

have been induced to add \$10,000,000 or \$15,000,000 to the recompense to be received by Colombia, I believe the treaty would have been ratified; but lately the tide of opposition has set in so strongly that it has seemed beyond control.

The public discussion which the Government invited has not only overwhelmed the treaty, but has been immensely disastrous to the Government itself. It has not been a discussion in fact, but a rivalry among the newspapers as to which could produce the most violent and bitter attacks upon the whole negotiation. The only articles which have appeared in defense of the treaty were written by Mr. J. T. Ford and Mr. Enrique Cortez. These were answered by personal attacks upon the writers. Mr. Ford was accused of desiring the passage of the treaty in order to secure the payment of the claims of his companies.

I must give Mr. Ford the credit of working for the treaty to the utmost of his ability during the three months that he remained at this capital.

Some of the newspapers are now urging that by threats and intimidation a powerful nation has been trying to coerce the acceptance of an unconstitutional and unsatisfactory treaty upon a weak one, but that through the loyalty of its legislators Colombia has emerged from the ordeal with unstained honor.

With respect to the assurances from certain quarters that the next Congress would be made up so that the canal treaty may be ratified, I believe that this must be taken with due allowance. That any one in authority here has any intention of securing the ratification of the treaty in its present form I can not believe. They will insist upon more money and other modifications.

It is now understood that the vice president will close this Congress on the 20th instant, so that little consideration can be given to the important questions before it. I believe a law concerning foreign claims will be passed. It is said that in this the Government will distinctly refuse to recognize its responsibility for damages occasioned by the revolutionists.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, September 10, 1903. (Received September 12.)

Since the report of the canal committee the question has not been discussed in the Senate. First consideration of the report postponed until 14th instant. Fierce attack to-day in the Senate upon the appointment of Obaldía as governor of Panama. The appointment is regarded as being the forerunner of separation. Of several Senators who spoke only the son of the President defended the action of the Government. A resolution passed by almost unanimous vote, which is equivalent vote of censure against the Government. The situation is not improved. There is no prospect of satisfactory action.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 133.]

LEGATION OF THE UNITED STATES,
Bogotá, September 11, 1903.

SIR: I have the honor to report that events of interest have taken place in connection with the appointment of Senator Obaldia to the post of governor of the department of Panama.

Senator Obaldia's separatist tendencies are well known, and he is reported to have said that, should the canal treaty not pass, the department of Panama would declare its independence, and would be right in doing so. That these are his opinions there is, of course, no doubt, as I stated in my telegram to the Department of August 31, 1903.

At yesterday's session of the Senate the feeling of opposition to Señor Obaldia's appointment was given expression by a resolution proposed by Senator Perez y Soto, to the effect that—

The Senate of the Republic can not see with indifference the appointment which has been made for the post of governor of the department of Panama which it regards as a menace to the safety of the Republic.

This resolution was amended by omitting the reference to the governorship of Panama in particular, and made to include all administrative posts held under the Government.

In this form it passed with an almost unanimous vote.

The debate itself, though short, for it lasted under two hours, was one of the most important that has yet taken place in open session. As I telegraphed yesterday, it was nothing more or less than a direct vote of censure.

It was said that Obaldia's appointment could have one, and only one, explanation: That he was sent to the Isthmus to make necessary preparations for the presidential election; and that other similar appointments had been made with the same end in view—such as that of insignares to the Department of Bolivar.

The speakers showed greater heat than I have yet known them to evince in this Congress. It seemed to be the general opinion that the Government was prostituting the general interests of the country for purposes of electioneering intrigue.

Gen. Pedro Nel Ospina, in a passionate and much applauded speech, warned the Government that should it persist in its present course, exhausted as the country was, a fresh revolution was not far distant.

The notable feature in the debate was the general spirit of hostility shown toward the Government, both by the Senators themselves and by the public assembled in the gallery and round the lobbies. With the exception of one Senator there was not a speaker who did not bitterly and uncompromisingly denounce the Government. When Senator Marroquin, the son of the President, rose to defend the action of the Government, he was greeted with hisses from all parts of the house, and hisses and jeers accompanied him throughout his speech. There was absolutely no sympathy for him nor for his position.

It is evident, I think, that a cross current was at work during the debate. It was initiated by an opponent of the canal and a believer in the integrity of Colombia against the appointment of a Panamanian who ardently supported the canal, and who, if forced to accept an

alternative, would rather see the Isthmus independent than lose the chance of seeing the canal built through his department. The opponent of the canal scheme carried the house with him, but he gained their support, not in virtue of his attitude on the canal question, but because his resolution opened the door to a general attack on the Government.

