your excellency that my Government has named two scientific commissions, one under the charge of Naval Capt. Don Eliseo Fradin, and the other under the charge of Don Enrique Pittier, the object of the first commission being to make a plan of the *Sixaola*, *Tarire*, *Tiliri* or *Tilorio*, of the *Yurquín*, tributary of the latter, known in *Colombia* under the name of *Dorado*, or *Doraces*, aside from other rivers and places of that locality, situated in Costa Rican territory; and the object of the second commission being to astronomically establish the position of the *Sixaola*, or be it, the point at which the *Tiliri* or *Tilorio* flows into the Atlantic, and the spot at which the latter joins the *Yurquín*, whose right bank is considered as the limit of the *statu quo*; and also of *Sipurio* or be it, *San Bernardo*, situated unquestionably in Costa Rican territory, and of other important places of that region.

The said commissions left this capital eight days before the receipt of your excellency's communications, I therefore do not believe that it could have referred to them; but I take this oppor-

¹ Foreign Relations, 1894, p. 190, 191.

tunity to inform your excellency that these commissions have been appointed for the study of the frontier territory. After the foregoing explanation, which is a guarantee of the fair dealing of my Government, I trust that the Colombian Government will be satisfied; and with the assurances of my high appreciation and distinguished consideration,

I remain, etc.,

MANUEL V. JIMÉNEZ.

Mr. McKinney to Mr. Gresham.

Doc. 399

No. 34.

LEGATION OF THE UNITED STATES,
BOGOTA, January 12, 1894.¹

SIR: I have the honor to acknowledge the receipt of your No. 32, of November 27, regarding the complaint of the Colombian minister that the tone of my communication, by which I transmitted your desire regarding the *Costa Rica* boundary question to the Colombian Government, was not in harmony with the spirit of the friendly relations existing between the two Governments. In communicating your instructions, I followed very closely the language of your letter, as you will see by the copy I enclose. I withdrew this letter at the request of the minister of foreign affairs, because he said he preferred to deal with the American legation on questions of this kind by private interviews. He said they desired the good services of the United States in urging *Costa Rica* to accept it, and promised to send a copy of the proposition to this legation before it should be forwarded to *Costa Rica*.

They failed to comply with seeming friendly promise, and we did not receive a copy until two weeks after its transmission to *Costa Rica*, when it had been published in the official organ of the Government.

I learned then that the Colombian Government did not wish to acknowledge the right of our Government to interfere in any way between two South American governments. I called the attention of the minister of foreign affairs to his failure to fulfill his promise, and politely intimated to him that his action in the matter, under the circumstances, was in the nature of a slight

¹ Foreign Relations, 1894, p. 180.

to the United States. He disclaimed any such intentions, and explained that on account of the great length of the document, and the time required to copy it, they had decided to wait for its publication before transmitting it to this legation. I am now convinced that his request for the withdrawal of my note was not inspired by the strong spirit of friendship which he professed, but through a desire to prevent any record being made of interference by the Department at Washington.

If there is any cause of complaint in this matter, it seems to me it should come from the Government of the United States.

I am, etc.,

L. F. MCKINNEY.

Mr. Jiménez to Mr. Suárez.

Doc. 400

REPUBLIC OF COSTA RICA,
DEPARTMENT OF FOREIGN RELATIONS,
SAN JOSÉ, February 12, 1894.¹

MR. MINISTER: I have had the honor to receive your excellency's letter, dated on the 4th of last January, in answer to the one sent by this department on the 18th of November, 1893, both referring to the boundaries between *Colombia* and *Costa Rica*, the solution of which matter would be of the greatest benefit to both States.

It was a great satisfaction to my Government to note in your excellency's letter that the illustrious Government of *Colombia* is animated by the same desires which that of *Costa Rica* has always entertained, in regard to the early termination of this matter in a just and decisive way, thus guaranteeing and strengthening more and more the friendly relations between the two countries, and at the same time eliminating obstacles which hinder the greater growth of their economical interests. It is likewise pleased that the Colombian Government agrees about the measures to be adopted, in order to realize in a just and friendly way that their common aspirations, viz, that the boundary question be settled by an arbitrational decision; and in the meantime that temporary limits be named, which will abolish all difficulties of

¹ Foreign Relations, 1894, p. 189, 190.

jurisdiction which might cool the spirit of cordiality which inspires the people and Governments that are neighbors and brothers.

As both Governments therefore agree upon the fundamental points in regard to the proceedings necessary to decide their lawsuit, it would seem conducive that the said points be put into practice; wherefore, the President of the Republic has instructed me to propose to your excellency's Government that it authorize—which *Costa Rica* will likewise do—its diplomatic representative in Washington to renew the convention of arbitration in regard to the final boundaries, and while this is being perfected, to celebrate a provisional boundary convention.

This proposition from my Government, as your excellency well knows, does not signify that my Government acknowledges the invalidity of the former boundary conventions, whose force has always been upheld, as the correspondence between this department and that under the worthy charge of your excellency will show, but its constant eagerness to facilitate the prompt solution of a lawsuit, the definite end of which interests greatly both republics.

Accept, etc.,

MANUEL V. JIMÉNEZ.

Mr. Rengifo to Mr. Gresham.

Doc. 401

LEGATION OF COLOMBIA,
WASHINGTON, February 22, 1894.¹
(Received February 23.)

SIR: When, in pursuance of the express instructions of my Government, I intended to make certain statements to the honorable Secretary of State relative to the boundary question pending between *Colombia* and *Costa Rica*, I learned with surprise that the U. S. Government was under the impression that my Government had not accepted the kind assurance of its friendly desire for the settlement of that dispute in accordance with the spirit of the treaty that was concluded to this effect, some years ago by the two countries, and I deem it my duty to dispel that erroneous

¹ Foreign Relations, 1894, p. 185, 186, 187, 188.

impression, which the course actually pursued by my Government is very far from justifying, as I hope to have the honor to show by means of a simple statement of what has taken place in connection with this matter.

The honorable American minister at *Bogota* addressed to the minister of foreign relations of the Republic a communication with the precise contents of which I am not familiar, but which I have good reason to presume contained an expression of the friendly desire of the U. S. Government for a settlement, by arbitration, of the differences in respect to boundaries which have existed for some time between my Government and that of *Costa Rica*. The aforesaid high Colombian functionary, being influenced by the most cordial feelings, personally solicited the Honorable Mr. McKinney to withdraw that note, it being his intention to discuss the case privately and confidentially, and by no means to act in a way that could offend a nation upon whose friendship the Government of *Colombia* places the high value which it deserves, and with which nation it earnestly desires to draw its relations constantly closer. The honorable American minister complied with the desire that had been expressed to him, and the point was taken into consideration in the manner proposed, to the satisfaction of both parties, its result having been an additional evidence of the special regard felt by my Government for that of the United States. In proof of this assertion, I take the liberty to quote the very language used by the Honorable Mr. McKinney in his note of October 2 to the minister of foreign relations. He there said:

“You will remember that some time ago I wrote you in regard to the *Costa Rican* boundary question. You personally requested that I withdraw my official letter, as you preferred to talk that question over privately. In deference to your wish I did so, and offered to ask the good services of my Government to urge the acceptance of your proposition by *Costa Rica*. You thanked me for my good will, and promised to send me an abstract of your proposition to *Costa Rica* before you transmitted a copy to the Government of *Costa Rica*, that I might present my Government with the same.”

I also quote the exact language used by the minister of foreign relations in replying to the Honorable Mr. McKinney in the

memorandum which accompanied his conversation of the 9th of the month aforesaid :

“On the 3d of August last the Government of *Colombia* received a note from the Government of *Costa Rica*, expressing the desire of that Government to conclude a new arrangement for the determination, by arbitration, of their common frontier. Some time afterwards the honorable legation of the United States expressed, in the name of its Government, a desire that the request of *Costa Rica* should be complied with. The Government, being influenced by its constant friendship for the United States, complied immediately and spontaneously with the desire expressed by the honorable legation. It was consequently verbally informed that *Colombia* would apprise *Costa Rica* that it was prepared to revive the treaty of arbitration, and it was likewise informed that this step was due in a great measure to the friendship of the Colombian Government for that of the United States. A promise was also made to the honorable legation to send it the written bases of the Colombian draft.”

As is seen, the agreement could not have been more complete, nor could the friendly offer of the U. S. Government have been more frankly and sincerely accepted; and if the bases of the Colombian draft were afterwards not sent to the honorable American minister before they were transmitted to *Costa Rica*, this was due to the fact that, as was remarked by the minister of foreign relations in the document referred to, “the principal effort was made by the Government of *Costa Rica*, and the collaboration by the U. S. Government. The natural course was to reply to *Costa Rica*, and send to the U. S. Government a copy of that reply, because a contrary course would have inverted the natural order of things.” This proceeding, which was fully justified, did, it is true, induce the honorable American minister to charge the minister of foreign relations with insincerity, the justice of which charge, in view of what has been stated, I leave to the consideration of the honorable Secretary of State. It is, however, to be remarked that the Honorable Mr. McKinney has never told the Government of *Colombia* that he considered the good offices of the United States as not having been accepted. He has, on the contrary, admitted that they were accepted, as appears from his aforesaid note, although a change in the form of the offer

was requested, which, if thoroughly examined, is rather an evidence of kindly cordiality, since the discussion of a case on intimate and confidential ground can not be regarded otherwise than as in indication of deference.

To the foregoing statement, which places the facts in their true light, I must add the most positive and solemn declaration that the Government of *Colombia* has gladly accepted the friendly offer of the United States in its boundary question with *Costa Rica*; that it regards this offer as being as important as it really is, and still further, that its consent to conclude a new treaty with that Republic for the determination of their common frontier by means of arbitration is due in a great measure to the feeling of special consideration and regard which it entertains for the United States.

I beg the honorable Secretary of State to permit me to avail myself of this occasion to remind him of the correctness of the attitude assumed by *Colombia* in its differences with *Costa Rica*, for my Government, which duly appreciates the moral value of the judgment of the United States, has specially instructed me to do so, and I will do it in very general terms, in order not to encroach too much upon your valuable time.

The Government of *Colombia* and that of *Costa Rica*, by the treaty of arbitration concluded between them December 25, 1880, and the additional treaty of January 20, 1886, agreed to settle their boundary dispute by arbitration, and to this end they appointed, in the first place, His Majesty Alfonso XII, and afterwards Her Majesty the present Queen Regent of Spain, as arbitrators. According to the treaties referred to, decision was to be pronounced within twenty months from the date of the acceptance of the office by the arbitrator, which acceptance took place on the 19th day of June, 1887, so that, according to the express letter of the agreement, his jurisdiction was to terminate February 19, 1889. The last-named day arrived, and the decision had not been pronounced, and the Government of *Colombia*, informed that of Spain, through the Spanish representative at *Bogota*, under date of October 9, 1891, that, since the term fixed for pronouncing a decision had long since expired, its jurisdiction was ended, in consequence of which the Government

of Her Majesty the Queen Regent of Spain declined to have anything further to do with the matter.

The Government of *Colombia* was induced to take this step by its sincere desire to prevent so important decision from being rendered null and void, and from giving occasion to the party that might deem itself injured for declining to accept it. It moreover desired to prevent the great labor which had been so kindly performed by the arbitrator from being wasted, which would doubtless have been a source of mortification to the latter. The uprightness of the purpose of the Government of *Colombia* is still further shown by the fact that it proposed, at the very outset, the revival of the lapsed conventions, its sole desire being that the boundary dispute should be finally settled, and that the decision by which it should be settled should be unassailable. My Government has been consistent in the view thus taken, in proof of which reference may be made to the correspondence between it and that of *Costa Rica* since the month of October, 1891, and it has constantly sought to bring about arrangements for the determination of a provisional boundary whereby conflicts of jurisdiction might be avoided.

If a final arrangement on this subject has not been reached sooner, this is the fault of *Costa Rica*, which has claimed that that boundary should be extended until it encroached upon the region to which *Colombia* has a very ancient right of possession, and which is governed by its laws. The contrast between the course pursued by each country is very noteworthy: *Colombia*, acting uprightly, keeps within the limits of its right; *Costa Rica*, on the other hand, constantly provokes dissensions by attempting to extend its jurisdiction farther than it is now authorized to do. Both nations should respect the *statu quo* established in 1881, which, for *Colombia*, is law, and for *Costa Rica* a dead letter. As a recent practical case, I may cite, in proof of the foregoing statement, the course pursued by the present Costa Rican minister of foreign affairs, Mr. Jiménez, who, four years ago, when he filled the same office, admitted that the river *Siraola* was the dividing line between the possessions of *Colombia* and *Costa Rica*, so that the eastern bank of that river belongs, incontestably, to *Colombia*, notwithstanding which, and in spite of the protests of the latter country, the Government of *Costa Rica*

continues to place authorities in that region, thereby abusing the patient and upright attitude of my Government.²

Fortunately, the time when these annoying differences must cease seems to be not far off. According to the last notes exchanged between the two Governments, there is a willingness on the part of both to conclude a new treaty, submitting their conflicting claims to arbitration, only that of *Costa Rica* desires that, when a new treaty is concluded, the validity of the old ones be submitted to arbitration, to which *Colombia* objects as being useless and illegal.

A new treaty is what the conditions of the dispute require, both because it is evident that the preceding ones have lapsed, and because provision may thereby be made that the decision that may be pronounced in consequence thereof shall be executed independently of the legislative action of each country, and that it shall determine what is necessary for the payment of the indispensable technical commissions that will have to trace the final boundary line. Recent and painful experience induces *Colombia* to pay special attention to these points, although they are apparently mere points of detail.

I will not close this note without declaring, in virtue of express authorization, that, if the decision of the arbitrator should adjudge to my Government control over the territories which it thinks belong to it, it would recognize the rights of private parties therein, and the transfers of actual ownership made by *Costa Rica*. Citizens of the United States or any other foreigners that have obtained concessions of unimproved lands, or who, for any other just cause, are the owners of lands, shall be maintained in possession thereof, since every valid title is to be respected.

Hoping that I have attained the friendly purposes which I had in view,

I have, etc.,

JULIO RENGIFO.

² Mr. Rengifo makes here a confusion between Mr. Manuel V. Jiménez and Mr. Manuel de J. Jiménez.

Report of the Minister of Foreign Relations of Colombia to the Congress. Sixaola and Punta Burica are Fixed as the Extreme Points of the status quo Line. Doc. 402

BOGOTÁ, 1894.¹

1. *Boundaries Between Colombia and Costa Rica.*
(Translation)

At your sessions of 1892 you were informed of the modifications introduced into the proceedings relating to our boundaries with our neighbors on the north, in consequence of the arbitration treaties having lapsed. The causes of such lapse could not be more weighty, if we look at the letter and spirit of the treaties, nor more worthy of consideration, in view of the necessity of removing all danger of inefficacy in so important a matter as that of our northern frontier.

To maintain that treaties which are void, or of very doubtful force, may serve as titles to extremely valuable rights, is to maintain that a question of this gravity may remain unsettled, or liable to future objections. If the admission of the lapse of the treaties involved the breaking off of all amicable negotiations concerning the pending dispute there would be some reason for claiming that those agreements, however defective, should continue to serve as a basis in this matter; but, as *Colombia* has declared her wish that they be renewed and amended, all claim to the contrary fails to be just or proper.

In the correspondence, which I have the honor to transmit herewith, is set forth in detail the course of these negotiations in the last phase which they have assumed. Our Government wishes the question of our boundary with *Costa Rica* to be settled in the manner prescribed by justice, to wit, by renewing and amending the treaties as experience demands, and at the time and place which may be most convenient to both countries.

It is desired that the treaties should contain stipulations relative to the practical execution of the award, to the costs of the litigation, to the enlargement of the powers which the arbitrator should have, to harmonize, as far as possible, the chief

¹ Foreign Relations of the United States, 1894, p. 193.

interests of the parties; and our Government, in acting in this way, is actuated by friendship toward *Costa Rica*, and acts in confidence of its rights, strengthened by new evidence.

The Costa Rican Government has at last assented to these proposals, as well as to that which has been made to it to fix upon a temporary boundary intended to put an end to the frequent complaints addressed to it by *Colombia* of the violations of the *status quo* to which both countries are pledged with respect to the possession of the zone now in dispute.

Complaints of this kind were mutual some time ago, owing to the surveys made by the Panama Canal Company in the districts adjacent to the *Almirante* Lagoon. The *San José* Government remonstrated at that time to the Colombian Government respecting the duties imposed by the *status quo* which had been agreed upon. The explanation on our part, however, were so candid and sincere that *Costa Rica* has not since found it necessary to make the slightest complaint of *Colombia's* proceedings.

This has not been the case with regard to our rights to present possession of a part of the zone in dispute. The authorities of *Panama* and *Bocas del Toro*, the periodical publications of the country, the documents published by *Costa Rica*, and respectable private individuals, are continually informing the Government that agents of the neighboring Republic, by what authority is not known, are committing acts of possession incompatible with the duties which have been expressly acknowledged.

On the Atlantic side, the Costa Rican Government has definitively admitted that the boundary of present possession is formed by the *Sixaola* River, so that it has no right to exercise acts of jurisdiction on the right bank of that river; but, notwithstanding this, Costa Rican agents or individuals have recently made surveys and drawn up maps on this side of the *Sixaola*.

On the Pacific side, the Costa Rican Government admitted, as far back as 1880, that it could not occupy territory situated on this side of *Punta-Burica*, for, at the demand of our Government, it vacated that territory in a manner which may be designated as solemn; and yet it has just been learned, through a perfectly reliable channel, that in that territory, exclusively under the jurisdiction of *Colombia*, colonists are settling, under the pro-

tection, as is asserted, of the *San José* Government and without the consent of the Colombian Government.

To these two species of violation of the *status quo* must be added another, which affects the whole boundary between the two countries. The Costa Rican Government recently published a geographical map of its territory in which its southern frontier does not even coincide with the extreme claims stipulated in the old treaties, but is drawn much farther this way than the straight line connecting *Punta-Burica* with *Escudo de Veraguas*, thus embracing a part of the Colombian territory which has not only been always under the jurisdiction and in the possession of the Republic, but forms a part of its undisputed territory.

These acts would not benefit *Costa Rica*, even if the arbitration treaties were in force, but would be prejudicial to her rights and interests, because they would prove, before the arbitrator, her disregard of indisputable and acknowledged duties. Notice having been given of the abrogation of those treaties, and *Costa Rica* being interested in their renewal, it is hard to understand why, at the very time that she is negotiating for such renewal, she puts an insuperable obstacle to it; for *Colombia* can not consent to the amicable act of fixing upon a temporary boundary and renewing compromise, until such irregularities have ceased.

This consideration has been the reason that the Colombian Government has hitherto confined itself to repeatedly calling the attention of the Government of the neighboring Republic (to these facts); and it has received from it the most satisfactory assurances in the sense asserted by *Colombia*. It is, however, to be presumed that the intentions of that Government have been thwarted by its agents, as several circumstances render it certain that the duties relative to the present possession of the disputed territory have not been thoroughly performed.

The theoretical statement of our rights and the protests against the violation of them have not, therefore, had the desired effect, and in this situation, the Vice-President of the Republic has instructed me to address to the Ministry of Government a communication setting forth the condition of affairs and the necessity of organizing at *Panama* two peaceful but active and efficient expeditions, to go, one to *Punta-Burica* and the other to *Sixaola*,

for the purpose of making an investigation at the principal points in those districts, in order to learn the state of things and to make the rectifications demanded by the rights of the Republic.

Doc. 403 **Convention Celebrated Between the Republics of Costa Rica and Colombia, November 4, 1896.**

The Republic of *Costa Rica* and the Republic of *Colombia*, desiring to put an end to the question of boundaries pending between them, and to reach a definitive territorial delimitation, have decided to put into effect, with the additions and modifications that are hereinafter stated, the conventions of arbitration which were celebrated in *San José de Costa Rica* on December twenty-fifth, eighteen hundred and eighty, by their Plenipotentiaries, Doctor Don José María Quijano Otero and Doctor Don José María Castro, and in Paris on the twentieth of January, eighteen hundred and eighty-six, by their Plenipotentiaries, Doctor Don Carlos Holguín and Licenciado Don León Fernández; and in order to realize such purpose have accredited as Plenipotentiaries:

The Government of *Costa Rica*, Señor Don Ascensión Esquivél, its Envoy Extraordinary and Minister Plenipotentiary in *Colombia*, and

The Government of *Colombia*, Señor General Don Jorge Holguín, Minister of Foreign Relations,

Who, after having exhibited their full powers and finding them in due form, have agreed upon the Articles following:

ARTICLE I.

The Conventions of arbitration which have been mentioned are declared to be in force, and they shall be observed and fulfilled with the modifications which are expressed in the Articles following:

ARTICLE 2.

The High Contracting Parties name as Arbitrator, His Excellency the President of the Republic of France; in the unexpected event that he shall not be pleased to accept, His Excel-

lency the President of the United States of *Mexico*; and in the event, equally unexpected, that the latter shall decline the duty, His Excellency the President of the Swiss Confederation, in all of whom the High Contracting Parties have without any distinction, the most unlimited confidence.

The High Contracting Parties hereby state that, if in declaring the arbitration conventions in force, they have not designated as Arbitrator the Government of Spain, which had previously accepted that duty, it has been because of the difficulty which *Colombia* has felt in requiring of that Government such continuous services, having recently signed with *Ecuador* and *Peru* a boundary treaty in which His Catholic Majesty was named as Arbitrator, after the laborious judgment upon the *Colombian-Venezuelan* frontier.

ARTICLE 3.

The acceptance of the first Arbitrator shall be requested within three months after the exchange of the ratification of the present Agreement is verified, and if because of the declination of any of the Arbitrators it should be necessary to apply to the one next in order, the request to accept shall be made within three months after the day on which notice of the declination was given to the Parties.

If the said three months should have elapsed without any of the Parties having solicited the acceptance, the one that may be present is authorized to request it, and the acceptance shall be as valid as if the two Parties had solicited it.

ARTICLE 4.

The arbitration shall proceed in conformity with the following rules:

Within the term of eighteen months, counted from the time when the acceptance of the Arbitrator shall be notified to the High Contracting Parties, the latter shall present to him their allegations and documents.

In order that the acceptance may have been duly notified to the Parties, so that they cannot allege ignorance of it, it is enough

that it be published in the official periodical of the nation of the Arbitrator.

The Arbitrator shall communicate to the Representative of each Government the allegations of the opposite party, within three months after their presentation, in order that he may rebut them within the course of the six months following.

The Arbitrator must pronounce his decision, in order that it may be valid, within the term of one year, counting from the date when the time granted for answering allegations shall have ended, whether they have been presented or not.

The Arbitrator may delegate his functions, provided that he does not fail to take part directly in the pronouncement of the definitive sentence.

The arbitral decision, whatever it may be, shall be held as a perfect and obligatory Treaty between the High Contracting Parties, and shall not admit of any recourse. Both Parties bind themselves to its faithful fulfillment, and renounce any claim against the decision, pledging thereto the national honor.

ARTICLE 5.

Articles 2 and 4 of the present Convention substitute Articles 2 to 6, inclusive, of the Convention of December twenty-fifth, eighteen hundred and eighty, and 1 and 4 of that of January twentieth, eighteen hundred and eighty-six. Excepting the modifications and additions stated, which must be complied with, the Conventions of arbitration already mentioned remain confirmed and in force in all their parts.

ARTICLE 6.

The present Convention shall be submitted to the approval of the Congress of *Colombia* at its present sessions, and of the Congress of *Costa Rica* at its next sessions, and shall be exchanged at *Panamá*, *San José de Costa Rica* or Washington, within the shortest possible time.

IN WITNESS WHEREOF the Plenipotentiaries sign and seal the present Convention, in *Bogotá*, the fourth of November, eighteen hundred and ninety-six.

(L. S.) ASCENSIÓN ESQUIVEL.

(L. S.) JORGE HOLGUÍN.

Correspondence Between the Minister of Costa Rica and the Minister of Foreign Affairs of the Republic of France. Doc. 404

Legation of Costa Rica.

PARIS, June 9, 1897.

MR. MINISTER:

I have the honor to bring to the knowledge of Your Excellency that, by a treaty signed at *Bogota* on November 4, 1896, the ratifications of which were duly exchanged at Washington during the past month, the Governments of the Republics of *Costa Rica* and *Colombia* agreed to submit to arbitration the question of territorial boundaries as to which they differ.

The Contracting Parties, believing that they could rely upon the friendly relations which exist between them and France, have designated His Excellency the President of the French Republic in the capacity of Arbitrator, and I have received orders from the Government of the Republic of *Costa Rica* to request that Your Excellency may be pleased to appeal to the good-will and impartiality of His Excellency M. Félix Faure to the end that he may consent to render to *Costa Rica* and *Colombia* the signal and inestimable service of accepting the post of Arbitrator.

Herewith I have the honor to forward to Your Excellency the Spanish Text and the French translation of the Treaty of *Bogota* of November 4, 1896, as well as an extract of all the articles actually in force from the several arbitration conventions concluded between the Republics of *Costa Rica* and *Colombia*, according to which the arbitral procedure should be regulated.

I also enclose a geographical map of the territory in litigation, upon which are indicated the boundaries claimed by each of the Contracting Parties.

Be pleased to accept, Mr. Minister, etc.

MANUEL M. DE PERALTA.

Ministry of Foreign Affairs:

Doc. 405

PARIS, June 16, 1897.

MR. MINISTER:

As I have had the honor to advise you, I did not fail to communicate to the President of the Republic the request submitted by your Government, that he accept the post of Arbitrator which had been assigned to him by the Arbitration Treaty, signed at *Bogota* on the 4th of November last, and the ratifications of which were exchanged between *Costa Rica* and *Colombia*.

I hasten to inform you that the President of the Republic has been pleased to consider favorably the request referred to and that he accepts the post of Arbitrator in the frontier dispute which is pending between your Government and the Republic of *Colombia*.

Accept, etc.

G. HANOTAUX.

Doc. 406

Ministry of Foreign Affairs.

PARIS, October 19, 1898.

MR. MINISTER:

In my letter of the 16th of June last I advised you that the President of the Republic had expressed his willingness, in accordance with the desire stated by your Government, to accept the post of Arbitrator in the frontier dispute which is now pending between the Republics of *Costa Rica* and *Colombia*.

Referring to that communication, I have the honor to let you know that M. Félix Faure has organized a special commission

charged with undertaking a preliminary examination of the documents which shall be presented by your Government in support of its claims against that of *Colombia*, and has appointed as members of that commission M. Roustan, former Ambassador of France, as Chairman; Messrs. Delavaud, Secretary of Embassy, Chief of the American Section of the Consular Bureau, M. Fouques-Duparc, Secretary of Embassy and Attaché of the Bureau of Political Affairs, and M. Gabriel Marcel, Keeper of the Maps in the National Library. These appointees met on the 2nd instant, in my Department, for the purpose of arranging the organization of their work.

I deem it my duty to remind you on this occasion that under the terms of Article 4 of the Convention entered into on the 4th of November last, between your Government and that of *Colombia*, the text of which was appended to your despatch of June 9th, the Cabinet of *San José* as well as that of *Bogota* undertook to furnish the documents relating thereto within a term of eighteen months, beginning on the day when they were notified of the acceptance by the Arbitrator.

I would be obliged if you will be pleased upon the receipt of the documents in question to see that the same are handed to M. Roustan, the Chairman of the above mentioned Commission.

Accept, etc.

G. HANOTAUX.

Extract from Autobiographical Memoirs of Don Lorenzo Montúfar.

Doc. 40

1898.¹

CHAP. LV. *Question of Boundaries with Colombia.*

Another important question I had to treat as Minister of Foreign Relations was that of boundaries with the *United States of Colombia*.

In order to understand this it will be necessary for me to state some of the antecedent facts.

¹ *Memorias autobiográficas de Lorenzo Montúfar. Guatemala, 1898.*

The first treaty entered into between *Colombia* and *Central America* was signed at *Bogota* on March 15, 1825.

It appears that the first Governor and Captain-General of *Costa Rica* was Diego de Artieda Chirinos. It also appears that the King of Spain designated as his jurisdiction: upon the North Sea, from the mouth of the River *San Juan* to the *Escudo of Veraguas*; upon the South Sea, from the River *Salto* or *Alvarado* as far as *Punta de Burica*. It further appears that down to the year 1803 all the dispositions of the Sovereigns of Spain tended to confirm the boundaries of *Costa Rica* traced for Chirinos upon the North Sea.

In one of the issues of the official periodical of *Costa Rica* for the year 1873 a long statement was published in the name of the Secretaryship of State which places in evidence this allegation.

Several times an effort was made to mark out the boundaries between *Costa Rica* and *New Granada*, afterwards the *United States of Colombia*.

General Pedro Alcántara Herrán, one of the personages of Spanish American Independence, presented himself in *Costa Rica* at the time when *Central America* was engaged in the struggle with Walker, offered his sword to fight the filibusters and made a small donation for the widows of Costarican soldiers who died in *Nicaragua*.

Herrán remained in *San José* during that campaign and there he celebrated with Joaquín Bernardo Calvo a boundary treaty which deviated from the line traced upon the map of Molina.

That treaty was ratified by the Congress of *Costa Rica*; but in *Bogota* modifications were made in it and ratifications were never exchanged.

Subsequently, Señor Doctor José María Castro went to *Bogota* in the capacity of an Envoy Extraordinary and Minister Plenipotentiary and made a boundary treaty with the distinguished Colombian Teodoro Valenzuela, which conformed very closely to the ideas of the said Valenzuela and those of Doctor Murillo, the President of *Colombia*, but did not agree at all with the views of many other persons in the Colombian administration. Valenzuela did not attempt to gain any territory for *Colombia*. He understood that *Colombia* had more territory than it needed;

much more than it could settle, and he proposed to follow out the principles of the Constitution of the *Río Negro*.

Consequently, it was stipulated that citizens of *Colombia* should be held in *Costa Rica* the same as Costaricans, and that citizens of *Costa Rica* should be considered in *Colombia* the same as Colombians; and that there should be in *Costa Rica* the same public liberties that were guaranteed by the Constitution of the *Río Negro*. This treaty, however, did not fix the boundaries as they were laid down upon the map of Molina, but they are a straight line drawn between *Punta de Burica* and the *Escudo de Veragua*.

Doctor Castro was unable to secure this line, notwithstanding the great disinterestedness evinced by Murillo and Valenzuela as to lands. He could not get it because it was not only traced across some settlements of Colombians but it left some of these upon the side of *Costa Rica*, and the Constitution of *Colombia* forbade the ceding of settlements.

Some of those settlements had been formed, notwithstanding the titles of Artieda Chirinos, because the population of *Colombia* had grown and extended while the Costarican population had not increased along that line.

To make up to *Costa Rica* what it lost, according to its standard, which was the map of Molina, those lines were drawn by trying to run them through vacant lands; but the treaty was left subject to ratification. Castro remained in *Bogota* struggling against adverse influences awaiting the ratification of the treaty by the Colombian Senate, but when his hopes were the brightest of obtaining that object an unfortunate event occurred to frustrate his plans.

There was a revolution in *Panama* in which some Costaricans took an active part.

This revolution produced an unfavorable effect in *Bogota*; a report was asked from Doctor Castro, who was unable to give it because he had no facts and was in complete ignorance of what was passing upon the *Isthmus*.

This failure to make an explanation was attributed by some to a want of sincerity and even to duplicity, so that the advantageous position the Minister had occupied was greatly impaired.

The ratification of the treaty was put off and Doctor Castro went back to *Costa Rica* where they were trying to get him elected as President of the Republic and that effort was successful.

Castro, although in power, would have had great difficulty in securing the ratification of the treaty in *Costa Rica*, because the articles relating to the propagation of political principles which ruled in *Colombia* were in conflict with the Constitution that was then existant in *Costa Rica*.

All the constitutions of *Costa Rica*, since the year 1825, had provided for the freedom of the press and some of them even went so far as to embrace anonymous communications, but subject to the penal laws; that is to say, providing against such as were insulting, slanderous, those that stirred up sedition or contrary to authority. The liberty of the Colombian press was absolute and it had no other restrictions than the weight of public opinion. The article relating to nationality of Costaricans and Colombians was opposed in *Costa Rica* by many persons, and especially by an emigrant from *Colombia*, an enemy of Murillo, Señor Obaldía.

It is said that his purpose was to flood *Costa Rica* with Colombians and later to convert it into a State of that Confederation. In the mean time, however, many Costaricans became alarmed and a portion of the Colombian press criticised the treaty, saying that the idea of presenting territory in exchange for principles could only have come from the head of Doctor Murillo.

Later the Government of *Colombia* sent to *Costa Rica* Doctor Antonio María Pradilla.

Guardia ruled provisionally and in the character of a Dictator.

Pradilla, it is said, had instructions not to begin any conferences as long as the dictatorship lasted, and it is probable this may have been so, because he continued for some time in the country without making any official utterance as regards boundaries.

He sought to gain the friendship of the President and was able to inspire him with confidence. He asked the Government of *Colombia* for permission to make a trip to Europe, and while in London he took part in a loan contract, which, under the in-

structions of Guardia, was to be used in relation to a railway that President then had in view.

Upon the return of Pradilla, although the fundamental law had not been put out, and the Colombian envoy refrained from officially holding conferences regarding boundaries, yet it is probable that he did talk over his mission with the President and understood that under his instructions and the attitude of *Costa Rica* it was impossible to come to any agreement.

The Congress of *Colombia*, for reasons of economy, cut down its Legations of the first class and sent to *Costa Rica* in the capacity of Minister Resident, General Buenaventura Correoso, who stood so high in *Panama* and in the rest of the Republic on account of the great influence he wielded upon the *Isthmus*.

Guardia then appointed me as Plenipotentiary to treat with Correoso, who quite the reverse of Pradilla immediately began conferences as to boundaries.

He did not wish to enter into prolix legal discussions. This led to the protocol or minutes of those conferences being very meagre, affording no light upon the palpitating question. Everything was done orally and very little was written down.

In order that Costaricans may know what was discussed verbally, I caused an article of some length to be published in the Official Gazette, which contained all the points presented by Felipe Molina in a very clear essay concerning boundaries, and many others that Molina did not then have before him and which are the result of a new and careful search of the archives of Seville, which General Guardia directed should be done. Notwithstanding this cumulation of documents and of proofs, Correoso was not willing to accept the straight line between *Punta de Burica* and the *Escudo de Veraguas*. He called attention to the fact that on the North, on the North-east, on the West and North-west of that line there were left Colombian settlements, fully organized and governed by the authorities and laws of *Colombia*; that the Constitution prohibited the Government from ceding settlements and that upon this point it was impossible to make any compromise.

It was very well understood that such were the instructions of General Correoso; but the justice of them was not understood.

Dominion is not acquired capriciously; it is obtained by virtue of just titles which transfer it.

This rule is a universal one, not in the Civil Law alone, but it is founded upon International Law and governs as an invariable principle the peoples of both hemispheres in their relations. In a civil society no individual can extend the bounds of his house or his estate over adjoining lands unless he proceeds under a title for that purpose, and precisely the same thing is true as regards one nation in respect to another.

Nations form a large society, of which they are the individual members, and the rules governing them are those established by International Law.

This, as well as the Civil Law, determines the titles transferring dominion, and if none of these exist no nation can acquire ownership over the territory of another.

States can acquire ownership by any of the methods that are employed by individuals. They may gain it by grant, purchase or exchange, by inheritance, prescription or occupation; they may secure it also by the right of conquest.

The titles vesting ownership in *Costa Rica* are those of Artieda Chirinos.

As regards the southern portion, the Sovereigns of Spain always and without exception sustained them, from Philip II down to Fernando VII.

It is deduced from this that the *Escudo de Veraguas* was considered as the limit between the Captaincy-General of Guatemala and the Vice-royalty of *Santa Fe* by Philip II, Philip III, Philip IV, Carlos II, Philip V, Luis I, Carlos III, Carlos IV, and Fernando VII.

This is clear. Then, who has modified those titles? They were not changed by the Royal Order of San Lorenzo, because that was not signed by the King, since neither Kingdoms nor Provinces in Spain were ever divided by Royal Orders; because that Royal Order had no other purpose than simply the guarding of the coasts that belonged to the same Sovereign; because it was not carried out; because the Sovereigns under or in virtue of it never laid a hand upon the Captaincy-General, and because *Colombia* itself so understands it today, inasmuch as it has never

molested *Nicaragua* nor *Honduras*, although the guarding of the coasts by that Royal Order of San Lorenzo was extended as far as the Cape of *Gracias á Dios*.

If the *Escudo de Veraguas* was recognized as a border point by the Sovereigns of the House of Austria and of Bourbon, down to the time of the independence, Spain did not modify those titles. The Federal Government of *Central America* understood it very well.

Indeed, it authorized Colonel Galindo to make a contract for colonization at *Bocas del Toro*, but *New Granada* drove him away by armed force, an action which neither the Government of *Costa Rica* nor that of the Federal administration considered as legitimate.

Such act was not a purchase, nor an exchange, nor a grant; it was not an inheritance, nor was it a prescription, neither was it an occupation, because an occupation is effected as to things of nobody, but the territory of a nation is not a thing of nobody in respect to another. Was it a conquest? Not for one moment can it be supposed that a Republic founded by Bolívar could undertake to conquer a sister Republic which had not offended it.

And even if this were not so, it would be necessary to call attention to the fact that territorial acquisitions obtained by force are not deemed legitimate, under the modern doctrines of International Law, until they are made legitimate by a treaty of peace.

The most celebrated acquisitions in our times have been those of Nice, Savoy, Milan, Venice, Alsace-Lorraine; but these were all confirmed by the treaties of Turin, Villafranca, Prague, Versailles and Frankfort; and *Colombia* can not cite in its behalf a single treaty which legitimizes the important portion of the Central American territory it has seen fit to occupy.

The Constitution of *Río Negro* did not permit the cession of Colombian settlements; but that very wise law could only have had application to pre-existing settlements, and not to settlements which were formed upon foreign territory and against the will of its owners.

Notwithstanding all this, General Correoso said that his instructions, founded upon the Constitution of *Colombia*, did not

permit him to discuss the line extending as far as the *Escudo de Veraguas*. When the negotiations reached that extreme it was necessary to give another turn to the ideas or else let diplomacy yield its place to artillery. Now it may be asked if *Costa Rica*, with 200,000 people, according to the calculation of Felipe Molina, or nearly 300,000 according to the mathematical computations based upon the number of men enrolled in the army of operations, could declare war against *Colombia*, with a population reaching three millions, according to the *Almanach de Gotha*.

A war with *Colombia* would be ruinous to *Costa Rica*.

It would be of no avail that Costaricans should repeat the prodigies of valor that shed so much glory upon them in their struggles against the filibusters in *Santa Rosa*, in *Rivas*, at the River *San Juan* and upon the Lake of *Granada*, for by the very numbers alone the chances would be against us.

True patriotism consists not in thinking ourselves greater than France or England, but in coolly and calmly estimating the resources of one's own country, so as not to launch it upon a disastrous war which could leave behind only ruin and ashes.

The population of *Costa Rica* is very much smaller than the population of *Colombia*.

Colombia is divided into nine States, of which *Magdalena*, *Bolívar* and *Panamá* have populations smaller than that of *Costa Rica*; *Tolima* has approximately the same; while the populations of *Boyacá*, *Antioquia*, *Cauca*, *Cundinamarca* and *Santander* are larger.

The revenues of *Colombia* amount to 3,114,619 pesos; while those of *Costa Rica* are 2,379,432.

A comparison of these two amounts speaks very loudly in favor of *Costa Rica*.

It is very remarkable that the difference in the revenues between two nations, one of which has 300,000 inhabitants and the other 3,000,000, should only be 735,187 pesos. This shows that the people of *Costa Rica* are very industrious, taken in connection with topographical conditions almost without a parallel as to territory. In the sum of the Colombian revenues the amount of 168,750 pesos was included which was produced by the Panama Railroad.

The exportation from *Costa Rica* in the year 1876 to 1877 amounted to 5,307,406 pesos, of which 300,000 were exported by the Atlantic and the rest through *Puntarenas*.

The total exports of the *United States of Colombia* during the same period were 9,983,386 pesos. It is amazing that the excess of its exports over those from a country of 300,000 inhabitants should not be at least double.

Following the same proportion the exports of *Costa Rica* would be enormous if it had as large a population as *Colombia*.

To launch a country into war when it is occupying so advantageous a position, ruinous to its industry and its commerce, could only be the result of an extreme necessity, not thus far arrived with respect to *Costa Rica*.

These statistical enumerations may be verified by the *Almanach de Gotha*, which is the statistical guide for both hemispheres.

Colombia goes on settling toward the Northwest of *Costa Rica* and its population advances day by day. Where will it get to in the course of a few years? What will future generations say of us, if by a mistaken estimate their territory is left in great part mutilated?

All these considerations impelled the Government of *Costa Rica* to fix a line which, starting from the shores of the Pacific Ocean at the *Punta de Burica*, at $8^{\circ} 40\frac{1}{2}'$ West longitude from the meridian of *Bogota*, and $8^{\circ} 18'$ North latitude, shall run straight by the tops of the peaks from that *Punta* until it touches the source of the River *San Bartolomé*, which is found at $8^{\circ} 43\frac{1}{2}'$ longitude West of the meridian of *Bogota*, and at 82° North latitude; from thence it ought to be drawn straight across the cordillera until it reaches the sources of the River *Bananos*, at $8^{\circ} 26\frac{1}{2}'$ West longitude from the meridian of *Bogota*, and $8^{\circ} 54\frac{1}{2}'$ North latitude, and from this point following the course of that river until it empties into the *Bay of Almirante*.

This treaty, which I had no hesitation in signing, left to *Costa Rica* a portion of the *Bay of Almirante* and the free use of all of it.

It was necessary that, as Minister of Foreign Relations, I should make a report of it to the Congress and I did so; but I did not make the report in such formal fashion that it could be ratified or amended.

The reasons for my action I could not explain to them at that time; but I subsequently submitted them and I will repeat them now.

One of the most serious difficulties in the way of public men is that of not being able to explain to the nation the ideas that they hold and the purposes they have in view at different periods in their career.

If I had made a report of the treaty to the Congress and it should have been ratified by it, without being ratified by *Colombia*, the treaty would have been left without any legal effect; but it would have been of great harm to *Costa Rica*, because in subsequent conferences between their plenipotentiaries that treaty would have been a very strong argument in favor of the diminution of Costarican territory.

The new Colombian plenipotentiary would then have said: "The Republic properly represented in its Congress gave up the *Escudo de Veraguas*, which proves that it has no right to the exaggerated line of Molina."

That argument could not be made if the treaty was left without ratification by the Congress of *Costa Rica*; because then it went no further than the simple action of two plenipotentiaries.

All these difficulties would be avoided if the treaty were presented to the Congress after it had been ratified by *Colombia*, but as the latter nation never did ratify it, I made no report of it to the Congress of *Costa Rica*.

REPUBLIC OF COLOMBIA.

Report of the Under Secretary of Foreign Relations in Charge of the Department to the Congress of 1898. Doc. 408

Published at Bogota. Print of Luis M. Holguín.

CHAPTER III.

COSTA RICA.

Boundary Arbitration.

In 1891 the Colombian Government stated to that of Spain, which had been designated as the Arbitrator to decide the boundary litigation between *Colombia* and *Costa Rica*, that the term within which the sentence could legally be pronounced had come to an end and that it was necessary therefore to make a new agreement by which the respective jurisdiction which had already terminated should be again delegated. This statement was not made in order to prevent the old and vexatious question of boundaries with our neighbor from attaining a definitive settlement, but, rather, with the honest purpose of avoiding the pronouncement of a sentence the basis of which might not be a solid one, and which, for this reason, might be susceptible of subsequent discussions. The conduct observed afterwards by the Government is a token of the perfect loyalty with which it acted upon adopting that resolution, which was received by the Cabinet of *San José* with evident grief. To the advances made afterwards by *Costa Rica* through a Plenipotentiary appointed to treat on the question of limits, *Colombia* has answered in a generous manner by accepting the renewal of the former Conventions of arbitration, without any substantial modification. You have approved by means of Law 71, of 1896, this act of the Government which is the best token of deference that *Colombia* could give to *Costa Rica*. The lapse of the Convention made in *San José*, in 1880, and of the additional one signed at Paris in 1886, having been declared, and the Arbitrator having been discharged of the duty of fulfilling his commission, *Colombia*

was quite free to refuse to sign another Convention if *Costa Rica* would not limit the purview of its claims involving territories that belong to *Colombia* by virtue of clear titles and uninterrupted possession, territories that, on the other hand, have great riches and a brilliant future. The spirit of American brotherhood was on this occasion stronger than any interested consideration—a case not rare in the history of our diplomacy.

