63D CONGRESS
2d Session

SENATE

DOCUMENT
No. 474

DIPLOMATIC HISTORY OF THE PANAMA CANAL

CORRESPONDENCE

RELATING TO
THE

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

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

REPORTED BY MR. HITCHCOCK.

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

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

Attest:

JAMES M. BAKER, *Secretary.*

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CORRESPONDENCE SUBMITTED APRIL 23, 1914.

LETTERS OF TRANSMITTAL.

To the Senate of the United States:

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

WOODROW WILSON.

THE WHITE HOUSE,
Washington, April 24, 1914.

To the PRESIDENT:

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

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

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

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

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

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

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

> The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war, and ships of war of the Republic of Colombia without paying any duty to the United States, even in case of an international war between Colombia and another country.
>
> * * * * * * *
>
> The foregoing provisions of this article shall not, however, apply in case of war between Colombia and Panama.

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

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

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

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

second Hay-Pauncefote treaty of November 18, 1901, negotiated in conformity with the amendments advised by the Senate with regard to the first treaty of the year before.

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

Respectfully submitted.

W. J. BRYAN.

DEPARTMENT OF STATE,
Washington, April 23, 1914.

LIST OF PAPERS.

PART I.

DIPLOMATIC HISTORY OF THE PANAMA CANAL.

PART I.

PAPERS SUBMITTED.

Mr. Hay to Mr. White.

No. 976.] DEPARTMENT OF STATE,
Washington, December 7, 1898.

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

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

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

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

I am, etc.,

JOHN HAY.

Mr. White to Mr. Hay.

[Telegram.]

AMERICAN EMBASSY,
London, December 21, 1898.

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

WHITE.

Mr. White to Mr. Hay.

[Telegram.]

AMERICAN EMBASSY,
London, December 22, 1898.

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

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

WHITE.

Mr. White to Mr. Hay.

No. 613] AMERICAN EMBASSY,
London, December 22, 1898.

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

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

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

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

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

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

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

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

I have, etc.,

HENRY WHITE.

[Inclosure to No. 613.]

[From the Spectator, December 10, 1898.]

THE NICARAGUA CANAL.

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

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

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

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

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

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

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

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

Mr. Hay to Mr. Choate.

No. 518.] DEPARTMENT OF STATE,
Washington, December 22, 1900.

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

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

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

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

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

3. Article III, reading—

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

is stricken out.

4. Article IV is made Article III.

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

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

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

I am, sir, etc.,

JOHN HAY.

Mr. Hay to Lord Pauncefote.

No. 2013.] DEPARTMENT OF STATE,
Washington, December 22, 1900.

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

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

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

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

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is stricken out.

4. Article IV is made Article III.

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

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

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

I have, etc.,

JOHN HAY.

Lord Pauncefote to Mr. Hay.

No. 379.] BRITISH EMBASSY,
Washington, December 26, 1900.

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

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

I have, etc.,

PAUNCEFOTE.

Mr. Hay to Mr. Choate.

[Telegram.][1]

Confidential.] DEPARTMENT OF STATE,
Washington, December 29, 1900.

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

HAY.

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[1] This refers to the first convention, which was amended by the Senate and never ratified.

Mr. Choate to Mr. Hay.

[Telegram.]

AMERICAN EMBASSY,
London, January 11, 1901.

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

CHOATE.

Mr. Choate to Mr. Hay.

No. 479.] AMERICAN EMBASSY,
London, January 12, 1901.

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

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

I have, etc.,

JOSEPH H. CHOATE.

[Inclosure to No. 479.]

Mr. Choate to Lord Lansdowne.

AMERICAN EMBASSY,
London, January 4, 1901.

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

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

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

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

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

3. Article III, reading—

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

is stricken out.

4. Article IV is made Article III.

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

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

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

I have, etc.,

JOSEPH H. CHOATE.

Mr. Hay to Mr. Choate.