It really begins to appear that the majority of the senate care little about the canal, except in so far as that subject ministers to their own political ends.

During yesterday's session the senators were presented with a document published by Senator Perez y Soto, protesting against the appointment of Senator Obaldia to Panama. The large portion of this publication consists of a copy of a letter addressed to the President on the subject. Treating of the canal in this letter, the following significant passage occurs:

When we (Perez y Soto and the President) met again, in December (1902), my first care was to entreat you to allow nothing to be signed—nothing at the time pending with the American Government—for by knowing how to wait we might be able to obtain greater advantages in the canal treaty. You answered me that the Government could very well allow the treaty to be signed, leaving it to Congress to make such modifications as it might see fit. I then observed to you that even that was a dangerous course to pursue, because with the Americans there was no playing. I said that you did not escape responsibility by making concessions ad referendum.

I have no reason to doubt the senator's veracity, and his statement brings vividly to mind the predictions I made in my No. 6 of April 15, 1903, to the effect that when the President ordered the treaty to be signed he anticipated amendments, and indulged in the hope of having them accepted by the United States.

In view of recent representations made to the department that the election for members of the Congress of 1904 would be so looked after that the canal treaty could be passed, it is well to remember that the present Congress was specially called to consider the treaty, and that the same methods were employed in electing this one as must be in electing the one of next year. Why, then, if that power is lodged in the Government, were not the present senators and deputies pledged to the ratification of the treaty?

If the Government intended to elect a minority strongly opposed to the treaty, and to give them full play in their attacks upon it with the view of obtaining better terms from the United States, it has reckoned without its host, for it has brought into existence a Congress a large portion of which is not only against the treaty but intensely hostile to the Government itself. This is partly due to blunders on the part of some of the governors of departments, especially the one in Panama, but also to the rupture with General Fernandez. A considerable number of the senators and deputies elected were supporters of the latter, and were regarded as votes upon which the Government could count. After the break with Fernandez these votes joined the opposition, and to-day the Government finds itself confronted with a hostile majority instead of a noisy minority.

It was evidently plain to the Government some time ago that there is no hope for the ratification of the treaty; that the treaty would be rejected not on its own merits, but as a means of dealing a blow at the Government of President Marroquin. Seeing how the political game

was being played the Government abandoned any intent it may have had to advocate the treaty and turned its attention to averting from itself the current of opposition, or at any rate the responsibility for the rejection of the treaty. For this reason, on a motion by Senator Marroquin, the President's son, on the day which had been set apart by previous arrangement for the rejection of the treaty, the debate was preceded by the reading of the correspondence which had passed between the minister for foreign affairs and myself. The object of this move is clear. The Government desired to make it appear that the rejection of the treaty was not a blow aimed at the President and his ministers, but was a protest against what was asserted to be the dictatorial attitude assumed by the United States Government through its minister.

The first debate on the report of the joint congressional committee appointed to consider the canal matter has been postponed until the 14th instant, but nothing satisfactory is to be expected from this Congress.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, September 14, 1903. (Received September 15.)

Canal committee report unanimously passed first reading to-day. Perez Soto gave notice amendment absolutely restricting the Executive to terms of proposed law. The situation has not changed, and nothing better than this law may be expected.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, September 17, 1903. (Received 7.30 p. m., 18.)

September 17, 11 a. m. No discussion of canal question and no change in the situation.

The probability is that Congress will not adjourn before 20th proximo.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 139.]

LEGATION OF THE UNITED STATES,
Bogotá, September 18, 1903.

SIR: I have the honor to send you inclosed a copy of the *Diario Oficial* of September 15, 1903, containing the majority and minority reports of the special committee of the Senate appointed to consider

the Panama Canal treaty, which reports were made on August 4, 1903. I also inclose the printed report of the Senate members of the joint committee appointed to consider the question of the construction of a canal, which report was made on September 4, 1903.

I informed you that the last report had passed the first debate in the Senate. Since that time the matter has not been considered at all. It is altogether probable that amendments will be made before the project passes the Senate, and that still others will be attached to it in the lower house.

It is the general opinion that the Congress will be closed on October 20, but this has not been definitely decided. At any rate the canal matter is not likely to be disposed of until the last days of the session.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Translation.]

PANAMA CANAL.

[Several papers concerning the treaty between Colombia and the United States. From the *Diario Oficial*.]

[Translation of a project of a law submitted by certain senators on August 3, 1903, by which the treaty between the Republic of Colombia and the United States of America, for the construction of an interoceanic canal between the Atlantic and Pacific Oceans, is approved with modifications. From the *Diario Oficial*, September 15, 1903.]

