Mr. Hay to Mr. Choate.

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

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

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

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

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

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

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

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

Yours, faithfully,

JOHN HAY.

Mr. Hay to Lord Pauncefote.

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

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

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

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

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

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

[1] See Ante, from British Blue Book; not on State Department files.

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

ARTICLE IV.

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

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

I am, my dear Lord Pauncefote,

Faithfully, yours,

J. HAY.

Mr. Choate to Mr. Hay.

[Extract.]

LONDON, *September 3, 1901.*

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

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

FOREIGN OFFICE, *September 12, 1901.*

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

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

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

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

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

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

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

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

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

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

I am, etc.,

LANSDOWNE.

Mr. Choate to Mr. Hay.

Confidential.] AMERICAN EMBASSY,
London, September 20, 1901.
(Received 5.40 p. m.)

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

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

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

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

CHOATE.

Mr. Choate to Mr. Hay.

Private and confidential.] SEPTEMBER 21, 1901.

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

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

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

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

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

Yours, very truly,

JOSEPH H. CHOATE.

Mr. Hay to Mr. Choate.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 21, 1901.

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

HAY.

Mr. Choate to Mr. Hay.

LONDON, *September 25, 1901.*

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

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

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

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

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

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

Yours, very truly,

JOSEPH H. CHOATE.

Mr. Choate to Mr. Hay.

Confidential.]

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

[Telegram.]

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

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

CHOATE.

Mr. Choate to Mr. Hay.

LONDON, *September 27, 1901.*

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

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

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Mr. Hay to Mr. Choate.

[Telegram.]

Confidential.] DEPARTMENT OF STATE,
Washington, September 29, 1901.

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

HAY.

Mr. Hay to Mr. Choate.

[Telegram.]

Confidential.] DEPARTMENT OF STATE,
Washington, October 2, 1901.

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

HAY.

Mr. Choate to Mr. Hay.

[Telegram.]

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

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

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

Amendments:

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

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

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

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

For article 3A substitute:

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

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

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

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

CHOATE.

Mr. Choate to Mr. Hay.

LONDON, *October 2, 1901.*

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

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

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

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

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

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

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

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

Very truly, yours,

JOSEPH A. CHOATE.

Mr. Hay to Mr. Choate.

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 3, 1901.

All amendments cordially approved.

HAY.

Mr. Choate to Mr. Hay.

LONDON, *October 9, 1901.*

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

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

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

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

Yours, most truly,

JOSEPH H. CHOATE.

Mr. Choate to Mr. Hay.

[Telegram.]

Confidential.] AMERICAN EMBASSY,
London, October 9, 1901.
(Received 8.48 p. m.)

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

CHOATE.

Mr. White to Mr. Hay.

[Telegram.]

AMERICAN EMBASSY,
Confidential.] *London, October 23, 1901.*
(Received 7.05 p. m.)

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

WHITE.

The Marquis of Lansdowne to Lord Pauncefote.[1]

FOREIGN OFFICE, *October 23, 1901.*

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

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

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

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

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[1] British Blue Book, United States, 1902.

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

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

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

I am, etc.,

LANSDOWNE.

Mr. White to Mr. Hay.

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

Confidential.] AMERICAN EMBASSY,
London, October 26, 1901.

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

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

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

[1] See British Blue Book, "United States, 1902," and Senate Document 746, 61st Cong., 3d sess.

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

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

I have, etc.,

HENRY WHITE.

Mr. Hay to Lord Pauncefote.

WASHINGTON, *November 8, 1901.*

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

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

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

I have, etc.,

JOHN HAY.

Lord Pauncefote to the Marquis of Lansdowne.[2]

WASHINGTON, *November 19, 1901.*

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

I have, etc.

PAUNCEFOTE.

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[1] Printed, ante.

[2] British Blue Book "United States, 1902."

[Telegraphic.]

Lord Pauncefote to the Marquis of Lansdowne.[1]

WASHINGTON, *December 16, 1901.*

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

Lord Pauncefote to the Marquis of Lansdowne.[1]

WASHINGTON, *November 18, 1901.*

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

I have, etc.

PAUNCEFOTE.

[Inclosure in No. 5.]

Mr. Hay to Lord Pauncefote.

WASHINGTON, *November 8, 1901.*

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

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

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

I have, etc.

JOHN HAY.

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

DEPARTMENT OF STATE,
Washington, December 12, 1901.

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

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[1] British Blue Book "United States, 1902."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I am, etc.,

JOHN HAY.

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

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

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

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

AS TO THE ABROGATION OF THE CLAYTON-BULWER TREATY.

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

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

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

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

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

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

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

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

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

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

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

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

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

The substantial differences from the former treaty are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lord Lansdowne accordingly proposed the following amendment, viz:

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

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

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

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

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

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

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

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

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

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

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

Mr. Hay to Lord Pauncefote.