The most important modification introduced in the Convention was the designation of the arbitrator, who is the President of the Republic of France, and in his default, the Presidents of the United States of *Mexico* and the Swiss Confederation, respectively. Upon making this change it was stated by petition of *Colombia* that if “the High Contracting Parties have not designated as arbitrator the Government of Spain, which had previously accepted the duty, it has been because of the difficulty which *Colombia* has felt in requiring of that government such continuous services, having recently signed with *Ecuador* and *Peru* a boundary treaty in which His Catholic Majesty was named as Arbitrator, after the laborious judgment upon the Colombian-Venezuelan frontier.” *Colombia* was aware that the Government of Spain, on account of its deferential kindness toward the Spanish American Republics, would have accepted the renewal of its powers and would have pronounced a sentence inspired by the principles of equity and justice which are traditional in the Fatherland of Alfonso the Wise; but it considered that it should not overstep the bounds of friendship by having recourse to the same Power for the decision of several and complicated differences of an international character. The circumstance of not having used at this time the good will and the highly esteemed services of the Spanish Government does not diminish in the least the gratefulness towards the Mother Country, which has given to us so many other tokens of the keen interest with which it looks upon the fate and prosperity of the Republic.

His Excellency, the President of the Republic of France, having been required by the Parties, according to what was stipulated in the Convention, deigned to accept the charge of arbitrator, giving a conspicuous token of friendship to both Republics. The Minister of Foreign Affairs, M. Hanotaux, notified our Minister

in France, of this acceptance, on May 17 of last year; and by a subsequent note of October 19th he communicated to him the appointment of a technical commission charged with the study of the matter and composed of Messrs. Roustan, former Ambassador to Spain, as President; Delavaud, Secretary of Embassy and Chief of the Section of America in the Board of Consulates; Fouques-Duparc, attached to the Board of Political Affairs, and Gabriel Marcel, Custodian of Maps in the National Library, all of them persons deserving the highest confidence on account of their learning, integrity and honorable profession. The report that they will submit to the consideration of the arbitrator will be, without any doubt, the faithful expression of truth and justice.

Our Minister, Señor Betancourt, who has studied at length our boundary questions and who cleverly managed the interests of the Republic in the boundary litigation with *Venezuela*, is working with his usual activity in gathering whatever documents may be useful for the preparation of the *alegato* which probably will be written by one of the most renowned jurisconsults and statesmen who are the honor of Spain. On its part the Government, desirous of adopting all means available to substantiate our rights, entrusted several years ago, to Señor Dr. Don Francisco de Paula Borda who is so distinguished as a specialist in this class of studies, the preparation of a memorandum that should contain the fruits of his years of investigation. This memorandum, which has achieved the proportions of an extensive work, is now in print, and, from the abundance of historical documents it contains, illuminated by important observations, it will be a source of information to be consulted by all who have to participate in the examination and decision of this delicate matter.

Lately there has been forwarded to Señor Betancourt a large collection of documents gathered by Dr. Don José T. Gaibrois who is as industrious as he is able.

We must hope that the award of France will be in favor of *Colombia*. The attorneys for *Costa Rica* have a large number of volumes of documents, published a long time ago, by means of which they try to shelter the claims of their Fatherland. But such documents, though interesting from the standpoint of his-

tory, have but scant legal value in this controversy; they have not the necessary force to invalidate the legal titles exhibited by *Colombia*, and under the shelter of which it has populated and colonized the best part of the territory in dispute, given impulse to industry and commerce and planted the seed of a large future prosperity.

Doc. 409 **Señor Peralta to the Minister of Foreign Affairs of the Republic of France.**

LEGATION OF COSTA RICA.

PARIS, September 11, 1899.

MR. MINISTER: I have had the honor to receive the letter of Your Excellency, under date of the 16th of September instant, by which you are pleased to inform me that you have forwarded to Monsieur Betancourt, Minister of Colombia, the *Réplique* (Reply) of the Republic of *Costa Rica* to the *Exposé* (Statement of the Case) of *Colombia*, and I hasten to advise Your Excellency of the receipt of the copy of the Memorial submitted by M. Betancourt in support of the claims of his Government, which you desired me to get in exchange.

I shall be very obliged to Your Excellency for communicating to the Minister of *Colombia* the volume of documents appended to the *Réplique*, as has been done without exception with each item presented by *Costa Rica* to the Arbitrator.

At this time I think that I ought to inform Your Excellency that since the 16th of December last, *Costa Rica* has delivered to the representatives of the opposing party, duly printed, all the documents and geographical charts upon which it bases its claims or which can contribute to the clearing up of the question. On the other hand, it has received from *Colombia* nothing but the *Exposé* signed by M. Silvela, and has not been able to obtain anything more up to this time, not even a list of the manuscript documents submitted to the Arbitrator by *Colombia*.

With your eminent impartiality, Your Excellency can easily understand the unequal situation in which *Costa Rica* is placed under these conditions and I shall be much obliged if you will interpose your good offices in order to have M. Betancourt for-

ward to me at least one copy of all the documents presented to the Arbitrator by *Colombia*, or proceed to a reciprocal exchange of a certain number of copies of those documents.

Be pleased to accept, Mr. Minister, the expressions of my highest consideration.

MANUEL M. DE PERALTA.

Ho His Excellency, Monsieur Delcassé, Minister of Foreign Affairs of the Republic of France.

The Minister of Costa Rica to Ambassador Roustan, Chairman of the Arbitration Commission, Protesting for the Failure to Communicate to Him the Documents of Colombia.

Doc. 410

LEGATION OF COSTA RICA.

PARIS, July 24, 1900.

MR. AMBASSADOR :

* * * * *

I also take this occasion to observe to your Excellency that up to this date the Republic of *Costa Rica* has not received any communication, official or otherwise, of the printed volume of documents, translated and annotated by *Colombia*; neither has it received a list of those documents, nor the estimations of documents ordered by the Republic of *Colombia* and consequently interested.

Be good enough to accept, Mr. Ambassador, the expressions of my highest consideration.

MANUEL M. DE PERALTA.

His Excellency, M. Théodore Roustan,
Ambassador of France.

Ambassador Roustan to Minister Peralta.

Doc. 411

PARIS, August 3, 1900.

MR. MINISTER :

Referring to the terms of the document of the action of the Commission of November 25th, 1889, annexed to my letter of the 29th of the same month, I have the honor to inform you that, at the session of July 31st last, the Commission agreed with unanimity that the documents presented by the parties interested

were amply sufficient to illustrate their views. Therefore it thought there was no room for arguments or verbal explanations.

Accept the assurances of the high consideration with which I have the honor to be, Mr. Minister, your very humble and obedient servant.

TH. ROUSTAN.

To Señor Peralta,
Minister of Costa Rica in Paris.

Doc. 412 **Minister Peralta to the Minister of Foreign Relations of
Costa Rica.**

Legation of
Costa Rica.

PARIS, August 2, 1900.

SIR,

I have the honor to hand you herewith a translation of the note of M. Roustan, dated yesterday, in which he states that the Commission for the examination of the question of boundaries, which is pending between *Costa Rica* and *Colombia*, met July 31st last, and agreed that, the documents presented by the parties to illustrate their views being amply sufficient, there was no room for verbal arguments or explanations.

I know, moreover, that the work of the Commission is coming to an end and that by the middle of this month of August its report will be presented to the President of the Republic, leaving M. Loubet an entire month to personally study the matter and prepare his decision.

The Commission has taken note of my communication of July 24th last and is examining the explanations and documents which I presented in the form of a book, with the title of "La Géographie historique et les Droits territoriaux de Costa-Rica."

Tomorrow it will meet once more to discuss and deliberate.

I have the honor to reiterate to you the expressions of my highest consideration.

MANUEL M. DE PERALTA.

The Minister of Foreign Relations of the Republic of Costa Rica.

Award of the President of France.

Doc. 413

RAMBOUILLET, September 11, 1900.

WE, THE PRESIDENT OF THE REPUBLIC OF FRANCE, Arbitrator by virtue of the Treaty signed November 4, 1896, at *Bogota*, by the Republics of *Colombia* and *Costa Rica*, an act which has conferred upon Us as full powers to indicate, according to the principles of law and historical precedents, the demarcation of boundaries that should take place between the two States above mentioned.

Having taken cognizance of all the documents furnished by the parties to the cause, and especially:

1. In that which concerns *Colombia*:

Of the Exposé of Don Francisco Silvela, Advocate of the Legation of *Colombia* in Spain;

Of the second and third Memorandums, presented in the name of the Republic of *Colombia* by M. Poincaré Advocate of the Court of Appeals of Paris;

Of an Opinion of M. Maura, Deputy in the Spanish Courts, President of the Royal Academy of Jurisprudence of Madrid, on the question of limits between *Colombia* and *Costa Rica*;

Of another opinion of M. M. Dr. Simón de la Rosa y López, professor of political law at the University of Seville and his collaborators;

Of the chronological summary of the territorial titles of *Colombia*;

And numerous geographical charts and texts, as well original as translated and annotated, sent to Us by the Representative of *Colombia*, specially accredited to Us for the present litigation;

2. In that which concerns *Costa Rica*:

Of the works of M. Manuel M. de Peralta, Envoy Extraordinary and Minister Plenipotentiary of that Republic at Paris, entitled:

"Límites de Costa Rica y Colombia,"

"Costa Rica y Costa de Mosquitos,"

"Jurisdiction territoriale de Costa-Rica,"

Of the Exposé of the territorial titles of the Republic of *Costa Rica*;

Of the reply to the Exposé of the Republic of *Colombia*:
(Réplique à l'Exposé de la République de Colombie);

Of the *Atlas histórico-geográfico de Costa Rica, Veragua y Costa de Mosquitos*;

Of the volume of Señor Peralta: "Géographie historique et Droits territoriaux de Costa Rica,"
etc., etc.,

And in general, of all things and all decisions, *capitulaciones*, royal orders, provisions, royal cédulas and laws, issued and promulgated by the ancient Spanish Monarchy, absolute sovereign and free disposer of the territories which later formed part of the two Republics;

Having proceeded to a minute and searching study of the said acts, submitted to Us by the parties, especially: of the Royal *Cédulas* of July 27, 1513, and September 6, 1521, of the Royal *provision* of April 21, 1529, of the Royal *cédulas* of March 2, 1537, January 11 and May 9, 1541, January 21, 1557, February 23, and July 18, 1560, August 4 and 9, 1561, September 8, 1563, June 28, 1568, and July 17, 1572, of the *capitulación* of Pardo of December 1, 1573, of the *Recopilación de las Leyes de Indias* of 1680, and particularly of laws IV, VI and IX of this collection; of the Royal *cédulas* of July 21 and November 13, 1722, August 20, 1739, May 24, 1740, October 31, 1742, and November 30, 1756; of the different instructions emanating from the Spanish Sovereign and addressed as well to the superior authorities of the Vice-royalty of *Santa Fé* as to those of the Captaincy-general of *Guatemala* during the course of the 18th century and in the following years; of the Royal orders of 1803 and 1805 and of the stipulations of the treaty concluded in 1825 between the two independent Republics, etc., etc.

And, conscious of the importance of our high mission, as well as of the very great honor which has been done Us in being chosen as Judge in the present dispute, and having neglected nothing to enable Us to render an exact reckoning of the value of the titles invoked by the one and the other of the two countries;

WE DECIDE:

The frontier between the Republics of *Colombia* and *Costa Rica* shall be formed by the counterfort (contrefort) of the Cordillera which starts from Cape *Mona*, on the Atlantic Ocean, and closes on the North the valley of the River *Tarire* or River *Sixola*; thence by the chain of the watershed between the Atlantic and the Pacific to about the ninth parallel of latitude; it shall then follow the line of the watershed between the *Chiriquí Viejo* and the affluents of *Golfo Dulce*, ending at *Punta Burica* on the Pacific Ocean.

As to the islands, groups of islands, islets and banks, situated in the Atlantic Ocean, in proximity to the Coast to the East and to the South-East of *Punta Mona*, these islands, whatever be their number and extent, shall form part of the domain of *Colombia*. Those which are situated to the West and to the North-west of the said Point (*Punta*) shall belong to the Republic of *Costa Rica*.

As to the islands more distant from the continent and included between the *Coast of Mosquitos* and the *Isthmus of Panama*, namely: *Mangle Chico*, *Mangle Grande*, *Cayos de Alburquerque*, *San Andrés*, *Santa Catalina*, *Providencia*, *Escudo de Veragua*, as well as all other islands, islets and banks, held by the ancient Province of *Cartagena*, under the denomination of *Cantón de San Andrés*, it is understood that the territory of these islands, without any exception, shall belong to the *United States of Colombia*.

On the side of the Pacific Ocean, *Colombia* shall likewise possess, starting from the islands of *Burica* and comprising them, all the islands situated to the East of the Point of the same name; those that are situated to the West of that Point being assigned to *Costa Rica*.

Done at Rambouillet, in duplicate, September 11, 1900.

(L. S.)

ÉMILE LOUBET.

Original Text of the Loubet Award.

Nous, Président de la République Française,

Arbitre, en vertu du traité signé le 4 Novembre 1898, à Bogota, par les Républiques de Colombie et de Costa-Rica, acte qui Nous a conféré pleins pouvoirs en vue d'apprécier, suivant les principes de droit et les précédents historiques, la délimitation à intervenir entre les deux États susnommés.

Ayant pris connaissance de tous les documents fournis par les parties en cause, et notamment :

1° en ce qui concerne la Colombie :

de l'Exposé de Don Francisco Silvela, Avocat de la Légation de Colombie en Espagne ;

des deuxième et troisième Mémoires, présentés au nom de la République de Colombie par M. Poincaré, Avocat à la Cour d'Appel de Paris ;

d'une consultation de M. Maura, Député aux Cortès Espagnoles, Président de l'Académie Royale de Jurisprudence de Madrid, sur la question de limites entre la Colombie et le Costa-Rica ;

d'une autre consultation de M. M. le Dr. Simón de la Rosa y López, professeur de droit politique à l'Université de Séville et ses collaborateurs ;

du Résumé chronologique des titres territoriaux de Colombie ;
et de nombreuses cartes géographiques et textes, tant originaux que traduits et annotés, à Nous remis par le Représentant de la Colombie, spécialement accrédité auprès de Nous pour le litige actuel ;

2° en ce qui concerne le Costa-Rica :

des ouvrages de M. Manuel M. de Peralta, Envoyé Extraordinaire et Ministre Plénipotentiaire de cette République à Paris, intitulés :

"Límites de Costa Rica y Colombia",

"Costa Rica y Costa de Mosquitos",

"Jurisdiction territoriale de Costa-Rica",

de l'Exposé des titres territoriaux de la République de Costa-Rica ;

de la Réplique à l'Exposé de la République de Colombie ;
de l'Atlas Histórico Geográfico de Costa Rica, Veragua y Costa
de Mosquitos ;

du volume de M. de Peralta : "Géographie historique et droits
territoriaux de Costa-Rica" ;

et, en général, de tous et toutes décisions, capitulations, ordres
royaux, provisions, cédules royales, lois, édictés et promul-
gués par l'Ancienne Monarchie Espagnole, souveraine absolue et
libre dispositrice des territoires qui ont fait partie, dans la suite,
des deux Républiques ;

ayant procédé à une étude minutieuse et approfondie des dits
actes, à Nous soumis par les parties, notamment : des cédules
royales de 27 Juillet 1513, du 6 Septembre 1521, de la provision
royale du 21 Avril 1529, des cédules du 2 Mars 1537, des 11
Janvier et 9 Mai 1541, du 21 Janvier 1557, des 23 Février et 18
Juillet 1560, des 4 et 9 Août 1561, du 8 Septembre 1563, du 28
Juin 1560, du 17 Juillet 1572, de la Capitulation du Pardo du
1er Décembre 1573, de la Recopilación de las Leyes de Indias, de
1680, particulièrement des lois IV, VI y IX de ce recueil, des
cédules royales des 21 Juillet et 13 Novembre 1722, du 20 Août
1739, du 24 Mai 1740, du 31 Octobre 1742, du 30 Novembre
1756, des différentes instructions émanant du Souverain Espagnol
et adressées tant aux autorités supérieures de la Vice-Roy-
auté de Santa-Fé qu' à celles de la Capitainerie Générale de
Guatémala au cours du XVIII siècle et dans les années suivantes ;
des ordres royaux de 1803 et 1805, des stipulations du traité
conclu en 1825 entre les deux Républiques indépendantes ; etc.,
etc.,

et, conscient de l'importance de Notre haute mission ainsi que
du très grand honneur qui Nous a été fait d'être choisi comme
Juge dans le présent débat, n'ayant rien négligé pour Nous rendre
un compte exact de la valeur des titres invoqués par l'un et
l'autre des deux pays ;

Arrêtons :

La frontière entre les Républiques de Colombie et de Costa-
Rica sera formée par le contrefort de la Cordillere qui part du
Cap Mona sur l'Océan Atlantique et ferme au Nord la vallée du
Rio Tarire ou Rio Sixola, puis par la chaîne de partage des eaux

entre l'Atlantique et le Pacifique, jusgu' à par 9° environ de latitude; elle suivra ensuite la ligne de partage des eaux entre le Chiriqui Viejo et les affluents du Golfo Dulce, pour aboutir à la Pointe Burica sur l'Océan Pacifique.

En ce qui concerne les îles, groupes d'îles, îlots, bancs, situés dans l'Océan Atlantique, à proximité de la côte à l'Est et au Sud-Est de la Pointe Mona, ces îles, quels que soient leur nombre et leur étendue, feront partie du domaine de la Colombie.

Celles qui sont sises à l'Ouest et au Nord-Ouest de la dite Pointe, appartiendront à la République de Costa-Rica.

Quant aux îles plus éloignées du continent et comprises entre la Côte de Mosquitos et l'isthme de Panama, nommément: Mangle-Chico, Mangle-Grande, Cayos-de-Alburquerque, San-Andrés, Santa-Catalina, Providencia, Escudo-de-Veragua, ainsi que toutes autres îles, îlots et bancs relevant de l'ancienne province de Carthagena sous la dénomination de Canton de San-Andrés, il est entendu que le territoire de ces îles, sans en excepter aucune, appartient aux États-Unis de Colombie.

Du côté de l'Océan Pacifique, la Colombie possédera également à partir des îles Burica, et y compris celles-ci, toutes les îles situées à l'Est de la Pointe du même nom, celles qui son sises à l'Ouest de cette pointe, étant attribuées au Costa-Rica.

Fait à Rambouillet, en double exemplaire, le Onze Septembre 1900.

(L. S.)

EMILE LOUBET.

Doc. 415 **Minister Peralta to the Minister of Foreign Relations of Costa Rica.**

LEGATION OF COSTA RICA.

PARIS, September 14, 1900.

SIR,

* * * * *

I ought to add that, contrary to the spirit of the Art. 4 of the Treaty of *Bogota*, the Arbitration Commission received a third Memorandum from M. Poincaré and two others besides, carefully hiding their existence from this Legation, notwithstanding my reiterated demands.

The Treaty of *Bogotá* did not provide for any more Memorandums than those that should be presented six months after the delivery of the first allegations, and equity demands that, in case of the presentation of any Memorandum later, it should be turned over or reasonable information of it given to the other side.

Nothing of this kind has been done, nor notwithstanding my constant offers for that purpose have I been called upon by the Commission to give explanations.

* * * * *

MANUEL M. DE PERALTA.

The Minister of Foreign Relations of the Republic of Costa Rica.

The Minister of Foreign Affairs of France to Minister Peralta. Doc. 416

PARIS, September 18, 1900.

MR. MINISTER:

In the third paragraph of the disposing part of the Arbitral Award rendered by the President of the Republic on the 11th instant, referring to the delimitation between *Colombia* and *Costa Rica*, the words "Etats-Unis de Colombie" have been used to designate the Republic of *Colombia*.

In the name of the Arbitrator I have the honor to make known to you, in order to avoid any confusion in the future, that those two appellations must be considered as synonymous in the award referred to and that they both apply equally to the Colombian State.

Please accept the assurance of the high consideration with which I have the honor, Mr. Minister, to be your most humble and obedient servant,

DELCASSE.

Doc. 417 Minister Peralta to the Minister of Foreign Affairs of the
Republic of France.

Legación
de
Costa Rica.

PARIS, September 26, 1900.

MR. MINISTER:

I have the honor to acknowledge receipt of Your Excellency's letter of September 18th, by which you have been pleased to inform me that the words "Etats-Unis de Colombie" used in the third paragraph of the disposing part of the arbitral award rendered by His Excellency the President of the Republic of France on the 11th instant, referring to the delimitation between *Costa Rica* and *Colombia*, must be considered as being applied to the Republic of *Colombia* or to the Colombian State.

I seize this opportunity to respectfully remind Your Excellency and through you, His Excellency, the Arbitrator, that by my letter of June 9, 1897, I remitted to Your Excellency a copy and translation of all the articles in force of the various arbitral conventions concluded between the two States, and under which the arbitral procedure should be governed.

Article III of the additional Convention of Paris, of January 20, 1886, is thus understood:

"The arbitral sentence must be confined to the disputed territory situated between the extreme boundaries already established; and it shall in no way affect the rights which a third party who has not intervened in the arbitration might be able to allege to the ownership of territory comprised between the boundaries indicated."

As the islands lying at a distance from the continent comprised between the *Mosquito Coast* and the *Isthmus of Panama*, that is, *Mangle Chico*, *Mangle Grande*, *Cayos de Albuquerque*, *San Andrés*, *Santa Catalina*, *Providencia* and others situated to the north of the 11th degree of North latitude and to the east of the *Mosquito Coast*, to which reference is made in the third paragraph of the disposing part of the sentence, were not embraced within the jurisdiction of the ancient province of *Costa Rica*, this Republic has not made of them a subject of litigation and they

have remained as far as *Costa Rica* is concerned, wholly outside the controversy submitted to the judgment of His Excellency the Arbitrator.

I beg that Your Excellency may be pleased to take note of this observation since the Republics of *Costa Rica* and *Colombia* the only parties in interest in this litigation, are bound by the aforesaid Article III of the Convention of Paris, and for all there is of right.

Please accept, Mr. Minister, the expression of my highest consideration.

MANUEL M. DE PERALTA.

**The Minister of Costa Rica to the Minister of Foreign
Affairs of the Republic of France.**

Doc. 418

Legation of Costa Rica.

PARIS, September 29, 1900.

MR. MINISTER,

Wishing to avoid all possible misunderstandings respecting the intended meaning of His Excellency, the President of the Republic of France, the arbiter in the boundary controversy between the Republic of *Costa Rica* and *Colombia*, as set forth in the Award which he was pleased to make on the 11th of the present month, I have the honor to come before and respectfully inform Your Excellency that the Government of *Costa Rica* interprets the first paragraph of the disposing part of that decision as follows:

"The frontier between the Republics of *Colombia* and *Costa Rica* shall be formed by the counterfort (contrefort) of the range of mountains beginning at *Punta Mona*, in the Atlantic Ocean, and which closes on the North the valley of the river *Tarire* or *Sixola*, near its mouth; it shall run in a Southwest-West (*Sud-Ouest-Ouest*) direction on the left bank of that river to its conjunction with the river *Yurquin* or *Zhorquin* (also called *Sixola*, *Culebras* or *Dorados*) toward longitude 82° 50' West of Greenwich, longitude 85° 10' West of Paris, and latitude 9° 33' North. Here the boundary will cut the thalweg of the *Tarire* on the left bank of the *Yurquin* and continue due South along the divide of the watersheds of the *Yurquin* on the East and the

Urén on the West; then along the divide of the Atlantic and Pacific watersheds, until near the ninth parallel of latitude North; it shall continue then along the divide between the *Chiriqui Viejo* and the streams flowing into the *Golfo Dulce* to terminate at *Punta Burica*."

Punta Mona is situated at longitude 82° 39' West of Greenwich, longitude 84° 59' West of Paris, and latitude 9° 39' North, 85° 5' West of Paris.

Punta Burica is situated at longitude 82° 52' West of Greenwich, longitude 85° 15' West of Paris, and latitude 8° 2' North.

The intersection of the frontier line and the ninth parallel is placed toward longitude 82° 45' West of Greenwich, longitude

This interpretation conforms with the evident meaning of the Award and with the topography of the territory, as well as with the terms of the arbitration agreement.

It responds perfectly to the wish of establishing with certainty and stability a natural frontier, and it deviated but slightly from a straight line traced between *Punta Mona* and *Punta Burica*, which is, so to speak, the fundamental thought of the Arbitrator.

I trust that this interpretation will be accepted by the President of the Republic of France as corresponding as nearly as possible with his high intentions, and my Government would appreciate very much his deigning to confirm this interpretation by an explanatory act.

Be pleased to accept, Mr. Minister, the expressions of the highest consideration with which I have the honor to be Your Excellency's very humble and most obedient servant,

MANUEL M. DE PERALTA.

His Excellency Monsieur Delcassé,

Minister of Foreign Affairs of the Republic of France.

Doc. 419 **The Minister of Foreign Affairs of the Republic of France
to the Minister of Nicaragua at Paris.**

PARIS, October 22, 1900.

MR. MINISTER:

By a letter dated September 22nd last, you were good enough to advise me of the rights which the Republic of *Nicaragua* would be able to exercise over certain islands on the Atlantic

coast and in particular over the islands *Mangle Chico* and *Mangle Grande*, mentioned in the arbitral judgment rendered by the President of the French Republic the 11th of the same month, between *Colombia* and *Costa Rica*.

You invoke therein the treaty made between the two countries on January 20, 1886, with a view of their respective delimitation, and by the terms of which the arbitration in question can not affect the rights which a third party might set up to ownership of the territory in controversy.

Taking account of the agreement arrived at upon this point between the two Republics in the cause, as well as of the general rules of the Law of Nations, the Arbitrator only had in mind, in referring by name to the islands mentioned in his decision, to establish that the territory of the said islands, mentioned in the treaty concluded March 30, 1865, between the Republics of *Costa Rica* and *Colombia* is not included in the dominion of *Costa Rica*.

Under these conditions, the rights which *Nicaragua* can have to the possession of these islands remain entirely as in the past, the Arbitrator not undertaking in any way to determine a question which was not before him.

Accept the assurances of the high consideration with which I have the honor to be,

Mr. Minister, your very humble and very obedient servant,

DELCASSÉ.

Monsieur Crisanto Medina, Minister of Nicaragua, at Paris.

The Minister of Costa Rica to the Minister of Foreign Affairs of France. Doc. 420

LEGATION OF COSTA RICA.

PARIS, October 23, 1900.

MR. MINISTER.

On account of the great divergence in the maps of the territory traversed by the frontier line that His Excellency the President of the Republic of France was pleased to fix between the Republics of *Costa Rica* and *Colombia* by his Award of the 11th of September last; and considering that His Excellency the Ar-

biter having had no new and precise data for tracing with all the exactness required a map of the said region such a map instead of serving as a probatory or useful document for the interpretation of the Award, might on the contrary lead to confusion, I have had the honor to inform Your Excellency that I withdraw my letter of the 15th of last September in which I asked that a map should be sent to me, and I pray Your Excellency to consider it as void.

I avail myself of this occasion to repeat to Your Excellency, as I had the honor to inform you in my letter of the 29th of last September, that the Government of *Costa Rica* interprets the first paragraph of the dispositive part of the arbitral decision in the following manner, as being the only one within the spirit and letter of this document that might conform with the terms of the Conventions which must rule the arbitration proceedings and especially with the terms of Article III of the Additional Convention of Paris of January 20, 1886.

“The frontier line between the Republics of *Colombia* and *Costa Rica* shall be formed by the counterfort (contrefort) of the range of mountains beginning at *Punta Mona*, in the Atlantic Ocean, and which closes on the North the valley of the river *Tarire* or *Sixola*, near its mouth; it shall run in a West-South-west (Sud-Ouest-Ouest) direction on the left bank of that river to its conjunction with the river *Yurquin* or *Zhorquin* (also called *Sixola*, *Culebras* or *Dorados*) toward longitude $82^{\circ} 33'$ West of Greenwich, longitude $85^{\circ} 10'$ West of Paris, and latitude $9^{\circ} 33'$ North. Here the boundary will cut the thalweg of the *Tarire* on the left bank of the *Yarquin* and continue due South along the divide of the watersheds of the *Yurquin* on the East and *Urén* on the West; then along the divide of the Atlantic and Pacific watersheds, until near the ninth parallel of latitude North; it shall continue then along the divide between the *Chiriquí Viejo* and the streams flowing into the *Golfo Dulce* to terminate at *Punta Burica*.”

This North-South direction of the frontier line between *Punta Mona* and *Punta Burica*, as the Government of *Costa Rica* understands it, is equally congruent with the course that the Republic of *Colombia* ascribes to the River *Sixola* in its official maps.

Moreover, recent explorations of that region justify this interpretation and make evident that any other interpretation would include within the region granted to the Republic of *Colombia* a territory not in dispute, a fact that would be a positive violation of the terms of the compromise which limits the attributions of the Arbiter and of the principles of International Law. Then, this cannot have been the intention of His Excellency the President of the Republic of France.

Wherefore I appeal again to the kindness of Your Excellency and respectfully pray you to ask the Arbiter for the explanatory act which I had the honor to request for in my letter of the 29th of last September which I confirm.

Be pleased to accept, Mr. Minister, etc.,

MANUEL M. DE PERALTA.

His Excellency Monsieur Delcassé, Minister of Foreign Affairs of the Republic of France.

The Minister of Foreign Affairs of France to the Minister of Costa Rica. Doc. 421

PARIS, November 23, 1900.

MR. MINISTER:

In answer to the wishes which you have been pleased to express in your letter of the 29th of September and 23rd of October last, I have the honor to inform you that for lack of precise geographical data, the Arbitrator has not been able to fix the frontier except by means of general indications; I deem, therefore, that it would be inconvenient to trace them upon a map. But there is no doubt, as you have observed, that in conformity with the terms of Articles 2 and 3 of the Convention of Paris of January 20, 1886, this frontier line must be traced within the limits of the territory in dispute, as they are found to be from the text of said Articles.

It is according to these principles that the Republics of *Colombia* and *Costa Rica* will have to proceed to the material deter-

mination of their frontiers, and the Arbitrator relies, in this particular, upon the spirit of conciliation and good understanding which has up to this time inspired the two interested Governments.

Accept the assurances of the high consideration which I have the honor to be, Mr. Minister, your very humble and obedient servant,

DELCASSÉ.

Monsieur Manuel de Peralta, Minister of Costa Rica in Paris.

Doc. 422

Original Text of the Delcassé Note.

PARIS, le 23 Novembre 1900.

MONSIEUR LE MINISTRE,

Pour répondre au désir que vous avez bien voulu exprimer dans vos lettres des 29 Septembre et 23 Octobre derniers, j'ai l'honneur de vous faire savoir, qu'en l'absence d'éléments géographiques précis, l'Arbitre n'a pu fixer la frontière autrement que par des indications générales; j'estime donc qu'il y aurait des inconvénients à les préciser sur une carte. Mais il n'est pas douteux, comme vous le faites remarquer, que conformément aux termes des articles 2 et 3 de la Convention de Paris du 20 Janvier 1886, cette ligne frontière ne soit tracée dans les limites du territoire en dispute, telles qu'elles résultent du texte des dits articles.

C'est d'après ces principes qu'il incombera aux Républiques de Colombie et de Costa-Rica de procéder à la détermination matérielle de leurs frontières, et l'Arbitre ne peut que s'en remettre sur ce point à l'esprit de conciliation et d'entente dont se sont inspirés jusqu' à présent les deux Gouvernements en cause.

Agréez les assurances de la haute considération avec laquelle j'ai l'honneur d'être,

Monsieur le Ministre,

votre très humble et très
obéissant serviteur.

DELCASSÉ.

Monsieur de Peralta, Ministre de Costa-Rica à Paris.

The Minister of Colombia to the Secretary of State in the Department of Foreign Relations of Costa Rica. Doc. 423

Legation of Colombia
in
Mexico and Central America.

SAN JOSÉ, January 26, 1901.

MR. MINISTER:

On the 13th of September of the year last past, the President of the French Republic decided the debated question of boundaries between *Colombia* and *Costa Rica*.

Although the greater part of the claims of *Colombia* were rejected and there was adjudged to *Costa Rica* a very important portion of the territory submitted to judgment and claimed by *Colombia*, it cannot view with discontent this loss because it redounds to the benefit of the neighboring Nation, for whom it has always been inspired with sentiments of deep fraternity, and because the Award removes every obstacle to the continuity of the harmonious interests and cordial relations between the two States.

Colombia, who bound herself as well as *Costa Rica* in the arbitral compact of 1896, to faithfully comply with the decision of the Arbitrator, engaging in it the national honor, desires that it be given punctual fulfillment and that the delimitation be at once proceeded with, in accord with the precise terms of the aforesaid decision.

Accept, Your Excellency, the sentiments of my highest consideration and distinguished appreciation.

LORENZO MARROQUÍN.

Excmo. Señor don Justo A. Facio, Minister of Foreign Relations.

Doc. 424 The Minister of Colombia to the Secretary of State in the
Department of Foreign Relations of Costa Rica.

Legation of Colombia
in
Mexico and Central America.

SAN JOSÉ, February 12, 1901.

MR. MINISTER:

I have been advised of the happy and glad news of the re-establishment of the health of the President of the Republic, whose illness delayed the consideration of my note of January 26th last past.

Obedience to paragraph 4 of the arbitration convention of 1880, by which *Colombia* and *Costa Rica* bound themselves to fulfill the arbitral decision faithfully and promptly, as well as the keen desire of my Government to remove forever and in a definitive manner all cause for dissension between the two countries, are sufficient reasons why I, in obedience to peremptory instructions from my Government, urge upon Your Excellency that we reach at once the desired end.

For this purpose and in order to fix and settle the matter, I make to Your Excellency the following declarations:

The publication in the Official Journal of the French Republic, in the number of September 15, 1900, of the Award made by H. E. the President of the French Republic as Arbitrator-Judge of Right in the controversy regarding boundaries between *Colombia* and *Costa Rica*, gave to the said arbitral judgment, in accord with the Conventions of December 25, 1880, and January 20, 1886, and November 4, 1896, the character of a perfect treaty, obligatory and ratified, between the Republics of *Costa Rica* and *Colombia*.

In virtue of said irrevocable international Convention, accepted by both parties, before it was delivered, all controversy as to boundaries between *Costa Rica* and *Colombia* disappeared, all differences in this respect being settled in fact and the rights of dominion, jurisdiction and possession of each one of the nations, being defined over the respective portions of the territories that previously constituted the litigated zone.

Consequently, *Costa Rica* as well as *Colombia* held in the aforesaid Award the perfect title of their respective territorial rights.

As the line of demarcation indicated by the Arbitrator is a natural one, as it is formed by the summit of the ridges and cordilleras, *Colombia* or *Costa Rica* may well occupy the territories which have been adjudicated to them and exercise therein jurisdictional acts of dominion and possession, without any condition whatever, their property titles since September 15, 1900, being clear, perfect and unquestionable. Nevertheless, *Colombia*, being animated toward *Costa Rica* by sentiments of the highest and most sincere brotherhood, desires to proceed in what relates to the fulfillment of the arbitral decision in close accord and harmony with it, establishing beforehand the time, manner, details and circumstances for tracing the boundary line between the two nations and the delivery and receipt of the districts or exchange of authorities that may be required.

Therefore, it formally invites Y. E. to execute a compact or convention for regulating the execution of the Arbitral Award above mentioned.

I renew to Y. E. the assurance of my highest and most distinguished appreciation.

LORENZO MARROQUÍN.

Excmo. Señor Don Justo A. Facio, Minister of Foreign Relations.

San José.

Doc. 425 The Minister of Colombia to the Secretary of State in the
Department of Foreign Relations of Costa Rica.

Legation of Colombia
in
Mexico and Central America.

SAN JOSÉ, February 27, 1901.

MR. MINISTER:

The international arbitral decision in the matter of boundaries, which, as stated in my previous note, is an executory judgment and title of property, authorized the States which took part in the arbitration to occupy the adjudicated territories as soon as said title came into their possession, especially when the frontier is marked by boundaries or natural objects, such as mountains, rivers or the like.

Nevertheless, international courtesy has established the manner in which the parties shall agree regarding the material execution of the arbitration; but it is not essential that the accord appear in international compacts. In default thereof it is enough that one Government communicate to the other, with due anticipation, the time when it proposes to occupy the adjudicated territories, delivering those that belong to the other party, and the manner and time when the delimitation, tracing and marking of the frontier line may be done; so that the occupation may be done justly and equitably, in accord with the precise terms of the Award and without any trespasses upon neighboring territory.

The long illness of His Excellency, the President, so deeply to be regretted, and the urgency for my leaving *Costa Rica* and no other causes, have been the reasons that Y. E. and myself have not come to the conclusion of an agreement, to which I formally invited Y. E. in my note of February 13, for the execution of the Award regarding boundaries, delivered September 11, 1900.

It is far from the mind of the Government of *Colombia*, to be violent, to threaten or constrain that of *Costa Rica* for its execution. My Government desires nothing else on this point except that its acts in consequence thereof may worthily succeed the very cordial and friendly ones which preceded and that they may

be dominated by the full and generous spirit by which the decision itself was given.

After making this frank statement, I can, without fear of offending in the least the susceptibilities of the Government of *Costa Rica*, which would be contrary to my instructions and my wish, state to Y. E. the way in which the demarcation of the frontier can be carried out, in default of the special agreement which I should have preferred.

One of the greatest advantages of the Award is that it closed definitively and forever the only question, the only motive for dissension, that may have ever existed between *Colombia* and *Costa Rica*; but the arbitration will not yield its essential results until the actual indication of the frontiers is finished. To delay or to put off that act is to prolong an irritating discussion, uselessly and unhappily agitating the peoples, impairing the good friendship and fraternal sentiments that ought to unite them and to the evident injury of the good understanding of the Governments. To provide against such difficulties the signatories of the Convention of Arbitration between *Costa Rica* and *Nicaragua* provided with great certainty and precision thirty days, after the Government was notified of the arbitral decision, for its fulfillment, in the Convention of Arbitration regarding boundaries of December 24, 1886.

If *Costa Rica* then accepted that peremptory term, it is not asking a great deal that the French Award may begin its operation a year after it was delivered.

Besides, the Colombian Government considers itself under obligation to look after the territories which were recognized by that judgment as a portion of its domains, establishing Custom Houses, defences, founding military and agricultural colonies, initiating the service of missions, providing for the political and judicial administration and employing the means conducive to the improvement of the wealth, development and progress of the districts marked out.

Therefore, and with other reasons at hand with which I do not desire to fatigue Y. E., the Government of *Colombia* in the middle of September of the present year will send commissioners to take possession of the territories which have been adjudicated to it under the Award and to deliver to *Costa Rica* those which

belong to it. The natural landmarks indicated by the Arbitrator make this course easy and practicable, in my opinion.

But as doubts may arise and my Government desires that the delimitation may be made without intrusions upon Costarican territory and in as just and equitable a manner as may be possible, it will at the same time send with the commissioners that have been mentioned a Scientific Commission, whose duties are hereinafter indicated; which will arrive at this capital (if Y. E. finds this point of meeting preferable to some Colombian place) about the 15th of September of the present year. I have deemed it opportune to indicate the convenience that the occupation and delivery of the territories shall coincide with the arrival of the Scientific Commission; but, if Y. E. prefers that the occupation, instead of being coincident, shall follow the arrival of the Commission and wishes to fix a precise time for it, I think that the Colombian Government will not have any objection thereto.

It may also be said that the Scientific Commission mentioned is to meet with another of like character, which I have no doubt the Costarican Government will appoint for the time already indicated.

To the end that both commissions shall be identically made up, I advise Y. E. that the Colombian Commission will be composed of a chief engineer, two assistant engineers, one assistant secretary engineer, one lawyer, one physician, one naturalist and a draftsman.

These commissions shall be made up as a whole under one engineer, whose appointment shall be requested by both parties from H. E. the President of the French Republic and whose duties shall be specifically as follows: whenever in carrying out their operations the commissions of *Costa Rica* and *Colombia* shall disagree, the disputed point or points shall be submitted to the judgment of the engineer of H. E. the President of the French Republic. The engineer will have full powers to decide any difficulty that may arise and the operations which we are considering shall be executed without any evasion in conformity with his decision.

The expenses incurred in sending and during the stay of the French engineer, as well as the compensation due to him during

the whole time that he continues in the performance of his duties, shall be paid in moities by the two Republics.

The duties of the Mixed Commission shall be as follows: if the Government of Y. E. does not augment, suppress or vary any of them:

1. To determine at what points and where not, the frontier should be indicated by means of landmarks, omitting them wherever it is thought that the frontier line (and as it is in the greater part thereof) indicated by natural objects.

2. To cause to be erected at the points that shall be determined, posts, pillars or other enduring marks, so that the frontier boundary shall be unequivocal.

3. When doubts or disagreements arise, these shall not suspend the tracing or marking of the frontier, except in the portion in respect to which they may have occurred.

4. The Costaricans or Colombians who may have to pass from one jurisdiction to the other, shall preserve their nationality, unless they choose the new one in a declaration made and sworn to before the respective authority, within six months after being under the new jurisdiction.

The formation of the Mixed Commission, as well as its duties, shall be as generally understood by international practice in such cases.

The manner of settling the doubts that may arise in carrying out the Award, I have copied verbatim from Article 2 of the Convention of March 27, 1896, celebrated between *Costa Rica* and *Nicaragua* for the tracing and marking of their frontier line. It is, therefore, a proceeding adopted and already used by *Costa Rica*, very wise, rapid and beneficial. The Government of *Colombia* entertains the belief that *Costa Rica* will not reject it in the demarcation of its frontiers on the South, proceeding different from what it used in those on the North; and I advise Y. E. beforehand that my Government will not adopt any other.

Therefore, the Colombian Government will address itself to the President of the French Republic, asking for the appointment of the Engineer Arbitrator; and I hope that of *Costa Rica* will do the same, to the end that the commissions of both countries can be duly made up together.

I cannot conceal from Y. E. that the intention of my Gov-

ernment to disregard the solution of the doubts and obscurities which may arise in carrying out of the French Award, leaving them to the Mixed Commission and as an ultimate recourse to the Arbitrator, has no other reason than the keen desire of removing all motive for discussion or dissension with that of *Costa Rica*. This will further prove to Y. E. the unshakable desire of my Government that the Award shall be carried out within the strict limits of probity and justice, and it is a natural consequence of the system adopted by both Governments for the solution of their differences regarding boundaries.

I take pleasure in renewing to Y. E. the assurance of personal appreciation and high and distinguished consideration.

LORENZO MARROQUÍN.

Ecmo. Señor don Justo A. Facio, Minister of Foreign Relations.

Doc. 426 **Fragment of the Message of the President of the Republic, Don Rafael Iglesias, Presented to the Constitutional Congress, May 1, 1901.**

As touching our international relations, I ought to begin by giving you an account of an important and transcendent matter, the solution of which has disappointed the hopes of the Government and in like manner gone throughout the country. I refer to the decision which was delivered by His Excellency, the President of the French Republic, M. Emile Loubet, as Arbitrator, dated September 11 of the year last past, in the boundary controversy of *Costa Rica* and *Colombia*. During a long period of laborious investigations and at the expense of pecuniary sacrifices, *Costa Rica* succeeded in acquiring an extensive and valuable collection of documents respecting its territorial rights in dispute and founded upon those titles its defense and its hopes of complete success in the contest. Unfortunately and contrary to all prevision, the decision, which satisfied a great deal of our legitimate claims so far as it refers to the southern part of the Republic, adjudging to us a good portion of the territory of which the provisional frontier *statu quo* deprived us and with it the exclusive sovereignty over all the littoral of the *Dulce Gulf*, traced the border on the Atlantic side under equivocal conditions,

which constituted for *Costa Rica* a considerable loss of the rights claimed.

The decision says :

“The frontier between the Republics of *Colombia* and *Costa Rica* shall be formed by the spur of the cordillera which starts from *Punta Mona* on the Atlantic Ocean, and closes on the North the valley of the River *Tarire* or *Sixola*; thence by the range that divides the watershed between the Atlantic and the Pacific to about the ninth parallel of latitude; it shall then follow the line of the water divide between the *Chiriquí Viejo* and the affluents of the *Dulce Gulf*, ending at *Punta Burica* on the Pacific Ocean.

“As to the islands, groups of islands, islets and banks situated in the Atlantic Ocean, in proximity to the coast, to the East and South East of *Punta Mona*, these islands, whatever be their number or extent, shall form part of the dominion of *Colombia*. Those which are situated to the West and North West of said Point, shall belong to the Republic of *Costa Rica*.

“As to the islands more distant from the continent and included between the *Coast of Mosquitos* and the *Isthmus of Panama*, namely, *Mangle Chico*, *Mangle Grande*, *Cayos de Alburquerque*, *San Andrés*, *Santa Catalina*, *Providencia*, *Escudo de Veragua*, as well as all other islands, islets and banks, held by the ancient Province of *Cartagena*, under the dominion of *Cantón de San Andrés*, it is understood that the territory of these islands, without any exception, belongs to the *United States of Colombia*.

“On the side of the Pacific, *Colombia* shall likewise possess, starting from the islands of *Burica* and including them, all the islands situated to the East of the Point of the same name; those that are situated to the West of said point being assigned to *Costa Rica*.”

It is to be regretted that the Award was not accompanied by a chart of the territory in dispute, which, serving to explain and complement it, might save at the time of the actual demarcation the possible differences consequent upon the very significant circumstances that the topography of those places and the generality of the terms of the Award afford opportunity for various locations of the dividing line. Foreseeing this, my Government, as soon as it had knowledge of the arbitral judgment gave instruc-

tions to our Minister in Europe that he should present himself to the High Arbitrator and communicate to him the understanding that *Costa Rica* had of the first paragraph of the decision.