The Colombian Congress, having examined the treaty signed the 22d of January of the present year between the chargé d'affaires of Colombia before the Government of the United States of America and the Secretary of State of that Republic, which treaty reads literally as follows (see text of treaty as signed), decrees:

Sole article. That the above-inserted treaty is approved with modifications set forth as follows:

First. In the preamble the reference to the law of the United States of June 28, 1902 (Spooner law), shall be suppressed.

Second. In the first article a provision shall be introduced that the Panama Canal and Railroad Companies shall previously enter into an agreement with the Colombian Government setting forth certain conditions, among which the Colombian Government shall give the necessary consent that such companies may transfer their rights to the United States. It shall be stipulated that Colombia shall recover control of all the public lands which are now in the possession of the said companies, without exception, so that the cities of Panama and Colon shall remain effectively and completely outside of the zone of the concession.

Third. The terms of the second and third articles shall be modified so as to clearly provide that Colombia concedes to the United States only the right to use the zone of the canal and such part of the adjacent territory as may be necessary for the work; it must be clearly set forth that the rights conceded to the United States are in the nature of a tenancy, excluding any idea of transfer of dominion by establishing clearly and peremptorily the perpetuity of the concession. The boundaries of the zone shall be indicated with the greatest possible precision and the accessory properties included in the concession shall be clearly set forth, definitely excluding from the latter the cities of Panama and Colon. It shall be stipulated, moreover, that the guaranty of the treaty of 1846-1848 shall not be modified in any way and shall continue to be in force in the Department of Panama, including the zone of concession.

Fourth. In the seventh article the concession shall be limited expressly to the right to use gratuitously the waters of the lakes, lagoons, rivers, and other streams, natural or artificial, which are necessary for the feeding of the canal, or for its construction, sustenance, and operation, having the right to deviate the course of such waters, to raise or lower their levels, to convert them into

lakes, widen or reduce them, as may be most convenient for the purposes; and it shall be stipulated that such right is exclusive so far as it relates to the use of said waters for the feeding and supply of the canal and canal auxiliaries, this concession not preventing the waters referred to being used, under legitimate authority, for other purposes than navigation, which do not interfere with or obstruct the use which the United States may desire to make of them. The use of water or waterways outside of the canal zone for the transportation of materials shall not be the exclusive right of the United States, but this right shall be granted to them without taxes or imposts of any kind, so far as relates to materials for the construction, support, and working of the canal.

The natural products, property of the Republic, which the United States may require for the work shall be stipulated with the greatest possible exactness, the right being limited to the Department of Panama, and providing that the expropriations which shall be made under this article (seventh) shall be subject to the provisions of article 14.

Fifth. In the eighth article the vagueness of the clause shall be corrected, under which no taxes shall be collected in the cities of Panama and Colon except upon merchandise imported for consumption in the rest of the Republic of Colombia, etc.

Sixth. In the thirteenth article there shall be suppressed as being contrary to the constitution all that relates to the establishment of United States tribunals and the application of the laws of that country in Colombian territory, and it shall be stipulated that the regulations of police and sanitation which shall be in force in the Canal Zone shall be a matter for agreement between the two Governments.

Seventh. Indemnifications which may be named by the committee mentioned in article 14 of the convention for expropriations made in certain cases referred to in the same article shall be paid by the United States, and the valuations shall be in accordance with the regulations set forth in article 9 of the law 119 of 1890.

Eighth. In the twenty-fourth article a clause of forfeiture shall be introduced designating a term after which, if the work is not completed, all the concessions shall lapse and all the rights and property of the enterprise shall return to Colombia.

The last part of article 25, beginning, "But no delay, etc.," shall be suppressed.

Ninth. In the additional clause the tribunal shall determine what must be done concerning differences that may arise between the contracting parties touching the fulfillment of the treaty provisions. Given, etc.

Submitted to the honorable Senate, in special committee, by the undersigned senators in the session of Monday, the 3d of August, 1903.

Pedro Nel Ospina, J. D. de Obaldia, J. M. Uricoechea, Luis F. Campo, Eduardo B. Gerlein, J. M. Ribas Groot, José M. González Valencia.

Joaquín M. Uribe B. and Jurn B. Pérez y Soto reserve the privilege of a separate report.

(In their minority reports they greatly amend the treaty.)

COLOMBIA, SENATE CHAMBER, OFFICE OF THE SECRETARY, No. 116,

Bogotá, August 13, 1903.