No. 2316.] DEPARTMENT OF STATE,
Washington, December 16, 1901.

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

Congratulating you on this successful outcome of our labors,

I have, etc.,

JOHN HAY.

Lord Pauncefote to Mr. Hay.

No. 49.] BRITISH EMBASSY,
Washington, February 18, 1902.

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

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

I have, etc.,

PAUNCEFOTE.

Mr. Hay to Lord Pauncefote.

No. 2372.] DEPARTMENT OF STATE,
Washington, February 20, 1902.

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

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

I have, etc.,

JOHN HAY.

PART II.

PAPERS SUBMITTED.

Mr. Root to Mr. Bryce.

DEPARTMENT OF STATE,
Washington, January 8, 1909.

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

Very sincerely, yours,

ELIHU ROOT.

[Inclosure.]

Memorandum.

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

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

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

DEPARTMENT OF STATE,
Washington, January 8, 1909.

Mr. Bryce to Mr. Root.

BRITISH EMBASSY,
Washington, January 8, 1909.

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

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

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

JAMES BRYCE.

Mr. Root to Mr. Reid.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 9, 1909.

Following memorandum was sent yesterday to Ambassador Bryce:[1]

* * * * * * *

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

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ROOT.

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[1] Printed ante.

Mr. Reid to Mr. Root.

[Telegram.]

AMERICAN EMBASSY,
London, January 11, 1909.
(Received 11.15 p. m.)

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

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

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

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

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

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

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

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

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

REID.

Mr. Reid to Mr. Root.

[Telegram.]

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

AMERICAN EMBASSY,
London, January 15, 1909.
(Received 7.08 p. m.)

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

REID.

Mr. Root to the British Ambassador.

DEPARTMENT OF STATE,
Washington, January 16, 1909.

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

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

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

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

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

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

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

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

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

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

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

Faithfully, yours,

ELIHU ROOT.

Mr. Root to Mr. Reid.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 16, 1909.

Confidential and for your own information and guidance only. The following letter [1] sent to Ambassador Bryce to-day:

* * * * * * *

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

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

[1] Printed ante.

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

ROOT.

Mr. Reid to Mr. Root.

No. 824.] AMERICAN EMBASSY, LONDON,
January 25, 1909.

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

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

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

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

I have, etc.,

WHITELAW REID.

[Inclosure to No. 824.]

Mr. Reid to Sir Edward Grey.

MEMORANDUM.

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

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

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

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

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

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

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

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

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

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

JANUARY 20, 1909.

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

[Not of record in the Department of State.]

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

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

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

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

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

Mr. Bacon to Mr. Bryce.

No. 540.] DEPARTMENT OF STATE,
Washington, February 20, 1909.

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

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

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

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

DEPARTMENT OF STATE,
Washington, January 8, 1909.

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

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

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

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

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

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

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

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

DEPARTMENT OF STATE,
Washington, January 16, 1909.

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

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

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

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

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

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

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

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

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

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

Faithfully, yours,

ELIHU ROOT.

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

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

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

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

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

I have, etc.,

ROBERT BACON.

Mr. Bryce to Mr. Bacon.

No. 45.] BRITISH EMBASSY,
Washington, February 24, 1909.

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

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

I have, etc.,

JAMES BRYCE.

PART III.

PAPERS SUBMITTED.

Chargé d'Affaires Innes to the Secretary of State.

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

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

The proposals may be summed up as follows:

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

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

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

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

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

I have, etc.,

A. MITCHELL INNES.

Mr. Innes to Mr. Knox.

BRITISH EMBASSY,
Washington, August 27, 1912.

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

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

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

I have, etc.,

A. MITCHELL INNES.

Hon. PHILANDER C. KNOX,
Secretary of State.

Mr. Wilson to Mr. Innes.

DEPARTMENT OF STATE,
Washington, August 30, 1912.

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

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

I have, etc.,

HUNTINGTON WILSON,
Acting Secretary of State.

Mr. Phillips to Mr. Knox.

No. 2121.] AMERICAN EMBASSY,
London, October 11, 1912.

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

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

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

I have, etc.,

WILLIAM PHILLIPS.

[Inclosure.]

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

THE PANAMA CANAL DUES.

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

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

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

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

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

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

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

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

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

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

FOREIGN OFFICE, *November 14, 1912.*

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

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

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

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

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

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

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

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

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

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

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

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

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

> The high contracting parties agree that the navigation of all navigable boundary waters shall for ever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free naviagtion, and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.
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> It is further agreed that so long as this treaty shall remain in force this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters and now existing, or which may hereafter be constructed on either side of the line. Either of the high contracting parties may adopt rules and regulations governing the use of such canals within its own territory, and may charge tolls for the use thereof; but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the high contracting parties, and they * * * shall be placed on terms of equality in the use thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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