This was done by our representative in Paris on September 29, setting forth that, in the opinion of this Government the frontier was formed by the spur of the cordillera that starts from Cape *Mona* on the Atlantic Ocean and closes on the North the valley of the River *Tarire* or *Sixola* near the mouth of that river; thence proceeding in a West by Southwest direction on the left bank of this river to the intersection of the *Yurquin* or *Zhorquin* (also called *Sixola*, *Culebras* or *Dorados*) to meridian $82^{\circ} 50'$ West of Greenwich, $85^{\circ} 10'$ West of Paris and $9^{\circ} 33'$ of North Latitude. Here the frontier line will cut the thalweg of the *Tarire*, on the left bank of the *Yurquin*, and will proceed, in a Southerly direction, following the ridge of the watershed between the basins of the *Yurquin* on the East and of the *Urén* on the West; thence by the ridge of the watershed between the Atlantic and the Pacific to about Latitude 9° ; thence following the line of the watershed between the *Chiriquí Viejo* and the tributaries of the *Dulce Gulf* to end at *Burica Point*.

Answering this statement, H. E., M. Delcassé, Minister of Foreign Affairs of the French Republic, was pleased to say that for lack of precise geographical data the Arbitrator was not able to fix the frontier farther except by general indications, which he thought would be inconvenient to set out in a map. But he did not doubt, as our representative had observed to him, that, in conformity with Articles 2 and 3 of the Convention of Paris of January, 1886, this frontier line must be traced within the limits of the territory in dispute, as they appear from the text of said Articles. That under these principles it would be for the Republics of *Colombia* and *Costa Rica* to proceed to the actual determination of their frontiers and the Arbitrator left the matter, at this point, to the spirit of conciliation and good understanding by which up to this time the two Governments had been animated.

The Secretary of State in the Department of Foreign Relations of Costa Rica to the Minister of Foreign Relations of Colombia.

DEPARTMENT OF FOREIGN RELATIONS.

SAN JOSÉ, July 27, 1901.

EXCMO. SEÑOR:

There were duly received in this Department of Foreign Relations three notes of H. E., Señor Doctor don Lorenzo Marroquín, Envoy Extraordinary and Minister Plenipotentiary of that Government near that of this Republic, dated January 26 and February 12 and 27 of the current year, to which I did not have occasion to respond in substance, not only because the illness from which the President of the Republic suffered prevented him from acting in the very important matter set out therein, but because Señor Marroquín himself left shortly afterwards.

In the first two of these despatches, the distinguished Colombian diplomat proposed the making of a compact regulating the execution of the Arbitral Award delivered by H. E. the President of the Republic of France on September 11, of the preceding year, in the frontier litigation of *Costa Rica* and *Colombia*; and in the last he suggested the thought that it was not essential that the accord for the execution of international decisions should be stated in a Compact, it being sufficient for the purpose the notification that either of the Governments might make to the other of the time and conditions proposed for the occupation of the lands adjudicated to it and for the delivery of those that might not belong to it. By the last one he informed my Government that that of Y. E., about the middle of September of the present year, will send commissioners to take possession of the respective territory and at the same time to this capital a Scientific Commission, so that in union with the one selected by *Costa Rica* and with an engineer arbitrator, whose appointment shall be requested from the French Government, the carrying out of certain operations relating to the demarcation of the frontiers may be proceeded with.

I am pleased in reply to say to Y. E. that *Costa Rica* listens with special pleasure to any proposition tending to bring to an end this ancient quarrel and accepts indiscriminately, either by a formal agreement or through a simple exchange of despatches, that there shall be established the basis under which the demarcation shall be carried out, provided that previously and in the usual form both parties have come to an understanding respecting the point the solution of which is an obligation antecedent to the operations of setting up landmarks.

I refer, Mr. Minister, to the exact direction of the dividing line on the Atlantic side. As to this particular, my Government, at the first moment it had knowledge of the decision, gave instructions to our representative in Paris that he should declare before the Arbitrator that *Costa Rica* interpreted the judgment as appears in the statement presented for that purpose, of which I have the honor to send to Y. E. a copy. The explicit statement of the Minister of *Costa Rica* was answered by the Arbitrator in terms of perfect accord, as may be seen in the transcript of his reply, which Y. E. will likewise find annexed.

My Government was inspired to proceed thus with the elevated purpose of purging that solemn decision of every defect contrary to the spirit of justice with which it is certainly animated, since, as Y. E. will very well understand, *any interpretation different from that which COSTA RICA has given and which impairing its indisputable rights shall go beyond the claims of COLOMBIA in the litigation, WILL TAKE AWAY THE FORCE OF THE AWARD.*

Considering, then, that the view of *Costa Rica* tends to preserve intact the validity of the Award and that it is on the other hand supported by the opinion of the Arbitrator, this Government thinks that of Y. E. will gladly accept it. But in the unexpected and contrary event that it shall not so come about, and as an agreement in this particular is indispensable, since the Arbitrator, according to his own expression, for lack of precise geographical data, could not fix the frontier except by means of general indications, which he thought it was inconvenient to precisely set out in a map, this Government considers it desirable to open negotiations looking to a termination of the difficulty within the scope and with the conciliation and good understand-

ing which the high authority of the Judge enjoins upon us for the completion of his work.

I take this opportunity to offer to Y. E. the assurances of my high consideration.

RICARDO PACHECO.

To His Excellency the Minister of Foreign Relations of Colombia.
Bogota.

From a Monograph Written in July, 1901, by Professor Dr. Edward Seler, of the University of Berlin, Concerning the True Location of the Port of San Jerónimo and Valleys of Coaza and of Guaymí, the Following Passage is Taken:

Doc. 428

“* * * In concluding his article Señor Peralta has seen fit to criticise the demarcation of the new boundary as I directed it to be traced on the map. For this I am not responsible. At that time I had not seen the text of the Award, for the printed copy of which I was later indebted to the courtesy of Señor Peralta. Nevertheless, I must confess that in view of the very clear wording of the arbitral sentence it would not have been possible to trace a definite line. Moreover, it seems certain, though Señor Peralta considers it so hypothetical that he rejects it as impossible, that the Arbitrator departed from the provisions of the Treaty so far as to attribute to *Colombia* a portion of territory which that nation never had considered as included in the litigation, and that is, the upper part of the Valley of the *Tarire* and of its tributaries, the *Coén* and the *Arari*. And as I, a third party and disinterested, could not remain indifferent in the face of that *res judicata*, nor have I to reserve my opinion as regards the conformity or inconformity of the sentence, I desire to supplement the two prior ratifications with a third, and that is, that in writing the last sentence of the article which I duplicated in the “*Mitteilungen de Petermann*,” I expressed myself erroneously as regards the agreement of said sentence with my own conclusions. There is in reality no such agreement. Those conclusions certainly were that *Colombia* was entitled to the possession of *Almirante Bay*, even to the whole of its extent.

But there is not in the history of the conflict any reason that can justify snatching away from COSTA RICA the CHÁNGUENA, the River DE LA ESTRELLA of Juan Vázquez de Coronado, of which the latter took possession in the year 1564 in the name of the King and on behalf of the Audiencia of Guatemala and where he laid out mines for it, his companions and the King, and less reason yet if the River Tarire is considered, on the banks of which was founded the Colony of Santiago de Talamanca, for a time flourishing, and in the basin of which the Costarican missionaries have sought since the earliest times of the conquest to bring the natives to Christianity and Spanish culture."

Doc. 429

Declaration of Independence of Panama.

November 3, 1903.¹

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. Agustín; Arosemena, Fabio; Brid, Demetrio H.; Chiari, R. José María; Cicalón, P.; Manuel, J.; Domínguez, Alcides; Lewis, Samuel; Linares, Enrique; McKay, Oscar M.; Méndez, Manuel María, and Vallarino, Darío, 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, Cicalón, 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 rights and liberty, cut asunder, on the 28th of November, 1821, its ties from Spain, and spontaneously

¹ Papers relating to the Foreign Relations of the United States, 58th Congress, 2d Session. House of Representatives, Document No. 1.

joined its destiny to that of the great Republic of *Colombia*. Reflections were made tending to show 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 particularly 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 respect, 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 peoples 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. José Agustín Arango, Federico Boyd, and Tomás 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. Cucalón P., Fabio, Arosemena, Oscar M. McKay, Alcides Domínguez, Enrique Linares, J. M. Chiari R., Darío Vallarino, S. Lewis, Manuel M. Méndez.

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.

Doc. 430 Executive Resolution of the Government of the Republic of Panama.

PANAMA, August 2, 1904.¹

Resolution No. 28, Republic of *Panama*: National Executive Power, Secretaryship of Government and Foreign Relations, No. 28, *Panama*, August 2, 1904.

By the resolution of June 10th of the current year the *Alcalde* of *Bocas del Toro* imposed a fine of two hundred "pesos" (\$200) upon the firm of Adolfo Dolder & Co. for having carried in one of their vessels to that town a Syrian proceeding from the Republic of *Costa Rica*,—a decision which the Provincial Governor confirmed. As the said firm has not conformed itself to this decision, it now requests revision by the Executive Power. As appears by the procedure instituted to impose the fine alluded to, and by the evidence given by the respective Governor, the Syrian, John George, embarked on the launch "Mazini," the property of Messrs. Adolfo Dolder & Co., at the place called

¹ *Gaceta Oficial* of Panama. Year one, No. 47, Second Term.

Gandokin (*Gadocan*) situated between the mouth of the river *Sixola* and *Point Mona*.

Although by the arbitral award pronounced by the President of the French Republic, *Gandokin* forms part of the *Panama* territory, this award has not been executed yet, and, while this is the case, the Government of this Republic does not exercise jurisdiction at that place, because situated within the limits of the disputed territory which originated the arbitration, and because the "*statu quo*" thus demands. In this manner the Costa Rican Government is the *actual possessor* of the place in reference, in the same way as that of *Panama* is the actual possessor of part of the Costa Rican territory on the Pacific. The execution of the award will give each sovereign the possession of the territory which belongs to it, and the "*statu quo*" will then terminate, but meanwhile such is not the case, *GANDOKIN will remain under the jurisdictional action of COSTA RICA*, and, as it was at that place where George embarked with destination to the jurisdictional territory of *Panama*, it is clear that Messrs. Dolder & Co. have violated the law which prohibits Chinese, Turkish, and Syrian immigration, and the decree which regulates it, reason for which the decision under examination is *correct*, and it is thus declared. Register, Communicate, and Publish. *The Secretary.*

TOMÁS ARIAS,
Secretary of State, etc.

Pacheco-Guardia Treaty.

Doc. 431

PANAMA, March 6, 1905.

Law of January 26, 1907, by which the Treaty of Boundaries with the Republic of *Costa Rica* was approved.

The National Assembly of Panama,
Considering:

1. That the Boundary Treaty, celebrated in this capital on March 6, 1905, between the Diplomatic Representatives of the Republics of *Panama* and *Costa Rica*, put an end to the ancient difference in a way that was deemed equitable and convenient for the high contracting parties.

2. That both countries, conformably to the declaration of the

first part of the Treaty, having respect for the Award delivered by His Excellency, the President of the French Republic, at Rambouillet, September 11, 1900, must take into account the provision in his decision regarding the adjudication of the island portion in dispute, as to which nothing is said in the Boundary Agreement, with the necessary variations in order to adopt what is there provided with the form and circumstances of the treaty ;

3. That all cause for divergence of opinion must be avoided and the points that may be confused in its text cleared up, such as the directings referring to cardinal points of the lines forming the continental frontier between the two Nations, for not conforming with precision to the intent of the Treaty, which is that these lines follow in general the summits of the spurs that form the division of the waters that flow to the basins of the rivers that according to it belong wholly to one or the other country ; and

4. That public opinion in both countries being excited by the discussion of this matter, its final settlement should not be prolonged, either by the Treaty or by the application of the Award,

DECREES :

ARTICLE 1. The Boundary Treaty between the Republic of *Panama* and that of *Costa Rica* is approved, which was celebrated *ad referendum* in this city by the Plenipotentiaries, General Don Santiago de la Guardia and Licenciado Don Leonidas Pacheco, March 6, 1905, which consists of a Declaration, a Convention of Boundaries and a Convention for setting Landmarks, the next of which is as follows :

“The Governments of the Republic of *Panama* and of *Costa Rica*, having in view the friendly and definitive settlement of any questions that may be presented in future regarding their respective territorial rights and animated by the desire of obliterating forever the differences which for many years were a source of uneasiness between the two Nations here represented and which should now be extinguished forever, since this is demanded by the fraternal and reciprocal interests of both countries ; for the purpose thereof, His Excellency, the President of the Republic of *Panama* has given full powers to His Excellency, General Don

Santiago de la Guardia, Secretary of State in the Department of Government and Foreign Relations, and His Excellency the President of *Costa Rica* to His Excellency the Licenciado Don Leonidas Pacheco, Envoy Extraordinary and Minister Plenipotentiary to the Government of the Republic of *Panama*, which Plenipotentiaries, having complied with all the due formalities, make in the name of their respective Governments the following declaration:

I.

"The Signatory Republics solemnly declare that by the tenor of what is provided and established in the respective laws and treaties and *the declarations made by the parties*, the dispute regarding territorial limits, maintained for many years by the Republic of *Colombia*, the former owner of the territory in controversy, now belonging to that of *Panama* and that of *Costa Rica*, was settled by the judgment that His Excellency, the President of the French Republic was pleased to pronounce in the respective arbitral proceeding, at Rambouillet on September 11, 1900, and in virtue of which, the frontier being fixed by the High Judge by means of general indications, the material determination of the same is left subject to the mutual accord prompted by the spirit of conciliation and good understanding by which up to now the two interested Nations have been animated.

"In witness whereof we sign and seal this in duplicate, in the City of *Panama*, the sixth day of March, nineteen hundred and five.

"SANTIAGO DE LA GUARDIA.

"LEONIDAS PACHECO.

"Executive National Power:

"Panama, March 6, 1900.

"Approved:

"M. AMADOR GUERRERO.

"The Secretary of Government and Foreign Relations,

"Santiago de la Guardia.

"The Governments of the Republics of *Panama* and *Costa Rica*, taking into account the tenor of the Declaration made by them

this day, with reference to the Arbitral Award delivered by the President of the French Republic on the eleventh of September, nineteen hundred; animated by the desire of binding and strengthening the fraternal relations that happily exist between the two, and considering that one of the most expeditious and efficacious means for securing the end desired is that of fixing in a definitive and solemn manner the frontiers that bound their respective territories, consulting in doing this not only their reciprocal sentiments of friendship but also the convenience of both countries; that by virtue of the separation of the *Isthmus*, which took place November 3, 1903, circumstances have profoundly changed since the period when the arbitral judgment was delivered hereinbefore mentioned to those of today; that these circumstances constrain the two Republics to establish a frontier line that shall better accord with their present and future interests; that the cordial sentiments that animate the signatory Nations and the common desire that their development, prosperity and progress may be continued without any hindrances, rather with the support and collaboration of each, show the desirability of consulting in the new tracing the desires, aspirations and needs of both countries; that being inspired by a criterion of conciliation and good understanding in order to establish the bases to which the tracing of the frontiers must be adjusted, the Republics of *Panama* and *Costa Rica* submit as is due to the revered counsel of the High Judge that appears by the arbitral proceeding; for all this the parties mentioned have resolved to celebrate the following treaty, to which end His Excellency, the President of *Panama*, has commissioned His Excellency, General Don Santiago de la Guardia, Secretary of State in the Department of Government and Foreign Relations, and His Excellency, the President of *Costa Rica*, His Excellency, Licenciado Don Leonidas Pacheco, Envoy Extraordinary and Minister Plenipotentiary before the Government of the Republic of *Panama*.

The said de la Guardia and Pacheco, after having exchanged their full powers which are found to be in due form, now agree to establish the frontier that bounds the territories of the Nations represented by them, in the definitive form that is set forth in the following paragraph:

I.

“The frontier between the Republics of *Panama* and *Costa Rica* shall be formed by a line that, starting from *Punta Mona* on the Atlantic Ocean, proceeds in a Southwest direction until it meets the *Sixaola* river, upstream from *Cuabre*. From this point the dividing line will proceed by the left bank of said *Sixaola* river to the intersection of this with the *Yurquin* or *Zhorquin* river. Here the frontier line will cut the thalweg of the *Tarire* or *Sixaola* on the left bank of the *Yurquin* and will follow in a southerly direction the watershed, first between the basins of the *Yurquin* on the East and of the *Urén* on the West, and thence between those of the latter and those of the *Tararia* or *Tilorio* until arriving at the summit of the great cordillera that divides the waters of the Atlantic Ocean from those of the Pacific Ocean. From this place the line will proceed in an East-south-east direction along the summit mentioned to a point called *Cerro Pando*, which marks the beginning of the watershed between the rivers *Coto de Terraba* and *Chiriquí Viejo*. From here the frontier will continue along the summit of the mountains of *Santa Clara*, following the watershed between the rivers *Coto de Terraba* and *Esquinas* to the West, and the rivers *Chiriquí Viejo* and *Coto del Golfo* to the East, until the headwaters of the river *Golfito* are reached, along which the line will continue until it empties into the *Dulce Gulf*, at the mouth called *Golfito*. Between this last point and *Puntarenitas* a straight imaginary line will divide the waters of *Dulce Gulf*, the western portion of it remaining under the exclusive dominion of *Costa Rica* and the eastern part under the common dominion of both signatory Republics, excepting that which on their respective coasts is called litoral sea and which shall be considered an integral part of the contiguous territory.

II.

“An additional convention to the present Treaty shall establish the method of proceeding for the frontiers fixed in the preceding paragraph.

III.

“When the present Treaty shall be ratified by the respective Congresses, steps will be taken within three months following the

date of the last of such ratifications to make their respective exchange, which shall be done in the city of *Panama* or in *San José de Costa Rica*.

"In witness whereof we sign and seal the present document in duplicate, in the city of *Panama*, the sixth day of March, nineteen hundred and five.

"SANTIAGO DE LA GUARDIA.

"LEONIDAS PACHECO.

"Executive National Power:

"*Panama*, March 6, 1905.

"Approved.

"Let it be submitted to the consideration of the National Assembly for the constitutional purposes.

"M. AMADOR GUERRERO.

"The Secretary of Government and Foreign Affairs,

"Santiago de la Guardia.

"The Republics of *Panama* and of *Costa Rica*, with the purpose of establishing the most expeditious method for tracing and marking the frontier line which is determined by the Boundary Treaty signed between the same parties this day, have agreed to celebrate the present agreement, for which object His Excellency the President of *Panama*, has named His Excellency, General Don Santiago de la Guardia, Secretary of State in the Department of Foreign Relations, and His Excellency, the President of *Costa Rica*, has named His Excellency, Señor Licenciado Don Leonidas Pacheco, Envoy Extraordinary and Minister Plenipotentiary before the Government of *Panama*.

"The said gentlemen, Guardia and Pacheco, having examined their respective full powers, which they found in due form, have agreed as follows:

I.

"With the object of tracing and marking properly the line established by the first paragraph of the Boundary Treaty celebrated between the signatory Republics this day, the contracting Governments agree to each appoint a commission composed of the necessary personnel which shall perform its duties within the periods and in the manner set forth in the following paragraphs:

II.

“The commissions created by the preceding article shall be taken in charge as a whole by an Engineer whose appointment shall be made in the manner hereinafter stated and whose functions shall be combined as follows: when in carrying out their operations there is a disagreement between the commissions of *Panama* and *Costa Rica*, the point or points discussed shall be submitted to the opinion of said Engineer, who shall have ample power to decide any difficulty whatever that may arise. The operations under consideration shall be carried out in conformity with his decision.

III.

“Within the three months following the exchange of the present convention, already duly ratified by the respective Congresses, the representatives in Washington of the two contracting Governments shall proceed in common accord to request from the President of the United States of North America that he appoint the Engineer above referred to and that his selection be made. If for lack of a representative of either of the two Governments or for any other reason the request jointly within the term specified is not made, when the latter has expired, either of the representatives of *Panama* or of *Costa Rica* in the Nation indicated can separately make such request, which shall have all the effect as if it had been made by both parties.

IV.

“The appointment of said Engineer being made, within the three months following the date of that appointment the demarcation and marking of the frontier line shall be proceeded with, which shall be concluded with the twelve months following the date of the inauguration of the works. The Commissions of the contracting parties shall meet at *Colón* within the periods fixed for the purpose and shall begin their work at one of the extremes of the dividing line that, according to the first paragraph of the Boundary Treaty herein referred to, starts from *Punta Mona* on the Atlantic Ocean.

V.

“The contracting parties agree that, if for any reason whatever either the commission of *Panama* or that of *Costa Rica* shall fail to be at the place designated on the day for initiating the work, the work shall be begun by the Commission of the other Republic that is present with the concurrence of the Engineer herein provided for and what is done in that way shall be valid and definitive without affording any ground for complaint on the part of the Republic that may have failed to send its commissioners. In the same way it shall be proceeded with if any or all of the commissioners of either of the two contracting Republics are absent, once the work is begun or if they refuse to carry it out in the manner indicated in the present Treaty or under the decision of the Engineer selected.

VI.

“The contracting parties agree that the period fixed for the conclusion of the setting of landmarks is not peremptory and therefore what may be done after its termination shall be valid, whether that period was insufficient for the execution of all the operations or because the commissions of *Panama* and *Costa Rica* agree between themselves and in accord with the Engineer selected in temporarily suspending the work and the period that may remain of that fixed is not enough to finish them.

VII.

“In case of the temporary suspension of the work of setting landmarks, what is done up to that time shall be taken as concluded and definitive and the boundaries as materially fixed in the respective portion, even though by unexpected and unsurmountable circumstances such suspensions may continue indefinitely.

VIII.

“The minute books of the operations that are signed and duly sealed by the commissioners, shall be, without need of approval or

any other formality on the part of the signatory Republics, the title of the definitive demarcation of their boundaries.

IX.

“The acts to which the preceding article refers shall be set forth in the following form: each day, at the conclusion of work, there shall be prepared a minute and detailed account of all that was done, stating where the operations of the day were begun, the kind of landmarks constructed or adopted, the distance one from the other, the relative bearing of the line that determines the common boundary, etc., etc. In case there is any discussion between the commissioners of *Panama* and *Costa Rica* respecting any point, there shall be set forth in the respective minutes the question or questions discussed or the resolution of the Engineer in relation thereto. These minutes shall be prepared in triplicate. The *Panama* Commission shall keep one of the copies, that of *Costa Rica* another and the aforesaid Engineer the third, in order to deposit it, when the operations are finished, in the hands of the United States of America.

X.

“The expenses which are incurred by reason of the sending and the continuance of the Engineer here provided for, as well as the compensation that is due to him during the whole time that he continues in the exercise of his functions, shall be paid in moities by the two signatory Republics.

XI.

“The lapse of the periods hereinbefore referred to without the work being done for which they were stipulated, shall not invalidate the present Convention and the omission shall be made up on the part of the Republic to which it belongs to do it, within the shortest time possible.

XII.

“When the present Convention shall be ratified by the respective Congresses, steps will be taken within the three months follow-

ing the date of the last of such ratifications to make their respective exchange, which shall be done in the city of *Panama* or in *San José de Costa Rica*.

"In witness whereof we sign and seal the present convention in duplicate in *Panama*, the sixth day of March, nineteen hundred and five.

"SANTIAGO DE LA GUARDIA. (L. S.)

"LEONIDAS PACHECO. (L. S.)

"Executive National Power:

"Panama, March 6, 1905.

"Approved:

"Let it be submitted to the consideration of the National Assembly for the constitutional purposes.

M. AMADOR GUERRERO.

"The Secretary of Government and Foreign Relations,

"Santiago de la Guardia."

With the following explanations:

1. The islands, islets, groups of islands and banks in dispute situated in the Atlantic, to the East of the meridian that passes by *Punta Mona*, shall belong to *Panama*, and those that are to the West shall belong to *Costa Rica*. The islands, islets, groups of islands and banks situated in the Pacific, to the South of the imaginary line that goes from the mouth of the river *Golfo*, in the bay of that name, to *Puntarenitas*, shall belong to the Nation to whose coasts they are nearest.

2. The lines referring to cardinal points shall be excluded and in preference shall be followed those of the division of the waters: thus, the line that leaves *Punta Mona* in the Atlantic Ocean shall follow the division of the waters that flow to the coasts of the one country or the other to the point nearest to *Cuabre* and from there to meet the river *Sixaola*, up stream from the site of *Cuabre*; and

3. The River *Golfo*, to which the Treaty refers, is that which conforms to the maps of Ponce de León, of Friederichsen, of Montes de Oca, of Peralta, and that which was used during the discussion of the Treaty, emptying to the Northwest in the bay

of *Golfo*, in the *Dulce Gulf*, close to the entrance of said bay, and the imaginary line between the mouth of said River *Golfo* and *Puntarenitas* shall pass to the Northeast of the entrance of said bay.

ARTICLE 2. The Executive Power is authorized, if the Republic of *Costa Rica* does not approve this Treaty, at the latest in the next ordinary sessions of its legislature, to suspend the effects of this law and to require the fulfillment of the Loubet Award.

Done in *Panama*, the twenty-fifth of January, nineteen hundred and seven.

The President, R. AIZPURU.

The Secretary, LEOPOLDO VALDÉS A.

Executive National Power:
Panama, January 26, 1907.

Let it be published and executed.

M. AMADOR GUERRERO.

Secretary of Foreign Relations,
Ricardo Arias.

This is a copy.

Under Secretary of Government and Foreign Relations,
JORGE L. PAREDES.

The Minister of the United States to the Minister of Foreign Relations of Costa Rica. Doc. 432

American Legation to Costa Rica, Nicaragua, and Salvador,
SAN JOSÉ, COSTA RICA, January 29th, 1906.

ESTEEMED SIR,—I have to call the attention of Your Excellency's Government to a cablegram received yesterday from the Honorable Secretary of State at Washington in relation to the *status* of the "American Banana Company," H. L. McConnell, President.

Said Company, as will be observed by Your Excellency, enters complaint of its eviction from the *Sixaola Valley* and *Port Gado*.

kin and the seizure of its property there by the Government of *Costa Rica*.

When the voluminous correspondence and numerous interviews in relation to this case were closed in the early part of 1905, I hoped that before this the question as to the sovereignty and legal jurisdiction over the *Sixola Valley* and *Port Gadokin* would be settled between Your Excellency's Government and that of the Republic of *Panama*. But a year has elapsed, and no action known to me has been taken in the premises by either Government. A decision as to the ultimate sovereignty and consequent permanent occupation of the territory would greatly facilitate the settlement of the Company's rights upon a basis of equity and justice. The cablegram received from my Government enters into such detail regarding its position in the case that I can do no better than to quote it, calling to the attention of Your Excellency the closing sentence thereof advising that a similar communication has been sent to the Government of the *Panama Republic*, which I presume will address Your Excellency's Government in connection therewith.

Meanwhile permit me to call Your Excellency's attention to this case with the view of such a solution as will protect the interests of American citizens involved and agreeable to the Governments interested in the *Sixaola Valley* and *Port Gadokin*.

The cablegram alluded to reads as follows:

"Referring to questions affecting 'American Banana Company,' it is represented that the Company is suffering through eviction and seizure of their property in the disputed (*Sixaola*) territory. You will say that, while we do not contravert the power of *Costa Rica* and *Colombia* or *Panama* in making a provisional agreement respecting administration of that territory pending the definite settlement of its ownership, we do not cede the power of the provisional administrator to execute judgement in the capacity of Sovereign until the sovereignty of the territory is adjudicated and the Courts of the Sovereign have passed upon the matters involved. Nor do we cede the right of either to prejudice the ultimate rights of American citizens therein by adverse action in advance of such definite adjudication. This Government does not undertake to determine the conflicting claims of title made by

this Company and by other American citizens, but will reserve in behalf of any injured American citizen, as against either *Costa Rica* or *Panama*, all rights which pertain to the territory and for the infringement of which its rightful Sovereign may be found responsible. A similar communication is made to the Government of the Republic of *Panama*."

Be pleased, Mr. Minister, to receive the assurances of my most distinguished consideration, and permit me to subscribe myself,

Your Excellency's most obedient Servant,

WILLIAM LAWRENCE MERRY,

E. E. and M. P. U. S. A.

To His Excellency

Señor Don José Astúa Aguilar,

Minister of Foreign Relations, etc.,

Republic of *Costa Rica*, *San José*.

The Minister of Foreign Relations of Costa Rica to the American Minister. Doc. 433

SAN JOSÉ, 3d of May, 1906.

MR. MINISTER:

I respectfully refer to the polite note under date of January 29th of this year, in which Your Excellency was kind enough to send a copy of the telegram of the 28th of the same month, which your Government thought proper to address to you through the Honorable Secretary of State, referring to a claim of Mr. H. L. McConnell, fully discussed last year in writing and verbally, and which it appears should have been considered as entirely terminated, inasmuch as through the *Costa Rica* Minister at Washington, and also before the Legation, over which you preside with so much skill and merit, my Government explained the facts of the case, and demonstrated that it had worked with indisputable reason and right, and since in the note of June 7th, 1905, the last received in this matter until now, I had the honor to communicate to you that the said gentleman voluntarily and by virtue of a change of purpose, the motive of which I have not succeeded in becoming acquainted with, had

notified me, in person, that he had abandoned the pending negotiation solicited by him, although he had accepted already, in its larger part, as Your Excellency knows, the one under way. My Government being mindful of the friendly intervention of Your Excellency to establish a *modus vivendi* which, upon a basis of equity, without injury to the territorial sovereignty of Costa Rica or prejudice to third parties and within the possibilities of our fiscal law, would govern the occupancy by McConnell of the lands which he has endeavored to make his own in the zone of Gandoca and along the left bank of the river Sixola, by virtue of an usurpation of ownership, the features of which as a transgression against the national property are clear by any criterion, and which, at the same time, would lend itself by giving it a retroactive effect to relieve him of the charge which exists against him of having committed in the country acts of smuggling in its most serious form, that is the clandestine importation of merchandise by the *Gandoca*, which is not a port qualified by our laws for maritime traffic.

Your Excellency thought proper to call my attention to the circumstance that the Secretary of State in Washington communicated also the said cablegram to the Government of *Panama*, and even if the reply which the latter must give is obvious, in view of the fact that it is evident from authoritative documents that the said nation recognizes the total and exclusive jurisdiction, or in other words the sovereignty of *Costa Rica* in said lands, I thought it expedient to delay my reply to Your Excellency while awaiting the declaration which that Republic should make in this respect, and this explains why this office has delayed the reply to the important note which is the cause for the present one, which I have the honor of addressing to you, without my knowing as yet that which the Secretary of Foreign Relations of *Panama* may have seen fit to express.

In the cablegram cited, there appeared the following propositions, which I must treat separately and in the same order in which they are given by the Honorable Secretary of State:—

1. That the question under consideration in this incident refers to the American Banana Company;
2. That in the territory in dispute (that of the *Sixola*) my

government has taken possession of some property of said Company;

3. That at the present time there does not exist between *Costa Rica* and *Panama* any arrangement governing the ownership and administration of the territory mentioned, while the boundary question is being definitely settled between the two countries;

4. That while the boundary is not established in a positive manner, the Government of the United States denies that *Costa Rica* or *Panama* possess faculty as sovereigns, to carry into execution judgments referring to the appropriation of such lands by their occupants, and that it does not admit either that the right which American citizens claim to have acquired, by alleging acts of their own consummated before the determination of the boundary, may in any form be affected by the exercise of territorial sovereignty of *Costa Rica* or *Panama*;

5. That the Government of Your Excellency does not undertake to determine the preference between the titles which the American Banana Company may allege, and the opposing titles that other American citizens may allege concerning the lands of the said zone, but that it reserves the right to protect any of them against the damage that may accrue to them from the territorial administration which *Costa Rica* or *Panama* might exercise in the premises.

With the high consideration due to the illustrious government of the United States, and maintaining for Your Excellency all the respect to which you are entitled, I shall now lay before you the observations of my government concerning every one of the points enumerated, in the certainty that they will suffice to make clear in the mind of the Secretary of State the justice of the case of *Costa Rica*, and also to show once more the correctness of the proceedings of my government in its relations with the foreigners who under the protection of its laws, yet in harmony with them, seek fields for industrial activity and for a place for its initiative, a correctness of proceeding which is not impaired by the slightest injury to the right of others, and which has gained for *Costa Rica* the high opinion in which it is held as a hospitable land amongst the nations which favor her with their friendship, and of which, it pleases me to believe, the Government of Your Excellency has positive proof in its dealings with this Republic.

Since your legation, without doubt, has taken note of the complete history of the McConnell affair, having had opportunity of following in detail its course, in the interviews that have taken place and by means of the pro memorias and other documents which in due season I thought proper to communicate to you, my task will not be long nor difficult, because it will be confined, to a great extent, to my referring to that which Your Excellency already knows and of which you possess documentary evidence.

First Point.

The Honorable Secretary of State of the Government of Your Excellency has been incorrectly informed as regards the personality of the claiming party. In *Costa Rica* no company is known that bears the name of "American Banana," nor has Mr. McConnell presented himself to my government in the character as president or manager of any company, a matter of which Your Excellency can convince himself by merely referring to the memorial addressed by him to this office on the 5th of April, 1905, which evidences with his own words that both when occupying the area to which the question refers, and when asking my government for the grant of a title which would give legal standing to the unlawful possession exercised by him, he acted for himself, and not for any other or others as jointly interested.

And although I do not attribute any very great significance to the fact whether McConnell, when infringing our customs laws and usurping state lands, did so in his own name and for his sole benefit, or as representative of the "American Banana Company," and for the benefit of the latter, yet it is proper that such a circumstance should not pass unnoticed, because it shows that in this part, as well as in the rest, the claimant did not relate the facts of the case with due exactness, having, on the contrary, shaped them for his intention to produce, with the most powerful government of Your Excellency, an impression favorable to his intention of making his own that which can lawfully become such only by way of an acquisition in conformity with our laws, and presented them so as to neutralize the acts of punishable importation committed by him.

Second Point.

It is true that the Costa Rican authorities, after learning of the fact that McConnell had usurped a considerable area of land be-

longing to the state and that, violating our customs law, he introduced merchandise by way of the unqualified port of *Gandoca*, ordered this gentleman, in compliance with their duty, to abstain from exercising acts of ownership on land which is not his and as a result of an unlawful traffic, seized the goods introduced by him with audacious contempt of our fiscal law; but both actions are the logical and necessary consequence of the exercise of the jurisdiction of the State within the territory that belongs to it, according to its present boundaries; a jurisdiction which, according to the principles of private as well as international law, implies, in order to be real and actual, the right of exclusion and defence of one's property and the power of causing the laws of the Republic to become imperative for all who live therein. It is, therefore, evident that my Government has not deprived the claimant of any property in *Gandoca*, because he did not possess any there; that its action has been confined, on the one hand, to preventing the continuance of usurpation of the national domain in a region which, at the present time, belongs to the public treasury, and which could not be taken by the irregular and unlawful means of an occupation *de facto*,—and on the other hand, to make effective the laws which govern smuggling in the importation of goods; which goes to show that an erroneous statement has been made to the government of Your Excellency, when it was informed that my government had appropriated any property of Mr. McConnell or of the said "American Banana Company."

Third Point.

I likewise attribute to deficient information given by the claimant to the honorable Secretary of State, the assertion contained in the cablegram as to the non-existence at the present time of an arrangement between *Costa Rica* and *Panama* as to which of the two nations shall exercise the territorial sovereignty in the region of the *Sixola*, until the boundary treaty which is awaiting the approval of their governments and legislatures, shall determine definitely the boundary.

Your Excellency is well aware, in the first place, that, for a very long time, and by virtue of the *statu quo* in force between the two countries, the dividing line between them is that of the *Sixola*, *Yurquin*, and *Rio Golfito*, which leaves on the *Costa Rica*

side the region to which McConnell refers, and in the second place that the government of *Colombia* before, during a long series of years, and now that of the Republic of *Panama*, consider said line as the frontier of the territory of *Panama*, as is clearly expressed in resolution No. 28 of the Office of the Secretary of State and Foreign Relations of the latter of said countries, issued on the 2nd of August, 1904, and published in its *Official Gazette* of the 23rd of the same month, which among other things says, "Although by the arbitration decision handed down by the President of the French Republic, *Gandokin* (region of the *Sivola*) forms a part of the territory of *Panama*, this arbitration decision has not been carried into execution as yet, and as long as this does not take place, the Government of this Republic (Republic of *Panama*) does not exercise jurisdiction in that place, because the same is situate between the boundaries of the territory, the dispute over which gave rise to the arbitration decision, and because the *statu quo* agreed on so demands it. Therefore the Costa Rican Government is the present possessor of the place referred to, just as the government of *Panama* is the present possessor of a part of the Costa Rican territory on the Pacific. The execution of the arbitration decision will give to each sovereign the possession of the territory that belongs to it, and from that time forth the *statu quo* will cease; but as long as this does not take place, *Gandokin* will remain under the jurisdictional action of *Costa Rica*."

From what has been said, it follows that an effective and perfect arrangement exists, not of recent date, but existing for a long time, concerning the exercise of the sovereignty in the region under dispute, to which the esteemed cablegram transmitted to Your Excellency alludes; effective because it has its origin in the will of the two nations interested therein and because it concerns a matter exclusively of their own, and perfect because aside from what has been said it has been confirmed by the action of their governments.

Fourth and Fifth Points.

That which I have just stated, correcting the statements concerning the extent and scope of the jurisdictional sovereignty of *Costa Rica* in its southern region, leaves no doubt whatsoever as to the value and legal truth of the following conclusions: the

first is that there exists a present boundary which divides the territory of *Costa Rica* from the territory of *Panama*, for all the effects of the international law of both countries, and from the point of view of the international relations between the two Republics, and with the other nations of the world, a boundary established by the only parties whom it affects and who could fix it, respected by them in the course of the years, sanctioned by direct acts of their governments, and on the efficiency of which for the same reason no discussion is admissible. The second is that the provisional character of the said line of demarcation does not operate in any way against the exercise of the sovereignty of my nation as far as the very bank of the *Sixola* and the *Yurquin*, since the only thing that this quality implies is the possibility of a modification in the frontier by virtue of a treaty, but not a limitation of the actual territorial ownership as long as in the absence of that agreement the *statu quo* lasts, as is declared by *Panama*. Such sovereignty and dominion of *Costa Rica* in the said region would be wholly a nominal and absurd thing if they were not accompanied with the power of defending the territory involved, of legislating on occupancy, possession and appropriation of the lands which it comprises, on the commercial traffic, on the order and security of the citizens, and other interests of civil life, and at the same time with the power of dispensing justice through the courts' in controversies relative to the property and possession of lands and in all kinds of transgressions of the national laws.

Therefore my Government has viewed with the greatest surprise the opinion expressed in said cablegram on this matter, and which limits itself to asserting that the courts of *Costa Rica* have no jurisdiction in the lands of *Gandoca* and the *Sixola River*; that is, that my nation has no sovereign power there. If it is asserted that its judges cannot pass any judgments nor order the carrying into effect of anything with regard to the things that occur in that integral part of its present territory, the predominance of its laws and the power of its authorities would be absolutely and unreservedly repudiated, because it cannot be understood what would be the object of one or the other without the power of deciding with certainty, that is, efficiently, the corresponding controversies, so that the axiom that the courts are

the law brought into effect and life, would be rendered futile; whereby without remedy the inadmissible result would be reached that that region is outside of all jurisdictional power, in view of the fact that *Panama* without hesitation attributes it to *Costa Rica*, and that the Honorable Secretary of State is of the opinion that neither nation possesses it.

I am inclined to believe that because of the brevity of the text of the cablegram, this office has made some mistake in interpreting it, because my government considers it as an impossible thing that the government of Your Excellency, which is so eminently possessed of the qualities of wisdom, nobility and spirit of justice should have the intention of failing to recognize the sovereignty of my country over a part of the territory which it has governed and is governing without restrictions and in agreement with the Republic of *Panama*, which not only assents to the exercise of our sovereignty, but considers it undeniable, and has so evidenced in its acts of administration, as has been expressed above, adding on its part the very important supporting opinion that by virtue of the *statu quo* it exercises the same power in the lands which the arbitration decision of the President of France attributes to *Costa Rica* on the side of the Pacific and to the south of the *Golfo* river.

To sum up: Mr. Minister, I have the honor of informing you in order that Your Excellency may deign to transmit it to your esteemed government, that the territory of *Gandoca* and the *Sixola* River, from the very bank of this river, and of the *Yurquin* have been and are now subject to the sovereignty of *Costa Rica*; that Mr. H. L. McConnell has attempted without title in virtue of his own will alone, by means of an occupancy which our laws and universal right qualify as the act of an usurper to appropriate as lord and master a great area of that region; that the same gentleman imported merchandise clandestinely by the unopened port of *Gandoca*, for which purpose he chartered ships which he caused to arrive at that point; that my government in the exercise of the national sovereignty, and under the necessity of inculcating respect for its laws acted through the fiscal authorities to proceed against that unlawful action and smuggling, and notified Mr. McConnell that he could not possess or make use of the lands mentioned since he had not acquired them in

accordance with our laws; and that in the course of time said claimant addressed to this office a memorial in which he solicited important concessions of land in those places, a memorial which my government, to manifest its friendship for the government of the United States and in consideration of the esteemed recommendations of Your Excellency, considered with good will, giving as a result thereof the reply addressed by this office to the said gentleman on the 12th of April, 1905, in which it proposed to him the leasing of said lands, up to the amount of two thousand hectares for the term of twenty-five to thirty years, subject only to the restriction of the rights acquired therein and to the reservations indispensable in the case. Said proposition was not accepted by McConnell, who after replying with a new plan of settlement unacceptable in almost all its parts, and which gave rise to a series of interviews at this office, finally agreed to the greater part of the clauses of a *modus vivendi*, which was communicated to Your Excellency, and in which he reached the realization of his wishes and in which my government had the satisfaction of attaining the possibility of giving to that of Your Excellency a proof of its friendship, favoring, in spite of what had preceded in the case, the interests of an American citizen; Mr. McConnell, however, just at the moment when the negotiations were on the point of coming to a conclusion, and only an agreement in matters of detail was necessary, informed me of his decision to abandon all discussion, leaving matters as they were in the beginning, in the irregular condition to which I have already referred.

It is necessary therefore in justice to recognize that my Government, aside from not having committed any act contrary to what is prescribed by its laws and the rules of international law affecting private rights, lent itself to making a concession to the claimant, in which the desire is evident to act in a manner agreeable to the government of Your Excellency, although protecting, as is but proper, the rights of the nation so far as its sovereignty and the respect for its fiscal regulations are concerned; and I hope that by means of this note and the other data connected with it, which I request Your Excellency kindly to communicate to the Honorable Secretary of State at Washington, I shall succeed in convincing the illustrious and upright judgment of the

Government of the United States of the fact that mine has acted in the matter in perfect harmony with the powers as sovereign and without disregarding any right of the said company, or of Mr. McConnell, treating the latter, on the contrary, with particular generosity.

It is my duty to send Your Excellency new copies of the memorial of Mr. McConnell and of the reply of this office, bearing the date of the month of April of last year, and I also beg to offer you anew the homage of my respect and distinguished consideration.

JOSÉ ASTÚA AGUILAR.

To His Excellency, Mr. William Lawrence Merry, Minister Plenipotentiary of the United States, City.

Doc. 434 The Chargé d' Affaires of the United States to the Minister of Foreign Relations of Costa Rica.

AMERICAN LEGATION,

SAN JOSÉ, COSTA RICA, April 27th, 1906.

ESTEEMED SIR:

Referring to this Legation's Despatch No. 269 of March 20, 1906, I beg to say that the Department of State at Washington has again taken up the complaint of H. L. McConnell and the American Banana Company against the Government of *Costa Rica*, and, after giving it most careful attention, instructs me in a despatch No. 694, dated April 16, 1906, to again most respectfully submit its views and conclusions to Your Excellency's honorable consideration.

While some of the details of the case are involved in controversy, my Government would invite Your Excellency's attention to three considerations which appear to be beyond dispute, and which in the present aspect of the situation my Government regards as of fundamental, if not of controlling, importance.

The first of these is that under the Loubet decision of 1900, accepted as final by both *Colombia* and *Costa Rica*, the territory included in the McConnell plantation was awarded to *Colombia* (now *Panama*), and became subject to the jurisdiction of that country. The second is that McConnell in 1903 entered upon a portion of these lands, planted a large area with banana trees, built houses, and started the construction of a tramway, expend-

ing large sums of money in his enterprise, and he alleges that his proceedings were based upon the authority of certain laws of *Colombia* relating to uncultivated lands. The third consideration is that the pending treaty of March 7, 1905, between *Costa Rica* and *Panama*, defining the boundary lines between those Republics, will, when drawn, include the McConnell concession within the jurisdiction of *Panama*.