To the Minister for Foreign Affairs:

In compliance with article 322 of the Senate rules, I have the honor to inform your excellency that this body, in yesterday's session, rejected on first debate the project of law "by which the treaty (signed in Washington on January 22, 1903) for the opening of the Panama Canal is approved."

God preserve your excellency.

MIGUEL A. PEÑAREDONDA.

COLOMBIA, SENATE CHAMBER, OFFICE OF THE SECRETARY, No. 121,

Bogotá, August 13, 1903.

Minister of Foreign Relations:

In order that the department under your excellency may take such course as may be deemed proper for foreign publicity, I communicate at once to your excellency the resolution unanimously approved by the Senate at to-day's session.

"The Senate of the Republic, in view of the rejection given to the treaty signed in Washington on January 22 of the present year, between the chargé d'affaires of Colombia and the Secretary of State of the American Union, and taking into account the fact that the people of Colombia desire to maintain the most cordial relations with the United States of America, and deem the construction of an interoceanic canal across the Isthmus of Panama a matter of the greatest importance to commerce and the world's progress, as well as for the development and progress of the American nations, resolves:

"First. That a committee of three senators, designated by the president of the Senate, consulting as far as possible the views of the House of Representatives, shall investigate a way of satisfying the desire of the Colombian people regarding the construction of the Panama Canal in harmony with the national interests and respect for law which has been on this solemn occasion the guide of the Senate.

"Second. That the greatest possible publicity shall be given, in this country as well as elsewhere, to this resolution, to the modifications which the Senate committee may propose to said treaty, and to the other documents which have preceded in the consideration of this matter."

God preserve your excellency.

MIGUEL A. PEÑAREDONDA.

[Inclosure with dispatch No. 139, September 18, 1903, from the United States minister at Bogotá.—Translation.]

PANAMA CANAL—REPORT OF A COMMITTEE AND DRAFT OF A LAW.

Honorable Senators:

Having been designated on the 13th instant by this honorable chamber to "find a way to satisfy the desire of the Colombian people regarding the construction of the Panama Canal in harmony with the national interests and respect for law, which has been on this solemn occasion the guide of the Senate," a designation made in conformity with the resolution adopted on the same day and reached after the unanimous rejection, on first debate, of the draft of law "which approves the treaty signed in Washington on the 22d of January of the present year between the plenipotentiaries of the Republic of Colombia and of the United States of America for the construction of an interoceanic canal through the Colombian Isthmus," we have given our whole attention to this difficult subject, endeavoring to find a solution which may harmonize and satisfy the exigencies of the case.

It is known that the treaty was disapproved because of unconstitutionality, illegality, and inconvenience for Colombia of some of its provisions, and because, while the Senate was considering it (under its constitutional prerogative and in accordance with the provisions of the treaty itself) and was in possession of the report which, at the first debate, the majority of the committee named for the purpose submitted, and of the restrictions proposed, the Government of the United States made known to Colombia, through their United States minister in Bogotá and the department of foreign affairs, and by the latter directly to the Senate, that any modification which might be introduced into the convention would not be admitted and would be equivalent to a rejection of the treaty. The Colombian Senate, in view of the attitude and declaration of the United States Government, was left necessarily with the alternative of approving what the constitution and the interest of the country ordered it to reject, or of refusing its approbation to what had been conditionally agreed upon by the two Governments. The Senate determined upon the latter of these alternatives, as was to have been expected.

Keeping within the constitutional limits (according to our loyal understanding of the constitution) and admitting such concessions as reason and experience show are indispensable, in order to arrive in this matter at a satisfactory and practical solution, we have formulated a draft of a law of authorizations, which we submit on a separate page, and which, if certainly an imperfect result because of the difficulties of the subject, of our incapacity, and of the many peculiar circumstances of the present case, will show our desire to succeed, and that an initiative which may tend to solve a problem of such universal importance as that of communication between the two oceans through our Isthmus of Panama, is not abandoned without some fresh effort made in good faith and loyalty by both parties.