DEPARTMENT OF STATE,
Washington, January 25, 1901.

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

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

Yours, faithfully,

JOHN HAY.

Mr. Hay to Mr. Choate.

[Telegram.]

DEPARTMENT OF STATE,
Washington, February 16, 1901.

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

[1] Not on State Department files.

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

HAY.

Mr. Choate to Mr. Hay.

[Telegram.]

Confidential.] AMERICAN EMBASSY,
London, February 19, 1901.

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

CHOATE.

The Marquis of Lansdowne to Lord Pauncefote.

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

FOREIGN OFFICE, *February 22, 1901.*

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

These amendments are three in number, namely:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] Printed in italics.

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

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

The other two amendments present more formidable difficulties.

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

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

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

> Similarly, the provisions of Articles IV, V, VII, and VIII,[1] shall not interfere with the measures which His Majesty the Sultan and His Highness the Khedive, in the name of His Imperial Majesty, and within the limits of the firmans granted, might find it necessary to take for securing by their own forces the defense of Egypt and the maintenance of public order.
>
> In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this article provides, the signatory powers of the declaration of London shall be notified thereof by the Imperial Ottoman Government.
>
> It is likewise understood that the provisions of the four articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to insure by its own forces the defense of its other possessions situated on the eastern coast of the Red Sea.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I am, etc., LANSDOWNE.

[Inclosure.]

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

ARTICLE I.

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

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

ARTICLE VI.

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

Mr. Hay to Mr. Choate.

[Confidential—Telegram.]

DEPARTMENT OF STATE,
Washington, March 13, 1901.

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

HAY.

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

Mr. Hay to Mr. Choate.

[Telegram.]

DEPARTMENT OF STATE,
Washington, March 15, 1901.

Paragraph is omitted at our request. Most confidential.

HAY.

Mr. Hay to Lord Pauncefote.

No. 2119.] DEPARTMENT OF STATE,
Washington, March 25, 1901.

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

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

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

I have, etc.,

JOHN HAY.

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

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

No. 1.

Lord Pauncefote to the Marquis of Lansdowne.

WASHINGTON, *April 25, 1901.*

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

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

I have, etc.,

PAUNCEFOTE.

[Inclosure No. 1.]

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

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

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

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

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

ARTICLE I.

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

ARTICLE II.

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

ARTICLE III.

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

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

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

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

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

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

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

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

ARTICLE IV.

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

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

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

Mr. Hay to Mr. Choate.

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

DEPARTMENT OF STATE,
Washington, April 27, 1901.

Private and personal.]

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

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

[1] See printed ante, Lord Pauncefote to Marquis Lansdowne, Apr. 25, 1901.

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

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

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

Very sincerly, yours,

JOHN HAY.

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

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

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

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

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

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

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

The Marquis of Lansdowne to Mr. Lowther.[1]

FOREIGN OFFICE, *August 3, 1901.*

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

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

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

I am, etc., LANSDOWNE.

[Inclosure 1 in No. 2.]

[Memorandum.]

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

The amendments were three in number, namely:

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

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

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

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

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

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

[1] British Bluebook, United States, 1902, No. 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LANSDOWNE.

AUGUST 3, 1901.

[Inclosure 2 in No. 2.]

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

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

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

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

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

ARTICLE I.

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

ARTICLE II.

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

ARTICLE III.

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

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

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

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

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

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

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

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

ARTICLE III–A.

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

ARTICLE IV.

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

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

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

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

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

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

[1] Not on State Department files.

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

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

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

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

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

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

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

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

Yours, very truly, JOSEPH H. CHOATE.

Mr. Choate to Mr. Hay.

LONDON, *August 20, 1901.*

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

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

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

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

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

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

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

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

Yours, very truly,

JOSEPH H. CHOATE.

Mr. Hay to Mr. Choate.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 22, 1901.

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

HAY.

[1] See Marquis of Lansdowne's note, Aug. 3, 1901. Ante.