My Government is not unmindful of the contention of *Costa Rica* that an understanding has existed between Your Excellency's Government and that of *Panama*, whereby the Government of *Costa Rica* has retained possession and administrative control over the district, and pending the ratification of the treaty of March 7, 1905, exercises police powers and other general attributes of *de facto* sovereignty within the territory. At the same time it is undeniable that the *de jure* sovereignty has been in *Colombia* and *Panama* since the Loubet award, accepted as it is by *Panama* and *Costa Rica*, so that either by virtue of that award or of the pending boundary treaty the territory ultimately come under the jurisdiction of *Panama*. Meanwhile certain American citizens, acting upon the assurances of the authorities of *Colombia* and *Panama* and in accordance with the laws of those States, have gone into this territory, expended large sums in developing it, and by virtue of such acts have acquired certain possessory rights thereunder, and are entitled to protection therein. In the adjustment of any conflicting claims of title which may arise or have arised my Government does not pretend to interfere. But, on the other hand, after rights possessory or otherwise in this property have been acquired in good faith by American citizens, and have become vested in them, the State Department at Washington is of opinion that they should not be divested except by due process of law, by ejectment or other appropriate legal action.

In my Government's conception of this matter, *Costa Rica* exercises at present a temporary *de facto* sovereignty over the territory included in the McConnell concession, subject of right to be vested at any time at the will of *Panama*, but actually continuing until such time as the pending boundary treaty is ratified. She exercises the powers of Government that are necessary for the orderly administration of the district, but should

not use this sovereignty in such a way as to impair the rights of the *de jure* sovereign of the territory. Her functions of government are limited by her tenure, which is of a temporary and precarious character. Her duty is to preserve the property, not to destroy it, and hand it over to her successor without the commission of any acts tending to impair the ultimate rights of the *de jure* owner. It is obvious, for instance, that it would have been unwarranted exercise of sovereign power for *Costa Rica* to grant a concession to McConnell for the construction of his railroad beyond the termination of the *de facto* sovereignty of *Costa Rica*. In a word, Your Excellency's Government stands in the position of a usufructuary entitled to the fruits and profits of the territory during the period of tenure, and it cannot be admitted that *Costa Rica* can in any way destroy or impair the substance of the usufruct. In like manner it is equally clear that the title to property rights in this territory acquired since the Loubet award are determinable according to the laws of *Colombia* and *Panama*, and it follows that *Costa Rica* can rightfully exercise no jurisdiction within the territory which *Panama* could not exercise; and as *Panama* cannot rightfully deprive possessors of title properly acquired under Colombian laws, which remained in force after the secession of *Panama*, without due process of law, it would be equally unjust for *Costa Rica* to attempt to do the same thing.

In considering the present connection of *Panama* with the territory in question, it would appear that that State has consented that Your Excellency's Government continue as the *de facto* sovereign until the ratification of the treaty. In the view of my Government, as long as the Government of *Costa Rica* is the sovereign in possession, whatever attributes that accompany or attend possession should be conceded to her, including the right to control, by taxation or otherwise, importations, etc., at *Gadokin*. But the ultimate attributes belong to the ultimate owner, and rights and titles which have accrued concerning the lands within this area should not be prejudiced by the State having accidental and temporary jurisdiction.

My Government insists that the property of Mr. McConnell and those whom he represents be protected and preserved, without any destruction thereof, until such time as the ultimate

rights of the parties may be passed upon by court or courts of competent jurisdiction.

The Department of State at Washington disclaims any intention to interfere in this case to the prejudice of the rights of the United Fruit Company or any other American interest already acquired in the territory immediately in question.

With assurances of my most distinguished consideration, I beg to remain Your Excellency's

Most obedient servant,

JAMES G. BAILEY,

Chargé d' Affaires ad interim.

To His Excellency Don José Astúa Aguilar,

Minister of Foreign Relations of the Republic of *Costa Rica*,
San José.

The Secretary of State in the Department of Foreign Relations to the Chargé d' Affaires of the United States of America.

Doc. 435

DEPARTMENT OF FOREIGN RELATIONS,

SAN JOSÉ, May 26, 1906.

HONORABLE SIR:

I have before me the despatch which Your Honor was pleased to address to my predecessor in this office, Señor Don José Astúa Aguilar, under date of April 27th last past.

This Department having been peremptorily occupied by the changes in the personnel of the Government, as well as the necessity of informing myself carefully of the details of the business to which the note of Your Honor refers, the present answer has been delayed until now, greatly to my regret.

Your Honor is pleased to state in your despatch mentioned, No. 270, that the claim of McConnell and the American Banana Company against the Government of *Costa Rica* has again been taken up by the Department of State at Washington for consideration, and that after much examination it has communicated to Your Honor instructions to submit to my Government three points of the question, which in the worthy opinion of the Department of State, appear to me of vital and decisive importance in the matter.

The first observation that the Cabinet at Washington, through the respected medium of Your Honor is pleased to formulate, is that, according to the Arbitral Sentence pronounced by His Excellency, the President of the French Republic, accepted as final, not only by *Costa Rica* but by *Colombia*, the territory in which the plantation and other works of Mr. McConnel are found, out of which this question arises, was adjudicated to *Colombia* (now *Panama*) and remained subject to the jurisdiction of that country, the Government of *Costa Rica* therefore lacking any legal basis for proceeding as it has done against the acts of violence and usurpation, perpetrated by McConnell within that territory.

Permit me, Your Honor, to call especially to your attention the main idea of the foregoing assertion. *Costa Rica* has not yet accepted the Award of His Excellency, President Loubet, as a final solution of its boundary controversy with the Republic of *Colombia*. Far from that, scarcely had my Government received information of that remarkable act, when it declared, under date of September 29, 1900, before the Arbitrator, through its Legation in Paris, that *Costa Rica* interpreted the first paragraph of the explanatory part of the Award, in the terms set forth in that declaration. The Arbitrator, through His Excellency, M. Delcassé, Minister of Foreign Affairs of the Republic of France, was pleased to respond to the representation of *Costa Rica* in terms of perfect understanding and urged upon both parties that with the spirit of conciliation and harmony with which they had been until that time inspired, they should seek to put an end to the business, inasmuch as the Arbitrator had not been able to fix the frontier except by means of general indications. Later in a note of this Department to the Minister of Foreign Relations of *Colombia*, dated July 27, 1901, my Government informed that of *Bogota* of the attitude of *Costa Rica*, in relation to this important business, declaring that "*any interpretation different from that which COSTA RICA has given and which impairing its undisputed rights shall go beyond the claims of COLOMBIA in the litigation, will take away the force of the Award.*"

The representation to the Arbitrator and said note, the text

of which Your Honor has *in extenso* in the documents that I have the honor to enclose to you, which are in essence but the expression of the dissent of *Costa Rica* with respect to certain details intimately related to the Award, the scope and efficacy of which they would affect, show clearly that the Award has been far from being unconditionally accepted as a final ending of the dispute over boundaries.

We may say, therefore, that after the note of July 27, which clearly stated the attitude of *Costa Rica*, as to the arbitral decision, the situation between *Costa Rica* and *Colombia* was one of simple expectancy, without there having been any act which could be understood in the sense of acceptance or submission to the decision. This matter was not again taken up specially between the parties interested, until the celebration of the treaties of *Panama*, one of which had for its particular object to stipulate the submission of the parties to the Award.

It may be observed here that, as the Plenipotentiaries who concluded those treaties duly showed to His Excellency, Mr. John Barrett, Minister of the United States to the Republic of *Panama*, an intimate relation exists between them, not only from the date at which they were signed, which shows the unity of the act, but also by the consideration upon which they were based, and from which jointly is to be drawn the idea that animated the contracting parties in making the three pieces that constituted them, connected acts, tending to a like end.

From the tenor of these treaties, therefore, it appears that if the first of them has as its object the recognition of the Arbitral Award, it is under the condition *sine qua non* of the stipulations recited in the other two. Moreover, it must be taken into account that up to now the aforesaid treaties have no legal force whatever, whilst they are awaiting the legislative approval that both Republics require as a basic principle to give effect to international compacts, (Art. 65, paragraph 4, Constitution of *Panama*: Art. 73, paragraph 4, Constitution of *Costa Rica*) and that until this has been done and the stipulated exchange been made, the acceptance of the decision as to boundaries is not a thing definitely settled. Therefore it cannot be said that the Arbitral Decision became a statutory law in favor of *Panama*,

in respect to the lands which Mr. McConnell claimed to occupy.

The situation, then, of the territory comprized within the claim, so far as regards its jurisdiction, was and is that fixed by the *statu quo* established in the treaty of March 15, 1825, ratified by the Convention of December 25, 1880, the scope of which has been the subject of various controversies; but if we only had to take into consideration the Colombian point of view to determine it there could be adduced the text of the note addressed to this Department by the Department of Foreign Relations of *Bogota*, dated March 16, 1891, which says:

“The Republic, then, being guided by especial sentiments of conciliation, proposes that the provisional frontier shall be the River *Doraces*, from its outlet in the Atlantic to its sources, following the Cordillera of *Las Cruces* to the River *Golfito* and thence the River *Golfito* to its mouth in *Dulce Gulf*.”

*

In the second place the Department of State considers that Mr. McConnell, according to his allegations, occupied the lands referred to in that claim, under the protection of certain laws of *Colombia* relating to vacant lands. I ought in this particular to respectfully observe to Your Honor that whatever the laws of *Colombia* may be applicable to vacant lands, the zone of territory not possessed by that Republic was, under the general principles of law and the positive accord of both Governments, clearly expressed in the compacts the nature of which I have referred to, excluded from the jurisdiction of that Republic. It is certain that Mr. McConnell planted bananas over an extent of land and made other important improvements therein, but it is also true, as my predecessor duly took occasion to inform the Legation in his note of March 13, last, that such acts were clandestinely carried out and illegally, being therefore subject to the restrictions in such cases and the provisions of law relating thereto.

But inasmuch as the improvements which Mr. McConnell or any other person may have made in a property, may give him possible rights of civil order, it is admissible that the claimant would have, perhaps, a right to claim the indem-

nities from him who, becoming the holder of said land, may avail himself of his efforts and of his capital on the value which these represent, but never in order to serve as the basis for a pretended right against the laws of this country. At this moment the lands in question, by virtue of denouncement are the property of a private party, a company incorporated under the laws of the United States, composed mainly of American citizens and having a legal personality in *Costa Rica*. The acquisition has been legally made, respecting our institutions and under their protection. It is with this new proprietor, in my view, that Mr. McConnell must legally settle his rights. In passing I am pleased to assure Your Excellency that the courts of *Costa Rica* have always afforded full and satisfactory justice; thanks to which no action ever taken by any of them has ever compromised the responsibility of the country abroad.

In the third place a point is made in the despatch of Your Honor of the following consideration; that while the treaty of March 7, 1905, which was celebrated between *Costa Rica* and *Panama*, is pending, which defines the dividing line between the two Republics, when that line is physically fixed, it will include the McConnell concession under the jurisdiction of *Panama*. From this the Government of Your Honor infers that until the treaty of March is ratified, *Costa Rica* only exercises police powers and other attributes of sovereignty *de facto* within the territory in question, and it considers it unquestionable that the sovereignty *de jure* has been in *Colombia* and is today in *Panama*.

Touching this particular I must state what has been the opinion of *Costa Rica* during the whole period which has elapsed since the boundary controversy was initiated, in order to demonstrate the certainty and uprightness of its actions in the present case and the inflexible logic and consistent spirit which has inspired its conduct in the matter.

My Government feels that the difference between the sovereignty *de jure* and the sovereignty *de facto* does not in the present case support the theory that is advanced in the important despatch of Your Honor. It thinks that the difference exists, but it is not based on the attributes that go to make one or the other, but it arises out of their origin and their cause and from

the real title under which these are exercised. Both the former and the latter afford authority for the exercise of the same and identical powers to carry out the acts that sovereignty in general comprizes. They differ only in that one is made effective by incontestable law, with undoubted title, while the other is the result of an act that is done with sufficient reasons to make itself respected by virtue of an effective occupation, ample in itself to respond before other Nations for the acts that are performed. The conqueror who by his own ambition makes himself master of a territory and subjects it to his will, governing it in accordance with his needs and inclinations, or even the victorious revolutionist who succeeds sufficiently to make his government respected and maintain order, without doubt exercises a sovereignty *de facto*; so that as regards the character and scope of their powers they do not differ in any way from sovereignty *de jure*. But of *Costa Rica* and *Panama*, exercising their sovereignty *animo domini* in the disputed zone in virtue of a legitimate title, as the Arbitral Convention is, it cannot be said that they have only a mere *de facto* sovereignty; and even if it was, it has already been seen that it is not in its scope and character of less efficiency than a sovereignty *de jure*.

Our right, then, to govern and dispose as a sovereign of the territories that we are holding, while the demarcation of the boundaries is in suspense, is a point not put in doubt, neither by *Colombia* before nor by *Panama* now; and the complete sovereignty of both countries over that which each occupies until the definitive demarcation is made, comprizes unlimitedly, as both nations have understood it, all the attributes that go to make it up.

The title under which both parties govern what they hold in those regions is the treaty and convention to which I have above referred (March 15, 1825, and December 25, 1880). In that treaty it is established that both countries formally agree to respect their boundaries, as they are at present, reserving the demarcation of the dividing line between the one and the other to be made in a friendly way by means of a special convention; and the convention mentioned itself added that while the boundary question and the designation of the frontiers remains unsettled, the *statu quo* agreed upon shall continue.

What was the agreement implicitly made up to that time and what was it that was accepted afterwards? Clearly, that both Republics should manage and govern, as their own, that which they were and are holding, without either of them ever having claimed that only the benefits of the civil law would be had during that undecided period. From what has been stated it results as unquestionable that *Colombia* previously, and now *Panama*, have understood and do understand, conjointly with *Costa Rica*, that each one of them is absolutely the owner of that which it is holding; therefore it is that their transient disputes have turned on whether this or that point was or was not occupied by one or the other of them.

On the other hand, in the view of the undersigned, the principles which define and regulate private property are not at all applicable to national sovereignty, in order to deduce therefrom whoever is not a definitive sovereign cannot alienate. Proprietorship, from the point of view of public international law, or in other words, the eminent domain of the sovereign, consists, as Your Honor well knows, in the power of always maintaining subject to the authority of the laws a portion of the territory, with full and ample power of decreeing expropriations and of transferring by sale or by any other title the lands comprized within the public domain; also in that of levying taxes, and in a word that of doing one and all of the acts that sovereignty comprizes within itself. Proprietorship, thus considered, is surely not transferrable in the present case. No act of *Costa Rica* which went to the extent of placing a part of the disputed territory beyond the reach of the laws of *Panama*, when that Republic, in virtue of the Loubet Award or of pending treaties, incorporates into itself territory held in whole or in part by *Costa Rica* today, for reasons which the Department of State has very well stated, would be either regular or valid. But adjudications of lands which at this very day are ruled by our laws, and tomorrow may be subject without any hindrance to the laws of *Panama*, constitute acts which if civil will subject them to the property law, but not if international, where the law which is the sovereign itself takes on a higher significance, more absolute and transcendent. It is not possible that they

are prohibited for whoever holds, governs and administers a section of territory.

The alienation of lands to private parties, which under civil law constitutes a renunciation or abandonment of dominion, under public law where the dominion has, as it may be said, a different scope, is clearly an act of administration or of usufruct; and I assume that it is in this sense that the Department of State considers *Costa Rica* the usufructor of the territory in controversy with the Republic of *Panama*. The method of securing the usufruct of that territory can only be by ceding the lands which are the subject of private activity, by sale or donation or other means, levying taxes and seeing that the laws are complied with. These are all acts which do not harm the eminent domain, the right to make effective the authority of the legitimate master at any time and in any form. The substance being saved, as the Romanists say, the act is one of pure usufruct.

If the question were that of ceding to a foreign country a part of the territory that may tomorrow belong to *Panama* or *Costa Rica*, if such part were recognized as or declared an independent State, then, indeed, the sovereignty would be harmed, it would be an attempt against the eminent domain of that Republic; and the act would be irregular and void. While it is not so, the act is regular and valid.

These considerations, which I beg that Your Honor will be pleased to communicate to the Honorable Secretary of State at Washington, move me to confirm the communications of my predecessor and to hope that, under the guidance of the spirit of rigid justice of the United States, with them the Department will arrive at the conviction of the uprightness and equitable spirit which has animated the actions of my Government in the present matter.

I am pleased to take this opportunity to reiterate to Your Honor the assurance of distinguished consideration with which I am your attentive and obedient servant.

LUIS ANDERSON.

Honorable James G. Bailey,

Chargé d' Affaires of the United States of America.

The Minister of Costa Rica to the Secretary of State. Doc. 436

LEGACION DE COSTA RICA,
WASHINGTON, November 26, 1906.

SIR:

Referring to the conversation which I had the honor to have with Your Excellency concerning the matter of the territorial limits of *Costa Rica* and *Panama*, and in view of the pending questions between two American Companies relative to certain lands located in territory between *Costa Rica* and *Panama*, near the Atlantic Ocean, it gives me pleasure to send to Your Excellency, herein enclosed, copy and translation into English of the three instruments signed by the two Governments looking to a final settlement of the long-pending boundary question between them. I add a note addressed by the Minister of *Costa Rica* in Paris, Sr. Peralta, dated September 29, 1900, and answer thereto by the Minister of Foreign Relations of the French Republic, M. Delcassé, dated November 25, 1900; relating to the same question. The latter of these notes states the fact that the Arbiter in the absence of precise geographic data, was able to fix the frontier only by means of general indications and asserts that it will correspond to the two Republics to proceed to the material determination of their respective frontiers, the Arbiter moreover deferring to the spirit of conciliation and good understanding which have inspired the litigant Governments, to which fact and wise advice of the Arbiter reference is made in the first of the three instruments above mentioned.

In connection with this matter and availing myself of this opportunity I wish to state that as Your Excellency is doubtless aware, *Costa Rica* took the initiative and brought about a friendly settlement of this controversy, having also given due and careful consideration to the claims of the interested American Companies; and that, although the two Republics have, in due course, agreed on a Treaty of Limits, now pending ratification by their Legislatures, a citizen of the United States, Mr. Herbert D. McConnell, temporarily sojourning in *Panama*, with an evident view to taking advantage of the prestige which his nationality affords, has been engaged in an active agitation prejudicial to the good understanding prevailing between the two countries, even peti-

tioning the Congress of *Panama* to enact legislation which if carried into effect, would surely cause my Government the greatest concern. A memorial signed by Mr. McConnell presented to the Congress of *Panama* during the last month is attached hereto for Your Excellency's information.

In submitting to Your Excellency the foregoing, I beg leave to renew the assurances of my highest and most distinguished consideration.

J. B. CALVO.

His Excellency Elihu Root, Secretary of State.

Doc. 437 **Award in the Boundary Arbitration Between Honduras and Nicaragua, Pronounced by the King of Spain.**

MADRID, December 23, 1906.

ARBITRAL AWARD.

Don Alfonso XIII, by the grace of God and the Constitution, King of Spain.

Whereas, there having been submitted to my decision the question of limits that is pending between the Republics of *Honduras* and *Nicaragua*, by virtue of Arts. 3, 4 and 5 of the Treaty of *Tegucigalpa*, of October 7, 1894, and of the tenor of the Notes addressed by my Minister of State, dated November 11, 1904, to the Minister of Foreign Relations of said Powers:

Inspired with the desire to respond to the confidence the two Republics mentioned have equally shown to the old Mother-Country, in submitting to my decision matters of such importance;

It appearing that, for that purpose and by Royal Decree of April 17, 1905, there was appointed a Commission of Examination of the aforesaid question of limits, to the end that the points in litigation might be cleared up and a preparatory report might be issued of the Arbitral Award;

It appearing that the High Parties interested presented in due time their respective *Alegatos* and *Réplicas*, with the corresponding documents, in support of what each one considered his rights;

It appearing that the boundaries between the Republics of

Honduras and *Nicaragua* are already definitively fixed by both parties, and by mutual accord, from the Coast of the Pacific Ocean as far as the *Portillo de Teotecacinte*;

It appearing that, according to the *Actas de Amapala*, of September 14, 1902, and August 29, 1904, there was to be selected by the Mixed Honduranian-Nicaraguan Commission a common boundary point on the coast of the Atlantic, in order to carry from there the demarcation of the frontier to the *Portillo de Teotecacinte* mentioned, which could not be done because there was no agreement;

It appearing that the territories in litigation comprise an extensive zone, which includes:

On the North, starting from the *Portillo de Teotecacinte*, and proceeding by the summit of the Cordillera and following the line or ridge which divides the waters of the rains to one side or the other, until ending at the *Portillo* where the spring rises that forms the *River Frio*, thence following the flow from said spring and said river until it is joined with the *Guayambre*; and after that by the flow of the *Guayambre* to where it joins with the *Guayape* and the *Guayambre* take the common name of *River Patuca*, following by the meanderings of this river until there met the meridian which passes by Cape *Camarón* and taking this meridian as far as the coast.

And on the South, from the *Portillo de Teotecacinte*, from the headwaters of the *River Limón*, going downstream, by the flow of this river, and thence by the flow of the *Poteca*, to the confluence with the *River Segovia*, continuing by the meandering of this latter river until arriving at a point located twenty geographical leagues distant, right and perpendicular to the Atlantic Coast, proceeding from this point toward the South upon an astronomical meridian until intersecting the geographical parallel of latitude that passes by the out of the *River Arena* and of the lagoon of *Sandy Bay*, and proceeding upon that parallel towards the East from the intersection indicated to the Atlantic Ocean.

It appearing that the question which is the subject of this arbitration consists, therefore, in determining the dividing line between the two Republics, included between a point on the Coast of the Atlantic and the *Portillo de Teotecacinte* mentioned;

CONSIDERING that, according to what was agreed by both parties in the third rule of Art. 2 of the Treaty of *Tegucigalpa* or *Gómez-Bonilla* of 1894, by which this arbitration is governed, it must be understood that each one of the Republics of *Honduras* and *Nicaragua* is the owner of the territory which, at the date of their independence belonging to Spain, constituted, respectively, the Provinces of *Honduras* and *Nicaragua*;

CONSIDERING that the Spanish provinces of *Honduras* and *Nicaragua* were formed by historic evolution, until they were constituted two distinct Intendancies of the Captaincy-General of *Guatemala*, by virtue of what was provided in the Royal Ordinance of Intendants of Provinces of *New Spain* of 1786, applied to *Guatemala*, and under its regimen of Provinces Intendancies it was found at the time of the emancipation from Spain in 1821;

CONSIDERING that by Royal *Cédula* of July 24, 1791, at the petition of the Governor Intendant of *Comayagua* and in conformity with what was granted by the *Junta Superior* of *Guatemala*, in virtue of the provisions of Articles 8 and 9 of the Royal Ordinance of Intendants of *New Spain*, there was approved the incorporation of the *Alcaldía Mayor* of *Tegucigalpa* with the Intendancy and Government of *Comayagua* (*Honduras*), with all the territory of its Bishopric, by reason of said *Alcaldía Mayor* being a province annexed to that of *Honduras* and being connected with it, both in ecclesiastical matters and in the collection of tribute:

CONSIDERING that, by virtue of this Royal *Cédula*, the Province of *Honduras* had been formed in 1791, with all the territories of the primitive *Comayagua*, those of its annexed *Tegucigalpa* and those beside of the Bishopric of *Comayagua*, composing thus a region that bordered on the South with *Nicaragua*, on the Southwest and West with the Pacific Ocean, *San Salvador* and *Guatemala*, and on the North, Northeast and East with the Atlantic Ocean, saving that portion of coast at that time occupied by *Mosquito* Indians, *Zambos*, natives, etc.

CONSIDERING that there ought to be noted, as a precedent for the provisions of said Royal *Cédula* of 1791, the demarcation made by the two other Royal *Cédulas* of August 23, 1745, appointing, in one Don Juan de Vera, Governor and General Commander of the Province of *Honduras*, for the command of that

province and of the rest included in all the Bishopric of *Comayagua* and district of the *Alcaldía Mayor* of *Tegucigalpa* and of all the territories and coasts that are included from where the jurisdiction of the province of *Yucatán* ends to Cape *Gracias á Dios*; and in the other Don Alonso Fernández de Heredia, Governor of the Province of *Nicaragua* and General Commander thereof, and of *Costa Rica*, office of *Corregimiento de Realejo*, *Alcaldías Mayores* of *Subtiava*, *Nicoya* and other territories included from Cape *Gracias á Dios* to the *River Chagres* exclusive. In these documents, then, Cape *Gracias á Dios* indicated as a border point for the jurisdiction conceded to the said Governors of *Honduras* and *Nicaragua*, with the character with which they were appointed.

CONSIDERING that it is also worth noting as an antecedent, the communication of the Captain-General of *Guatemala*, Don Pedro de Rivera, addressed to the King, on the 23rd of November, 1742, concerning the *Mosquitos* Indians in which it is stated that Cape *Gracias á Dios* is on the coast of the Province of *Comayagua* (*Honduras*);

CONSIDERING that when, by virtue of the Treaty with England of 1786, the English evacuated the country of the *Mosquitos*, at the same time that new regulations were made for the Port of *Trujillo*, the order was given to establish four settlements of Spaniards on the *Mosquito Coast*, on the *River Tinto*, at Cape *Gracias á Dios*, *Bluefields* and the outlet of the River of *San Juan*, so that while these establishments remained directly subject to the military authority of the Captaincy-General of *Guatemala*, both parties agreed to recognize that this in no way altered the territories of the Provinces of *Nicaragua* and *Honduras*, the latter Republic having shown by numerous certificates of legal proceedings and of reports that before and after 1791 the Government-Intendancy of *Comayagua* intervened in all that belonged to its cognizance in *Trujillo*, *River Tinto* and Cape *Gracias á Dios*;

CONSIDERING that Law 7, of Title 2, of Book 2, of the *Recopilación de Indias*, in determining the method that was to be used in making the division of the territories discovered, provided that it should so be carried out that the division for the temporal should conform with that of the spiritual, the Archbishoprics

corresponding with the Audiencias, the Bishoprics with the Governments and the *Alcaldías Mayores*, and the parishes and curacies with the *corregimientos* and ordinary *alcaldías*;

CONSIDERING that the Bishopric of *Comayagua* or of *Honduras*, which had already before 1791 exercised acts of jurisdiction in territories now disputed, exercised them in an unquestioned manner from that date in the demarcation of the Government-Intendancy of the same name, it having been proved that it disposed of surplus collections of tenths, issued matrimonial licenses, provided curates and heard claims of ecclesiastics in *Trujillo*, *River Tinto* and *Cape Gracias á Dios*;

CONSIDERING that the establishment or settlement of *Cape Gracias á Dios*, located somewhat to the South of the Cape of the same name and on the southern bank of the most important outlet of the river now called *Coco* or *Segovia*, was from before 1791 included in the ecclesiastical jurisdiction of the Bishopric of *Comayagua*, and continued a dependency of that jurisdiction until the ancient Spanish Province of *Honduras* was constituted an independent State;

CONSIDERING that the Constitution of the State of *Honduras*, of 1825, prepared at a time when it was united to that of *Nicaragua*, forming with others the Federal Republic of *Central America*, establishes that "its territory includes all that which belongs and has always belonged to the Bishopric of *Honduras*";

CONSIDERING that the demarcation fixed for the Province or Intendancy of *Comayagua* or of *Honduras*, by the Royal *cédula* cited, of July 24, 1791, continued without variation at the time when the Provinces of *Honduras* and *Nicaragua* obtained their independence; since even when, by Royal Decree of January 24, 1818, the King approved the reestablishment of the *Alcaldía Mayor* of *Tegucigalpa*, with a certain economic autonomy, the said *Alcaldía Mayor* continued forming a part of the Province of *Comayagua* or *Honduras*, dependent on the Political Chief of that province; and as such part it took part in the election, on November 5, 1820, of a Deputy to the Spanish Cortes, and a substitute Deputy for the Province of *Comayagua*; and also took part with the other parts of *Gracias á Dios*, *Choluteca*, *Olancho*, *Yoro*, with *Olanchito* and *Trujillo*, *Tenoca* and *Coma-*

yagua in the election of the Provincial Deputation of *Honduras*, which election was held on November 6 of the same year of 1820 ;

CONSIDERING that at the organization of the Government and Intendancy of *Nicaragua*, with reference to the Royal Ordinance of Intendants of 1786, it had been formed by the five parts of *León*, *Matagalpa*, *El Realejo*, *Subtiava* and *Nicoya*, not including in this division nor in that which the Governor Intendant, Don Juan de Ayssa, proposed in 1788, territories of what is now claimed by the Republic of *Nicaragua* to the North and West of Cape *Gracias á Dios*, it neither appearing that the jurisdiction of the Bishopric of *Nicaragua* reached as far as the latter cape, and noting that the last Governor Intendant in *Nicaragua*, Don Miguel González Saravia, in describing the province that was under his command in his book, *Bosquejo político estadístico de Nicaragua*, (Political and Statistical Sketch of *Nicaragua*), published in 1824, said that the divisory line of said province on the North ran from the Gulf of *Fonseca*, on the Pacific, to the River *Perlas* on the North Sea (the Atlantic) ;

CONSIDERING that the Commission of Examination has not found that the expansive action of *Nicaragua* has been extended to the North of Cape *Gracias á Dios*, nor reached, therefore, to Cape *Camarón* ; that no map, description of geography or document of those examined by said Commission is there any mention that *Nicaragua* might have reached to said Cape *Camarón*, and that, therefore, said Cape could not be selected as a frontier boundary with *Honduras* upon the Coast of the Atlantic, as *Nicaragua* claims ;

CONSIDERING that even though at some period it may have been believed that the jurisdiction of *Honduras* extended to the South of Cape *Gracias á Dios*, the Commission of Examination has found that such extension of dominion never was well determined, and in any case was ephemeral farther down than the settlement and port of Cape *Gracias á Dios*, and, on the other hand, the action of *Nicaragua* has been extended and exercised in a positive and permanent manner toward the said Cape *Gracias á Dios*, and, consequently, it does not follow that the common boundary on the Atlantic littoral can be *Sandy Bay*, as *Honduras* pretends ;

CONSIDERING that in adopting either Cape *Camerón* or *Sandy Bay* it would be necessary to have recourse to artificial dividing lines, that do not correspond in any way to well-marked natural boundaries, as the Gámez-Bonilla Treaty recommends;

CONSIDERING that all the maps (Spanish and foreign) which the Commission appointed by the Royal Decree of April 17, 1905, has examined, referring to the territories of *Honduras* and *Nicaragua*, prior to the date of Independence, indicate the separation between the two countries at Cape *Gracias á Dios* or to the South of that Cape, and that, at a time subsequent to the Independence maps like those of Squier (New York, 1854), Baily (London, 1856), Dussieux (made in view of data of Stieler, Petermann and Berghaus, Paris, 1868), Dunn (New Orleans, 1884), Colton, Ohman & Company (New York, 1890), Andrews (Leipzig, 1901), Armour (Chicago, 1901), mark the boundary at the same Cape *Gracias á Dios*;

CONSIDERING that of the maps examined relating to the question, only five present the boundary between *Honduras* and *Nicaragua*, on the side of the Atlantic, to the North of Cape *Gracias á Dios*, and these five maps are all subsequent to the date of Independence, and even to the epoch when the litigation began between the two States mentioned; that of these five maps, three are Nicaraguan, the other two (one German and the other North-American), while placing the boundary to the North of Cape *Gracias á Dios*, yet put it at a point very near to that Cape, or at the extreme North of the delta of the River *Segovia*;

CONSIDERING that geographical authorities, like López de Velasco (1571-1574), Tomás López (1758), González Saravia (Governor of *Nicaragua*, 1823), Squier (1856), Reclus (1870), Sonnestern (1874), Bancroft (1890), have indicated as the common boundary between *Honduras* and *Nicaragua*, on the Coast of the Atlantic, the outlet of the River *Segovia*, or the Cape *Gracias á Dios*, or a point to the South of this Cape;

CONSIDERING that Cape *Gracias á Dios* has been recognized as a common boundary between *Honduras* and *Nicaragua* in various diplomatic documents proceeding from the latter Republic, such as the circulars addressed to the foreign Governments by Don Francisco Castellón, Minister Plenipotentiary of *Nicaragua* and

Honduras (1844); Don Sebastián Salinas, Minister of Foreign Relations of *Nicaragua* (1848), and Don José Guerrero, Supreme Director of the State of *Nicaragua* (1848), and the instructions given by the Government of *Nicaragua* to its Envoy Extraordinary in Spain, Don José de Marcoleta, for the recognition of the independence of said Republic (1850);

CONSIDERING that, according what is deduced from all that has been stated, the point that best responds from reasons of historic right, equity and geographical character, to serve as the common boundary between the two litigant States, upon the Coast of the Atlantic, is that of Cape *Gracias á Dios*, and that this Cape marks what has practically been the end of the expansion of conquest of *Nicaragua* toward the North and of *Honduras* toward the South;

CONSIDERING that, once adopted the Cape of *Gracias á Dios* as the common boundary of the two litigant States on the Atlantic littoral, there is to be determined the frontier line between this point and the *Portillo de Teotecacinte*, which was as far as the Mixed Honduranian-Nicaraguan Commission went;

CONSIDERING that from Cape *Gracias á Dios* there is no great cordillera beginning, which from its character and direction could be taken as the frontier between the two States, to start from that point, and that, on the other hand, there is presented at the same place, as a perfectly marked boundary, the outlet and course of a river as important and carrying so much water as that called *Coco*, *Segovia* or *Wanks*;

CONSIDERING that since the course of this river, at least in a great part thereof, presents from its direction and the circumstances of its flow, the most natural and most precise boundary that could be desired;

CONSIDERING that this same river *Coco*, *Segovia* or *Wanks*, in a great part of its course, has figured and does figure in many maps, public documents and geographical descriptions, as the frontier between *Honduras* and *Nicaragua*;

CONSIDERING that in the volumes of the Blue Book corresponding to the years of 1856 and 1860, presented by the Government of His Britannic Majesty to Parliament, and which figure among the documents brought by *Nicaragua*, it appears: that according to the note of the Representative of England in the United

States, who intervened in the negotiations in order to resolve the question of the *Mosquito* territory (1825), *Honduras* and *Nicaragua* had mutually recognized as the frontier the River *Wanks* or *Segovia*; that in Article 2 of the Agreement between Great Britain and *Honduras*, of August 27, 1859, His Britannic Majesty recognized the middle of the River *Wanks* or *Segovia*, which empties at Cape *Gracias á Dios*, as the boundary between the Republic of *Honduras* and the territory of the *Mosquito* Indians, and that in Article 4 of the Treaty between Great Britain and the United States of America, of October 17 of the same year 1856, it was declared that all the territory to the South of the River *Wanks* or *Segovia*, not included in the portion reserved to the *Mosquito* Indians, and without prejudice to the rights of *Honduras*, should be considered within the limits and sovereignty of the Republic of *Nicaragua*;

CONSIDERING that it is necessary to fix a point at which the course of this River *Coco*, *Segovia* or *Wanks* should be abandoned, before proceeding to the Southwest to go inland into territory recognized as *Nicaragua*;

CONSIDERING that the point which best unites the conditions required in that case, is the place where the said River *Coco* or *Segovia* receives, on its left bank, the waters of its tributary, the *Poteca* or *Bodega*;

CONSIDERING that this point of the confluence of the River *Poteca* with the River *Segovia* has been adopted also by various authorities, and notably by the Engineer of *Nicaragua*, Don Maximiliano V. Sonnestern, in his "Geography of *Nicaragua* for the use of the Primary Schools of the Republic" (*Managua*) 1874:

CONSIDERING that in continuing by the flow of the *Poteca*, going upstream, until arriving at the junction with the River *Guineo* or *Namashí*, there is reached the South of the location of the *Teotecacinte*, to which the document presented by *Nicaragua* refers, dated August 26, 1720, according to which said location belonged to the jurisdiction of the city of *New Segovia* (*Nicaragua*);

CONSIDERING that from the point at which the River *Guineo* enters to form part of the River *Poteca*, there may be taken as a frontier line that which corresponds to the demarcation of the

said site of *Teotecacinte* until it connects with the *Portillo* of the same name, but so that the site mentioned remains within the jurisdiction of *Nicaragua*;

CONSIDERING that, if the selection of the confluence of the *Petaca* with the *Coco* or *Segovia*, as a point at which the course of said last river may be abandoned, in order to seek the *Portillo de Teotecacinte* in said form should give rise to doubt or controversy, it being supposed that the result favored *Honduras* in the narrow region of the northern part of the basin of the *Segovia* which would thus remain within its frontiers, in exchange and as compensation for having adopted the outlet of the *Segovia* in the form before stated, there shall remain within the dominions of *Nicaragua* the Bay and settlement of *Gracias á Dios*, which, according to the proved antecedents, would with greater right belong to *Honduras*; and

CONSIDERING, finally, that while rule 4 of Article 2 of the Gámez-Bonilla Treaty or Treaty of *Tegucigalpa* provides that in order to fix the boundaries between the two Republics the dominion of the territory fully proved shall be considered, without recognizing any juridical value in the possession in fact that one party or the other may allege, rule 6 of the same Article provides that, it being convenient, compensations may be made and even indemnizations fixed in order to secure the re-establishment, as far as possible, of well marked natural limits;

IN CONFORMITY with the solution proposed by the Commission of Examination, and by accord with the Council of State in full session and with my Council of Ministers;

I DECLARE that the divisional line between the Republics of *Honduras* and *Nicaragua*, from the Atlantic to the *Portillo de Teotecacinte*, where the Mixed Commission of Limits of 1901 left it, not having been able to agree concerning the continuation and its subsequent meeting places, shall remain determined in the form following:

The extreme borders point on the Coast of the Atlantic shall be the outlet of the River *Coco*, *Segovia* or *Wanks* in the Sea, adjoining Cape *Gracias á Dios*, considering as the mouth of the river its principal branch between *Hara* and the Island of *San Pío*, where the said Cape is found, there remaining for *Honduras* the islands and islets existing within the said principal branch

before reaching the bar, and keeping for *Nicaragua* the South bank of the said principal mouth, with the Island of *San Pío* mentioned, besides the Bay and settlement of Cape *Gracias á Dios* and the arm or estuary named *Gracias*, which goes to the Bay of *Gracias á Dios*, between the Continent and the said Island of *San Pío*.

Starting from the mouth of the *Segovia* or *Coco*, the frontier line shall follow by the meandering of valley course (thalweg) of this river, going up-stream, without interruption until arriving at the site of its confluence with the *Petaca* or *Bodega*, and from this point, the said frontier line shall leave the River *Segovia*, continuing by the meanders of the said affluent *Petaca* or *Bodega*, and following up-stream to the junction with the River *Guineo* or *Namaslí*.

From this junction the divisional line shall take the direction that corresponds to the demarcation of the site of *Teotecacinte*, with reference to the demarcation made in 1720, to end in the *Portillo de Teotecacinte*, in such manner that said site shall wholly remain within the jurisdiction of *Nicaragua*.

DONE in the Royal Palace of Madrid, in duplicate, on the twenty-third of December, One thousand nine hundred and six.

ALFONSO.

The Minister of State,
Juan Pérez Caballero.

Report of the Joint Committees of Foreign Relations and
Legislation of Costa Rica, Concerning the Pacheco-
Guardia Treaty. Doc. 438

SAN JOSÉ, May 14, 1907.

The Governments of the Republics of *Costa Rica* and *Panama*, having in view an amicable and definitive settlement of whatever questions may in future arise concerning their respective territorial rights, and animated by the desire to obliterate forever the differences that have for so many years been a source of disturbance between the two nations here represented, and which ought now to be forever extinguished, inasmuch as that is desirable for the fraternal and reciprocal interests of both countries;—

Therefore, for the reasons stated, the Most Excellent Señor President of the Republic of *Costa Rica* has given its full powers to the Most Excellent Señor Licentiate Don Leonidas Pacheco, Envoy Extraordinary and Minister Plenipotentiary before the Government of the Republic of *Panama*; and the Most Excellent President of the Republic of *Panama* to the Most Excellent Señor General Don Santiago de la Guardia, Secretary of State in the Department of Government and Foreign Affairs;—which plenipotentiaries, after having complied with the due formalities, make in the name of their respective Governments the following declaration:

1. The signatory Republics solemnly declare that by the tenor of what has been provided and established by the respective laws and treaties and the official declarations made by the parties, the dispute as to territorial boundaries, carried on for many years by the Republic of *Colombia*, the former mistress of the territory in litigation, now belonging to that of *Panama* and to that of *Costa Rica*, was settled by the sentence delivered in the respective arbitral proceeding by His Excellency the President of the French Republic at Rambouillet on the 11th of September, 1900, in which, the High Judge having fixed the frontier by means of general indications, he left the material determination of the same to that mutual accord which should be effected by the spirit of

conciliation and good understanding that have thus far inspired the two interested nations.

In Witness whereof we sign and seal it in duplicate in the city of *Panama*, on the sixth day of March, 1905.

LEONIDAS PACHECO. (L. S.)

SANTIAGO DE LA GUARDIA. (L. S.)

SAN JOSÉ, May 7, 1906.

In view of the foregoing Convention and inasmuch as it accords with the good and friendly understanding had between the High Contracting Parties, to come to an agreement in the Boundary Treaty which was signed by them upon the same day, let it be approved, upon condition that the said Boundary Treaty be definitively ratified by the Public Authorities of the Republic of *Panama*, and with such understanding let the said Convention be transmitted to the Constitutional Congress for the legal purposes.

ESQUIVEL.

The Secretary of State in the Department of Foreign Affairs:

JOSÉ ASTÚA AGUILAR.

The joint Committee of Foreign Relations and Legislation, after having examined the Declaration of the sixth of March, 1905, in which the Minister of *Costa Rica* and the one of *Panama* recognised that the dispute as to boundaries between the two countries was settled by the arbitral decision of H. E. the President of the French Republic, the Treaty as to boundaries which followed said Declaration, and the Additional Convention concerning the manner of proceeding to the erection of landmarks;—and after weighing the reasons set forth by the President of the Republic in his Message relative to the matter aforesaid, are of opinion that it would be most discreet to put aside the said diplomatic Conventions.

The Message, to which reference has been made, being known to the Congress, it rests with the Committee to demonstrate the invalidity of the arbitral decision if it is to be interpreted in the way which is claimed by our neighbors of *Panama*. The premise, then, being stated that, under the supposed hypothesis, the decision is invalid, the acceptance of the Conventions which are

under examination depends upon the view that is taken of the advantages to be gained by the Republic in sacrificing the region embraced between *Punta Burica* and the River *Golfo*, in renouncing absolute dominion over a great part of the Gulf of *Dulce* and losing at the same time the Island of *Coco*, in order to maintain lordship over *Talamanca*. They may exist, but the reporting Committees, agreeing upon this point with the opinion of the Señor President, do not see them.

The Treaty signifies the acknowledgment that, by virtue of the Award, we lose *Talamanca*; and that, in order to recover it, we give up a good part of that which the Arbitrator recognised as ours; so that, far from lessening our defeat it makes it the more disastrous. For lack of sufficient data, it is difficult to determine, as between the southern portions of the Republic upon the Atlantic and the Pacific, affected by the Treaty of *Panama*, which is the most valuable; but the impression of those making up this report is that if the Loubet Award is to be carried out completely to our detriment, it would be better to comply with it than to endeavor to turn it in another direction in the manner proposed in the Treaty.

But if the Committees submitting this report are in harmony upon this point with the view of the Señor President, they regret not to be able to follow it in so far as he recommends the Declaration that we recognise the validity of the arbitral sentence. The said Declaration states that “* * * by the tenor of what has been provided and established by the respective laws and treaties and the declarations made by the parties, the dispute as to boundaries * * * was settled by the sentence * * *.” If instead of saying “* * * and the declarations made by the parties * * *,” it had been written “* * * and the declarations made after the Award by the parties * * *,” it is evident that we would at any time be able to allege that our acquiescence in the Award was conditional; but the wording used is liable to be construed, perhaps forcibly, in the sense that those declarations were prior to the delivery of the Award.

Moreover, *Panama* could argue that if, notwithstanding the signing of the Declaration, the efficacy of the Award of M. Loubet was left a matter of opinion, there would be no reason for such Declaration. To avoid a new complication it would be

preferable that the Declaration take the same fate as the Treaty, all the more when it is clear that the representative of *Costa Rica*, if he subscribed the Declaration, did so only with the understanding that the Boundary Treaty was desirable for the interests of the Republic and was to be accepted here. Otherwise the Declaration would never have been signed.

The Convention for setting landmarks, if the Treaty fails, no longer has any reason for its existence.

Summing up, the Committees are of opinion that the three agreements at *Panama* should be allowed to lapse.

National Palace, San José, May 14, 1907.

CARLOS M. JIMÉNEZ.
 RICARDO JIMÉNEZ.
 GREGORIO MARTIN.
 FEDERICO FAERRON.
 TOB. ZÚÑIGA MONTÚFAR.
 FÉLIX MATA VALLE."

Doc. 439 **Congress in Secret Session Decides to Allow the Convention and Declaration as to boundaries and the Loubet Award to Lapse, Oct. 24, 1911.**

The undersigned Secretary of State in the Department of Foreign Affairs of the Republic of *Costa Rica*, Certifies:

That in virtue of the report made to the Constitutional Congress by the joint Committees of Foreign Affairs and Legislation, concerning the Conventions between *Costa Rica* and *Panama* as to boundaries and for the erection of landmarks and the Declaration regarding the validity of the Loubet Award, all of which were signed in the city of *Panama* on March 6, 1905, by the plenipotentiaries of the two countries, it was in secret session decided to allow the said Conventions and Declaration to lapse.