It is too clear to us (as to all the world) that this matter can not be determined heedlessly, but that its solution, the result of which will affect our entire country for centuries, and represents at this time the hope of life and prosperity or the fear of ruin to important sections of the country, and even to those sections apparently remote and isolated with respect to the colossal work, demands that it be considered and acted upon in an especial manner, not permitting the standard to be disturbed either by erroneous notions or half-formed truths, which usually divert it or carry it to extremes which, the fervor of the moment having passed, may afterwards appear improper. Calmness, a precise appreciation of the present and future national needs, in the widest and noblest sense of those words, foresight and prudence must enter into the study of this thorny question in order that it can be said that it was settled for the country's good, which must consist in acts, not in words; in serving the country, not in harming it in the belief of serving it. We may feel sure that this is the first occasion in which this problem has been presented before the world under the conditions which we now have before us. It would be, then, useless to look for precedents. Whatever may be done to settle the matter under these circumstances, which no one can alter, will be the precedent for future cases. We must bravely and loyally meet the problem because it is ours, and at the same time interests the entire civilized world. It is necessary, then, to proceed without losing sight of the most important points, which are not necessary to enumerate here, and not only to look for the greatest good possible in the facts for Colombia, but to try to patriotically avoid serious evils whose character and importance might perhaps involve worse results than those which are now circulated around by the best intentioned but, perchance, not sufficiently discerning persons who, in desiring that things shall be as they are not, close their eyes to the reality of a situation which if prudently looked into might be converted into good to the country, but if unknown or carelessly studied, will not fail to bring about dangers and complications in no way compensated by good intentions or friendly words. Civil courage demands, in cases like this, a frank expression of honest conviction.

In view of which we have the honor to propose the following draft of a resolution:

"That there be a first debate of the draft of a law by which a disapproval is ratified and authorizations are given to the Government to negotiate for the opening of an interoceanic canal across the Isthmus of Panama."

Bogotá, August 29, 1903.

Submitted by the undersigned members of the committee designated by the president of the Senate:

PEDRO NEL OSPINA.

MANUEL MARÍA RODRÍGUEZ.

Upon the recommendation of the honorable Senator Luis F. Campo.

PEDRO NEL OSPINA.

OFFICE OF THE SECRETARY OF THE SENATE.

On this date it was resolved to extend the time for consideration of the draft to which this report refers until the session of next Monday, and to publish prior to that date the report of the draft of the law in a loose sheet.

September 2, 1903.

Draft of a law which ratifies the disapproval and gives authorization to the Government to negotiate for the opening of an interoceanic canal across the Isthmus of Panama.

The Colombian Congress decrees:

Article. Ratifies the rejection made on the 12th of August in the Senate chamber of the "convention between the Republic of Colombia and the United States of America for the construction of an interoceanic canal between the Atlantic and Pacific Oceans," signed at Washington on the 22d of January of the present year, 1903.

Article. Invests the President of the Republic with all the necessary powers, in order that at any time he may deem proper and opportune he may negotiate public treaties or conventions for the opening of an interoceanic canal across the Isthmus of Panama, or contract for the construction of such a work with corporations or private companies who may give sufficient guarantee of being able to carry the work to completion within the term that may be designated.

Article. The foregoing authorizations shall be understood to be granted without prejudice to the rights acquired by the New Panama Canal and Railroad companies, which companies shall continue in the full use and enjoyment of their privileges and concessions, and subject to the fulfillment of their obligations, so long as they have not come to an agreement with the Government of Colombia concerning the manner of transferring to another company, political entity (corporation?), or foreign government the rights, concessions, and privileges growing out of the contracts entered into with them.

Article. The Government of Colombia shall permit the railroad company of Panama to transfer to another government or entity the rights and enjoyments which said company may possess in the aforesaid enterprise, providing that the concessioner and concessionist respect the contracts which are now in force in the matter, particularly as regards the recognition of the obligation to pay to Colombia the annual rental of 250,000 pesos in gold, and to transfer (to her) the absolute ownership in the enterprise at the expiration of the year 1967, or pay in that year a fair price for the work, fixed by an agreement between the two parties or, in case of disagreement, a sum to be determined by the government of some friendly nation as arbitrator.

Paragraph. In the transfer mentioned, the public lands referred to in title 2 of the contract entered into with the railroad company on the 15th of April, 1850, shall not be included, such lands shall then be returned to Colombia. The lands used by the line of the railroad, the stations and other appurtenances shall be turned over to the Republic at the expiration of the existing concession.

Article. The Government of Colombia will likewise permit the New Panama Canal Company to transfer its rights and engagements to any other Government or political entity providing that the said company fulfills the following conditions:

First. That there be paid to the Government of Colombia when the transfer is made the sum of 50,000,000 francs.

Second. That there shall not be included in the cession 500,000 hectares of public land which, under the present contract, belongs to it. These lands shall be returned to the full control of Colombia.

Paragraph. The 50,000 preferred shares which the Republic has in the New Canal Company shall be canceled as soon as the Government receives the 50,000,000 francs referred to in the second part of this article.

Article. In the negotiation of the treaties or conventions mentioned in this law the Government of Colombia is authorized to make, if it shall be necessary, concessions on the following bases:

First. To constitute a right for the sole end of constructing, maintaining, and operating a canal and its auxiliary works upon a strip of Colombian territory 10 miles wide, from the Caribbean Sea to the Pacific Ocean, in which (zone) the cities of Panama and Colon shall not be included. The duration of this right shall be for one hundred years and the concessioner shall pay for this right an annual rental sum of \$150,000 in gold up to the year 1967, inclusive, and \$400,000 from 1968 and thereafter, this concession being renewable at the option of the concessioner for periods of equal duration (one hundred years), provided the latter agrees to increase, in the proportion of 25 to 100, above the maximum bases of the preceding period, the annual rental sum.

The concessioner shall also have the right to use and dispose of materials of construction which are within the zone referred to and of the waters necessary for the construction, operation, and maintenance of the canal and its auxiliary works.

2^a. Expropriation in conformity with Colombian law, and at the cost of the contracting Government, of private properties in the aforementioned zone, and previous indemnification, at the cost of the same Government, for damages and injuries which the works or labors undertaken may occasion to private properties.

3^a. The consent of Colombia for the construction of ports at the mouths of the canal and for the use of the portion of the sea adjacent to them, so far as said use is necessary for anchorage, repair, and protection of vessels.

4^a. The free use across the zone for public roadways already existing or for those that may be constructed between the towns and districts of the Department of Panama.

5^a. Exemption from customs duties, established in favor of the foreign contracting Government for the introduction of machinery, fixtures, and tools necessary for the construction and maintenance of the work.

6^a. The neutrality of the canal and explicit recognition of the sovereignty of Colombia over all its territory and inhabitants.

7^a. For the judging of all causes or litigations; whether the interested parties are foreigners or Colombians and foreigners, the Colombian Government shall agree with the foreign contracting Government upon the establishment, in the constituted zone, of mixed tribunals with civil, criminal, and admiralty jurisdiction, which tribunals shall be composed of jurists named in equal number by each of the two Governments, and the laws and regulations which they may agree upon shall be in force.

8^a. It shall be the duty of the Colombian Government to maintain order, security, and public sanitation by means of police and the national army in the aforementioned zone of the canal; but Colombia shall be permitted to ask the loan of such service from the foreign contracting Government, and in such event the latter Government must render the service at its own cost.

9^a. And, finally, that the Bahía del Almirante shall be, in no case, included in the waters which are at the disposal of the contracting Government, and that the right is reserved to Colombia to utilize as seems best the present geographical communication between the channels of the Atrato and San Juan Rivers.

Article. The Government of Colombia shall stipulate in the treaty or convention a provision for forfeiture in the event that the concessioner does not begin or complete the work on the canal within the appropriate and sufficient periods that may be fixed for that purpose.

Article. It shall be expressly stipulated that any disagreement as to the meaning or interpretation of the treaty shall be settled by the arbitration of a nation friendly to both contracting parties.

Article. An as initial compensation for the granting of the right which is referred to in article —, and for the other rights and concessions authorized by this law, the contracting Government shall pay to Colombia, as a minimum, the sum of \$20,000,000 in American gold upon the exchange of ratifications of the treaty.

Article. If the negotiation shall be made with a private company or association, the bases shall be analogous to those of the contract entered into with the French company, and shall primarily stipulate the following conditions:

- (a) Recognition of the legislation and jurisdiction of Colombia;
- (b) Renunciation of diplomatic intervention in case of any claim not a denial of justice;
- (c) Forfeiture of the privilege for nonexecution of the work within the fixed periods;
- (d) Recognition in favor of Colombia of such shares in the enterprise as may be the estimated value of the works already made, of the machinery, fixtures, and tools of which the nation shall be the owner at the expiration of the extension granted to the Canal Company;
- (e) The complete acquisition of the enterprise gratuitously by Colombia at the termination of the one-hundredth year of the concession.

Bogotá, August 29, 1903.

Submitted by the undersigned members of the committee designated by his excellency the president of the Senate: Pedro Nel Ospina; Manuel María Rodríguez. Upon the recommendation of the honorable Senator Luis F. Campo, Pedro Nel Ospina.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, September 22, 1903. (Received 1.36 p. m., 23.)

September 22, 5 p. m. The proposed law concerning the canal treaty has not been discussed since the first reading. No new developments.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 150.]

LEGATION OF THE UNITED STATES,
Bogotá September 24, 1903.

SIR: The report of the committee with its project of law authorizing the executive to negotiate for the construction of an Isthmian canal has not yet been presented to the Senate since the first debate.

The legislative procedure in the Colombian Congress is as follows:

At the first debate the project of law is presented, and if it is a subject that the Senate desires to consider, it is passed. If rejected it is implied that the Senate does not wish to consider the matter at all.