Given in the city of *San José*, on the twenty-fourth day of October, 1911.

MANUEL CASTRO QUESADA.

A seal reading:

"Secretaría de Relaciones Exteriores.
 República de Costa Rica."

The Minister of Costa Rica on Special Mission to the Secretary of State. Doc. 440

Legación
de
Costa Rica.

Misión Especial.

WASHINGTON, December 9, 1907.

SIR:

I have the honor to confirm herewith our conversation of the 4th instant. As I have had expressed to Your Excellency the Government of *Costa Rica* is animated by the best desires to bring to an end the boundary controversy pending with the Republic of *Panama*, but various circumstances have opposed themselves until the present to prevent the accomplishment of this so desirable result; and it is to be believed that the present situation will continue indefinitely, if the good and impartial offices of Your Excellency's Government, who has shown such marked evidences of sympathy and interest as well for *Costa Rica* as for *Panama*, do not come to the aid of both countries with the object of adjusting the difference.

As Your Excellency was good enough to express to me, the importance to the Government of the United States of the determination of the respective jurisdiction of *Costa Rica* and *Panama* in the territory in dispute, with respect to questions arising between American citizens in regard to better title to those lands no less than the good disposition always evinced by Your Excellency's Government in favor of the friendly settlement of any differences between the sister states of the American Continent, cause me to hope that this time it will also give us the benefits of its moral support to a just settlement of the question.

The Minister of *Costa Rica* in Washington, Señor Don Joaquín Bernardo Calvo, has kept Your Excellency informed of the different phases which the boundary question has assumed since His Excellency the President of France, Monsieur Emile Loubet, the Arbiter chosen to adjust it, pronounced his Award.

Minister Calvo in a note dated November 26, 1906, transmitted to Your Excellency copy and translation into English of the three instruments signed in *Panama*, looking to the final settlement of

the pending boundary question between the two countries. With these papers he also sent copy of a note addressed by the Minister of *Costa Rica* in Paris, Señor Don Manuel María Peralta, to the Secretary of Foreign Relations of the French Republic, Monsieur Delcassé, dated September 29, 1900, and of the answer to the same, dated November 25 of the same year, concerning the interpretation given by *Costa Rica* of the Award which His Excellency President Loubet issued on the eleventh of same month of September, 1900. In the second of these notes the fact is stated that the Arbiter in the absence of precise geographic data, was able to fix the boundary line only by means of general indications, and it is also asserted that it will correspond to the two Republics to proceed to the material determination of their respective frontiers, the Arbiter deferring, moreover, to the spirit of conciliation and good understanding which inspired the two Governments, of *Colombia* and *Costa Rica*, then, as now inspire those of *Costa Rica* and *Panama*.

Lately, in view of the modifications, by the way, unacceptable to *Costa Rica*, which under the modest title of "aclaraciones," (explanations) the Assembly of *Panama* introduced in the second of the three instruments mentioned, modifications which brought practically about the failure of the Treaty in both countries, Minister Calvo expounded to Your Excellency in an interview held on the 20th of last June, the views of the Government of *Costa Rica* on this subject, expressing besides the objections existing against the Treaty of *Panama* and against the French Award. These objections being of such a nature that, if presented, would undoubtedly cause a complete invalidation of said sentence.

In this occasion Mr. Calvo also manifested the good will of my Government to arrive at a final and satisfactory solution of the question, if not directly, by proposing to the Government of *Panama* to submit to the arbitration of the Chief Justice of the United States whatever refers to the interpretation of said Award.

Your Excellency was kind enough to express to Mr. Calvo that the way suggested by my Government was found to be acceptable, in case no other more direct one could be found, and that, there being no objection to the nomination of the proposed Arbiter

the Department under Your Excellency's able direction would, with great pleasure, co-operate to obtain the acceptance of the Chief Justice of the United States, or of any of the Associate Justices of the Supreme Court, should the former because of any circumstances not be able to accept the nomination.

Consistent with the foregoing and again referring to the interview of the 4th instant, already mentioned, I desire to request Your Excellency's good offices with the Government of *Panama* to the desired end. My Government who appreciates greatly the tokens of consideration received from the illustrious Government of Washington, is confident that through its wise and disinterested co-operation the Republic of *Costa Rica* will be able to carry to a happy end the fixing of the dividing line with her sister Republic of *Panama*, thus making closer still, if possible, the friendly relations which happily unite those two countries.

Be pleased, Sir, to accept the assurances of my highest and most distinguished consideration.

LUIS ANDERSON.

His Excellency Elihu Root, Secretary of State.

Case Adjudged in the Supreme Court of the United States. Doc. 441
American Banana Co. v. United Fruit Co.

October, 1908.¹

Mr. Justice Holmes delivered the opinion of the court.

This is an action brought to recover threefold damages under the Act to Protect Trade against Monopolies. July 2, 1890, c. 647, §7, 26 Stat. 209, 210. The Circuit Court dismissed the complaint upon the motion, as not setting forth a cause of action. 160 Fed. Rep., 184. This judgment was affirmed by the Circuit Court of Appeals, 166 Fed. Rep., 261, and the case then was brought to this court by writ of error.

The allegations of the complaint may be summed up as follows: The plaintiff is an Alabama corporation, organized in 1904. The defendant is a New Jersey corporation, organized in 1899. Long before the plaintiff was formed, the defendant, with intent to prevent competition and to control and monopolize the ba-

¹ *United States Reports*, vol. 213, p. 353. New York, 1909.

nana trade, bought the property and business of several of its previous competitors, with provision against their resuming the trade, made contracts with others, including a majority of the most important, regulating the quantity to be purchased and the price to be paid, and acquired a controlling amount of stock in still others. For the same purpose it organized a selling company, of which it held the stock, that by agreement sold at fixed prices all the bananas of the combining parties. By this and other means it did monopolize and restrain the trade and maintained unreasonable prices. The defendant being in this ominous attitude, one McConnell in 1903 started a banana plantation^o in *Panama*, then part of the *United States of Colombia*, and began to build a railway (which would afford his only means of export), both in accordance with the laws of the *United States of Colombia*. He was notified by the defendant that he must either combine or stop. Two months later, it is believed at the defendant's instigation, the governor of *Panama* recommended to his national government that *Costa Rica* be allowed to administer the territory through which the railroad was to run, and this although that territory had been awarded to *Colombia* under an arbitration agreed to by treaty. The defendant, and afterwards, in September, the government of *Costa Rica*, it is believed by the inducement of the defendant, interfered with McConnell. In November, 1903, *Panama* revolted and became an independent republic, declaring its boundary to be settled by the award. In June, 1904, the plaintiff bought out McConnell and went on with the work, as it had a right to do under the laws of *Panama*. But in July, Costa Rican soldiers and officials, instigated by the defendant, seized a part of the plantation and a cargo of supplies and have held them ever since, and stopped the construction and operation of the plantation and railway. In August one Astúa, by *ex parte* proceedings, got a judgment from a Costa Rican court, declaring the plantation to be his, although, it is alleged, the proceedings were not within the jurisdiction of *Costa Rica*, and were contrary to its laws and void. Agents of the defendant then bought the lands from Astúa. The plaintiff has tried to induce the government of *Costa Rica* to withdraw its soldiers and also has tried to persuade the United States to interfere, but has been thwarted in both by the defendant and has failed. The govern-

ment of *Costa Rica* remained in possession down to the bringing of the suit.

As a result of the defendant's acts the plaintiff has been deprived of the use of the plantation, and the railway, the plantation and supplies have been injured. The defendant also, by outbidding, has driven purchases out of the market and has compelled producers to come to its terms, and it has prevented the plaintiff from buying for export and sale. This is the substantial damage alleged. There is thrown in a further allegation that the defendant has "sought to injure" the plaintiff's business by offering positions to its employes and by discharging and threatening to discharge persons in its own employ who were stockholders of the plaintiff. But no particular point is made of this. It is contended, however, that, even if the main argument fails and the defendant is held not to be answerable for acts depending on the co-operation of the government of *Costa Rica* for their effect, a wrongful conspiracy resulting in driving the plaintiff out of business is to be gathered from the complaint and that it was entitled to go to trial upon that.

It is obvious that, however stated, the plaintiff's case depends on several rather startling propositions. In the first place the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress.

No doubt in regions subject to no sovereign, like the high seas, or to no law that civilized countries would recognize as *adequarem* such countries may treat some relations between their citizens as governed by their own law, and keep to some extent the old notion of personal sovereignty alive. See *The Hamilton*, 207 U. S., 398, 403; *Hart v. Gumpach*, L. R. 4 P. C. 439, 463, 464; *British South Africa Vo. v. Companhia de Moçambique* (1893), A. C. 602. They go further, at times, and declare that they will punish any one, subject or not, who shall do certain things, if they can catch him, as in the case of pirates on the high seas. In cases immediately affecting national interests they may go further still and may make, and, if they get the chance, execute similar threats as to acts done within another recognized jurisdiction. An illustration from our statutes is found with regard

to criminal correspondence with foreign governments. Rev. Stat., §5335. See further *Commonwealth v. Macloon*, 101 Massachusetts, 1; *The Sussex Peerage*, 11 Cl. & Fin. 85, 146. And the notion that English statutes bind British subjects everywhere has found expression in modern times and has had some startling applications. *Rex v. Sawyer*, 2 C. & K. 101; *The Zollverein*, Swabey, 96, 98. But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. *Slater v. Mexican National R. R. Co.*, 194 U. S. 120, 126. This principle was carried to an extreme in *Milliken v. Pratt*, 125 Massachusetts, 374. For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent. *Phillips v. Eyre*, L. R. 4 Q. B. 225, 239; L. R. 6 Q. B. 1, 28; Dicey, *Conflict of Laws* (2d ed.), 647. See also Appendix, 724, 726, Note 2, *ibid.*

Law is a statement of the circumstances in which the public force will be brought to bear upon men through the courts. But the word commonly is confined to such prophecies or threats when addressed to persons living within the power of the courts. A threat that depends upon the choice of the party affected to bring himself within that power hardly would be called law in the ordinary sense. We do not speak of blockade running by neutrals as unlawful. And the usages of speech correspond to the limit of the attempts of the lawmaker, except in extraordinary cases. It is true that domestic corporations remain always within the power of the domestic law, but in the present case, at least, there is no ground for distinguishing between corporations and men.

The foregoing considerations would lead in case of doubt to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. "All legislation is *prima facie* territorial." *Ex parte Blain, in re Sawers*, 12 Ch. Div. 522, 528; *State v. Carter*, 27 N. J. (3 Dutcher) 499; *People v. Merrill*, 2 Parker, Crim. Rep. 590, 596. Words having uni-

versal scope, such as "Every contract in restraint of trade," "Every person who shall monopolize," etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch. In the case of the present statute the improbability of the United States attempting to make acts done in *Panama* or *Costa Rica* criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in *Panama* or *Costa Rica* is not within the scope of the statute so far as the present suit is concerned. Other objections of a serious nature are urged but need not be discussed.

For again, not only were the acts of the defendant in *Panama* or *Costa Rica* not within the Sherman Act, but they were not torts by the law of the place and therefore were not torts at all, however contrary to the ethical and economic postulates of that statute. The substance of the complaint is that, the plantation being within the *de facto* jurisdiction of *Costa Rica*, that state took and keeps possession of it by virtue of its sovereign power. But a seizure by a state is not a thing that can be complained of elsewhere in the courts. *Underhill v. Hernández*, 168 U. S. 250. The fact, if it be one, that *de jure* the estate is in *Panama* does not matter in the least; sovereignty is pure fact. The fact has been recognized by the United States, and by the implications of the bill is assented to by *Panama*.

The fundamental reason why persuading a sovereign power to do this or that cannot be a tort is not that the sovereign cannot be joined as a defendant or because it must be assumed to be acting lawfully. The intervention of parties who had a right knowingly to produce the harmful result between the defendant and the harm has been thought to be a non-conductor and to bar responsibility, *Allen v. Flood* (1898), A. C. 1, 121, 151, etc., but it is not clear that this is always true, for instance, in the case of the privileged repetition of a slander, *Elmer v. Fessenden*, 151 Massachusetts, 359, 362, 363, or the malicious and unjustified persuasion to discharge from employment. *Moran v. Dunphy*, 177 Massachusetts, 485, 487. The fundamental reason is that it is a contradiction in terms to say that within its jurisdiction it is unlawful to persuade a sovereign power to bring about a result

that it declares by its conduct to be desirable and proper. It does not, and foreign courts cannot, admit the influences were improper or the results bad. It makes the persuasion lawful by its own act. The very meaning of sovereignty is that the decree of the sovereign makes law. See *Kawananakoa v. Polybank*, 205 U. S. 349, 353. In the case of private persons it consistently may assert the freedom of the immediate parties to any injury and yet declare that certain persuasions addressed to them are wrong. See *Angle v. Chicago, St. Paul, Minneapolis and Omaha Ry. Co.*, 151 U. S. 1, 16-21; *Fletcher v. Peck*, 6 Cranch, 87, 130, 131.

The plaintiff relied a good deal on *Rafael v. Verelst*, 2 Wm. Bl. 983; *Ib.* 1055. But in that case, although the Nabob who imprisoned the plaintiff was called a sovereign for certain purposes, he was found to be the mere tool of the defendant, an English Governor. That hardly could be listened to concerning a really independent state. But of course it is not alleged that *Costa Rica* stands in that relation to the United Fruit Company.

The acts of the soldiers and officials of *Costa Rica* are not alleged to have been without the consent of the government and must be taken to have been done by its order. It ratified them, at all events, and adopted and keeps the possession taken by them; *O'Reilly de Camara v. Brooke*, 209 U. S. 45, 52; *The Paquete Habana*, 189 U. S. 453, 465; *Dempsey v. Chambers*, 154 Massachusetts, 330, 332. The injuries to the plantation and supplies seem to have been the direct effect of the acts of the Costa Rican government, which is holding them under an adverse claim of right. The claim for them must fall with the claim for being deprived of the use and profits of the place. As to the buying at a high price, etc., it is enough to say that we have no ground for supposing that it was unlawful in the countries where the purchases were made. Giving to this complaint every reasonable latitude of interpretation we are of opinion that it alleges no case under the act of Congress and discloses nothing that we can suppose to have been a tort where it was done. A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law.

Further reasons might be given why this complaint should not

be upheld, but we have said enough to dispose of it and to indicate our general point of view.

Judgment affirmed.

MR. JUSTICE HARLAN concurs in the result.

The Minister of Costa Rica on Special Mission to the Secretary of State. Doc. 442

Legación
de
Costa Rica.

Misión Especial.

WASHINGTON, D. C., November 21, 1908.

MR. SECRETARY:

On various occasions I have had the honor of explaining to Your Excellency the state of the boundary question pending between the Republics of *Costa Rica* and *Panama*; and of soliciting the mediation and impartial good offices of Your Excellency's Government in order to procure a satisfactory solution of the present situation, which unfortunately constitutes a cause of unrest in both countries, to the impairment of their reciprocal interests and of the feeling of good will and amity which has always united the Costa Ricans and Panamanians.

On the 19th of December last, the Department of State, in answering my note of the 9th of that month, saw fit to accede to my request in terms that evoked the gratitude of my Government, which for a moment contemplated the immediate realization of the fervent desire to see its only pending controversy of an international character closed and settled forever. But the Presidential Campaign which began shortly afterwards in *Panama*, forestalled the opening of any negotiations whatever.

It is the belief of my Government that the present would, perhaps, be a propitious time for entering into negotiations with *Panama* through the medium of the Legation of that Republic in Washington, and with the just and impartial mediation of Your Excellency's Government, which, therefore, *Costa Rica* now solicits anew, invoking besides other considerations the repeated proofs of the sincere and cordial friendship of the United States towards the sister Republics of *Costa Rica* and *Panama*,

and most especially the marked interest which Your Excellency evinces in everything that tends to the just and honorable settlement of any differences between the countries of the American Continent.

In most respectfully making the foregoing request in conformity with special instructions from my Government, I avail myself of this opportunity of renewing to Your Excellency the assurance of my highest and most distinguished consideration.

LUIS ANDERSON.

To His Excellency Elihu Root, Secretary of State, Washington, D. C.

Doc. 443 The Acting Secretary of State to Minister Anderson.

In reply refer to File No. 2491/40.

DEPARTMENT OF STATE,
WASHINGTON, December 1st, 1908.

EXCELLENCY:

I have the honor to acknowledge the receipt of your note of the 21st ultimo, in which, referring to the Department's note of December 19, 1907, you request the use of the good offices of this Government to bring about a settlement of the boundary dispute between *Costa Rica* and *Panama*.

In reply I have the honor to say that the Government of the United States is anxious that the boundary dispute between *Costa Rica* and *Panama* may be satisfactorily and speedily settled, and it will cheerfully extend its impartial good offices and mediation in order to facilitate the adjustment of the controversy.

The Department notes with pleasure the statement in Your Excellency's note to the effect that the attitude of the United States has met with the approval of your Government.

Accept, Excellency, the renewed assurance of my highest consideration.

ALVEY A. ADEE,

Acting Secretary.

His Excellency Señor Don Luis Anderson, Envoy Extraordinary and Minister Plenipotentiary of Costa Rica on Special Mission, Washington, D. C.

Minister Anderson to the Secretary of State.

Doc. 444

Misión Especial.

Legación
de
Costa Rica.

WASHINGTON, D. C., December 4, 1908.

MR. SECRETARY:

I have the honor to acknowledge the receipt of Your Excellency's kind note of the 1st instant, (File No. 241/40), in which, replying to mine of the 21st ultimo, you were pleased to tell me, in terms that evoke the gratitude of my Government to a high degree, that Your Excellency's own distinguished Government has seen fit to accede to the request to which my said note refers, and that the Government of the United States is anxious that the boundary dispute between *Costa Rica* and *Panama* may be satisfactorily and speedily settled, and it will cheerfully extend its impartial good offices and mediation in order to facilitate the adjustment of the controversy.

My Government, Mr. Secretary, is confident that the happy intervention of that of Your Excellency in this delicate matter, is the surest means of reaching a just and honorable solution which *Costa Rica* so much desires; and it is very pleasing for me to assure Your Excellency of the profound gratitude with which my Government receives this new evidence of friendship on the part of the United States.

I am sure that the sister Republic of *Panama*, which I consider equally interested in removing forever the only cause of disagreement between the two countries and in seeing her frontiers determined with certainty, will join in the sentiments which I am so happy to express.

Be pleased, Excellency, to accept the renewed assurances of my highest and most distinguished consideration.

LUIS ANDERSON.

His Excellency Elihu Root,
Secretary of State,
Washington, D. C.

Doc. 445 **The Minister of Costa Rica on Special Mission to the Secretary of State.**

LEGACIÓN DE
COSTA RICA.

MISIÓN ESPECIAL,

WASHINGTON, D. C., December 7, 1908.

EXCELLENCY:

I have the honor to acknowledge the receipt of the esteemed note of the 5th instant, in which Your Excellency is pleased to again refer to my communication of the 21st ultimo and to the desire of my Government, so frequently disclosed in the various audiences Your Excellency has had the goodness to grant me, to see the boundary dispute between *Costa Rica* and *Panama* satisfactorily adjusted through the impartial good offices and friendly mediation of the Government of the United States.

Your Excellency is pleased to inform me of a suggestion of His Excellency Mr. Arias, Minister of Foreign Affairs of *Panama*, to His Excellency Mr. Squiers, Minister of the United States to that Republic, when, in response to my note of December 9, 1907, and graciously deferring to the request of *Costa Rica*, the Department of State began to use its friendly good offices to bring *Panama* to the so much desired settlement of the boundary dispute. The solution proposed by Mr. Arias, Your Excellency adds, might be made the basis of an arrangement between *Costa Rica* and *Panama* satisfactory to both countries.

Before entering upon the consideration of the suggestion of Mr. Arias, allow me, Mr. Secretary, to again express the sentiments of profound gratitude with which *Costa Rica* regards the interest which the Government of Washington has been pleased to take in this troublesome matter, and the pleasure with which my Government is disposed to listen to the wise council of Your Excellency in order to reach a just settlement of the pending controversy.

In accordance with Your Excellency's statement the suggestion of Mr. Arias is as follows:

"It being understood by *Panama* that the objection raised by *Costa Rica* to the Guardia-Pacheco Treaty

hinged on the 'aclaraciones' made by *Panama* in its ratification of the Treaty—that if *Costa Rica* would ratify the Treaty as signed, then *Panama* would obtain from its Congress the suppression of the 'aclaraciones,' or, in the event of this not being done the Minister said that as the Loubet Award remained in force by the very nature of the arbitration, that the

'said Award be made effective and the location of the frontier therein specified be undertaken at once though a landmark convention identical to that forming the third part of the Guardia-Pacheco Treaty wherein the Umpire is to be appointed by His Excellency the President of the United States. All of the within to be stipulated according to the mutual convenience of the parties.'”

In the first place, and with respect to the Guardia-Pacheco Treaty, I have to state that *Costa Rica* has absolutely disregarded said agreement; because it has considered and does consider it as insubsistent, inasmuch as the modifications introduced in it under the name of “aclaraciones” by the Congress of *Panama* are equivalent, in the true theory of International Law, to a rejection of said Guardia-Pacheco Treaty on the part of that Republic. That Treaty being thus disapproved is null and void, and it would not now be proper to revive it, prescinding from the “aclaraciones,” as suggested by Mr. Arias, but to enter upon new negotiations.

With regard to the other alternative of the suggestion of Mr. Arias concerning the Loubet Award, I consider it very appropriate, and I believe that my Government would not decline to accept it, provided that an undertaking was previously reached between *Costa Rica* and *Panama* with respect to the interpretation that should be given to said Arbitral Award, and that the exact direction of the frontier line on the Atlantic side be fixed in a well defined manner.

This prerequisite act is absolutely indispensable; because, even though the frontier line that the Award designates on the Pacific side from *Punta Burica* to about *Cerro Pando* is clear and unmistakable, the same is not true of the line on the Atlantic side, with respect to which, the terms of the decision are vague and

render necessary an undertaking as to the points through which the frontier must pass. At the same time I have to state that said previous agreement of the parties is all the more urgent since, according to one of the interpretations given to the Loubet Award, the frontier line would, to the detriment of the territorial rights of *Costa Rica*, surpass the claims of *Colombia* in the litigation; and if such interpretation were to prevail as to the true meaning of the decision, it would absolutely deprive the Award of any legal force or effect.

Such, Mr. Secretary, is my opinion with respect to the suggestion of Mr. Arias of which Your Excellency has been pleased to inform me; and if, as is to be hoped, *Panama* were disposed to enter into the previous understanding which *Costa Rica* so justly suggests, this will be the surest means of reaching a happy conclusion of the matter.

With the sole desire of stating to your Excellency precisely the position of *Costa Rica* in the controversy, I take the liberty of enclosing a memorandum which I beg Your Excellency to consider as a part of this note.

Accept, Excellency, the renewed assurance of my most distinguished consideration.

LÚIS ANDERSON.

Doc. 446

Legación
de
Costa Rica.

MEMORANDUM.

The Arbitral Award rendered by his Excellency the President of France, on September 11, 1900 (Enclosure "A"), which should have put an end to the old and at times irritating dispute over boundaries between *Costa Rica* and *Colombia* (now *Panama*), "fixing a line that should permanently and clearly divide the territory of the first from that of the second," as was graphically expressed in the Convention of Arbitration concluded between the two countries on December 25, 1880 (Enclosure "B"), could not, unfortunately, fulfill its purpose; and today, after more than seven years since that judgment was pronounced, the interested countries, each maintaining its former possession, are unable to fix their frontier, and are far removed from an

agreement to determine what the intention of the eminent Judge was within the exact scope of his jurisdiction. This is, in fact, the case even though I am happy to say that *Costa Rica* acknowledges with great respect the good will, rectitude and learning of the High Arbitrator.

Articles second and third of the Convention signed January 20, 1895 (Enclosure "C") read as follows:

"The territorial limit which the Republic of *Costa Rica* claims on the Atlantic side extends as far as the island *Escudo de Veragua*, and the river *Chiriquí (Calobébora)*, inclusive; and on the Pacific side, as far as the river *Chiriquí Viejo*, inclusive, to the East of *Punta Burica*.

"The territorial limit which the United States of *Colombia* claim extends, on the Atlantic side, as far as Cape *Gracias á Dios*, inclusive; and on the Pacific side, as far as the mouth of the river *Golfo Dulce* in *Golfo Dulce*.

"The Arbitral Award shall confine itself to the disputed territory that lies within the extreme limits already described, and cannot affect in any manner any rights that a third party, not taken part in the Arbitration, may set up to the ownership of the territory comprised within the limits indicated."

"Later, and by virtue of a Treaty signed November 4, 1896, (Enclosure "D") the question was submitted to the arbitration of His Excellency the President of France, and *Costa Rica* and *Colombia* through their respective attorneys formulated, not generally and vaguely, as in the Convention of 1886, but in a concrete and well defined manner, the extent of the rights they alleged; i. e., the line *that each desired sanctioned by the Eminent Judge*.

Thus, *Colombia* in a petition dated on December 8, 1898, through its lawyer, Hon. Francisco Silvela, reduced its claims to clear and precise terms, and set out its demands for a frontier line in this manner:

"By virtue of all the foregoing, the Republic of *Colombia* formally rejects the claims of *Costa Rica*, and demands from the eminent impartiality of the Arbitrator that he fix the frontier as follows:

"Leaving the mouth of the River *Golfo Dulce* in *Golfo Dulce*, on the Pacific side, it proceed Northward along a meridian, which,

crossing the river *Coto* whose waters empty into the Pacific, and cutting the rivers *Lari* and *Coén*, tributaries of the *Tiliri* or *Sigsaula* whose waters flow into the Atlantic, shall reach this latter (*Tiliri* or *Sigsaula*) at a point situated at about $9^{\circ} 33'$ North latitude. From the point of intersection of said meridian with the river *Tiliri* or *Sigsaula*, a point whose geographical coordinates are $9^{\circ} 33'$ North latitude, $85^{\circ} 31' 30''$ longitude West of the Meridian of Paris, approximately, a right line shall be drawn so as to terminate at the mouth of the river *Sarapiquí* in the river *San Juan* or *Desaguadero*, ($10^{\circ} 43'$ North latitude, and $86^{\circ} 15'$ longitude West of the Meridian of Paris)."

"Such is the dividing line which the Republic of *Colombia* asks in the present suit." (Enclosure "E"; Map line.)

The Arbitrator decided the litigation concerning the boundaries in these terms:

"The frontiers between the Republics of *Colombia* and *Costa Rica* shall be formed by the spur of the mountain range that runs from Cape *Mona*, on the Atlantic Ocean, and on the North closes the Valley of the *Tarire* or *Sixola* River; thence along the ridge that divides the water-shed between the Atlantic and Pacific, to about the ninth parallel of latitude; it shall then follow the line of the water divide between the *Chiriquí Viejo* and the affluents of *Golfo Dulce*, so as to come out at *Punta Burica* on the Pacific.

"As regards the islands, groups of islands, keys, banks, situated in the Atlantic Ocean, near the coast, East and Southeast of *Mona Point*, these islands, no matter what their names and extent may be, shall form part of the territory of *Colombia*. Those that are situated to the West or Northwest of said Point shall belong to the Republic of *Costa Rica*.

"With regard to the islands farther distant from the mainland and included between the *Mosquito Coast* and the *Isthmus of Panama*, called *Mangle Chico*, *Mangle Grande*, *Cayos de Alburquerque*, *San Andrés*, *Santa Catalina*, *Providencia*, *Escudo de Veragua*, as well as all other islands, keys, and banks, belonging to the ancient Province of *Cartagena*, under the name of *Canton de San Andrés*, it is understood that the territory of this islands, without any exception, belongs to the *United States of Colombia*.

"On the Pacific Coast, *Colombia* shall likewise possess, beginning from the islands of *Burica*, and therein comprised these, all the islands situated to the East of the Point of the same name, those situated to the West of this point belonging to *Costa Rica*." (Enclosure "A.")

Aside from the fact that this decision awarded to *Colombia* islands under the dominion and occupation of *Nicaragua*, contrary to the stipulations of article third of the Convention of January 20, 1886, which gave rise to the corresponding protest from the latter, who was not a party to the Arbitration; the terms of the award are not sufficient to determine the frontier on the Atlantic side with certainty, nor does it in some points conform to the nature and topographical conditions of the territory. Therefore, as soon as the Award became known, *Costa Rica* requested an explanation of the Arbitrator; and, assuming as a premise that the Award could not grant to *Colombia* territory that it did not claim, which would mean a violation of the Arbitral Submission, stated to him the way in which it interpreted the Award. (Enclosure "F.")

To such representations on the part of *Costa Rica*, His Excellency Mr. Delcassé, Minister of Foreign Affairs of France, replied under date of November 23, 1900, saying:

"In the absence of precise geographical data the Arbitrator was able to fix the frontier only by general indications; I understand then, that there would be difficulties in fixing it on a map. But it is not doubtful, as you have observed, that, in conformity with articles 2 and 3 of the Treaty of Paris of January 20, 1886, this boundary line must be traced within the limits of the territory in dispute, which limits are set forth in the text of said articles.

"It is according to these principles that it will correspond to the Republic of *Colombia* and *Costa Rica* to proceed to the material determination of their frontiers, and the Arbitrator at this point defers to the spirit of conciliation and good understanding which up to now has inspired the litigant Governments." (Enclosure "G.")

Later, and as the Government of *Colombia* through its Legation in *San José*, urged that of *Costa Rica* to proceed to the execution of the Arbitral Award, the Department of Foreign

Relations of *Costa Rica*, under date of July 27, 1901, set out its interpretation of the Arbitral Award, stating positively that:

“Any interpretation different from that which *Costa Rica* has given, and which, infringing on indisputed rights, would surpass the demands of *Colombia* in the litigation, would viciate the binding force of the Award.” (Enclosure “H.”)

This clear and definite declaration of the attitude of *Costa Rica* with respect to the Award of His Excellency Mr. Loubet, was the last word with *Colombia* in this very important matter.

In passing I must say that such attitude was confirmed before the Department of State, in a note of the Minister of Foreign Relations of *Costa Rica*, addressed to the American Legation in *San José*, in reply to one of April 27, 1906, regarding the claim of Mr. H. L. McConnell and the American Banana Company.

In this note the Minister of Foreign Relations of *Costa Rica* says:

“The Representation to the Arbitrator and said note (Refers to Enclosure “F” and “H”) which are in essence nothing but the expression of the dissent of *Costa Rica* with respect to certain details intimately related to the Award, the scope and efficacy of which they might affect, *show with entire certainty that the Award has been far from being unconditionally accepted, as a final settlement of the dispute over boundaries.*”

Shortly after *Panama* separated from *Colombia*, negotiations were begun between *Costa Rica* and the new Republic; and on March 6, 1905, the Guardia-Pacheco Treaty was signed; but the Congress of *Panama* introduced into said agreement already burdensome to *Costa Rica*, changes, that meant new losses of territory for the latter, couched in such terms as to make it unacceptable. The same having thus been unapproved and therefore inoperative, the question of boundaries returned to the status it had when *Costa Rica* addressed the note to *Colombia*, to which I have already referred. (Enclosure “H.”)

It now becomes necessary, therefore, as His Excellency Mr. Delcassé said, in his note of November 23, 1900, “that the litigant Republic, animated with the spirit of conciliation and good understanding, with which up to the present they have been

inspired, should proceed to the material determination of their frontiers."

My Government desires nothing else than to obtain such a laudable result, and is, therefore, disposed to enter forthwith upon the consequent negotiations under the friendly mediation of the Department of State, to determine first of all:

"What interpretations must be given to the Loubet Award and through what points the frontier line which it establishes must run."

Thus the controversy would be terminated, and *Costa Rica* would be disposed to carry out the decision without delay; but if contrary to what is to be desired, it should appear in the course of the negotiations that the Loubet Award suffers from defects, which, according to the principles of International Law, would impair its validity, it will be necessary, according to the Convention of 1880, to submit the whole boundary dispute to a new arbitration; and in such case, *Costa Rica* will always be ready to conclude the respective Convention of Arbitration.

The Government of *Costa Rica* is anxious to settle this dispute and in seeking the mediation of that of the United States, in order to arrive to such a happy result, does so in the conviction that its spirit of justice and its profound knowledge will be the most potent factors in the negotiations tending to obtain it; and will greatly contribute to removing forever the only cause of disagreement between two friendly sister nations.

Doc. 447 **The Minister of the United States to the Secretary of State of Panama.**

1. ENCLOSURE WITH DESPATCH No. 410.

No. 166.

December 21, 1908.

YOUR EXCELLENCY:

Referring to Legation note No. 78, January 14, 1908, and Mr. Arias' esteemed reply No. 40/11, February 18, 1908, respecting the boundary Treaty between *Costa Rica* and *Panama*, I have the honor again to bring this important matter to Your Excellency's attention. The Government of *Costa Rica* has solicited the good offices of my Government in procuring a satisfactory solution of the long pending question, which is the cause of unrest in both countries, impairing their reciprocal interests and feeling of good will and amity which have always united the two people.

My Government expressly directs me to state to Your Excellency that the United States would be happy to extend its impartial good offices and mediation to *Panama* and *Costa Rica*, in the hope that the boundary dispute which has existed for many years may be settled to the satisfaction of each of the contending parties, within the very near future.

I avail myself of the opportunity to again assure Your Excellency of my highest esteem and most distinguished consideration.

H. G. SQUIERS.

To His Excellency,

Jose Augustín Arango,
Secretary of State,

Panama, Republic of Panama.

Doc. 448 **The Acting Secretary of State to Minister Anderson.**

DEPARTMENT OF STATE,
WASHINGTON, December 26, 1908.

EXCELLENCY:

Referring to previous correspondence concerning the disputed boundary between *Costa Rica* and *Panama*, I have the honor to inform you that the Department is in receipt of a telegram, dated

the 24th instant, from the American Minister to *Panama*, in which he says that he is informed by the Panaman Minister for Foreign Affairs that the Government of *Panama* accepts in principle the submission of the boundary question to the impartial arbitration of the Chief Justice of the United States, but would like to know what questions are to be submitted.

The telegram adds that the Government of *Panama* is inclined to adhere to the line as fixed upon by the Loubet Award and Article three of the Constitution.

Accept, Excellency, the renewed assurance of my highest consideration.

ROBERT BACON,
Acting Secretary.

His Excellency

Señor Don Luis Anderson,

Minister of Costa Rica on Special Mission,
Washington.

The Minister of Costa Rica on Special Mission to the Secretary of State. Doc. 449

Legación de
Costa Rica.

MISIÓN ESPECIAL,

WASHINGTON, D. C., December 28, 1908.

MR. SECRETARY:

I have the honor to acknowledge the receipt of your note dated the 26th instant in which you were pleased to inform me that the Department received a telegram from the American Minister to *Panama*, conveying the information that the Government of that Republic accepts in principle the submission of the boundary question between *Costa Rica* and *Panama* to the impartial arbitration of the Chief Justice of the United States, but would like to know what questions are to be submitted.

In reply, with the object to join the desire of His Excellency, the Minister of Foreign Affairs of *Panama*, I have the honor to say:

As I have expressed to Your Excellency the Award of His Excellency Mr. Loubet, the President of the French Republic, did not decide the boundary question between *Costa Rica* and *Colom-*

bia (now *Panama*), by "fixing a line that should permanently and clearly divide the territory of the first from that of the second," as it was graphically expressed in the Convention concluded between the two countries on December 25, 1880, by virtue of which the High Judge pronounced his decision—the Sentence is both vague and indefinite, and its meaning, moreover, was abandoned to an ulterior understanding between the litigant Governments. The question having thus been left open, the interested countries remained without having been able to reach an agreement; but on the contrary, the Award in what it refers to the boundary line on the Atlantic side offered ground to various interpretations, among them to that given by *Colombia*, which goes beyond the limit of the disputed territory, a pretension, by the way, that, if it would prevail, would dispose of all the legal force of said Award, as it would bring forth the defect of *ultra petita*, which, as it is well known, would cause the invalidation of any sentence of this nature.

In view of the foregoing, I believe that it would be advisable to submit the whole boundary question to a decision to be given in clearer and more definite terms than the Loubet Award, thus determining the rights of each of the two countries; but, as *Panama* according to the despatch of His Excellency Mr. Squiers, which Your Excellency deigned to communicate to me, is inclined to adhere to the boundary line as fixed upon by the Loubet Award and Article 3 of the Constitution of that Republic, I beg leave to suggest that the points to be submitted to a new arbitration, which *Costa Rica* desires and *Panama* accepts in principle, be as follows:

I. Whether the Loubet Award is free from defects that, according to the principles of International Law, impair its legal force.

II. If, considering that the Award is not thus defective, to determine what its meaning is, and through which points the frontier line should be drawn.

Be pleased, Mr. Secretary, to accept the renewed assurance of my highest and most distinguished consideration.

LUIS ANDERSON.

His Excellency Elihu Root,
Secretary of State.

The Minister of Foreign Relations of Panama to the United States Minister. Doc. 450

DEPARTMENT OF FOREIGN RELATIONS,

No. 57/11.

PANAMA, December 28, 1908.

SEÑOR MINISTER:

Referring to Your Excellency's esteemed note of the 21st instant, No. 166, in which Your Excellency informs me that the Government of *Costa Rica* has solicited the good offices of Your Excellency, for the purpose of securing a satisfactory solution of the pending boundary question with *Panama*.

At the same time I note with much pleasure that the Government of the United States has kindly offered its friendly services, with the hope that the controversy respecting limits will be terminated to the satisfaction of the parties interested.

My Government highly appreciates the offer which has been made by the American Nation through Your Excellency for a prompt and happy solution of this important matter, and I am especially pleased to repeat in writing what I have already stated orally to Your Excellency; that my Government has resolved to very soon establish a Legation in *San José de Costa Rica* for the purpose of settling this question in a friendly manner.

At the same time it affords me great pleasure to state to your Excellency that the Panamanian Government is animated with a desire respecting the suggestion of Your Excellency of submitting the settlement of this matter to the able and impartial arbitration of the Chief Justice of the Supreme Court of the United States, which it accepts in principle, and being under the obligation, as my Government is, to adhere to the terms of the award rendered by President Loubet in September, 1900, and also a compliance with the provisions of Article III, of the National Constitution being obligatory upon the Republic of *Panama*, my Government desires to know before coming to a conclusion relative to arbitration, the points to be considered by the Tribunal of Arbitration.

I avail myself of the opportunity to again assure Your Excellency of my highest esteem and most distinguished consideration.

J. A. ARANGO.

To His Excellency
Herbert G. Squiers,
E. E. and M. P. of the U. S. A.,
Present.

Doc. 451 **The Acting Secretary of State to Minister Anderson.**

DEPARTMENT OF STATE,
WASHINGTON, January 6, 1909.

EXCELLENCY:

I have the honor to acknowledge the receipt of your note of the 28th ultimo, in which, in answer to the Department's note of the 26th ultimo, you state the questions in the boundary dispute between *Costa Rica* and *Panama* which your Government desires to have submitted to a new arbitration.

In reply I have the honor to say that your note has been communicated to the American Minister to *Panama*, in substance, by telegraph, and, in copy, by mail.

Accept, Excellency, the renewed assurance of my highest consideration.

ALVEY A. ADEE,
Acting Secretary.

His Excellency
Señor Don Luis Anderson,
Minister of Costa Rica on Special Mission,
Washington.

Doc. 452 **The Under-Secretary of Foreign Relations of Panama to the Minister of the United States of America in the same Republic.**

DEPARTMENT OF FOREIGN RELATIONS,
PANAMA, January 9, 1909.

MR. MINISTER:

I am pleased to acknowledge the receipt of the kind communication, dated the 2nd of the present month, to which Your Excellency was pleased to annex a copy of a cable despatch

relating to the controversy as to boundaries between *Panama* and *Costa Rica*, addressed by the Department of State of the United States of America to Your Excellency, in response to a prior despatch of your Legation.

As I have had the honor of stating to Your Excellency, orally, my Government declines to submit the point to a new decision and is resolved to accredit a Legation in San José de *Costa Rica*, to the end that—in a friendly manner—a final settlement may be arrived at between the two Republics of this important matter. However, if after having exhausted all the proper resources of such negotiations, the result desired should not be secured, then my Government will accept with pleasure the good offices of that of Your Excellency, and thereafter will be pleased to submit to the learned decision of the Honorable Chief Justice of the United States Supreme Court any and all the points that could give rise to disagreements in fixing the division line between the two countries, with reference to the Loubet Award.

I renew to Your Excellency the assurance of my high appreciation and distinguished consideration and take pleasure on this occasion to subscribe myself your obedient servant.

Under-Secretary in charge of the Department,

J. M. FERNÁNDEZ.

To His Excellency, Herbert G. Squiers,

Minister of the United States of North America.

The Secretary of State to Minister Anderson.

Doc. 453

DEPARTMENT OF STATE,

WASHINGTON, January 9, 1909.

EXCELLENCY:

Referring to the Department's note of the 6th instant, I have the honor to inform you that the Department is in receipt of a telegram, dated the 8th instant, from the American Minister at *Panama*, in which he says that the Government of *Panama* declines to submit to arbitration either point in the question of the boundary dispute between *Costa Rica* and *Panama*, before every effort to settle with *Costa Rica* directly has been exhausted;

that Mr. Porras, late Minister to Brazil, is expected to leave soon for *Costa Rica*; and that Mr. Porras's mission will be to settle the boundary dispute.

Accept, Excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency

Señor Don Luis Anderson,

Minister of Costa Rica on Special Mission,
Washington.

Doc. 454

The Secretary of State to the Minister of the United States at Panama.

No. 150.

Copy AM.

File No. 2491-54, 56.

January 23, 1909.

Herbert G. Squiers, Esquire,
American Minister,
Panama.

SIR:

Your despatch No. 416, of the 12th instant, in relation to the Costa-Rican-Panaman boundary controversy, has been received. You report the result of your action upon the Department's telegraphic instructions of December 31st, proposing points to be submitted to a new arbitration, and enclose copy of the reply of the Ministry for Foreign Affairs. It is therein stated that *Panama* declines to submit the matter to a new decision at this time, that it is intended to send to *Costa Rica* a mission in order that the two Republics may arrive at an amicable settlement, and that, in the event of a failure to arrive at such a settlement, after exhausting all proper efforts, *Panama* will then be pleased to accept the good offices of the United States and to submit the question to the Chief Justice of the United States.

For three years and more this Government has repeatedly and urgently shown its earnest desire and expectation that the conflicting claims of *Panama* and *Costa Rica* in regard to their

common boundary should be set at rest. The interest of the United States in seeing the dispute settled has been continuously manifested, and the grounds of our interest clearly set forth. At the time of Panaman independence there were important American interests on the border, upon the *Sivola* river, to which rival American citizens were claimants. The determination of their conflicting claims was and still is dependent upon the issue of the question of sovereign title to the territory and sovereign jurisdiction over controversies arising therein. The situation thus arising has been from the outset most embarrassing and vexatious to the United States and this embarrassment and vexation must continue so long as the determination of sovereign title is in suspense.

This Government welcomed with gratification the institution of negotiations between *Panama* and *Costa Rica* looking to a final fixation of their common boundary. It put forward every friendly effort toward the ratification of the treaty signed by them March 7, 1905. The consummation of that treaty was indefinitely deferred because of the amendment introduced in the Panaman Act of ratification. Again our efforts were put forth to effect a renewal of negotiations on conventional lines. Thereupon *Costa Rica* proposed arbitration. The United States supported this proposal as having become apparently the only manner of bringing about the settlement of a controversy the continuance of which bore so heavily on American interests. The acceptance of the arbitration in principle by *Panama* on December 24th last was hailed by us with a feeling of relief as a hopeful augury of a speedy disposition of the question. The communication now made to you by Señor Fernández holds *Panama's* acceptance in abeyance by contingently deferring the resort to arbitration to await the uncertain outcome of a proposal to reopen direct negotiations for adjustment of the dispute by mutual agreement. This step is disappointing, because tending to excite our apprehension that this fresh resort to direct negotiations may prove as ineffectual as previous efforts in that direction, and may turn out to have merely dilatory results so far as a final settlement is concerned, and that an agreement may be found as remote as at the beginning of the dispute.

All this constrains the Government of the United States to

the conclusion that the conditions existing for years and still existing are such that they force the United States in justice to its own citizens to treat the *defacto* line as the line to the north of which *Costa Rica* has jurisdiction and to the south of which *Panama* has jurisdiction is recognized; in other words, to hold that, inasmuch as the territory northward of the *defacto* line is left by *Panama* within the actual jurisdiction and control of *Costa Rica*, *Panama* is stopped by her own act from objecting to the United States treating it as Costa Rican territory, and looking to *Costa Rica* to remedy the annoying and embarrassing situation caused to this Government and to its citizens by the absence of responsible jurisdiction in that Quarter.

You will make the proposition of the United States in this regard clear to the Panaman Minister for Foreign Affairs by reading this instruction to him and handing him a copy.

I am, sir, your obedient servant,

ELIHU ROOT.

Doc. 455

The Secretary of State to Minister Anderson.

DEPARTMENT OF STATE,
WASHINGTON, February 16, 1909.

SIR:

Referring to previous correspondence concerning the disputed boundary between *Costa Rica* and *Panama*, I have the honor to inform you that the rights of American citizens to property situated within the disputed districts are deeply involved, and that each succeeding year renders it more important to the United States that a permanent status be established in the territory in dispute between *Costa Rica* and *Panama*, in order that the just rights of American citizens be recognized and safeguarded.

Negotiations have been transferred to *Costa Rica*, and the Department earnestly hopes that the boundary dispute may be arranged to the satisfaction of *Costa Rica* and *Panama*. Should however, an adjustment of the controversy be delayed or no adjustment made in the near future, the Government of the United States will be constrained to the conclusion that the conditions existing for years and still existing are such that they force the United States in justice to its own citizens to treat

the *de facto* line as the line to the North of which *Costa Rica* has jurisdiction and to the South of which Panama jurisdiction is recognized; in other words, to hold that, inasmuch as the territory north of the *de facto* line is left by *Panama* within the actual jurisdiction and control of *Costa Rica*, the United States must in the interests of its citizens treat it as *Costa Rican* territory and look to *Costa Rica* to remedy the annoying and embarrassing situation caused to the United States and its citizens by the absence of responsible jurisdiction in that quarter.

Accept, Sir, the assurance of my most distinguished consideration.

ROBERT BACON.

Señor Don Luis Anderson,
Minister of Costa Rica on Special Mission,
Washington.

Minister Anderson to the Secretary of State.

Doc. 456

LEGACIÓN DE
COSTA RICA.
MISIÓN ESPECIAL.

WASHINGTON, D. C., February 23, 1909.

MR. SECRETARY:

I have the honor to acknowledge receipt of Your Excellency's communication of the 16th instant (File No. 2491), wherein, with reference to the pending negotiations for the final settlement of the boundary question between *Costa Rica* and *Panama*, Your Excellency deigns to express the importance to the United States of the establishment of a permanent status in the territory in dispute in order that the just rights of American citizens established therein be recognized and safeguarded. Your Excellency adds that the negotiations having been transferred to *Costa Rica* the Department earnestly hopes that the boundary dispute may be arranged to the satisfaction of both parties, and that "should, however, an adjustment of the controversy be delayed, or no adjustment made in the near future, the Government of the United States will be constrained to the conclusion that the conditions existing for years and still existing are such that they force the United States in justice to its own citi-

zens to treat the *de facto* line as the line to the north of which *Costa Rica* has jurisdiction and to the south of which Panaman jurisdiction is recognized; in other words to hold that, inasmuch as the territory north of the *de facto* line is left by *Panama* within the actual jurisdiction and control of *Costa Rica*, the United States must in the interest of its citizens treat it as *Costa Rica* territory and look to *Costa Rica* to remedy the annoying and embarrassing situation caused to the United States and its citizens by the absence of responsible jurisdiction in that quarter."

My Government, which appreciates fully the importance of the good offices of that of the United States toward a just solution of the boundary dispute with *Panama*, regrets that it should not have been possible at the present time to arrive by this means at the immediate settlement that it desires so much, but it hopes at the same time that the negotiations which are about to be initiated in *San José de Costa Rica*, through the Legation that *Panama* will send there with that purpose, will bring forth an understanding that will obliterate forever the only difference that has existed between the friendly and sister Republics of *Costa Rica* and *Panama*.

If, contrary to what is expected, the definite settlement should be delayed, it pleases me to state solemnly to Your Excellency that the interests of the citizens of the United States in all the disputed territory over which *Costa Rica* exercises its jurisdiction will have, as they have at all times had, the ample and most efficient protection granted by our laws. To this effect, I deem it opportune to tell Your Excellency, as I have had occasion to inform the Department of State, that the line which defines the present territorial jurisdiction of *Costa Rica* to the south, is: "The River *Sivola* from its outlet on the Atlantic up to its junction with the River *Yurquin*; thence following in almost a straight line the watershed, to end in *Punta Burica* on the Pacific."

This is the *status quo* that has been maintained for many years and that the Convention of December 25, 1880, ratifies. In said Convention it is expressly agreed between *Costa Rica* and *Colombia* that while the boundary question and the designation of frontiers are not decided the *status quo* will be maintained.

This fact, together with the actual control exercised by *Costa Rica*, constitutes the title with which my country maintains its sovereignty over the territory northward of the frontier line above set forth. My Government accepts with real gratification the statement contained in the last part of Your Excellency's note, because, as such sovereign, it takes upon itself, unreservedly, all the responsibilities inherent to the exercise of jurisdiction; and the Government of Your Excellency can, therefore, rest assured that the Government and the Courts of Justice of *Costa Rica* will give all the necessary and effective protection to the just and legitimate interests that citizens of the United States, or of any other nation, may have in that territory.

Before closing this communication, which terminates the present negotiation, I wish to express once more to Your Excellency the deep appreciation of the *Costa Rican* Government, and my own, for the kind deference and good will with which the Department of State has been ready to cooperate towards the satisfactory solution of the boundary question between *Costa Rica* and *Panama*, and for the repeated proofs of personal consideration with which Your Excellency has been kind to oblige me.

Be pleased, Mr. Secretary, to accept the assurances of my highest consideration and esteem.

LUIS ANDERSON.

The Honorable Robert Bacon,
Secretary of State,
Washington.

The Acting Secretary of State to Minister Anderson.

Doc. 457

DEPARTMENT OF STATE,
WASHINGTON, March 11, 1909.

Serial No.

SIR:

I have the honor to acknowledge the receipt of your note of the 23d ultimo, in which, acknowledging the receipt of the Department's note of the 16th ultimo, you express the hope of your Government that the negotiations about to be initiated in *San José de Costa Rica* between the governments of *Costa Rica* and *Panama*, will result in the definite settlement of the bound-

ary dispute between the two countries; and you state that, should the settlement be delayed, the interests of American citizens in all the disputed territory over which *Costa Rica* exercises jurisdiction will, meanwhile, have the amplest and most efficient protection granted by the laws of *Costa Rica*.

Accept, Sir, the renewed assurance of my highest consideration.

HUNTINGTON WILSON,
Acting Secretary.

Señor Don Luis Anderson,
Minister of Costa Rica on Special Mission,
Washington.

Doc. 458 The Minister of Panama to the Secretary of State in the Department of Foreign Relations of Costa Rica.

Legation of the
Republic of Panama.

No. 37.

SAN JOSÉ, May 29, 1909.

EXCELLENCY:

In the very moments in which I await with the greatest anxiety the necessary instructions from my Government for the settlement of the boundaries between your friendly country and my own, which have been delayed in their arrival by the afflictions of the Government of *Panama*, in the death of Ex-President Amador and Secretary Arango, I feel very deeply to have to begin my labors with the enlightened Government of Your Excellency with a protest by order of my Government. In fact I have just received a cablegram from the new Secretary of Foreign Relations of *Panama*, Señor Don Samuel Lewis, in which he states to me textually the following:

"Governor *Bocas del Toro* informs arrival today, passing by there for *Sixola* of Garro, who goes invested Inspector Department of Treasury and Military Commandant of that region on left bank of river. Five subordinate employees accompany him. Government *Panama* amazed such procedure under present cir-

cumstances. Communicate thus to that Government. Lewis.”

The present case is one it seems to me of suspension between *Panama* and *Costa Rica* of all those acts which could amount to an effective occupation or taking possession of a territory as to which the parties are disputing. The valley of the *Sixola*, disputed for a long time by *Colombia*, has been acquired by *Panama* which is its heir in this particular, by virtue of a decision spontaneously sought by both nations and to the execution of which the honor of both is pledged. *Costa Rica* claims it for other reasons, by occupation and colonization and interests which, it says, it has therein. I have come to believe, therefore, saving the better opinion of Your Excellency, that it is not just, until these matters are definitely settled, that *Costa Rica* should do any acts upon which—precisely by pretending that it has done them since long time ago—a basis may be laid for seeking a modification of the Award.

Panama has on the right bank of the *Sixola*, from its mouth where its first village is located, up to the *Yurquin*, in fourteen others which existed before the Arbitral decision was pronounced, a population which has no room enough and which it would have been possible to establish or spread out, with officials, political, administrative, judicial and fiscal, on the left bank of the river, where *Costa Rica* does not have more than a dozen known inhabitants, nor any possession or cultivation except that of Federico Alvarado, in front of the Panaman village of *Cuabre*. And it has not done so, out of considerations of friendship for a neighboring and fraternal people and in the hope, without loss or waste, of a friendly solution which should define for all time and in perfect direct accord the indisputable rights of both.

Permit me, Your Excellency, to believe that the case will not lend itself to any interpretation distinct from this which I have endeavored to give to it, because if there be conceded to *Costa Rica* the right of proceeding to take possession of territory and colonizing or establishing officials therein, it would have to be admitted that *Panama* could do likewise; and with such an advance by each party there might be disturbances and unfortunate conflicts.

I beg Your Excellency most earnestly to take note of this protest, which I make with much regret, in the name of my

Government, and that Your Excellency will have the goodness to submit to the enlightened Government of which Your Excellency is so important a member, the desire of my own that the employees headed by Señor Garro, for an Inspectorship of the Department of the Treasury shall retire from the left bank of the *Sixola*, leaving things thereafter as they were before the appointment of that gentleman.

I reiterate to Your Excellency the assurance of my most distinguished consideration and remain Your Excellency's most obedient servant,

BELISARIO PORRAS,

E. E. and M. P. of Panama.

To His Excellency,

The Secretary of Foreign Relations.

P.

The Secretary of State in the Department of Foreign Relations to the Minister of Panama. Doc. 459

Department of
Foreign Relations

REPUBLIC OF COSTA RICA,
SAN JOSÉ, June 5, 1909.

MR. MINISTER:

I have the honor to acknowledge the receipt of the courteous note of Your Excellency, dated May 29th last.

Your Excellency may be assured that if Your Excellency has deeply felt the opening of your diplomatic labors with a protest, it has been no less painful for the Government of *Costa Rica* that such protest was based upon an act which it never suspected could have given rise to it, especially as it considers such act, and cannot do otherwise, as strictly legitimate and entirely in harmony with its rights and the official declarations of *Panama* in the matter. My Government feels that only a misunderstanding of this act on the part of the Panaman Government could have led it to instruct Your Excellency to make the protest which has been submitted to this Department. It cherishes the firm hope that at the proper time, when once there shall have come to your knowledge the motives that led *Costa Rica* to establish on the left bank of the *Sixola* a Sub-inspectorship of the Department of the Treasury and a Military Command, there will disappear whatever apprehension as to this act may still exist in the mind of the Government of *Panama*, with which that of *Costa Rica* keenly desires to maintain the most cordial friendship, as it is natural should prevail between two neighboring and fraternal nations.

The appointment of a Sub-inspector of the Treasury and Military Commandant in the place called *Guavito*, on the left bank of the River *Sixola*, had for its object to carry out a contract made by my Government with the United Fruit Company. That Company, as Your Excellency surely knows, is constructing a railway bridge over the said River *Sixola* at the aforesaid point of *Guavito*; and it cannot be unknown to the knowledge of Your Excellency that the opening of a railway which will facilitate the coming of travelers and merchandise to our territory in a district which lacks political and fiscal authorities could not

possibly be permitted by my Government, without previously taking all those precautions and administrative measures that would tend to guarantee the rights and interests of the Nation.

In accord with the contract celebrated between the Department of the Treasury and Commerce and the United Fruit Company, of which I have the honor to enclose to Your Excellency a copy, that Company is authorized to introduce by our frontier with *Panama* merchandise destined for the stocking of the stores and commissary offices that it may establish on the left bank of the *Sixola*; that is to say, in territory subject to the jurisdiction of *Costa Rica*, in conformity with the *status quo* in force as *Panama* has in a perfectly explicit manner recognized.

Now then, the United Fruit Company have been conceded the right to bring in merchandise at *Guavito* and the Government of *Costa Rica* could not, without disregarding its most elemental attributes, refrain from placing on the frontier a fiscal authority charged with the obligation of enforcing our laws as regards the Treasury. And if it at the same time invested that official with the character of Military Commandant, there was in that no other purpose than to give him the necessary force to make his orders respected and keep order in a place so distant and where it is probable that soon there will be formed the nucleus of a population.

The Government of *Costa Rica*, Mr. Minister, has not felt for one moment the least doubt in regard to the full right with which it has acted in this matter; but in case it may have had any it would have been quickly dissipated by the consideration of Resolution No. 28 of the Department of Government and Foreign Relations of *Panama*, dated August 2, 1904, published in the Official Gazette of the Republic on the 23rd day of the same month and year, which Your Excellency knows and which among other things states as follows:

“Although by the Arbitral Award, pronounced by the President of the French Republic, *Gandokin* (in the *Sixola* region) forms part of the Panaman territory, that Award has not yet been carried out and while that is not done the Government of this Republic does not exercise jurisdiction in that locality, it being situated within the limits

of the territory, the dispute over which gave rise to the arbitration and because the *statu quo* agreed so requires. So that the Costarican Government is the possessor of the locality referred to, in the same way that that of *Panama* is the actual possessor of a part of the Costarican territory on the Pacific. The execution of the Award will give to each State the possession of the territory that belongs to it and the *statu quo* will thereupon cease; but until this occurs *Gandokin* will remain under the jurisdictional authority of *Costa Rica*."

After a declaration so conclusive as well as in harmony with the sound principles of international law, the Government of *Costa Rica* could not suppose that that of Your Excellency would make any objection to an act that in no way exceeds the scope of the exercise of its jurisdiction over a territory which is found under conditions like that of *Gandokin* or *Gandoca*; that is to say, on the left bank of the River *Sixola*, which separates us from the Republic of *Panama* up to the intersection with the *Yurquin* or *Zhorquin*. Indeed, Mr. Minister, this important Resolution of the Government of *Panama* confirms, if it were necessary, the perfect and full right which supports us in the exercise of our jurisdiction in the territories situated to the north of the *de facto* line always respected by *Costa Rica* and *Colombia* as the division between the two Republics, since the controversy as to boundaries was started between them. This line the Government of Your Excellency has recognized in your turn, as is very clearly shown by the Resolution cited of August 2, 1904.

Costa Rica has proceeded in this case, as in all others, with entire good faith. This is demonstrated by the very fact that the Sub-inspector made his journey by way of *Bocas del Toro*, in such a manner that the Panaman authorities could not but be aware of it. There was not, therefore, on the part of my Government any intention to do anything prejudicial to *Panama* and much less to alter in any sense the respective situation of the two Republics, so far as relates to their territorial boundary.

The Government of *Costa Rica* appreciates too much the high spirit of justice and equity which animates that of Your Excellency not to hope that when it knows the reasons that it has

had for establishing the Sub-inspection of the Treasury and Military Command of *Guavito* it will withdraw any objection it may have thought necessary to make on this point.

I close, Mr. Minister, with the most fervent wishes that the sister Republics of *Costa Rica* and *Panama* may soon reach a perfect understanding and satisfactory solution of the annoying controversy as to boundaries.

I take this opportunity to reiterate to Your Excellency the expression of my high and distinguished consideration.

F. FERNÁNDEZ GUARDIA.

To His Excellency, Señor Doctor don Belisario Porras,
Envoy Extraordinary and Minister Plenipotentiary of
Panama. S. D.

Doc. 460 **The Minister of Panama to the Secretary of State in the
Department of Foreign Relations of Costa Rica.**

Legation of the Republic
of Panama.

No. 41.

SAN JOSÉ, June 3, 1909.

EXCELLENCY:

Having instructions from my Government to solicit from the respected Government of *Costa Rica* information as to what has been the fate of the Guardia-Pacheco Treaty, celebrated on March 6, 1905, I have the honor to address you for that purpose the present letter.

That Treaty, in effect on March 6, 1905, bearing the name of the Plenipotentiaries that celebrated it, on one part Don Santiago de la Guardia, Secretary of State in the Department of Government and Foreign Relations of the Government of *Panama*, and on the other part Don Leonidas Pacheco, Envoy Extraordinary and Minister Plenipotentiary of *Costa Rica*, must be ratified by the Congresses of *Panama* and *Costa Rica* so that the exchange (of ratifications) may thereafter be made within three months after the last of the ratifications.

I ought to state to Your Excellency that although the ratification of the treaty mentioned was made with a slight modi-

fication by the Assembly of *Panama*, my Government knows nothing as to what has been done by the Congress of *Costa Rica*. It is not known in *Panama* whether the Treaty was submitted to its deliberations, whether or not it was taken up, whether it approved it or whether it rejected or disapproved of it.

It was a happy opportunity for putting an end to the old boundary question, first discussed between *Colombia* and *Costa Rica* and later between *Costa Rica* and my country, because, notwithstanding the public recognition of the Loubet Award, which put an end to it, the treaty referred to had for its object the making of concessions to *Costa Rica*.

The Award, in effect, had been recognized by the same learned Plenipotentiary of *Costa Rica*, Don Leonidas Pacheco, the very 6th day of March, 1905, as an irrevocable decision, firm and obligatory. In the Declaration of that day and year, of which two of the same tenor were signed and sealed in *Panama*, the Plenipotentiary of *Panama*, Don Santiago de la Guardia, and that of *Costa Rica*, Don Leonidas Pacheco, both with full powers from their respective Governments, declared in their name:

“* * * that the dispute regarding territorial limits was settled by the judgement that in the respective arbitral proceeding His Excellency, the President of the French Republic, was pleased to pronounce at Rambouillet on the 11th of September, 1900.”

The frontier being fixed by this High Judge by means of general indications, the Plenipotentiaries of the two Nations judged that

“* * * there remained only the material determination of the same subject with the mutual accord dictated by that spirit of conciliation and good understanding with which the countries had been up to that time inspired.”

The Guardia-Pacheco Treaty which was signed following this declaration, had for its object to set forth the bases of the material determination of the frontier, making concessions to *Costa Rica*, and showed that the spirit of conciliation and good understanding, to which allusion had been made, certainly inspired the negotiators at least.

The Declaration regarding the validity and obligatory force of the Award did not require the ratification of the respective Congresses. Moreover, it was not required by the constitutions of the two countries, and on the other hand the arbitral agreement of November 4, 1896, signed by the Plenipotentiaries, Don Ascención Esquivel and Don Jorge Holguín, says in the final part of Article 4:

“The arbitral decision, whatever it may be, shall be held as a perfect and obligatory Treaty between the High Contracting Parties and shall not admit of any recourse. Both parties bind themselves to its faithful fulfillment, and renounce any claim against the decision, pledging thereto the National honor.”

This exemption from ratification rested, then, on what was agreed and upon the character of the Award. The Arbitral Tribunal having acted, in virtue of a bilateral agreement of the parties to the controversy, and the agreement under which the point was fixed that was to be decided, the name of the judge and the time of the decision, having been a true synallagmatic and aleatory contract, it was not conceivable that it could be broken because of the unexpected character of the sentence. The accord was based upon the freedom of consent and the reciprocity of obligations and it was celebrated knowing the decision was uncertain, such uncertainty being precisely the determining factor which urged the action of the parties at the moment when they exchanged their promises.

The Guardia-Pacheco Treaty, on the contrary, required the ratification of the respective Congresses, and the Assembly of *Panama* on its part did so, proving in the same way as the negotiators how keen and sincere throughout the country was the spirit of fraternal conciliation in favor of *Costa Rica*.

What the Honorable Congress of *Costa Rica* may have done, my Government does not know. In *Panama* they have come to believe that, notwithstanding the four years that have already elapsed since the celebration of the Treaty, they have not had occasion to submit it here to the consideration of the Honorable Congress. It would be very fictitious to do it now, while it is

actually in session, and obtain by such approval the ending of a difference which, as has been said, is the only one between these two neighboring and sister countries, who more than any other should, under every consideration, live united, supporting and defending each other with decided loyalty.

I take advantage of this opportunity to offer to Your Excellency the assurance of the high consideration with which I have the honor to be your very humble servant.

BELISARIO PORRAS,

E. E. and M. P. of the Republic of Panama.

To His Excellency,
The Secretary of State,
in the Department of Foreign Relations. P.

The Secretary of State in the Department of Foreign Relations to the Minister of Panama. Doc. 461

Department of Foreign Relations.
Republic of Costa Rica.

SAN JOSÉ, June 15, 1909.

MR. MINISTER:

I have had the honor to receive the courteous note of Your Excellency, dated the 3rd of the current month, in which in obedience to the instructions of your Government, the desire is manifested to know what has been done in this Republic with the Pacheco-Guardia Treaty of March 6, 1905, concluded by Plenipotentiaries of *Costa Rica* and *Panama*, with the laudable purpose of defining amicably the frontier between the two countries.

Your Excellency adds that the said Treaty had in view the making of concessions to *Costa Rica*, notwithstanding the public recognition of the Loubet Award and that expressly made by the Plenipotentiary of *Costa Rica* in the Declaration which was signed at the same time as the Treaty and Convention. As to such Declaration, Your Excellency affirms that it did not require legislative ratification, not only because the constitutions of the two countries did not require it in that case, but

because the decision in consequence of the Arbitral Convention is endowed with the force of a perfect and obligatory Treaty by paragraph 4 of the agreement of 1896.

Your Excellency suggests, lastly, the idea that the Congress of *Costa Rica*, now in session, take up the Pacheco-Guardia Treaty, in order to thereby secure, with its approval, the ending of the boundary difference, the only one that intervenes between the two neighboring and sister peoples, who more than any others should from every consideration live united, mutually supporting and defending each other with decided loyalty.

May I be permitted, Mr. Minister, before answering the various points discussed in your courteous communication, to repeat to Your Excellency, and through your respected medium to the Panaman people, that my Government eagerly desires that the old and troublesome territorial dispute may be settled between the two countries in a friendly manner and with the spirit of cordiality and benevolence proper between sister Nations, which have lived together since ancient times in perfect harmony, now maintaining the most sincere relations and invited by the bonds of blood, history and destiny to march united in the future.

As regards the fate of the Pacheco-Guardia Treaty in *Costa Rica*, I regret exceedingly to say to Your Excellency that it has not been ratified by the Constitutional Congress. In this respect I think it necessary to record the fact, stated and recognized in the note of Your Excellency, that the Assembly of *Panama*, in approving it, introduced various additions and changes under the name of clarifications (*aclaraciones*). Such additions, whether they may be characterized as slight modifications, according to the view of Your Excellency, or as substantial alterations, according to the opinion of my Government, are to be necessarily considered as an indirect form of disapproval, since in accord with an incontrovertible principle of international law, to approve conditionally or to modify a treaty amounts to a disapproval of it.

Many opinions of writers of great authority on the subject of treaties might be cited in this case. It is sufficient to draw the attention of Your Excellency to that of Rivier, where it is conclusively stated, in speaking of the ratifications of treaties, as follows:

"The ratification cannot be partial but must apply to all the stipulations of the treaty. It cannot be modified and must be absolute, pure and simple. A conditional ratification is equivalent to a rejection." (*Principes du Droit des Gens*, t. II, p. 79.)

My Government, notwithstanding the disapproval expressed by the Assembly of *Panama* and although disagreeing with the changes introduced by it in the Treaty, submitted the matter to the Congress of 1907. The Committee of Foreign Relations reported against the ratification, and the Chamber, after various important discussions, resolved that any decision was useless, since the approval of the Treaty by the Assembly of *Panama* implied, by its form, a tacit rejection of it. Therefore, the Government of *Costa Rica* has since then considered the invalidity of the Pacheco-Guardia Treaty as a point beyond all doubt and in this sense has made various declarations, not only in messages of the President of the Republic but in annual Reports of this Department of State.

As to the other particulars which are referred to in the note of Your Excellency, I deem it of great interest, in order to explain the attitude of my Government, to make a statement of some important antecedents, which may perhaps not be known to Your Excellency, having occurred while our boundary question was debated with the Government of *Colombia*.

The Award of President Loubet having been delivered, the Plenipotentiary of *Costa Rica*, on September 29, 1900, addressed to M. Delcassé, Minister of Foreign Affairs of the Republic of France, a communication in which he established before the High Judge the interpretation that was given on the part of my Government to the frontier line. Our Minister, Señor Peralta, presented the following version of the paragraph mentioned:

"The frontier between the Republic of *Colombia* and that of *Costa Rica* shall be formed by the spur of the Cordillera that starts from Cape *Mona*, on the Atlantic Ocean, and closes on the North the valley of the River *Tarire* or *Sixola*, near the mouth of that river; following with a direction Southwest-west along the left bank

of that river, to the junction with the river *Yurquin* or *Zhorquin* (called also *Sixola*, *Culebras* or *Dorados*) to meridian 82° , $50'$, West of Greenwich, 85° $10'$ West of Paris and 9° $33'$ of North Latitude). Here the frontier line will intersect the river course of the *Tarire*, on the left bank of the *Yurquin*, and will follow in a southerly direction the division range of the waters between the basins of the *Yurquin* on the East and the *Urén* on the West; thence by the division range of the waters between the Atlantic and the Pacific to near the ninth degree of Latitude; thence following the division line of the waters between the *Chiriquí Viejo* and the tributaries of the *Dulce Gulf*, and terminating at *Punta Burica*."

Minister Delcassé, on November 23rd of the same year replied to Señor Peralta as follows:

"* * * the Arbitrator has not been able to fix the frontier except by means of general indications; I deem therefore that it would be inconvenient to trace them upon a map. But there is no doubt, as you have observed, that in conformity with the terms of Articles 2 and 3 of the Convention of Paris of January 20, 1886, this frontier line must be traced within the limits of the territory in dispute, as they are found to be from the text of said Articles. It is according to these principles that the Republics of *Colombia* and *Costa Rica* will have to proceed to the material determination of their frontiers, and the Arbitrator relies, in this particular, upon the spirit of conciliation and good understanding which has up to this time inspired the two interested Governments."

Later (July 27, 1901) this Department of State said to that of Foreign Relations of *Colombia*:

"* * * *Costa Rica* listens with special pleasure to any proposition tending to bring to an end this ancient quarrel and accepts indiscriminately, either by formal agreement or through a simple exchange of despatches,

that there shall be established the basis under which the demarcation shall be carried out, provided that previously and in the usual form both parties have come to an understanding respecting the points the solution of which is the obligation antecedent to the operation of setting up landmarks. I refer, Mr. Minister, to the exact direction of the dividing line on the Atlantic side.”

And the note to which I refer adds:

“* * * as Your Excellency will very well understand, any interpretation different from that which *Costa Rica* has given and which impairing its indisputable rights shall go beyond the claims of *Colombia* in the litigation, will take away the force of the Award.”

This despatch was never answered by the Government of *Colombia*. Then came the separation of *Panama* and negotiations were opened with the Republic Your Excellency so worthily represents. The fruit of these was the Declaration, the Boundary Treaty and the Convention for setting up landmarks, which the Plenipotentiaries of both countries signed on the 6th of March, 1905, at *Panama*.

In the preliminary declaration of the Treaty both Plenipotentiaries recognized that * * *

“* * * by the tenor of what is provided and established in the respective laws and treaties and the *official declarations made by the parties*, the dispute regarding territorial limits * * * was settled by the judgment (Loubet Award) * * * and in virtue of which, the frontier being fixed by the High Judge by means of general indications, the material determination of the same is left subject to the mutual accord prompted by the spirit of conciliation and good understanding by which up to now the two interested Nations have been inspired.”

The above declaration recognizes effectively that the contro-

versy between *Costa Rica* and *Panama* was definitively concluded by the decision of President Loubet; but the text notes, with exquisite care that *this is understood by the tenor of the official declarations made by the Parties*. The Plenipotentiary of *Costa Rica* would not have been able to subscribe a declaration referring to this point, without making the reservation that my Government had already presented before the High Judge and before the Government of *Colombia*. In other words, Minister Pacheco would not have been able to recognise the force of the Loubet Award, excepting with the understanding that the division line, under the general indications stated in the decision pronounced at Rambouillet, should follow the general directions determined in the note addressed to M. Delcassé on September 29, 1900, for the contrary would deprive the sentence of any force.

Such a declaration, made with specific reserve and which was indispensable in order to maintain a consistent theory on the part of the Government of *Costa Rica*, was not signed by the Plenipotentiaries as an isolated document and entirely separate from the others. In the intention of the Plenipotentiaries the three documents were and formed a single Treaty and therefore required legislative ratification.

Regarding this conclusion, permit me Your Excellency to invoke the authority that should be unimpeachable, that of the same Assembly and Executive of *Panama*. What was, in fact, said in the law passed by that Assembly on January 25, 1907, and approved on the following day by His Excellency, President Amador? The text reads:

"The boundary Treaty between the Republic of *Panama* and that of *Costa Rica* is approved, which was celebrated *ad referendum* in this city by the Plenipotentiaries General Don Santiago de la Guardia and Licenciado Don Leonidas Pacheco, March 6, 1905, which consists of a Declaration, a Convention of Boundaries and a Convention for the setting up of Landmarks, the text of which is as follows:"

After reading the above approbative law, Your Excellency can

do no less than to recognize with me that the Declaration cannot in any way be separated from the Treaty and Convention and that therefore it has no value unless it be approved by the respective Congresses.

Referring now to the affirmation contained in the important note that I have the honor to answer, that the Treaty of March 6, 1905, had in view the making of territorial concessions to *Costa Rica*, I beg to inform Your Excellency that one of the principal reasons that the Congress of *Costa Rica* had for not approving it, was precisely the fact, that by that agreement a cession was made of a part of the territory adjudicated to us in the Loubet Award (that which is comprized between *Punta Burica* and the *River Golfito*) without obtaining any advantage on the Atlantic side, since according to the interpretation of *Costa Rica* the line should pass exactly by the points that are stated in the Treaty.

To consent to such a definition of the frontier, would be equivalent on the part of *Costa Rica* to proclaiming in the most evident manner that it was not right in claiming that the division line should follow the general direction set forth in the note of September 29, 1900; because notwithstanding it leaves the line on that side as it was, in its opinion, established by the Award, it appears to cede on the Pacific side, without any compensation, that which without any dispute the sentence attributes to us.

Costa Rica not gaining anything on one hand and giving away on the other, it is *Panama* that the Treaty favors and not *Costa Rica*. So that if it was the purpose of the negotiators to make territorial concessions, it must be confessed that the result did not correspond to the purpose.

My Government, in conclusion, holding as it does that the Pacheco-Guardia Treaty is invalid and desiring as it does earnestly desire that the dispute about the frontier should be promptly terminated, is ready to negotiate with that of *Panama*, either for a new Treaty to define the dividing line, or for an Arbitral Convention to decide what must be the correct interpretation and if being necessary what is to be the force of the Loubet Award.

Such arbitration has already been happily accepted in prin-

ciple by the Government of Your Excellency, in case the direct negotiations between the two interested Governments do not succeed, in order to reach in a friendly manner a solution satisfactory to both countries. And as there exists on the part of my Government the best disposition for a settlement of this troublesome matter, with that spirit of fraternal conciliation which should be felt by Nations bound by so many and such ancient ties, I cherish the hope that within a very short time, when Your Excellency has been pleased to communicate to this Department of State that you are ready to open negotiations, we shall be able to close forever this already long chapter of territorial discussions.

In the meantime, I am pleased to reiterate to Your Excellency the assurance of my greatest consideration and very distinguished appreciation.

R. FERNÁNDEZ GUARDIA.

To His Excellency

Señor Doctor Don Belisario Porras,

Envoy Extraordinary and Minister Plenipotentiary of
Panama. S. D.

**Doc. 462 The Minister of Panama to the Secretary of State in the
Department of Foreign Relations.**

Legation of the
Republic of Panama.

No. 44.

SAN JOSÉ, June 7, 1909.

MR. SECRETARY:

On Saturday afternoon I had the honor to receive the courteous communication of Your Excellency, dated the 5th of the present month, answering my protest-note of May 29th last.

As Your Excellency will remember, my communication was in obedience to the orders of my Government, received by cable, and therefore now, considering the response of Your Excellency as a contradiction of the arguments which were set forth in my note, it is my duty, in expectation of new orders which may be sent to me, to confine myself to acknowledging the receipt *ad referendum* of the contra-protest of Your Excellency. With the

expectation of very shortly receiving said orders, I hasten to prepare—in order to send it to my Government—a copy of the communication of Your Excellency, as well as of the contract of the Department of the Treasury with the United Fruit Company, of which Your Excellency was pleased to also send me a copy.

In the meantime, permit me to request Your Excellency, in order to hasten the conclusion of this incident concerning the establishment by the Government of *Costa Rica* of an Inspectorship of the Treasury and Military Command on the left bank of the *Sixola*, that you will be pleased to make me acquainted with the agreement, called the *statu quo*, existing between *Costa Rica* and *Panama* (with which I am sorry to state I am not acquainted) and which, according to Your Excellency, explains the perfect right that *Costa Rica* has to exercise jurisdiction in the territories situated on the North of the *de facto* line, which is, Your Excellency adds, “the left bank of the River *Sixola*, which actually divides *Costa Rica* from the Republic of *Panama*, up to the intersection of the *Sixola* with the *Yorquin* or *Zhorquin*.”

I reiterate to Your Excellency the assurance of the most distinguished consideration with which I have the honor to subscribe myself your obedient servant,

BELISARIO PORRAS,

E. E. and M. P. of Panama.

To His Excellency

the Secretary of State in the Department of Foreign Relations. E. S. D.

The Secretary of State in the Department of Foreign Relations to the Minister of Panama.

Doc. 463

Department of
Foreign Relations.

REPUBLIC OF COSTA RICA,

SAN JOSÉ, June 22, 1909.

MR. MINISTER:

I have the honor to acknowledge to Your Excellency the receipt of your courteous note of June 7th instant, by which

I am informed that Your Excellency is expecting new instructions from your Government in regard to the matter that led to the protest which you addressed to this Department of State on the 29th of May last.

Your Excellency adds that in order to hasten the termination of the incident originating in the establishment of a Sub-inspection of the Treasury and of a Military Command at *Guarito*, on the left bank of the *Sixola*, you desire to be acquainted with the agreement in force, called the *statu quo*, between *Costa Rica* and *Panama*, which explains the perfect right that *Costa Rica* has to exercise jurisdiction in the territories situated on the north of the line *de facto*, which now serves as a frontier line for the two Republics.

Out of respect to the desire expressed by Your Excellency, I am pleased to state to you that the jurisdictional *statu quo* existing between *Costa Rica* and *Panama* does not have for its basis any special agreement called *statu quo*. It is founded upon the treaties concluded between the Federal Republic of *Central America* and that of *Colombia* and afterwards between *Costa Rica* and the United States of *Colombia*.

As regards the line *de facto*, on the Atlantic side it is as follows:

The River *Sixola* to its junction with the *Yurquín* or *Zhorquín* (called also *Sixola*, *Culebras* or *Dorados*); the *Yurquín* to its watershed.

I take this opportunity to reiterate to Your Excellency the testimony of my great consideration.

R. FERNÁNDEZ GUARDIA.

To His Excellency Señor Doctor Don Belisario Porras, Envoy Extraordinary and Minister Plenipotentiary of Panama.
S. D.

The Minister of Panama to the Secretary of State in the Department of Foreign Relations. Doc. 464

Legation of the
Republic of Panama.

No. 65.

SAN JOSÉ, July 28, 1909.

MR. SECRETARY :

When I received on Saturday the 5th of June your esteemed communication of that day, in response to my protest-note of May 29th, concerning the establishment of a Sub-inspectorship of the Treasury and Military Command at *Guarvito*, on the left bank of the *Sixola*, I had the honor to state to Your Excellency that in the expectation of receiving new orders from my Government I only acknowledged the receipt *ad referendum* of the communication mentioned.

I deemed it a case for urgency and immediately sent a copy of the said note of Your Excellency to my Government. The latter, after having weighed with due care the reasons that *Costa Rica* held for taking possession, in the manner indicated, of a territory which was not in its possession before but which had been adjudicated to *Panama* by an arbitral sentence, for the fulfillment of which the national honor was pledged beforehand by both countries, I have not deemed it proper that I should withdraw the objections that it was necessary for me to make in the matter referred to. On the contrary it instructed me to maintain and to strengthen it with new and more powerful reasons.

In the letter mentioned, in which I made such statement to Your Excellency, I requested from Your Excellency that, in order to hasten the termination of this incident, concerning the establishment by the Government of *Costa Rica* of the Sub-Inspectorship of the Treasury and Military Command mentioned on the *Sixola*, you would be pleased to inform me regarding the *statu quo* between *Costa Rica* and *Panama*, for I confessed with shame and regret that I did not know to what Your Excellency referred. Your Excellency believed it gave full right to *Costa Rica* to exercise provisional authority and jurisdiction on the said left bank of the *Sixola* and answered me as follows :

“Out of respect to the desire expressed by Your Excellency, I am pleased to state to you that the jurisdictional *statu quo* existing between *Costa Rica* and *Panama* does not have for its basis any special agreement called *statu quo*. It is founded upon the treaties concluded between the Federal Republic of *Central America* and that of *Colombia* and afterwards between *Costa Rica* and the United States of *Colombia*.”

Your Excellency went further, indicating to me, founded on I know not what documents, “the *de facto* line” on the Atlantic side, thus:

From the mouth of the River *Sixola* to that of the River *Zhorquín*, which Your Excellency also calls *Culebras* or *Dorados*, and thence by the said river *Zhorquín* to its watershed in the Cordillera. As to the Pacific side Your Excellency did not make any statement.

In a note which was previously addressed by Your Excellency to me, I was assured that the Government of *Costa Rica* did not harbor the least doubt as to the full right with which it acted in that matter, supported by the *statu quo* referred to; but that in case it might have had any, it would have disappeared in view of the Resolution No. 28 of the Department of Government and Foreign Relations of *Panama*, dated August 2, 1904. This was published in the Official Gazette of the Republic on the 23rd day of the same month and year and in it the Secretary, invoking the *statu quo* “agreed” and considering everything and bearing in mind that *Gandoca* forms part of the territory of *Panama*, conformably to the Loubet Award, that award not yet having been executed, thought that the Government of *Panama* did not exercise jurisdiction in it but that *Costa Rica* did, in the same way that *Panama* exercised it on the Pacific side in another part of the disputed zone.

Finally, Your Excellency alleges that the *Sixola* and the *Zhorquín* form the *de facto* line; alleging further that to the North of it *Costa Rica* exercises of right a provisional jurisdiction and that such *de facto* line has always been respected by *Colombia* and *Costa Rica* as the division between the two Republics since the dispute as to boundaries was started between them.

In order to answer these reasons, *Panama* also is supported before all by "the treaties concluded, first between the Federal Republic of *Central America* and that of *Colombia*, and later between *Costa Rica* and *Colombia*." These treaties are in all four, one dated 1825 between the Republics first cited, and three of arbitration to definitely solve the question of boundaries and are between the last two respectively of 1880, 1886 and 1896. Of those for arbitration, the first establishes that the question of boundaries between the parties shall never be decided by any other means than the civilized and humanitarian one of arbitration and that until such a desired solution is arrived at the agreed *statu quo* shall be preserved. The last two confirm the first. It appears, therefore, that there was already, when they were celebrated, conformably to these Conventions, a *state of things* agreed (*statu quo*), and seeking what it is found in the aforesaid Treaty of 1825, celebrated between *Colombia* and the Federal Republic of *Central America*.

The Protocol and Articles 5 and 7 are known of that treaty, signed by the two Representatives of the two Nations, Don Pedro Gual and Don Luis Molina. In the Protocol it says:

"Article 5 was read and Señor Gual was opposed to its adoption as being contrary to the legitimate titles of *Colombia*, and in proof of this he showed to Señor Molina the original *cédula* of November 30, 1803, in which the *Coast of Mosquitos*, as far as Cape *Gracias á Dios*, was added to the Viceroyalty of *New Granada*; and also the Decree of the Executive of July 5, 1824, against the enterprises of unauthorized adventurers on said *Coast*, without noting many other acts by which commerce with the natives who inhabited it was regulated. He also added that the Government of *Colombia* was resolved not to abandon its rights except in the case of making mutual concessions by a special boundary treaty, and that if Señor Molina had instructions from his Government to enter into such negotiation, he would have no hesitancy in venturing now the idea that it was very possible *Colombia* might agree in the establishment of a dividing line, for that part, from the mouth of the River *San Juan* to the entrance into the lake of *Nicaragua*, where a point toward the South would be selected by which to continue marking the boundaries, until reaching the *Dulce Gulf*, in the Pacific

Ocean. In this way, he said, there would remain to *Guatemala* the largest and most populous part of the Province of *Costa Rica* on the South, and all the part of the *Coast of Mosquitos* from the North bank of the River *San Juan* up, and it could then be stipulated that the navigation of said river and Lake of *Nicaragua* were to be common to both parties. *Colombia* would only gain the advantage of this navigation on the North, the fragment of land comprized between the interior division line, from the Lake toward *Gulf Dulce* and that of having natural boundaries for the greater part, which is its principal interest, in order to avoid all disputes in the future. Señor Molina answered that he did not have instructions for such a negotiation. Señor Gual then responded that it was necessary to go, in the matter of boundaries, to the *uti possidetis* of 1810 or 1820, as might be desired. Señor Molina having acquiesced in this, Señor Gual charged himself with the preparation of the articles therefor within the time to make the draft."

In conformity with this part of the Protocol, there was established in Articles 5 and 7 what Your Excellency will notice:

"ARTICLE 5. Both the contracting parties mutually guarantee the integrity of their respective territories against the attempts or invasions of the subjects of the King of Spain and their adherents, *in the same footing in which they were before the present war of independence*

ARTICLE 7. The Republic of *Colombia* and the United Provinces of *Central America* formally agree and obligate themselves to respect their boundaries *as they are at present*, reserving the demarcation of the dividing line between one or more of the States to be made in a friendly manner, by means of a special Convention, as soon as circumstances may permit it, or whenever one or the other of the parties indicates to another that it is disposed to enter into such negotiation."

The *state of things*, as regards boundaries, referred to in the Protocol of the Convention and in Articles 5 and 7 of it, which I have copied, was the *statu quo* that was agreed. As there was no other Treaty between the Federal Republic of *Central America*

and *Colombia*, without doubt it is this Treaty to which Your Excellency referred in stating that the *statu quo* under discussion "is founded on treaties concluded between the countries mentioned." This "state of things" was also the principle denominated *uti possidetis jure* of 1810 or 1820; that is to say, that whatever *Central America* and *Colombia* held of right in 1810 or 1820 (legally held), should be considered as the boundaries between the two. The rule was one of equity and justice for the distribution of the territorial rights which had been inherited and accepted for the Nation a part of which is now *Costa Rica* and for that a part of which came to be *Panama*, as an equally rigorous rule between these latter two. It is clear that the "state of things" to which reference has been made is the legal situation (*estado legal*) in which those Nations were found in 1810 or 1820; the legal situation created by the juridical ties that bound each one of those peoples to its respective territory, with absolute exclusion of all possession *de facto*, without a just title, acquired by administrative errors or more or less covert or fraudulent usurpation.

This legal or rightful situation is determined by the Royal *Cédula* of November 30, 1803, by which the *Coast of Mosquitos* as far as Cape *Gracias á Dios* was added to the Viceroyalty of *New Granada*, and by the Executive Decree of July 5, 1824, against the undertaking of unauthorized adventurers on that coast, documents to which Señor Gual alluded in the paragraph of the Protocol which I have copied. That *cédula* informed Señor Molina, because the said Señor Gual sent to him a certified copy of it by the note of March 11, 1825, so that he might take full knowledge of it. It is a clear statement, precise and conclusive, and reads as follows:

"The King has resolved that the islands of *San Andrés* and the part of the *Coast of Mosquitos*, from Cape *Gracias á Dios*, inclusive, towards the *River Chagrcs*, be segregated from the Captaincy-General of *Guatemala* and dependent from the Viceroyalty of *Santa Fe*. I advise by Royal Order in order that the Ministry under your charge may issue what is proper for the fulfillment of this sovereign resolution. (Signed) Soler.

To the Viceroy of *Santa Fé*,

So that, if after the Treaty of 1825 between *Colombia* and *Central America*, of which *Panama* and *Costa Rica* are the heirs, no other treaties were signed, neither between the former nor between the two latter, which modified the state of things agreed in it, which consisted in the rule of the *uti possidetis jure* of 1810 or 1820 for the provisional demarcation of their boundaries, and even in the Treaties of Arbitration the only ones that followed it, allusion was scarcely made to the *statu quo* agreed upon, it is evident that between *Costa Rica* and *Panama* there was no other *statu quo* until the delivery of the Award.