If the project of law passes the first debate it is referred to a committee appointed by the president of the Senate. The committee is given a reasonable time to study the law and has the power to suggest amendments. When this committee reports the matter comes up for the second debate, and this is the crucial test. Aside from the report of the committee individual members may propose amendments, and there is a general discussion of the whole question. As the law comes out of this debate it will pass, for the third debate is but a matter of form.

The project then goes to the Chamber of Representatives, where the same rules are observed.

A law may originate in either the Senate or the Chamber, and may be introduced by any member thereof or by the ministers of the Government, and the ministers may take part in all legislative debates.

There is no provision for conference committees, but if amendments are made to a Senate law by the Chamber, it is sent back to the original body for further consideration.

As I have previously reported, the proposed law authorizing the Executive to negotiate for the construction of a Panama canal, passed the first debate in the Senate; it was then referred to a committee headed by Senator Quintero Calderón as chairman. That Senator has since been very ill, so that nothing has been done toward a report. Yesterday, the 23d instant, the president of the Senate appointed Senator Rivas G. as chairman of the committee to succeed Senator Quintero Calderón, and gave him five days in which to prepare a report.

According to the very best information that I can get at this time, there is very little probability of the law passing the second debate in its present form. The enemies of the Government and the canal treaty threaten to add amendments still more unfavorable to the United States, and that they will succeed I do not doubt. I had an interview this morning with Gen. Pedro Nel Ospina, one of the strong men of the Senate, and he, too, is of the opinion that modifications are certain to be made.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 154.]

LEGATION OF THE UNITED STATES,
Bogotá, September 25, 1903.

SIR: I have the honor to report some further details relating to the Panama Canal treaty.

A resident of the United States, and one not thoroughly familiar with the people of Colombia and especially of Bogotá and the interiors, can not understand the embarrassments and trials experienced by this legation during the course of the canal negotiations.

The difficulty of getting reliable information of the status of affairs has been almost insurmountable, because public opinion and the ideas of the leaders on both sides have varied and shifted with the succeeding days.

When Congress convened and the first votes taken in the Senate indicated that the Government had been sustained and that its friends were in the majority, most people believed that the treaty would be ratified.

As time went on and the Government did not use its influence in favor of the treaty, and the committee to whom it had been referred were twice given an extension of time for their deliberations, the long wait and inaction lessened public interest in the main question, and there was little discussion of it.

Then Senator Caro appeared upon the scene and commenced his violent assaults upon the Government, and the executive power began certainly and surely to lose ground. Again the public was aroused into vehement opposition to the treaty. During this period, and before there was an opportunity for another reaction, and before there was any real discussion of the merits of the treaty, it was presented and rejected.

While this latter period lasted it seemed impossible to get the expression of the real opinion of any of the senators, with the exception of Obaldia, Perez y Soto, and Velez. It is a positive fact that some of the most prominent senators avoided me because of the charges frequently made that bribery was being resorted to by the United States, and the consequent fear that if seen in conversation with the American minister they would be under suspicion. This was admitted to me after the rejection of the treaty.

Mr. Enrique Cortez was one of the two men who defended the treaty in public articles. Because I was seen making a social call at his residence, he was openly accused the next day of being in the pay of the United States minister. He afterwards intimated to my son-in-law that for the above reason he could not see as much of me and my family as he wished.

Of course these matters are unimportant, except that they show the annoyances and difficulties one has to contend with in this country, where, after all, the little things so greatly affect and influence the great ones.

The minister for foreign affairs was evidently as reluctant as others to express any opinion, and it was very apparent that he did not wish to discuss canal matters. About all I could get from him was that conditions were "very bad" or "a little better." I found the President much more inclined to tell me his hopes and fears on the question.

General Reyes said to me that he had advised the Government against forcing the ratification of the treaty in the early days of Congress, thinking it best to influence public opinion into a more favorable state before taking such action, and that this had been the Government's view. He realized that this course had been a serious mistake, for the reaction that they had anticipated had not come. His own actions had been influenced by these views, and it was only a few days before the rejection of the treaty that he came out in the open and advocated its ratification. I believe that he did the best he could after that, but it was too late.

It was in these last few days that the idea presented itself to members of the Government, General Reyes, and others, that it would be best to have the treaty rejected at the first debate, in the hope that such precipitous and unusual action would arouse the coast departments into vehement protests, send exchange up enormously, and so disturb the country that there would be a reaction of public sentiment which would enable them to either have the treaty reconsidered or to pass a law authorizing the President to complete the negotiations.