It is true that on April 20, 1880, Don Luis Carlos Rico, Secretary of Foreign Relations of *Colombia*, marked out a line distinct from that considered as the interpretation of the *statu quo*, but that line, the capricious work of a Secretary that could not invalidate an existing Treaty which had been solemnly approved and ratified, was happily not accepted by *Costa Rica*. The Secretary stated as follows:

“In order to carry out the *statu quo* that both Republics have agreed to change, until the arbitral decision is accomplished, my Government claims and protests that the boundary between the two Republics during the time that its boundary questions remain pending is that on the Atlantic side, following the principal river bed of the *Culebras* to its watershed and following a line along the summit of the range of *Las Cruces* as far as the mouth of the River *Golfito*, in *Dulce Gulf*, in the Pacific.” * * *

The provisional line continued, then, being that of the *uti possidetis jure* of 1810 or 1820, because *Costa Rica* did not accept that of Luis Carlos Rico. But supposing that the simple note of Luis Carlos Rico, notwithstanding it had not been accepted by the Government of *Costa Rica*, could have annulled that *uti possidetis jure* of 1810 or 1820 and could have become the line actually in force, it must have followed by the River *Culebras* and not by the *Sixola*, which is the one that Your Excellency endeavors to establish. In fact, the *Sixola* is not the *Culebras*. In the last official map of *Costa Rica*, which is that of Pittier, of 1903, the

River *Culebras* does not appear; but in the prior map, that of 1876, signed by Luis Friederichsen and prepared, according to official data, in the time of General Don Tomás Guardia, the *Culebras* or *Dorados* is shown as a river that runs to the North of *Punta Mona* and empties into the sea, probably the *Estrella* of today. The *Sixola* is marked to the South of that point, as it is in the map of Pittier and as it is in fact. Yet today the map of Friederichsen continues to be the official map in the *Juzgado de lo Contencioso* of this city.

My theory is that we can admit that there is an error in that map and that the River *Dorados* or *Culebras* may be the *Sixola*, but why would it have to be the *Zhorquín* or *Yurquín*, which is only a tributary of the latter? In any case the line starts from the sea, and if the *Sixola* empties into the sea, as it does, and it being taken that it is the same as the *Culebras*, Your Excellency would have to agree that the *de facto* line runs by the course of current of that river "to its watershed," as Señor Louis Carlos Rico says, and not by the course of the *Zhorquín*.

It is true that *Central America*, in the first place, and afterwards *Costa Rica*, have been occupying the territory of which *Colombia* and its heir *Panama* had lawful command and jurisdiction; but such acts could not create for *Costa Rica* a legal condition. The *uti possidetis jure* of 1810 or 1820 did not refer to acts but to law, to the *legal state* the old Spanish Colonies were in at the time of becoming independent in this part of America. How could casual or irregular acts be valid, which altered lawful, demarcations which had been accepted?

In some cases, as in the occupation of *Bocas del Toro*, by virtue of concessions later than 1825, a term was put to the occupation, but not in others, it being continued notwithstanding the representations and protests of *Colombia* and *Panamá*. Happily, in international matters as in the Civil Law, the prescription upon which a right is based supposes for its possession a just title and good faith, and only *Panama* had such just title. It consists in the Royal Order of November 30, 1803, in the Executive Decree of July 5, 1824, against the enterprises of unauthorized adventurers, and in the Treaty of 1825, not yet invalidated nor modified.

It is evident, then, that up to the Loubet Award there existed the *statu quo* of 1825, and as that Award has not yet been applied it said *statu quo* has continued in all its force. *Colombia*, first, and thereafter the Republic of *Panama*, have exercised jurisdiction and authority over the Atlantic coast as far as *Punta Mona*. The Executive Decree of *Panama*, No. 17, of 1903, of November 11th, in its Article 12 indicated the powers of the Chief of the Customs Guard (*Resguardo*) of *Bocas del Toro*, who at the time that he exercised jurisdiction collected duties in the territory above mentioned. By Decree No. 18 of 1903, also of *Panama*, dated November 16 and published in Official Gazette No. 2 of the 20th of said month and year, the Province of *Bocas del Toro* was created, fixing its boundaries with *Costa Rica*, including the whole of the zone over a part of which that Republic had in fact begun to exercise its jurisdiction. Finally, in the Report of 1906, presented to the National Assembly of *Panama* by the Secretary of Government and Foreign Relations, it appears that the Government of *Panama* considers the Guardia-Pacheco line as the same as the *statu quo*. So that, therefore up to 1906, *Gandoca*, and with greater reason the mouth of the *Sixola*, have been under the jurisdiction of the Republic of *Panama*.

I acknowledge that on August 2, 1904, the Secretary of Foreign Relations of my country issued a Resolution, by which he intimated that *Costa Rica* exercised jurisdiction in *Gandoca*, notwithstanding it was found within Panaman territory, since the Loubet Award had not yet been executed which adjudicated it to *Panama*; but that administrative Resolution, which did not merit the assent of the Executive and has scarcely any appreciable value, mistaken of course, did not amplify, nor reform, nor modify the conventions, treaties and declarations made in the matter of the controversy as to boundaries, neither did it in the least alter the value of the *uti possidetis jure* of 1810 or 1820, or that of the *statu quo* of 1825, the only rule and legal principle, agreed and in force, in this respect between *Costa Rica* and *Panama*.

Why, solely because of the fact that the Award had not been carried into effect, should *Costa Rica* exercise jurisdiction in *Gandoca*? It is a funny idea. If *Costa Rica* did not exercise it

there before the Award, why after the Award was made, which gave that territory to *Panama*, could she exercise it? With the rejection of the Award by *Costa Rica*, and without its execution, the territory comprized between *Punta Mona* and the spur of the Cordillera, starting from that Point and the mouth of the *Sixola*, along all the left bank of that river, is definitively under the jurisdiction of *Panama*, because the least that *Panama* could acquire if the very worst happened would be that which the Representative of *Costa Rica* in Paris always and entirely acknowledged to it when he interpreted the Award. In fact, as appears in the important note of Your Excellency of June 15th, Minister Peralta presented to the Arbitrator, through M. Delcassé, the following version of the paragraph relating to the frontier line of the Atlantic side:

“The frontier between the Republic of *Colombia* and that of *Costa Rica* shall be formed by the spur of the Cordillera (within which are *Punta Mona*, *Gandoca* and the whole left bank of the *Sixola*) that starts from Cape *Mona*, on the Atlantic Ocean and closes on the North the Valley of the River *Tarire* or *Sixola*, near the outlet of the latter * * *.”

If, then, by so many legitimate titles, since 1803, before the Independence and afterwards, until the Loubet Award was delivered, *Colombia* first and later *Panama* have had lawfully the dominion and jurisdiction over the whole left bank of the *Sixola*, to the Spur of the Cordillera that starts from *Punta Mona* and closes the valley of the said River *Tarire* or *Sixola*, it is clear that it could not be lost to *Panama* by an administrative resolution of the Secretary of Government and Foreign Relations. Dominion and jurisdiction are the two great attributes of sovereignty and they can only be taken away by the constitutional authority. Supposing that such resolution had any value, it would be considered as a mere courtesy or simple permission, as an innocent use, not conferring any perfect right and which terminates at the time and in the form that the sovereign may determine. I refrain from citing any author on this point, because the fundamental principle is well recognized by Your Excellency. No State is required to consent that within its own territory another power may exercise any political act (of police, judicial

administration, military or imposing taxes). Every State is under obligation to refrain from any such acts within a foreign territory. These are well accepted principles of International Law.

From what has been stated and in the confidence that Your Excellency will take it into serious consideration, recognizing the right and justice that supports *Panama* in the protest that it has made through me, I am led to hope in the name of my Government that the learned and just administration of *Costa Rica* may withdraw from the left bank of the *Sixola* that it established there, with an Inspectorship of the Treasury and Military Command. The acquiescence of the Government of *Costa Rica* in this would be the most patent proof of the sentiments of fraternity which it holds for *Panama* and the most transcendent act in the arrangement of the boundary dispute which would assure without doubt its definitive settlement for all time.

Be pleased, Your Excellency, to accept the sincere testimony of my most earnest esteem and believe me your very obedient servant;

BELISARIO PORRAS,
E. E. and M. P. of the Republic of Panama.

To His Excellency the Secretary of State in the Department of Foreign Relations.

Doc. 465 The Secretary of State in the Department of Foreign Relations to the Minister of Panama.

Department of
Foreign Relations.

REPUBLIC OF COSTA RICA.

SAN JOSÉ, August 13, 1909.

MR. MINISTER:

I have had the honor to receive the courteous note of July 28th last, in which Your Excellency, with new instructions from your enlightened Government, insists upon the request to *Costa Rica* to withdraw the Sub-inspection of the Department of Treasury and Military Command established recently in *Guavito*, on

left bank of the River *Sixola*; and with the purpose of strengthening the reasons previously invoked you consider at length the *statu quo* agreed between *Costa Rica* and *Colombia*.

In this matter Your Excellency has been pleased to set forth some propositions, of which the principal are as follows:

1. In order to contradict the right that *Costa Rica* has to exercise jurisdiction and authority upon the left bank of the *Sixola*, which according to my previous notes is no other than the possession in fact agreed between both countries until the definitive delimitation should be made, the Government of your Excellency relies upon the Treaty of 1825, according to which the Central-American Federation, of which *Costa Rica* formed a part, and the original Republic of *Colombia*, accepted as a principle for the definition of their respective frontiers, the *uti possidetis* of 1810 or 1820;

2. The River *Culebras* is not the River *Sixola*;

3. *Panama*, and previously *Colombia*, exercised jurisdiction on the Atlantic coast as far as *Punta Mona*;

4. *Panama* considers the line of the Pacheo-Guardia Treaty as the same as that of the *statu quo*;

5. If the *Sixola* is the River *Culebras*, why should it be the *Yurquin*?

The discussion being thus systematized, may I be permitted to present to Your Excellency the reasons that my Government has to disagree with Your Excellency in regard to all and every one of said points.

FIRST.

As regards the first point, I must state to Your Excellency that *Costa Rica* has never refused to recognize, as a basis for deciding the territorial disputes with its neighbor on the South, the legal state of things as they were at the time of the emancipation of our two countries. It was so admitted in the Treaty of 1825 and afterwards before the Arbitrator.

But the *uti possidetis* or *jus possidendi* which is invoked by both *Costa Rica* and *Panama*, as well as by most of the Republics that formerly constituted the Spanish Colonies in America, to serve as a basis for determining their respective frontiers,—a right which is called at other times the jurisdictional *statu quo*

or "state of things,"—is one thing, and quite another and distinct thing is the possession in fact or the line *de facto* agreed upon by the countries to be respected as the provisional frontier while their litigation is pending as to a definitive dividing line.

For this reason, in my note of June 5th last, I duly noted the difference between the jurisdictional *statu quo* defined in the treaties and the line *de facto* as to which no treaty whatever exists.

As both countries are agreed that the question of territory must be decided or ought to be decided in accord with the legal situation (*estado legal*) of the dominion and jurisdiction prior to independence, and to convince Your Excellency that a line really exists which marks the possession in fact or provisional, I will recite recent Colombian documents and even those of *Panama* which so provide and recognize, notwithstanding *Costa Rica* duly made protests against what it has considered to be unauthorized invasions of its territory.

(a) May 21, 1870, the President of the State of *Panama*, General Correo, in a letter addressed to the President of *Costa Rica*, said: "The Captain of the Port of *Moin*, it is asserted, is doing the same, invading the Colombian village of *Sixoula*, situated on the eastern side of that river * * *." And farther on adds: "* * * without any one having disputed up to the present time the boundaries fixed as the limit of both countries by the Spanish Government, in the Atlantic the river *Culebras*, also called *Doraces* or *Dorces* * * *."

(b) October 20, 1871, the Plenipotentiary of *Colombia* in *Costa Rica*, commenting upon some events that had occurred in *Sixola* and *Changuinola* said to the Secretary of Foreign Relations of the latter Republic:

"A person called Santiago Mayas or Mayay, entitling himself an agent of the Government of *Costa Rica*, has pretended to exercise acts of jurisdiction in the village of *Changuinola*, which as Your Excellency knows, is located to the West of the *River Doraces*, the boundary between this Republic and that of *Colombia*, as the Government of the latter maintains. *Colombia* has at all times been in possession of *Changuinola*; and although *Costa Rica* also thinks that it has a right to the territory in which that village is situated, such possession ought to be respected,

not only because by Art. 7 of the Treaty celebrated between old *Colombia* and *Central America* on March 15, 1825, the two Republics were obligated to respect their boundaries, as they then were, but also because it is in the interest of both, in order to avoid complaints and reciprocal claims, to recognize *their respective possessions in the condition in which they are now found*, as long as their boundaries are definitively fixed."

That is a document which puts in clear relief, not only the *uti possidetis* but also the *statu quo de facto*.

(c) The Minister of Foreign Relations of *Colombia*, Señor Rico, in a note addressed to this Department of State on April 20, 1880, said:

"In virtue of the *uti possidetis* of 1810, and with a solid basis of authentic and irrefutable documents, the boundaries of *Colombia* extend upon that side as far as Cape *Gracias á Dios*, comprising all the *Coast of Mosquitos* on the Atlantic, and to the River *Golfo* on the Pacific; but for the purposes of the *statu quo*, which both Republics have agreed not to alter, whilst the arbitral decision may not be carried out, my Government alleges and protests that the marking of the boundary between the two Republics, during the time that their questions concerning limits continue pending, is the following: Upon the Atlantic side, the main channel of the River *Culebras* to its sources, continuing by a line along the crest of the range of *Las Cruces* to the mouth of the River *Golfo* in the *Gulf of Dulce* on the Pacific."

(d) The previous note of Señor Rico, which Your Excellency claims has no authority because it is contrary to the Treaty of 1825, is rather a confirmation of the same. But this is not the only document that my Government can call upon in this matter. There is another from a higher source, which confirms it and strengthens it. The proclamation of President Núñez, of September 6, 1880, reports to the Nation that the Senate of Plenipotentiaries approved the following conclusions:

"1. Colombia has, under titles emanating from the Spanish Government and the *uti possidetis* of 1810, a perfect right of dominion to, and is in possession of, the territory which extends toward the North between the Atlantic and Pacific oceans to the following lines:—From the mouth of the River *Culebras* upon

the Atlantic, going upstream, to its source from thence a line along the crest of the ridge of *Las Cruces* to the origin of the River *Golfito*; thence the natural course of the latter River to its outlet into the *Gulf of Dulce* in the Pacific."

(e) There is more yet. The Government of *Costa Rica* having proposed to that of *Colombia* the fixing, by common accord, of a provisional frontier line, while the Spanish Government had not pronounced its arbitral decision, the Under-Secretary of State in charge of the Ministry of Foreign Relations of *Colombia*, Don Marco Fidel Suárez, addressed to this Department the note of March 16, 1891, of which I have the honor to send Your Excellency a copy as it does not appear in the publications in regard to the boundary dispute.

In this note Señor Suárez states as follows:

"On April 8, 1889, the Minister of Foreign Relations of *Costa Rica* addressed to the Minister of the same branch of the Republic a note in which he recognizes that *Sixaola* has long been subject to the jurisdiction of *Colombia*; so both parties interested are agreed in acknowledging that the one has actual possession in a certain point of the litigated zone. So, then, the provisional and transitory boundary can not be to the East of the *Sixaola*, for that would be to disturb the actual possession that *Costa Rica* acknowledges in *Colombia*, and lose sight in the act of settlement of the purposes which impose that settlement. *As to the part West* of the *Sixaola*, although *Colombia* insists, in accord with the Additional Convention signed in Madrid by the Plenipotentiaries of this Republic and of *Costa Rica* on January 20, 1886, that its rights on the Atlantic extend to Cape *Gracias á Dios*, it does not complain if its actual possession be restricted, fixing the transitory limit nearer than that terminal.—The Republic, then being guided by especial sentiments of conciliation, proposes that the provisional frontier shall be the River *Doraces*, from its outlet in the Atlantic to its sources thence following the Cordillera of *Las Cruces* to the River *Golfito* and thence along the River *Golfito* and thence the River *Golfito* to its outlet in *Dulce Gulf*."

(f) The resolution of the Government of Your Excellency, which I cited in my note of June 5th of the current year, is an explicit recognition of the line *de facto* respected by *Costa Rica* and *Colombia* and which *Panama* must respect while definitive delimitation is not made.

This situation of fact has not only been respected by our two countries, but has also been recognized in a categorical manner by the Government of the United States of America, as a rule for judging of the rights and protection for the interests of its citizens. The Under-Secretary of the Department of State, Mr. Robert Bacon, in a note of February 16th of this year 1909, communicated to my Government and to that of Your Excellency, says as follows:

“Should, however, an adjustment of the controversy be delayed or no adjustment made in the near future, the Government of the United States will be constrained to the conclusion that the conditions existing are such that they force the United States in justice to its own citizens to treat the *de facto* line to the North of which *Costa Rica* has jurisdiction and to South of which *Panaman* jurisdiction is recognized; in other words, to hold that, inasmuch as the territory North of the *de facto* line is left by *Panama* within the actual jurisdiction and control of *Costa Rica*, the United States must in the interests of its citizens treat it as *Costa Rican* territory and look to *Costa Rica* to remedy the annoying and embarrassing situation caused to the United States and its citizens by the absence of responsible jurisdiction in that quarter.”

Besides, the existence of a provisional boundary line in no way changes the rights of the parties, and my Government does not believe that its own rights are injured in any way by the circumstance of *Panama* finding itself in possession of a territory that belongs to it. In the same way, the possession that *Costa Rica* may have of any territory whatever, which the Republic of *Panama* can with right legitimately claim, does not injure that right, since the possession *de facto* does not contradict the legal *statu quo* or agreed *uti possidetis*.

SECOND.

Your Excellency affirms that the River *Sixola* is not the *Culebras* and in making that assertion relies upon the map of Friederichsen of 1876, in which a River *Culebras* or *Dorados* appears to the North of *Punta Mona*.

I must, therefore, inform your Excellency that in *Costa Rica* there is no official map. Various private ones exist and all are used, according to the caprice of convenience of the person who needs one.

Upon this point I will add that the names *Culebras* or *Dorados* are not known in *Costa Rica* and that they are exclusively Colombian. And in *Colombia* itself it has been at times believed that one is the River *Dorados* or *Doraces* and another the River *Culebras*, until they have at last come to the point of considering *Culebras* as being the same as *Dorados* and that the two are one and the same river.

I will cite in support of my allegation some documents of Colombian and Panaman origin:

(a) The Government of *Colombia* at one time claimed as the line of possession a river called *Doraces*, *Dorces*, or *Dorados*, and the Senate and House of Representatives, in approving one of the plans for settlement of boundaries in 1857 stated and explained that the river so named in the Treaty is the first one that is met with at a short distance to the South-east of *Punta Careta*.

(b) In the plan of settlement, presented in 1865, by the Plenipotentiary of *Colombia*, Señor Valenzuela, to Doctor Don José María Castro, Plenipotentiary of *Costa Rica*, it was repeated (Art. IV, Clause 3) that the River *Dorados*, *Dorces* or *Doraces* is the first river that is met with toward the south-east of *Punta Careta*, vulgarly called *Punta Monas*.

(c) Señor Fernández Madrid, in his celebrated report of 1852, in speaking of the necessity of obtaining exact data for the fixing of the frontier says that it was so much more indispensable inasmuch "as some of the persons who have visited them (the coasts) recently declare that among their inhabitants the names, so commonly used, of River *Culebras* and *Punta Careta* are not known, the former being called there the River *Sixaula* and the latter

Punta del Mono, without their being in the other designations any similarity whatever with those that we know here."

(d) The President of the State of *Panama*, General Correoso, in the letter already cited of 1870, recognizes as the boundary with *Costa Rica* the River *Culebras*, called also *Doraces* or *Dorces*.

(e) In the documents communicated to my Government by Señor Pradilla, Minister of *Colombia*, in 1871, there appears a paper written to the Prefect of *Colón* by a Señor R. Iglesias, in which it says: "* * * then the *Sixaula* is the same river *Culebra* that marked the boundaries with *Costa Rica* in the time of the former *Colombia* * * *."

(f) Lastly, from the notes of Rico and Suárez, before cited, it is clearly deduced that the rivers *Doraces* and *Culebras* are the same as the River *Sixola*.

Further it may be said, that as for *Cosa Rica* no other name has ever existed of those mentioned except that of *Sixola*, and that in our historical geography we have never known any other River *Culebras* than the actual *Calobébora* or *Chiriquí*; while for the Government of *Panama* it appears to be well demonstrated, that the River *Dorados* is the same as *Culebras* (letter of General Correoso, notes compared of Rico and Suárez); that the River *Culebras* is the *Sixola* (report of Fernández Madrid, paper of Iglesias communicated by Pradilla), and that said river *Culebras* or *Dorados* is the first river that is found a short distance to the South-east of *Punta Mona*, which is no other than the one we call the *Sixola*.

THIRD.

Your Excellency asserts that *Colombia* first and afterwards the Republic of *Panama* exercised jurisdiction and command over the Atlantic Coast as far as *Mona Point*.

I do not pretend to contradict Your Excellency so far as refers to the coast that draws away, toward the South-east, from the mouth of the *Sixola*, but I have to deny the fact so far as regards the section of coast comprised between the mouth of that river and *Punta Mona*, in which no Colombian or Panaman authority has ever exercised any command.

As proof of the assertion of Your Excellency two decrees are

cited of the Executive of *Panama*, both of November, 1903, the terms of which are not known to this Department of State; but even supposing that there was specifically given by them authority to the fiscal Customs Officer and that *Punta Mona* was indicated as a boundary of the Province of *Bocas del Toro*, that only shows that in *Panama* there had been legislation about this matter; but it does not in any way show that it in fact any command has been exercised in the district of *Sixola-Punta Mona*, which neither *Colombia* nor *Panama* have held up to this moment.

The theory of Your Excellency is controverted by your own Government in the resolution of August 2, 1904, posterior to the Executive decrees mentioned and cited in my despatch of June 5th last. In that resolution the Government of Your Excellency recognized in a clear and conclusive manner that it did not exercise jurisdiction in *Gandoca* or *Gandokin*, notwithstanding the adjudication of the Award of President Loubet.

In regard to this Your Excellency adds that the said resolution of August 2, 1904, did not obtain the approval of the Executive and that you deem it contrary to the treaties, conventions and declarations made relative to the controversy as to boundaries. Permit me, Your Excellency, to repeat that said resolution did not involve any negation of the *uti possidetis* or of the *statu quo*. It is purely and simply the recognition of an incontestable truth, which is that notwithstanding the Arbitral Award, each country maintains jurisdiction over the territory that it possesses, adjudicated to the other claimant, whilst the decision is not executed. Such a resolution in no way affects, either the rights of *Costa Rica* or those of *Panama*.

Even Your Excellency can do no less than confess this truth, when saying that it is true "that *Central America*, in the first place, and afterwards *Costa Rica* have been occupying the territory of which *Colombia* and its heir *Panama* had lawful command and jurisdiction."

If all the documents relating to the boundary dispute are examined carefully, it will be seen that in no case nor at any time did *Colombia* or *Panama* ever exercise effective authority to the North of the River *Sixola*. On the contrary, there will be found numerous proofs that what was accepted by both parties was to take as the boundary point the mouth of that river.

The same cannot be said in respect to the possession of *Costa Rica* to the South of the mouth of the *Sixola*, for Your Excellency knows too well that it was but in 1836 that this Republic was despoiled in a violent manner of its possession in *Bocas del Toro*, over which *Central America* and the State of *Costa Rica* governed at that time. Nevertheless, that dispossession was not carried out without a protest on our part and even *Panama* admitted in a certain way that which we considered our right.

In fact, as Your Excellency knows, in 1841, when *Panama* was separated from *New Granada*, it made a Treaty with *Costa Rica* which was signed in its name by Don Pedro de Obarrio. One of the clauses of that agreement reads as follows:

“The State of *Costa Rica* reserves its right to claim from the State of the *Isthmus* the possession of *Bocatoro*, upon the Atlantic Ocean, which the Government of *New Granada* had occupied, *trespassing the division line located in the ESCUDO DE VERAGUAS.*”

For all the reasons stated, my Government does not make any claim by reason of the fact that *Panama* holds territory that is adjudicated to us and belongs to us, because it understands that a momentary possession is one thing and a definitive right is another.

Your Excellency argues that if *Costa Rica* did not exercise jurisdiction before the Arbitral Award, in *Gandoca*, how could it exercise it after the Award which gave that territory to *Panama*. Your Excellency, further qualifies as funny the view that because the Award has not yet been executed *Costa Rica* must exercise jurisdiction over the territory of *Gandoca*.

Notwithstanding the profound respect that I have for any opinion of Your Excellency, I am compelled to state to you that the expressions cited have filled my Government with great surprise. In fact, Mr. Minister, not only before the Award but subsequent thereto *Costa Rica* has been in full possession of the territory of *Gandoca* and has exercised command over it, in the same way that *Panama* has done so at *Punta Burica*. It is true that the execution of the Award would bring as a result that *Costa Rica* would enter into possession of *Punta Burica* and *Panama* of *Gandoca*; but it is also true that the Award has not been executed and that so far as it is not executed each country maintains pos-

session and command of the territory which it is holding and which in virtue of the Award may have been adjudicated to the other.

And if the Award has not been carried out, it has only been from difference of interpretation of its terms, which must be previously settled in order to be able to judge of its efficacy. From the beginning *Costa Rica* has understood it in the form which Minister Peralta stated it to the Arbitrator and which Your Excellency has quoted in part. Therefore, my Government is ready, when it shall be so understood, to deliver the territory of *Gandoca* and to take back that of *Punta Burica*. Both Republics will in the meantime have a proper and legal right to maintain the possession or *de facto* line agreed upon as a provisional boundary.

FOURTH.

One affirmation contained in the courteous note of Your Excellency, and which my Government cannot allow to pass without correction, is that "the Government of *Panamo* considers the Guardia-Pacheco line as the same as the *statu quo* line."

Your Excellency is well aware that the Pacheco-Guardia Treaty has no value whatever, since it was not approved by our two Governments. Consequently, the line that the Plenipotentiaries admitted cannot be held as that of the *statu quo*, whether the expression is taken to mean a line in fact or as a legal line.

It cannot be the former, because the line of the possession is different, since *Costa Rica* is found to be holding the territory comprised between *Punta Mona* and the River *Sixola*; neither can it be the second, because *Costa Rica* is legally entitled to the territory comprised between *Golfito* and *Punta Burica*.

FIFTH.

Lastly, Your Excellency asks: Even supposing that the River *Dorados* or *Culebras* may be the *Sixola*, why should it be the *Yurquín*, which is only a tributary of it, the one it was sought to designate up to its sources as the line of the *statu quo*?

I am extremely pleased to respond to the interrogation of Your Excellency.

Supported in my former citations, I must suppose that Your Excellency has no further doubt that the River *Dorados* or *Culebras* is the same as the *Sixola*. That point is incontrovertible. This river being, as it is, the *Sixola*, the line must follow the course of the *Yurquín*. I base this on the following reasons:

1. The River *Sixola* does not exist as a river that flows from any Cordillera. This river is formed by the *Tarire*, the *Coén*, the *Lari*, the *Sipurio* and the *Yurquín*, the latter being the nearest to the coast. The last part of all these waters, collected together, is what is properly called the River *Sixola*. Now, then, as what *Costa Rica* and *Colombia* proposed to do was to indicate a line which should coincide, "in so far as possible with the line separating the actual possession of *Colombia* and *Costa Rica*, so that upon the determining of the same, the present condition of things will not be disturbed," as the note of Señor Suárez frankly explains, it was not possible to take other waters above, since there is no River *Sixola*, but those nearest to the sea, that is to say, those which are found going up to a mountain and these waters are no others than those of the *Yurquín*.

2. Because if this was the idea of both parties, they could not have taken any of the other rivers, since *Costa Rica* having villages, such as *Sipurio* and Indian hamlets (*Urén*, *Coén*, *Cabécar*, *Bribri*, *Túnsula*, etc.) both on the banks of the *Sipurio* as well as of the other rivers that form the *Sixola*, that would have been contrary to the purposes of both Nations in fixing their provisional boundaries.

3. Because *Costa Rica* has exercised and does exercise authority and jurisdiction throughout the region to the North of the proper River *Sixola* and to the West of its tributary the *Yurquín*, which runs toward the South-east.

This and no other has always been the understanding of the line and in conformity to it the possession has been regulated. Even before the Award was delivered, the well known geographer Pittier, in notes upon the geography of *Costa Rica*, published in the Review *Tour du Monde*, in 1892, stated as follows:

"The frontier of the *statu quo*, which may be considered as imposed by the Government of *Bogota*, inasmuch as it lies very far from the boundary that *Costa Rica* claims, goes up the River *Golfito*, a small tributary of

Dulce Gulf, thence follows the hills of *Las Cruces*, between the basins of the River *Coto de Térraba* and the *Chiriquí Viejo*, until it reaches the summit of the great Cordillera, and thence goes down the northern watershed by the Rivers *Yurquín* (*Zhorquín*) and *Sixola*."

It would be possible for me to further adduce numerous reasons in refutation of the arguments of Your Excellency, relative to the various points discussed in your note of July 28th last, which I have the honor to answer; but I consider what I have stated as quite sufficient to bring to the mind of Your Excellency the conviction that the Government of *Costa Rica* notwithstanding the sentiments of cordial friendship which it feels toward that of *Panama*, cannot accede to those desires touching the withdrawal of the Sub-inspection of the Treasury and Military Command from *Guavito*.

I will in closing, Mr. Minister, urge upon Your Excellency as strongly as may be the desirability of reaching as quickly as possible a definitive accord in regard to the boundary dispute between our two countries. The very matter that has led to this correspondence indicates the urgent necessity of closing forever this chapter of controversies, which my Government ardently desires to avoid, in deference to the good harmony that should exist between two neighboring peoples, bound by powerful ties of race, history and friendship.

I am pleased to reiterate to Your Excellency the testimony of high and distinguished consideration with which I am your very obedient servant.

R. FERNÁNDEZ GUARDIA.

To His Excellency Señor Doctor Don Belisario Porras, Envoy Extraordinary and Minister Plenipotentiary of Panama.

The Minister of Panama to the Secretary of State in the Department of Foreign Relations. Doc. 466

Legation of the
Republic of Panama.

No. 73.

SAN JOSÉ, August 14, 1909.

MR. SECRETARY:

Upon being invested by the Government of *Panama* with the high office of Envoy Extraordinary and Minister Plenipotentiary before the Government of Your Excellency, I was instructed, among other things, to ascertain what concessions of lands had been made on the part of *Costa Rica*, how and to whom, before and since the decision of M. Loubet, within the boundaries of the Award. In *Panama*, as a matter of fact, there was a vague rumor of such concessions, and during the first months of my stay in this capital I became convinced that assuredly many had been made. I obtained a map of the locality, which was the object of my examination and I took personally in the *Juzgado de lo Contencioso* a note of all the adjudications. As a result of my investigations I learned that, excepting the Maritime mile, which has not been sold to anybody, and with exception of certain parcels of marsh lands, which are not cultivatable, the Government of Your Excellency has conceded or alienated by the system of favors (*sistema de gracias*) accorded to the Municipalities for their progress, all the lands on the left bank of the *Sixola*, between that river and the spur of the Cordillera that terminates in *Punta Mona*, for one part, and the mouth of said river and the point on its bank called *Cuabre*, to the banana enterprise called "Northern Railway Company," or to the "United Fruit Company," and to private foreigners and citizens of the country.

After the date of my investigations, which was about the middle of May, new lots of lands were denounced in the zone indicated; but at that time such lots only included eighteen and comprized 15,624 hectares, distributed as follows:

	Hectares.
1. United Fruit Co.....	6,000
2. Arnaldo André	765
3. Pradilla and Chacón.....	765

4. Arturo Volio Jiménez.....	800
5. Arturo Volio Jiménez.....	1,200
6. Pacheco and Rodríguez.....	975
7. A. Pacheco	300
8. Francisco de P. Gutiérrez.....	1,000
9. Jorge Orozco Casorla.....	705
10. Guillermo Coronado and M. Sáenz.....	350
11. Fabio Baudrit G.....	250
12. Jorge Orozco Casorla.....	174
13. J. J. Rodríguez.....	610
14. Máximo Fernández A. and Isaac Muñoz M.....	310
15. Federico Tinoco Iglesias.....	500
16. Tobías and Isaac Zúñiga M.....	550
17. S. E. Stewart.....	200
18. Guillermo Coronado J. and Isaac Zúñiga M.....	170

My Government, having in view my report of these acts, has instructed me to make to the Government of Your Excellency the due protest against such sales and concessions of lands. The cablegram, giving me this order, signed by the Secretary of Foreign Relations, Don Samuel Lewis, is dated the 10th of the present month and reads thus:

“Concessions lands territory in dispute imply acts of sovereignty that *Costa Rica* cannot exercise. Protest them.”

In compliance with this order and with the right and law that my country relies upon in this particular, I come to Your Excellency with the greatest respect and at the same time with the greatest regret at having to make hear again, for another act, my voice of protest, for the purpose of establishing things as they should be, as far as may be practicable for me and possible for the rectitude, wisdom and good judgment of Your Excellency.

Before the Loubet Award, to which *Costa Rica* and *Colombia* submitted in advance without any right to further claim or appeal, so as the boundary question be forever ended, it is evident that the vast territory comprized for one part between the *Escudo de Veraguas*, River *Calobébora* and the *Chiriquí Viejo*, to the East of *Punta Burica*, and on the other Cape *Gracias á Dios* and the River *Golfito* in the *Dulce Gulf*, were, like things that are dis-

puted, in a state of suspension as regards dominion, and the territory was one over which neither of the parties could consider itself sure of exercising in the future full sovereignty. But after that decision the situation changed and each party came to know with certainty what each received in justice by that Award,—that of which it is undisputably the master now and the territory to which its control and jurisdiction extends. The decision commences thus :

“The frontier between the Republics of *Colombia* and *Costa Rica* shall be formed by the spur of the Cordillera that starts from *Punta Mona* on the Atlantic Ocean and closes on the North the valley of the River *Tarire* in the River *Sixola* * * *,”

So that on the Atlantic side *Panama* is the heir in that part of *Colombia* and not *Costa Rica*; it is the sovereign of the territory, comprized between the spur of the Cordillera that leaves *Punta Mona*, on one side, the coast as far as the mouth of the *Sixola*, on the other, and this river, up-stream as far as the point on its left bank where the adjudication or sales of lands have been made. *Panama* is the sovereign there, with all the more reason because that district was included in the interpretation that His Excellency, Señor Don M. M. de Peralta, representative of *Costa Rica*, gave to the Loubet Award; so that if my Government had accepted that interpretation,—which is the least that could be accorded to it,—the territory adjudicated by *Costa Rica* to private individuals would always belong to my country in full sovereignty and proprietorship.

I am bold enough to suggest,—and I beg that Your Excellency will be pleased to excuse me,—that *Costa Rica* has proceeded in making those concessions, deceived doubtless by a sort of mirage which must have been produced in its mind by the tenancy or provisional possession it has in that part of the territory. Your Excellency has communicated to me the theory of *Costa Rica* in regard to the *statu quo* or *de facto* line, affirming that such line starts at the mouth of the *Sixola* and goes up-stream of that river as far as the intersection of the *Yurquin* or *Zhorquin*. Consequently, it considers that all the territory to the North of the said river, that is to say, on its left bank, is in the tenancy of provisional possession of your country; and exercising in it cer-

tain acts of sovereignty, such as those of pure conservation, has insensibly come to imagine that it has a right to exercise all others.

My Government has instructed me not to accept that *statu quo*,—but taking it as certain and valid, the character that *Costa Rica* has in the territory above mentioned is that of a sovereign. *de facto*, in contraposition to the sovereignty *de jure* that *Panama* has. That is equivalent to saying that the character of *Costa Rica* is that of a mere holder or usufructuary of the territory until the Award is in that respect executed;—while that of *Panama* is that of a naked proprietor, the true owner of it. As holder *Costa Rica* owes the essential duty of conserving the property, not destroying it nor ceding it to anybody, but delivering it over to its successor without committing any act that will impair the rights of the sovereign *de jure* or proprietor. It is only for the latter to cede, to sell or to transfer. Dominion comprehends, among other rights, that of transfer and alienation; and such right of transfer and alienation comprehends in its turn the power to modify, to change or even to destroy in whole or in part, as well as to alienate or turn over to another the whole or a part, because such rights inhere solely in the proprietorship and not in a mere tenancy or simple possession.

I have admitted that *Costa Rica* is in the territory of which we are treating, in the position of a usufructuary, with a right to the fruits and the benefits of the territory during the period of its tenancy, and, therefore, it is not admissible that it can in any manner sell, adjudicate, destroy or impair the substance of the usufruct. The civil laws, treating of usufruct, go so far as to impose upon the usufructuary the obligation of giving bond, if he abuses or causes a deterioration in the property or allows it to be destroyed for want of repair. It also imposes upon him the duty of responding in damages for the injuries caused by his fault. In international matters, these principles, although less strict, do not depart from the primal idea of the conservation of the property. It is a doctrine generally admitted of the law of nations, that from dominion and command the power emanates to make laws regarding the acquisition, enjoyment, alienation or transfer of the properties existing within the territory of the State. It is also upon these that the law of the State is based,

where the property is found, which governs in whatever concerns the sale or transfer of real estate.

Therefore it appears to me as conclusive that *Costa Rica* has not been able to act as a sovereign *de jure*, selling or conceding lands there where it was in reality only a sovereign *de facto*, a simple holder of the territory and mere usufructuary. It would be such holder and usufructuary even in the case that the said territory had not been yet adjudicated to *Panama* by the Loubet Award, as it has been, according to the interpretation of *Costa Rica*, and if on the contrary things would be found in the state they were before that decision;—that is to say, it would be conclusive that *Costa Rica* would not have been able to cede or to transfer to any corporation or private individual, even under the extreme supposition that *Panama* had not yet the title that it has by a sentence that is unappealable, giving to it full proprietorship.

For the reasons stated, which appear to me incontestable, I hope that Your Excellency will accept the protest that I make to the enlightened and just Government of Your Excellency, against the concessions or sales of lands on the left bank of the *Sixola* and in all of the zone comprized between that river and the spur of the Cordillera that ends in *Punta Mona* at the sea and recognize the right that supports my country in this point.

I beg Your Excellency to believe in the interest I take in arriving as quickly as possible at a definitive accord in relation to the boundary dispute between our two countries. Such an accord would be for me the greatest source of pride and satisfaction; but obedient to the orders of my Government and deeming it of capital importance in the first place to rectify certain accessory points in the principal question debated, I am obliged with regret, as Your Excellency will not doubt, to begin with that part of it.

I have the greatest satisfaction in reiterating to Your Excellency the testimony of my highest and distinguished consideration and remain your obedient servant.

BELISARIO PORRAS,

E. E. and M. P. of the Republic of Panama.
To His Excellency the Secretary of Foreign Relations.

Doc. 467 **The Secretary of State in the Department of Foreign Relations to the Minister of Panama.**

Department of
Foreign Relations.

REPUBLIC OF COSTA RICA.

SAN JOSÉ, September 22, 1909.

MR. MINISTER:

I have had the honor to receive the courteous note of August 14th last, in which Your Excellency is pleased to communicate to me that upon investing him with the high office of Envoy Extraordinary and Minister Plenipotentiary in this Republic, the Government of *Panama* instructed you, among other things, to ascertain what concessions of land *Costa Rica* had made, how and to what persons, before and after the decision of President Loubet, within the limits indicated by the Award. Your Excellency states in continuation the results of your laborious investigations in that matter, and thereupon, following the instructions of your Government, presents to that of my country a protest against such concessions or sales of lands.

Notwithstanding the reasons upon which that protest is based appear to Your Excellency incontestable, and with all the respect due to your opinions, I am under the necessity of stating to you, much to my regret, that the Government of *Costa Rica* does not consider them just.

May I be permitted to commence by observing that all the argument of Your Excellency starts from an incorrect premise, which is that after the decision of the President of the French Republic, "each party came to know with certainty what each received in justice by that Award, that of which it is undisputably the master now and the territory to which its control and jurisdiction extends."

If said Award had been accepted as a whole and without objection by the parties interested, the prior affirmation would be proper; but Your Excellency can do no less than agree with me that the fact is quite different. *Costa Rica* has not accepted it, except in a conditional way, and as for that, while there is no accord with *Panama* it can be said that there is no Award, both parties keeping the same position they had prior to the delivery

of the decision. And as this position can be no other than that established by the agreed *statu quo* or *de facto* line, the evident result is, that *Costa Rica* exercises complete sovereignty over the territory situated to the North of the River *Sixola* and consequently has been able to and can dispose with full right of the lands situated in that region.

In this respect Your Excellency states that your Government has instructed you not to accept that *statu quo*. Besides the surprise caused my Government by this unexpected declaration, as concerning to an agreement already explicitly accepted by *Panama*, in a public and official document, I must express to Your Excellency that *Costa Rica* considers that *Panama* being the heir of the rights of *Colombia* over the territory in dispute, has also inherited its obligations, and that therefore it cannot repudiate those obligations without *ipso facto* renouncing those rights. Relying upon this argument and in deference to the harmony that should exist between the two countries, the Government of *Costa Rica* maintains the entire and unquestionable force of the *statu quo*, agreed with *Colombia* and accepted by *Panama*.

In order to demonstrate that my Government did not have the right to make sales and concessions of lands in the disputed territory, which is under the dominion of *Costa Rica* and has been adjudicated to *Panama* by the Award, Your Excellency endeavor to discriminate between the sovereignty *de facto*, which in your opinion is all that *Costa Rica* exercises in the territory, and the sovereignty *de jure*, which according to your own view belongs only to *Panama*. Following this reasoning, Your Excellency considers *Costa Rica* as a mere holder or usufructuary of the territory, while the Award remains unexecuted.

The question stated by Your Excellency in this form was fully debated by my Government and that of the United States of America in 1906, on account of the claim set up by Mr. H. L. McConnell, of which Your Excellency is informed.

The Government at Washington sustained at that time the same theory as Your Excellency, with like or similar arguments. I cannot, therefore, better respond to the allegations of Your Excellency than by repeating what *Costa Rica* then sent to the United States. That response was, without doubt, considered a good one then, if we are to judge from the contents of the note

addressed on February 16th of the present year, by Mr. Robert Bacon, Assistant Secretary of the Department of State, to our Minister in Washington on Special Mission. I have already had the pleasure of transmitting to Your Excellency a part of it, on the 13th of August last past, and now I take pleasure in sending to you a copy of it.

Señor Don Luis Anderson, the Secretary of State in the Department of Foreign Affairs of this Republic, stated to the Chargé d’Affairs of the United States, under date of May 26, 1906, as follows:

“My Government feels that the difference between the sovereignty *de jure* and the sovereignty *de facto* does not in the present case support the theory that is advanced in the important despatch of Your Honor. It thinks that the difference exists, but it is not based on the attributes that go to make one or the other, but it arises out of their origin and their cause and from the real title under which these are exercised. Both the former and the latter afford authority for the exercise of the same and identical powers to carry out the acts that sovereignty in general comprizes. They differ only in that one is made effective by incontestable law, with undoubted title,—while the other is the result of an act that is done with sufficient reasons to make itself respected by virtue of an effective occupation, ample in itself to respond before other Nations for the acts that are performed. The conqueror who by his own ambition makes himself master of a territory and subjects it to his will, governing it in accordance with his needs and inclinations, or even the victorious revolutionist who succeeds sufficiently to make his government respected and maintain order, without doubt exercises a sovereignty *de facto*; so that as regards the character and scope of their powers they do not differ in any way from sovereignty *de jure*. But of *Costa Rica* and *Panama*, exercising their sovereignty *animo domini* in the disputed zone in virtue of a legitimate title, as the Arbitral Convention is, it cannot be said that they have only a mere *de facto* sovereignty;— and even if it was, it has already

been seen that it is not in its scope and character of less efficiency than a sovereignty *de jure*."

In the same note cited, the Secretary of State, Señor Anderson adds:—

"On the other hand, in the view of the undersigned, the principles which define and regulate private property are not at all applicable to national sovereignty, in order to deduce therefrom that whoever is not a definitive sovereign cannot alienate. Proprietorship, from the point of view of public international law, or in other words, the eminent domain of the sovereign, consists, as Your Honor well knows, in the power of always maintaining subject to the authority of the laws a portion of the territory, with full and ample power of decreeing expropriations and of transferring by sale or by any other title the lands comprised within the public domain; also in that of levying taxes, and in a word that of doing one and all of the acts that sovereignty comprises within itself. Proprietorship, thus considered, is surely not transferable in the present case. No act of *Costa Rica* which went to the extent of placing a part of the disputed territory beyond the reach of the laws of *Panama*, when that Republic, by virtue of the Loubet Award or of pending treaties, incorporates into itself territory held in whole or in part by *Costa Rica* today, for reasons which the Department of State has very well stated, would be either regular or valid. But adjudications of lands which at this very day are ruled by our laws, and tomorrow may be subject without any hindrance to the laws of *Panama*, constitute acts which if civil will subject them to the property law, but not if international, where the law which is the sovereign itself takes on a higher significance, more absolute and transcendent. It is not possible that they are prohibited for whoever holds, governs and administers a section of territory.

"The alienation of lands to private parties, which under civil law constitutes a renunciation or abandonment of

dominion, under public law where the dominion has, as it may be said, a different scope, is clearly an act of administration or usufruct; and I assume that it is in this sense that the Department of State considers *Costa Rica* the usufructuary of the territory in controversy with the Republic of *Panama*. The method of securing the usufruct of that territory can only be by ceding the lands which are the subject of private activity, by sale or donation or other means, levying taxes and seeing that the laws are complied with. These are all acts which do not harm the eminent domain, the right to make effective the authority of the legitimate master at any time and in any form. The substance being saved, as the Romanists say, the act is one of pure usufruct.

“If the question was that of ceding to a foreign country a part of the territory that may tomorrow be that of *Panama* or *Costa Rica*, if such part were recognized as and declared an independent State, then indeed the sovereignty would be harmed, it would be an attempt against the eminent domain of that Republic; and the act would be irregular and void. While it is not so, the act is regular and valid.”

The litigation between the United Fruit Company and the American Banana Company, of which Mr. McConnell was said to be the Manager, was determined in the month of October, 1908, by the Supreme Court of the United States, against the latter. Among the learned considerations stated by that High Tribunal, in delivering its opinion, is the following, to which Your Excellency will permit me to call your special attention:

“The fact, if it be one, that *de jure* the estate is in *Panama*, does not matter in the least; sovereignty is pure fact. The fact has been recognized by the United States, and by the implication of the bill is assented to by *Panama*.”

I am pleased to reiterate to Your Excellency the testimony of my high and very distinguished consideration.

R. FERNÁNDEZ GUARDIA.

To His Excellency,
Señor Doctor Don Belisario Porras,
Envoy Extraordinary and Minister Plenipotentiary of
Panama.

The Secretary of State to Minister Anderson.

Doc. 468

DEPARTMENT OF STATE,
WASHINGTON, February 2, 1910.

SIR:

I have the honor to inform you that, for several reasons, the Department of State deemed it advisable not to delay further the sending of a telegram to our Legation at *Panama* in reference to the proposed boundary arbitration of your country with *Panama*. Accordingly, the Department telegraphed yesterday, February 1st, instructing our Chargé d' Affaires at *Panama* to call the attention of the Government of *Panama* to the fact that the Department's telegram to him, of December 7th and its instruction of December 18th, made it clear that there was no intention to limit the boundary issue between *Costa Rica* and *Panama* to the mere interpretation of the Loubet award: that the United States Government thinks, and has said, and now repeats that the crucial matter to be submitted to arbitration is the respective contentions of the two Republics, as to the true boundary line; that by the foregoing statement of the real issue this Government merely indicates its friendly opinion and disclaims any desire to influence the free agreement of the two Republics or the course of the proposed arbitration: that the responsibility for the arbitration and for the success or failure of the pending negotiations must rest with the two Republics. But that this Government nevertheless deems it proper to say that in view of all the facts, it has felt some degree of surprise upon learning the tenor of the powers of the Special Minister of *Panama*, which are not full powers as designated in certain passage thereof, but powers restricted to the negotiation of a protocol founded upon the strict acceptance first and above all by both countries of the Loubet award, and further hampered, it seems, by special instruction which limit his freedom and independence of action? That this Government respectfully but

earnestly represents that such are not full powers, are not adequate to the task in hand, and are not equivalent to the unrestricted powers of the Special Minister of *Costa Rica*, and therefore should be amplified by telegraph to secure progress in the negotiations. That this Government further feels that its own attitude, assumed before the Special Minister of *Panama* was accredited, shows that it believed full powers were needed and were confidently awaited in order to settle the real and broad question as to the true permanent boundary, and that the unavailing negotiations with *Costa Rica* for nearly ten years last past had made it clear beyond peradventure that this long-standing controversy cannot be settled by insisting on a mere interpretation of the Loubet award. That during the said period *Costa Rica* has insisted that the Loubet award was void in part at least on the ground of *ultra petita* or impaired or vitiated by ambiguity and uncertainty, and that this contention was not in violation of the original agreement of submission which contemplated an award within the defined limit of the claims and not technically void for uncertainty. That this Government represents further and suggests that, considering these facts, the terminal points of the Loubet award should now be finally agreed to as accepted by both parties, namely, *Punta Burica* and *Punta Mona*, and that the boundary drawn from one to the other should be submitted and determined without restriction in the light of the Loubet award as well as in the light of all the allegations, contentions, evidence, and arguments submitted by both parties. That admitting, as all must do, a moral obligation flowing from the Loubet award, the question submitted by this Government to the Panama Government is whether, considering the long practical deadlock of this controversy and the past unyielding attitude of both Governments, it is not now most important and indeed necessary to dwell upon and emphasize the moral and practical importance of peace and good neighborhood and the amicable settlement of a historic controversy which has been and this Government feels will evidently continue to be rendered impossible in case the acceptance of the Loubet award be insisted upon.

That, finally, this Government feels itself entitled to urge the importance of a prompt, practical and final settlement of the

matter by reason of the large property interests of its citizens located in the disputed territory, which are unfavorably affected by the ambiguous and unsettled status of the boundary question, and by reason of its guaranty under the treaty of 1903 with Panama of the independence of that Republic, which gives it the right to know as speedily and definitely as may be the true boundaries and the exact extent of the territory the independence of which it has guaranteed.

Accept, Sir, the renewed assurance of my highest consideration.
P. C. KNOX.

Señor Don Luis Anderson,
Minister of Costa Rica on Special Mission.

Conference Between the Ministers of Costa Rica and Panama: Doc. 469

WASHINGTON, February 14, 1910.

Questions put by Dr. Anderson, at the conference between the Special Minister of Costa Rica, Dr. Luis Anderson, and the Special Minister of Panama, Dr. Belisario Porras, at which were also present the Minister of Panama, Mr. C. C. Arosemena, and, on behalf of the State Department, Messrs. Dawson, Hoyt and Doyle.

QUESTION 1. Mr. Anderson: In order to make clear the position of *Panama* and *Costa Rica* regarding this question, I beg Dr. Porras to reply to the following questions: As soon as the Arbitral Award of His Excellency President Loubet was made known to the Government of *Costa Rica*, this Government hastened to make clear to the Arbitrator the way in which it understood such Award. This interpretation of the Arbitral sentence was communicated to the Government of *Colombia* in a note of the Secretary of Foreign Relations of *Costa Rica* dated the 27th of July, 1901. This note, due to the civil war of *Colombia* and the independence of *Panama* which followed soon after, was left

without an answer. Does the Government of *Panama* accept the interpretation given by the Government of *Costa Rica*?

By Dr. Porras: Answer: *Panama* has its interpretation which is *Colombia's* interpretation.

Q. 2: Mr. Anderson: As the Government of *Colombia* never has made an official interpretation of the Award, would you kindly tell me the way in which the Government of *Colombia* did interpret or in which the present Government of *Panama* does interpret the sentence?

By Dr. Porras: Answer: Starting from Cape *Mona* there is a spur of the mountain which goes to meet the central mountain range. This spur of the mountain closes on the north the valley of the *Sixola River*. The interpretation which *Panama* gives to the Loubet Award is from Cape *Mona* following the water-shed of this spur which separates the waters which empty in the *Sixola* from those which run toward the north to empty into the River *Estrella*. The line then follows along the central mountain range to near the 9th parallel, and from that point towards the south to *Punta Burica*, along the crest of the mountain range which separates the waters which go to the *Gulf Dulce* on one side and those which go to the River *Chiriqui Viejo* on the other, provided that this line will in no way go beyond *Colombia's* maximum claim.

Q. 3: Dr. Anderson: Can you show on the map what is the meaning of the line that you have already described?

By Dr. Porras: Answer: No, because Mr. Anderson's maps, as he has said, if I (Dr. Porras) am not mistaken, are not correct and because when I desired to establish the existence of the mountain spur which starts from *Punta Mona* in accordance with the map which has been exhibited here, Mr. Anderson declared that such a spur does not exist, and in the map it is shown.

(Mr. Anderson presents the map drawn by Mr. B. W. Palmer in which he thinks that such a spur has not been marked, and calls attention to the fact that this is the only map that has been made use of in this conference. If a reference to the inaccuracy of the maps has been made, it is regarding those old Colombian maps such as the one of Ponce de León and the one of the Panama

Canal Company, but I (Dr. Anderson) think that the one of Palmer which I now present is one of the most accurate and correct that has been drawn of those lands.)

Q. 4: Mr. Anderson: I beg Dr. Porras, as he has said that the way in which he interprets the Loubet Award is provided that it does not go beyond the maximum claim of *Colombia*, to say what is that maximum claim of *Colombia*?

By Dr. Porras: Answer: A straight line drawn from the mouth of the *Golfo* River to Cape *Gracias á Dios*.

Q. 5: Mr. Anderson: What value does Dr. Porras give, then, to the demand made before the Arbitrator by the Honorable Francisco Silvela, the lawyer representing *Colombia* in the arbitral proceedings?

By Dr. Porras: Answer: The value of an argument of a lawyer.

Mr. Anderson thinks that the following words of Silvela,

“By reason of the above, the Republic of *Colombia* formally rejects the pretensions of *Costa Rica*, and claims through the high impartiality of the Arbitrator that he shall fix the frontier line as follows: etc.”

could not be considered as an argument but as mere demand to substitute and remedy the vagueness of the Convention of Paris.

Q. 6: Mr. Anderson: Will Dr. Porras please say if the line that follows the ridge of the mountains from the 9th degree about to *Punta Burica* is accepted by *Colombia* as the true meaning of the Award, to which *Costa Rica* agrees there is no question regarding that portion of the territory?

By Dr. Porras: Answer: That from *Costa Rica*'s Representative's interpretation in Paris, nine days after having been notified of the Award, *Panama* accepts not only the part of the line Mr. Anderson has described, but also that part of the line which, starting from *Punta Mona*, follows the spur of the mountain to a point on that line of the Loubet Award, and that *Panama* accepts those two parts of the line because they are in accord with its own interpretation and also the Loubet Award.

Q. 7: To this Dr. Anderson replies that the interpretation that

was submitted by *Costa Rica* to the Arbitrator was the expression of the sacrifice that *Costa Rica* was ready to make in order to bring an end to the question, declining to make any claim against the Award. Does Minister Porras accept, in behalf of his Government, such interpretation in the whole?

By Dr. Porras: Answer: No.

Q. 8: Dr. Anderson: What does Dr. Porras propose in order to bring about a settlement of the question?

By Dr. Porras: Answer: Dr. Porras has had the honor to address the State Department stating that, in a very short time, he will be ready to make a proposal regarding this matter which he hopes will be acceptable to the Minister of *Costa Rica*.

Doc. 470 **The Minister of Panama on Special Mission to the Secretary of State.**

(Copy J.)

LEGATION OF PANAMA,
WASHINGTON, February 20, 1910.

YOUR EXCELLENCY:

Referring to the various conferences which I have had with Your Excellency and with the Special Minister of *Costa Rica* concerning the proposed arbitration of the differences between the two countries respecting the boundary between them, under the friendly auspices of Your Excellency's Government, I regret that any disagreement should have arisen between *Panama* and *Costa Rica*.

As I have already informed Your Excellency, my Government is constitutionally unable, even were it disposed to consent to the annulment of the Loubet Award and the resubmission of the whole question to a new arbitrator. Such a course would, moreover, be productive of no practical result since the conditions, which compelled President Loubet to describe the boundary in terms so general as to have given rise to the differences which followed it, would make it equally impossible for any other arbitrator to be more precise and definite.

The result of a second arbitration of the whole question, were it possible, must necessarily be to give rise to new discussions of exactly the same character as those which have arisen under

the Loubet Award, and differing from them only in the name of the arbitrator whose award is discussed.

In order that it should be possible to ascertain definitely the boundary line, there must be a survey and examination of the line and the territory through which it runs, made authoritatively by engineers commissioned for that purpose, the result of whose labors will leave no room for doubt as to the topography of the country or the true course of the boundary line.

Such a commission of delimitation, fixing and marking the boundary as they proceeded, and thus every possible question arising upon the subject would be finally, authoritatively and conclusively determined at one and the same time.

With a view of this end, and with the sincere desire of reaching an amicable settlement of the subject, and of showing by every means in its power its warm appreciation of the mediation of Your Excellency's Government, my Government has authorized me to propose the following method of procedure:

A commission shall be appointed of four engineers, one to be named by the President of the Republic of *Panama*, one by the President of the Republic of *Costa Rica*, and the other two by the President of the United States. The latter two shall be citizens and residents of the United States, civil engineers in private practice and in every respect independent and impartial and without personal interest as respects either the Republic of *Panama* or *Costa Rica*, or any affair in either of said countries.

These four engineers shall proceed, by actual survey upon the ground, to lay out and mark the boundary line between the two Republics in accordance with the Loubet Award, and bearing in mind the limitation of that Award expressed in the letter of M. Delcassé to Señor Peralta, Minister of *Costa Rica* at Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Colombia and the Republic of *Costa Rica* of January 20, 1886.

Should the commission be unable to agree upon the true location of any portion of said line, or should either the Republic of *Panama* or the Republic of *Costa Rica* be dissatisfied with the decision of said commission with respect to the location of any part of said line, the questions thus arising shall be submitted

to the Chief Justice of the Supreme Court of the United States, who shall decide, as final arbitrator, the true location of such part of said line under and in accordance with terms of the Loubet Award. In any case of such inability of the commission of engineers to fix any part of said line, or dissatisfaction of either of the Republics with any part of the line as located by said commission, the commission shall prepare a full and accurate map from their own original independent surveys of the entire region through which that portion of said line in question runs, which shall be submitted to said arbitrator, with their report and the questions arisen thereon, for his decision, and in every such case, the line as finally fixed by said arbitrator shall be deemed the true line, and his determination of the same shall be final, conclusive and without appeal, and the Commission should proceed to make the line in accordance therewith.

The expenses of such arbitration shall be borne by the two Republics equally.

Your Excellency will observe that an acceptance of this proposition by the Republic of *Costa Rica* will lead to a speedy and absolute termination of all differences between the two Republics concerning the boundary between them. It will make impossible any further question as to the location of that line, and, if the Commission be authorized to mark the line as so determined by suitable monuments, will obviate even the necessity of a new commission of delimitation.

The proposition, in fact, differs from the proposition made by Señor Pacheco, then Secretary of Foreign Affairs of *Costa Rica*, by his letter of July 27, 1901, to Señor Marroquín, then Minister of *Colombia* to *Costa Rica*, only in that Señor Pacheco proposed that an interpretation of the Award should precede the delimitation, while under this proposal the delimitation and arbitration proceed together and the arbitration will be based upon an accurate knowledge of the geographical facts involved, which knowledge is essential to an accurate judgment by the arbitrator of the points which may arise.

It is obvious that in the absence of this definite information no arbitrator could decide any such points. The same difficulty which made it impossible for President Loubet to define the line so exactly as to avoid dispute would make it equally impossible

for the new arbitrator to do so. But by the proceeding suggested, the new arbitrator will have before him all the data which can be required, and will be able to interpret the award of President Loubet with full knowledge of the actual situation.

It is, therefore, the logical, reasonable and proper course that the survey of the line and the country through which it runs should precede the arbitration, and this modification of the former proposal of *Costa Rica* involves no essential change, but only a useful and necessary modification of the procedure by which the results contemplated by that proposal shall be attained.

My Government is confident that in this way the amicable settlement of all differences between the Republics of *Panama* and *Costa Rica*, which it is no less desirous than is Your Excellency's Government to attain, may be reached in an equitable, reasonable and honorable way, and it trusts that its proposition may meet with approval of Your Excellency's Government and with that of *Costa Rica*.

Accept, Mr. Secretary, the renewed assurances of my highest consideration.

BELISARIO PORRAS.

Hon. P. C. Knox,
Washington, D. C.

**Plan of Arrangement suggested by the Secretary of State
of the United States, March 1, 1910.** Doc. 471

IDENTIC MEMORANDUM, handed to Señor Don Luis Anderson, Envoy Extraordinary and Minister Plenipotentiary of *Costa Rica* on Special Mission, and Dr. Belisario Porras, Envoy Extraordinary and Minister Plenipotentiary of *Panama* on Special Mission, at the conference held at the Department of State, on March 1, 1910, at three P. M.

The Secretary of State has given the most studious attention to the respective attitudes of the Governments of *Costa Rica* and of *Panama*, as revealed by a long correspondence and as

finally crystallized in the specific proposals received respectively on February 2nd and February 25, supplemented by the very important statements made orally at the conference of the 25th and 26th ultimo.

The Secretary of State is well aware of the desires of *Costa Rica*, that the proposed arbitration shall be as broad as possible. He is equally sensible of the considerations which impel the Government of *Panama* to insist upon the Loubet Award as a basis for the definitive determination of the boundary. It was a source of great satisfaction to take note of the fact that both parties are in practical agreement as to the boundary line from the Pacific Ocean to a point beyond *Cerro Pando* on the Central Cordillera. The fact that difficulties to overcome are thus confined to the determination of the line thence to the Atlantic, caused the Secretary of State to entertain the gratifying hope that, in view of the conciliatory and candid spirit animating the two Governments, it would surely be a matter of no great difficulty to reach a satisfactory solution.

Animated by this hope and in response to the desire of both Governments that the United States should lend its good offices in connection with the proposed arbitration, the Secretary of State has arrived at a theory which, in his judgment, should form a basis substantially satisfactory and entirely considerate of the respective contentions.

The Secretary of State, therefore, suggests that the *compromis* stipulate the acceptance of the line to the extent above mentioned, as free from doubt, and, continuing, state the question to be arbitrated as the following:

“What is the boundary between the Republics of *Costa Rica* and *Panama* under and most in accordance with the true interpretation and correct intention of the Loubet Award, in the light of all the historical, geographical, topographical and other facts and circumstances surrounding it, as well as under the established principles of international law.”

The Secretary of State also deems it important, in the interest of justice and for the avoidance of future disputes, that the arbi-

tration convention contain some such stipulation as the following :

“All valid titles to land or other valid rights of property in the disputed territory, granted or created by either Republic, or by the Republic of *Colombia*, either before or after the rendition of the Loubet Award, shall be recognized and protected in case the result of this arbitration shall be to transfer the *locus* of such titles and rights and the sovereignty over the same from the Republic granting or creating the same to the other Republic.”

As to the very interesting and able suggestion of the Panama Government, that the question should be solved by a joint surveying and arbitrating commission, which should refer to the actual arbitrator all questions of difference between them or between their respective Governments, the Secretary of State has given to this proposal the sympathetic analysis which its importance made appropriate, bearing in mind, however, the fact that the arbitrator would naturally call for a survey in all cases when he found a necessity for more precise topographical information, the Secretary of State has deemed more practical that the arbitrator should proceed and himself call for all data which he might find relevant to the question before him, and that, anticipating this possibility, the protocol should instead contain a provision whereby the two Governments would agree to share the expense of a surveying commission appointed by the arbitrator, if the latter should require such survey at any stage of his consideration of the question.

Department of State,

Washington, March 1, 1910.

2491—123.

Doc. 472 **The Minister of Costa Rica on Special Mission to Secretary of State.**

WASHINGTON, D. C., March 14, 1910.

MR. SECRETARY:

As I have already had the honor of verbally saying to Your Excellency, my Government received with satisfaction the very timely suggestions set out by Your Excellency in the identic memorandum, delivered on March 1st, to the undersigned and to Honorable Dr. Porras, Minister on Special Mission of *Panama*. My Government considered that a protocol of submission, in which the clauses indicated by Your Excellency should be solely and simply included, was a sure means of justly and honorably settling the differences concerning the boundary between *Costa Rica* and *Panama*, although such a protocol could not take into account, in their entirety, the claims of *Costa Rica*. *Panama*, however, saw fit to make some observations concerning said memorandum, which, having been considered by the Department of State, and discussed at various conferences with the representatives of that Republic and the undersigned, gave rise to a draft convention, which, after it had been examined and fully modified on Friday last, at the request of the representative of *Panama*, was presented to the final consideration of both Republics by the Assistant Secretary of State, the Honorable Huntington Wilson, at the conference held on Saturday, the 12th instant, with the favorable recommendation of the Department of State.

Anxious as my Government is of terminating this ancient controversy and constantly desirous to show to Your Excellency in the most obvious manner the high appreciation in which it holds your timely and impartial mediation; no less than its profound gratitude for this service, also accepted the draft of the protocol, such as was agreed to in the conference of Friday and presented by the Assistant Secretary of State at the conference on the day following.

If, contrary to what is to be hoped, the representatives of *Panama* desire still to make new changes in the draft protocol, my Government would find itself compelled to believe that the sister Republic of *Panama* does not desire to enter into an agree-

ment to which with such good will and impartial spirit *Costa Rica* invited it in deference to their reciprocal interests and the friendship which at all times has united the Costa Ricans and the Panamans. In such case my Government will have, as an inevitable necessity, to insist upon the objections which exist against the Loubet Award, and which beyond all doubt vitiate its binding force.

I ask Your Excellency once more to be pleased to accept the expression of my most distinguished consideration.

LUIS ANDERSON.

The Honorable

Philander C. Knox,

The Secretary of State.

Arbitration Treaty Between Costa Rica and Panama.

Doc. 473

WASHINGTON, March 17, 1910.

The Republic of *Costa Rica* and the Republic of *Panama*, in view of the friendly mediation of the Government of the United States of America, and prompted by the desire to adjust in an adequate manner their differences on account of their boundary line, have appointed Plenipotentiaries as follows:

Costa Rica, His Excellency Señor Licenciado Don Luis Anderson, Envoy Extraordinary and Minister Plenipotentiary on Special Mission,

Panama, His Excellency Señor Dr. Don Belisario Porras, Envoy Extraordinary and Minister Plenipotentiary on Special Mission,

who, after having communicated their respective full powers, and found them to be in good and due form, have agreed upon the following:

CONVENTION.

ARTICLE I.

The Republic of *Costa Rica* and the Republic of *Panama*, although they consider that the boundary between their respec-

tive territories designated by the Arbitral Award of His Excellency the President of the Republic of France the 11th of September, 1900, is clear and indisputable in the region of the Pacific from *Punta Burica* to a point beyond *Cerro Pando* on the Central Córdillera near the ninth degree of North latitude, have not been able to reach an agreement in respect to the interpretation which ought to be given to the Arbitral Award as to the rest of the boundary line; and for the purpose of settling their said disagreements agree to submit to the decision of the Honorable the Chief Justice of the United States, who will determine, in the capacity of Arbitrator, the question: What is the boundary between *Costa Rica* and *Panama* under and most in accordance with the correct interpretation and true intention of the Award of the President of the Republic of France made the 11th of September, 1900.

In order to decide this the Arbitrator will take into account all the facts, circumstances, and considerations which may have a bearing upon the case, as well as the limitation of the Loubet Award expressed in the letter of His Excellency Monsieur Delcassé, Minister of Foreign Relations of France, to His Excellency Señor Peralta, Minister of *Costa Rica* in Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of *Costa Rica* and the Republic of *Colombia* of January 20, 1886.

ARTICLE II.

If the case shall arise for making a survey of the territory, either because the Arbitrator shall deem it advisable or because either of the High Contracting Parties shall ask for a survey (in either of which cases it shall be made), it shall be conducted in the manner which the Arbitrator shall determine upon, and by a commission of four engineers, one of whom shall be named by the President of *Costa Rica*, a second by the President of *Panama*, and the two others by the Arbitrator. The persons selected by the Arbitrator shall be civil engineers in private practice, in every respect independent and impartial, and without

personal interest of any kind as respects either *Costa Rica* or *Panama*, and not citizens of either of said countries.

Said Commission shall make detailed reports, with maps of the territory covered by their survey or surveys, which reports and maps, with the data relating thereto, shall be returned to the Arbitrator and copies thereof shall be communicated to the High Contracting Parties.

ARTICLE III.

If, by virtue of the award of the Arbitrator, any portion of the territory now administered by either of the High Contracting Parties shall pass to the jurisdiction and sovereignty of the other, the titles to lands or other real property rights in said region granted by the Government of the former, prior to the date of this Convention, shall be recognized and protected just as if they had issued from the other of them.

ARTICLE IV.

One month after the ratifications of this Convention are exchanged, the representatives of the two governments, or of either of them, shall make request of the Chief Justice to accept the position of Arbitrator.

Within four months from the date when the Chief Justice shall communicate to the signatory Governments, through their respective Legations in Washington, his willingness to accept the position of Arbitrator, each said Government through its representative shall present to the Arbitrator a complete exposition of the question and of its pretensions, together with the documents, allegations and proofs upon which it rests them.

If any survey shall be directed, as provided in Article II, said period of four months shall begin from the delivery to the Arbitrator and to the High Contracting Parties of the reports, maps and data of the Commission of Survey herein before provided for.

Within the period of six months after the Arbitrator shall so communicate the same, answers thereto shall be made, and such answers shall be limited to the subjects treated of in the allega-

tions of the opposite party. The Arbitrator may, in his discretion, extend any of the foregoing periods.

The cases and the proofs sustaining the same shall be presented in duplicate and the Arbitrator shall deliver a copy to the representative of each Government.

Should the High Contracting Parties be unable to produce original documents, they may submit authenticated copies of same.

ARTICLE V.

The Chief Justice shall make his decision within three months following the closing of the arguments.

ARTICLE VI.

The compensation and expenses of the Arbitrator, including the expenses of any survey and delimitation which may be made, shall be equally borne by the High Contracting Parties.

ARTICLE VII.

The Award, whatever it be, shall be held as a perfect and compulsory Treaty between the High Contracting Parties. Both High Contracting Parties bind themselves to the faithful execution of the Award and waive all claims against it.

The boundary line between the two Republics as finally fixed by the Arbitrator shall be deemed the true line, and his determination of the same shall be final, conclusive and without appeal.

Thereupon a Commission of Delimitation shall be constituted in the same manner as provided in Article II with respect to the Commission of Survey, and shall immediately thereafter proceed to mark and delimitate the boundary line, permanently, in accordance with such decision of the Arbitrator. Such Commission of Delimitation shall act under the direction of the Arbitrator, who shall settle and determine any dispute as to the same.

ARTICLE VIII.

The present Convention shall be submitted for the approval of the respective Congresses of the Republics of *Costa Rica* and *Panama*, and ratifications shall be exchanged in the City of Washington as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereunto attixed their seals.

DONE at Washington the seventeenth day of March, A. D., one thousand nine hundred and ten.

(L. S.) LUIS ANDERSON.

(L. S.) BELISARIO PORRAS.



ADDENDA

Doc. 474

Royal Order Concerning the Settlement of the Coast of Mosquitos.

SAN LORENZO, November 30, 1803.¹

MOST EXCELLENT SIR:

The King according to what Your Excellency states as suitable in your letter of October 22, ultimo—has been pleased to approve that the undertaking for the settlement of the *Coast of Mosquitos* shall be helped with the grant of freedom of trade with our colonies, freed from any import or export tax and also with the grant that the settlers shall be free from paying the tithe upon their harvests for twenty years, and that after the lapse of this time they shall have to pay only a half tithe. And I communicate the foregoing to Your Excellency by Royal Order for your understanding and compliance.

May God guard Your Excellency many years.

JOSÉ ANTONIO CABALLERO.

To the Viceroy of Santa Fé.

Statement Made to the Cortes by Don José Joaquín Ortíz, Deputy for Panama.

Doc. 475

CADIZ, April 28, 1812.¹

That important Isthmus (the Isthmus of Panama) has, from the village of *Chepo*, which borders on the country of the wild Indians of *Darién*, as far as the village of *Boquerón*, in the jurisdiction of *Chiriquí*, which borders upon the Kingdom of *Guatemala*, a length of 118 leagues, and its width from North to South varies from 50 to 12 leagues. But in the said province are to be found all the principal fruits and products of rich America, among them being pearls and the famous purple of ancient Lydia, which is taken from the shellfish known as *Murice* and *Bucinum*, and from which is dyed a large portion of the cotton thread, called *caracol*, that is consumed in the Kingdom of *Guatemala* and othes localities, etc.

¹ Peralta, *Límites de Costa Rica y Colombia*, p. 191.

¹ *Diario de Cortes*, t. XIII, p. 143.

Doc. 476 Political Territorial Division of Costa Rica and Nicaragua,
According to the Plan of the Provincial Deputation
Addressed to the Ministry of Beyond the Seas.

LEÓN DE NICARAGUA, December 13, 1820.¹

EXCELLENCY:

This Provincial Deputation, complying with the Royal Orders of August 4, 1813, February 2 and April 19, 1814, have prepared the annexed explanatory plan, No. 1, having in view the division of the territory for the appointment of political chiefs, and considering the localities and the distribution of the inhabitants over this vast country.

No. 2 contains the details of the salaries allowed to the superior political chief and the subalterns, to the Deputies in the Cortes and the secretaries and employees, according and as it was provided by the aforesaid Royal Orders.

This body is convinced that the allowances made are very moderate, well knowing the economy that is requisite on account of the exhausted condition of the public treasury, but with a firm belief that a larger amount will be obtained under the good and intelligent management the present order assures and the notorious lack of which has caused the sad decadence which has been experienced and concerning which the Intendant has informed His Majesty.

Under date of the 18th of last month Your Excellency was advised of the lack of municipal funds in that province and the serious considerations restraining our desires as regards the important and principal point of the means to be employed and the funds necessary to provide for the indispensable expenses of the new institutions. Upon that date we proposed to cover them for the moment with funds from the public treasury, which can

¹General Archives of the Indies. Shelf 100. Compartment 6. Bundle 15. Peralta—*Costa Rica y Costa Rica de Mosquitos*, p. 543.

easily support that short surcharge which is shown in the statement herewith, the result of which has been less than the twenty thousand pesos therein indicated, because the political salaries amounting to 17,960 pesos and the 6,000 for the learned judges, it represents a charge of 23,960 pesos, but deducting in favor the 7,600 pesos to which the salaries of the Governor and Assessor of that province and the Province of *Costa Rica* amount, it leaves a result net of 18,360, from which there is still further to be deducted the saving that will be made in the compensation for the sub-delegates whose functions cease.

However, being convinced of the need of augmenting the funds of the treasury, we suggest in that delicate matter the continuation of the increased duty called *reemplazo* (substitute), the object of which seems to have lapsed, and it could be collected temporarily, as an expedient, until the system of the Treasury was formed and consolidated.

This deputation is persuaded that it is indispensable to take some progressive action in the constitutional establishment which suffers the greatest embarrassment for the lack of the proper authorities, officials, seriously affecting the social order. It has the satisfaction that it was understood by the Ministry in the Royal Order of February 2, in which it was provided that without loss of time the appointments should be made, with the corresponding allowances, we having refrained as far as possible from taking any steps which might perhaps appear hasty and at the same time affecting the financial system of this province, which has been unsettled by the abolition of what was called the superior board of the Royal Treasury and the duties of which not having been performed or provided for have left the Intendant in the greatest uncertainty as to those that contest them.

We rejoice that our labors merited the approval of His Majesty and we hope that under the auspices of Your Excellency indulgence may be granted consistent with the good intention which has inspired them. this body being interested in the most prompt action, and most earnestly begging that in the first appointment of new officials not the least thing be omitted, to the end that persons be found of prudence, learning, disinterested-

ness and morality, qualities which are always desirable and in this undertaking are imperative.

May God guard Your Excellency many years.

León de Nicaragua, December 13, 1820.

MIGUEL GONZÁLEZ SARAVIA.
 JOAQ. ARECHAVALA.
 MANUEL LÓPEZ.
 DOMINGO GALARZA.
 PEDRO SOLÍS.
 JUAN FRANCISCO AGUILAR, Secretary.

To His Excellency the Secretary of State and of the Department of Government Beyond the Seas.

No. 1.

Explanatory statement of the distribution prepared by the Honorable Provincial Delegation of *León de Nicaragua* and *Costa Rica*, dividing the territory into subordinate political districts and those which shall be continued, the first *alcalde* appointed reassuming the duties, according to the tenor of Art. 19, Chap. 1, and others of the Law of June 26, 1813, prepared in execution of the Royal Order of August 4, 1813.

Central or Capital District, under the immediate charge of the Superior Political Chief.

	<i>Inhabitants.</i>
City of <i>León</i>	27,108
<i>Subtiava</i>	5,223
<i>Nagarote</i> and <i>Pueblo Nuevo</i>	1,008
<i>Villa del Sanse</i> and <i>Santa Rosa</i>	1,089
<i>Somotillo</i> and <i>Villa Nueva de Navia</i>	3,010
<i>Matiare</i>	74
<i>Villa de Managua</i>	6,990
<i>San Pedro Metapa</i>	4,792
Total.....	49,294

District of *Realejo*, in charge of a subordinate political chief.

<i>Viejo</i>	3,253
<i>Chinandega</i>	4,975
<i>Realejo</i>	296
<i>Talica and Quesalguague</i>	996
<i>Posoltega, Posoltega and Chichigalpa</i>	1,544
	<hr/>
Total.....	11,064

District of *Nicoya*, in charge of a subordinate political chief.

<i>Nicoya</i>	2,553
<i>Villas of Guanacaste and Santa Cruz</i>	906
	<hr/>
Total.....	3,459

District of *Granada*, in charge of a subordinate political chief.

City of <i>Granada</i>	10,233
Town of <i>Masaya</i>	7,903
<i>Diriá and Diriomo</i>	1,903
<i>Niquinohomo and Santa Catarina and San Juan</i>	2,575
<i>Nandaine</i>	1,244
<i>Masatepe, Nandasmo and Valley of San Marcos</i>	4,487
<i>Xinotega, Diriamba and Santa Teresa</i>	3,167
<i>Nindirí</i>	1,408
Town of <i>Tipitapa</i>	1,211
<i>Teospete</i>	3,800
Towns of <i>Acoyapa, Lobago, Lobiguisca and Juigalpa</i>	2,455
	<hr/>
Total.....	40,386

District of *Nicaragua*, its chief town.

Town of <i>Rivas de Nicaragua</i>	13,025
Village of <i>San Jorge</i>	3,053
Island of <i>Omotepe</i> with its three colonies	2,300
	<hr/>
Total.....	18,378

The Fort of *San Carlos* is an isolated military post, constructed to defend the entrance of the great lake by the river and port of *San Juan*, which has no other colony. It is under the command of a military commandant and it should so continue for the present.

District of *New Segovia*, in charge of a subordinate political chief.

	<i>Inhabitants.</i>
<i>Tepesomoto</i>	3,200
<i>Ocotal, Ciudad Vieja inocente, Jalapa and Xicaro</i>	2,000
<i>Tologalpa, Jalaguina and Palacagua</i>	3,000
<i>Telpaneca, Condega, Pueblo Nuevo and Estelí</i>	2,000
<i>Matagalpa, Village of Santísima Trinidad, city of Sebaco, Muymuy, San Ramón, Camsapa, and Comalapa</i>	12,000
<i>Xinotega and Boaco</i>	5,000
Total	27,200

District of *Costa Rica*, in charge of a subordinate political chief.

<i>City of Cartago</i>	8,714
<i>Villa Vieja</i>	8,730
<i>City of San José of Valle Hermoso</i>	11,136
<i>Alajuela, Tres Ríos and Escasú</i>	5,050
<i>Town of Las Cañas and Bagases</i>	1,194
<i>Barba, Currdavad, Pueblo Nuevo, Boruca and Aserri</i> . . .	1,713
<i>Ujarrás, Orosí, Cot, Quircot and Orosí</i>	1,937
<i>Villa of Esparza, Atirro, Tucurrique and Matina</i>	200
Total	38,674

NOTES.

1. Before the establishment of the Constitution the political and judicial departments were united in the manner following: the Province of *Costa Rica*, which includes the population above stated, under a military and political Governor, independent of the one in this province, except as to finances; the one here being

Intendant and the one in *Costa Rica* his sub-delegate, according to Art. 1, of the Royal Ordinances of December 4, 1786.

2. The Governor of *León* had a special territory of the capital. The old municipal councils of *Granada* and *Nicaragua* each had the territory of which it was the headquarters, and the rest of the province was divided into districts with sub-delegates for the four branches, *Subtiava*, *Realejo* (or *Viejo*, which is the new headquarters), *New Segovia*, *Matagalpa*, *Masaya* and *Nicoya*.

3. In the political distribution shown in the table it was sought to conciliate the localities and the population, diminishing as far as possible the number of political chiefs, notwithstanding the extent of the territory and the irregular dissemination of the settlements, quite disproportionate to the large area they occupy, presents serious difficulties, the division of districts which is suggested being regular, although the territory under the command of *Leon* has some settlements which are more than fifty leagues away and for which it is necessary to traverse other jurisdictions, in crossing which the populous settlements of Indians of *Subtiava* are brought into such contact with this capital as to form the base of an almost exact right-angled parallelogram for this settlement, separated by nothing more than a regular way that runs straight from North to South.

4. The very limited district which is proposed in *Nicoya* is the same as embraced by its present sub-delegation, and it is necessary for the following reasons: that territory runs from East to West for more than 50 leagues, shut in on the North by an impassible mountain and uninhabitable for the whole right bank of the River *San Juan*, without going beyond it, and upon the South by the sea of that name. It is separated from the Province of *Costa Rica* on the East by the River *Salto* and the great mountain of *Aguacate*. Its exit on the West is necessarily by the desert shores of the sea, with great rivers which are impassible during the greater part of the year, or crossing the northern mountain going into *Nicaragua*. This mountain presents more dangers than known anywhere else in these countries. *Nicoya* is distant from the town of *Rivas de Nicaragua* sixty leagues, and from *Cartago*, the capital of *Costa Rica*, one hundred and nine leagues. The whole of the district of *Nicoya* is made up of plains for the pasture of cattle, over which are scattered its very scant popula-

tion, needing an immediate control even for the material transaction of business and bringing into the settlements those people who come very rarely to the villages but live in a state of degradation that is lamentable. For these reasons a subordinate political chief is suggested, with a meagre allowance, proportionate to the territory.

5. The district of the town of *Rivas de Nicaragua* has a greater number of inhabitants than appear by the poll-lists and the settlements known under the name of *Potón, Obraje, San José, Tola* and *Zopotal*, which in due time will seek for the establishment of municipal councils, under the constitution and the laws pursuant thereto.

6. The Fort of *San Carlos*, as well as the River and the open port of *San Juan*, should remain for the present as they are and as stated in the explanatory statement. This vast and fertile province without doubt owes its prosperity and its greatness to this port and river, and this body at the proper time will give its opinion as to the particular plan relating to this important subject as soon as the very urgent work in which it is occupied is terminated.

Provincial Deputation of *León de Nicaragua*.

December 13, 1820.

SARAVIA.

ARECHAVALA.

GALARZA.

LÓPEZ.

SOLÍS.

JUAN FRANCISCO AGUILAR, Secretary.

No. 2.

Statement of the allowances for annual salaries to the superior and subordinate political chiefs, the secretary's office of the former and of the Provincial Delegation, fees and assistance to the deputies to the Cortes who are to represent these provinces. All are prepared by this Provincial Deputation in pursuance of the Royal Orders by the Ministry of the Government of Beyond the Seas, dated August 4, 1813, February 2 and April 19, 1814, in accordance with which His Majesty is advised.

	<i>Pesos.</i>
To the Superior Political Chief, per annum.....	4,000
His secretarial office.	
1 Secretary, annually.....	600
1 Chief Official.....	360
1 clerk	200

The expense of the secretary's office cannot be calculated exactly, but they are burdensome to the chief who is not credited with them nor compensated therefor.

1	subordinate Political Chief of <i>Costa Rica</i>	1,200
1	id. of <i>Granada</i>	1,200
1	id. <i>Rcalejo</i>	800
1	id. <i>Segovia</i>	800
1	id. <i>Nicoya</i>	400

One Deputy to the Cortes for this province, with an allowance, of 3,000, specified for account of the journey of the *junta preparatoria* of *Guatemala* and which is settled, this charge being made for two years of the Deputation, results in each year..... 1,500

For the fees of the same during the two years of the Deputation, the fees being specified by the Cortes at 110 *reales vellón* daily, amounts to 40,150 *reales vellón*, making 2,007½ *pesos*; but if said amount is to be paid in the Peninsula there must be added the cost of remittance, which is considerable, beside the risk; and if the payment is made here for the party interested, so that his fees will be equal to those of the others, it will be indispensable to increase them. It is urgent this matter be settled and there is also doubt as to whether the fees should be considered for only the legislative months or during the whole year. This dilemma and the necessity for supporting the Deputy, who cannot while he is under commission return to his industrial pursuits, has decided this body to allow a regular annual appropriation for assistance for the journey of 2,000 pesos annually..... 2,000

One Deputy to the Cortes for the Province of <i>Costa Rica</i> , on account of his journey the same as above.....	1,500
<i>idem</i> on account of fees, like the above.....	2,000

Provincial Deputation.

1 Secretary, per annum.....	800
1 Chief Official.....	400
1 Clerk	200
	17,960

The minor office expenses which cannot be estimated now, for lack of data, although they may be calculated at a moderate sum, including paper, pens, ink, etc.

Notes.

1. The present military and political Governor and Intendant of this province only receives a salary of 3,500 *pesos*, per annum, a notable reduction from the amount received by the other three Intendancies of the Captaincy-General of *Guatemala*, where the salary is 4,000 *pesos*, even in the poor one of *Ciudad Real de Chiapa* and that of *San Salvador*, which does not have the military part, no port on the sea, nor the surcharge of the revenue of tenths, which is managed by the board of *Guatemala*, to which archbishopric all their territory belongs without having any subordinate allowed for their secretaryship.

2. The political command of the Province of *Costa Rica* has been united to the military, with the title of Governor, receiving now a salary of 2,600 *pesos* annually.

3. This Deputation submits the foregoing for the opinion of the superior authorities, as illustrative of the matter, showing that it has adopted the lowest amounts in the appropriations on account of the economy required by the poverty of the treasury, and when the situation improves they ought to be increased, for if good employees are desired they must be properly paid.

4. The sub-delegates who are to cease, having performed personal services, now prohibited, took their salaries from the

juzgados de actuación, a certain percentage of the collection of taxes and perquisites in some special branches, without these savings going into the public funds but only from taxes received integrally in the treasury.

León de Nicaragua, December 13, 1820.

SARAVIA.

ARECHAVALA.

GALARZA.

LÓPEZ.

SOLÍS.

JUAN FRANCO. AGUILAR, Secretary.

Report of Don Marcial Zebadúa, Minister of Foreign Relations of Central America, to the Congress of that Country.

Doc. 477

GUATEMALA, March 5, 1825.

* * * * *

In the periodicals of the Republic of *Colombia* a decree by its Government has been published, issued on July 5th last, in which, referring to the news that some foreigners are planning to locate establishments in the territory called *Poyáis*, upon the *Mosquito Coast*, and for the purpose of preventing such enterprises being carried out, it is stated that the coasts from Cape *Gracias á Dios* toward the River *Chagres*, belong in dominion and ownership to that Republic, in virtue of the declaration made at San Lorenzo on November 30, 1803; and that by it that portion of the coast was definitively added to the Viceroyalty of *New Granada*, separating it from the old Captaincy-General of *Guatemala*.

The Executive Power was surprised to see this declaration by the Government of *Colombia*. The territory spoken of has belonged continuously to *Guatemala* and has been in its possession. In the law passed by the Senate and House of Representatives of *Colombia* on the 23rd of June last, relating to the division of its territory, the *Mosquito Coast* is not embraced; and in the note of July 29th, by which the Minister of State forwarded the aforesaid decree to the Intendant of *Magdalena*, it is positively stated that it does not belong to *Colombia*.

Moreover, our envoy near that Republic, in his communication of September 28th says, in relation to this matter, that he had been assured the Government of *Colombia* had no idea other than to prevent the location of establishments upon the coast mentioned. Our Minister has remained there so as to inform himself in the matter upon his arrival at *Bogota* and declare the rights of the Republic in that part of the territory; and the Executive Power directs that the National Assembly be at once advised as to this incident and furnished with all the antecedent facts that could be found in the archives of the previous Government, which it was provided be sought for, and the information with proper orders be duly given to the envoy.

LAW 13

Doc. 478 Of June 2, 1843, Relating to the Organization and Special Régime of the Territory of Bocas del Toro.¹

Art 1. The islands of *Escudo de Veragua*, and those in *Almirante Bay* and *Chiriquí Lagoon*, and the part of the continent comprised between the following boundaries: upon the East the *Cañaveral* River; upon the South the crest of the *Chiriquí* Cordillera; upon the Northwest the frontier line which on that side separates the Republic of *New Granada* from that of *Central America*, and also the part of the *Coast of Mosquitos* as far as *Capé Gracias á Dios*, as it was aggregated by the Royal Order of November 20, 1803, to the Viceroyalty of *Santa Fé*, shall form a territory which shall be ruled in a special manner until the number of its inhabitants will permit the establishment of a canton or province. From this territory there shall be segregated the District named "*El Mineral*," which shall be added to the Canton of *Santiago*.

Art. 2. This territory shall be ruled by an official under the name of "Prefect," who shall be appointed and removed at will by the Executive Power. He shall hold his position during four years and can be reappointed.

¹ Pombo, *Recopilación de las Leyes de Nueva Granada*. Tratado I. Part II, p. 64.

* * * * *

Art. 6. The Prefect shall depend directly on the Executive Power in all matters of government and administration and he shall deal directly with the Secretaryships of State. In the matters of justice he shall depend upon the Tribunal of *Magdalena*; and in military matters he shall receive orders from the authority designated by the Executive Power.

* * * * *

Art. 24. In order to preserve or to re-establish the lordship of *New Granada* over the whole territory of *Bocas del Toro*, and for the reduction or subjection of the natives, the Executive Power is authorized to build fortifications in the places that it shall deem most suitable, and to take all the proper measures for the foregoing objects.

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