But their plans and anticipations were built upon sand. The reaction they hoped for did not come. The mere announcement that a joint congressional committee had been appointed to provide ways and means for the construction of a canal was enough to calm the public pulse, for the public has continued in the secure belief that the United States would never seriously consider any other route for a canal than that through Colombian territory; that she was abundantly able and would in the end concede to Colombia a much greater recompense in money and more favorable concessions generally; that whatever proposals the new committee would make would be accepted by the United States. With this belief abroad, the opposition to the terms of the proposed treaty has intensified rather than otherwise, culminating in the report of the joint committee now before the Senate.

With all this shifting and changing of plans and sentiments, it has been most difficult to forward to the department reliable information. I have several times been about to telegraph news which came to me from what should be absolutely authoritative sources, when further investigation convinced me that it was a myth; a theory of one day which would be abandoned the next.

In connection with the unreliability of the information given out by people in high places, I might mention that one day a prominent Senator told me very confidentially of a plan concerning the treaty that was to be carried out. Within an hour afterwards, a friend came to the legation, fresh from an interview with the same Senator, who had told him that a plan would be proposed in all respects different from the one explained to me. When I informed my visitor of my conversation with the Senator, he said: "Mr. Beaupré, am I going mad! or have these people all lost their senses? There is nothing but lies and lies! I walk two blocks to hear an important bit of news, and in the next two hear an entire contradiction, both coming from the same source." I should add that neither of the plans were ever acted on.

And so it has been from the beginning.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,

Bogotá, September 27, 1903.

(Received September 28, 1.12 p. m.)

September 27, 8 p. m. No change in canal matter. Second debate of projected law will probably be decisive, and this will occur within a few days. Additional amendments practically certain.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,

Bogotá, September 30, 1903. (Received 10.55 p. m.)

September 30, noon. The Senate commission appointed at the first debate on canal committee's report of September 12, to prepare the matter for second debate, have prepared their report, and it will be presented in a few days. It approves rejection of the treaty August 12, but disapproves the proposed law authorizing the executive to negotiate for the construction of a canal under mentioned conditions. The object is to leave the Government at liberty to negotiate a new treaty without restriction. There is a prospect that it will be adopted.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 164.]

LEGATION OF THE UNITED STATES,

Bogotá, September 30, 1903.

SIR: I have the honor to report that I have succeeded in obtaining from Senator Rivas G., chairman of the committee to whom was referred the report made to the Senate by the canal committee on September 12, the substance of the report which he will make in the next day or two. As I telegraphed to the department to-day, he will recommend the approval of the action of the Senate on August 12 in rejecting the Panama Canal treaty with the United States. He will also recommend the disapproval and rejection of the proposed law authorizing the President to make treaties or contracts for the construction of an Isthmian canal. This law was embodied in the committee's report made on September 12, and contained many provisions binding the President to a certain line of action, and prescribing the concessions which could be made, of which I have previously informed the department.

Senator Rivas said that by simply rejecting this proposed law, and adding no further legislation, the Government would be left at full liberty to negotiate, without restrictions, on such terms as could be obtained, and as would be honorable and just to the contracting parties. He felt confident that his plan would be accepted by the Senate and confirmed by the Chamber of Representatives.

If the Senate takes this step, and there seems to be a reasonable probability that it will, the canal matter will stand just as it did the

day after its rejection on August 12; or, in fact, as it did before the treaty was signed in Washington on January 22, 1903.

It is said, and generally believed in this city, that there is a project on foot among certain Senators to annul the arrangement entered into by the Colombian Government and the French Canal Company in 1900, extending the franchise and privileges of that company. Even men good enough to be candidates for President are advocating this action with all seriousness and solemnity. It is urged that Congress has full power to either annul or ratify the action of the Government in this matter, and that if the arrangement made extending the contract is declared null and void, the French company's rights and interests on the Isthmus cease to exist, and Colombia could then arrange with the United States to receive not only the \$10,000,000 offered her, but the \$40,000,000 offered the company.

The good or bad faith of such a movement is not of sufficient consideration to prevent an attempt being made to carry it out, and were it not for one important element in the situation, it is quite among the possibilities that it would be successful.

Senator Caro and his followers are powerful factors in the present Senate. Senator Caro was an intimate friend and advisor of President Sanclemente, under whose administration the franchise of the French company was extended, and it is quite certain that he will defend that administration to the extent of his ability. He would probably favor any investigation or action tending to the detriment of the present Government, but not any retrospective measure censuring the previous Government. As the situation now is, any project seriously opposed by him would stand little chance of success.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, October 9, 1903. (Received October 14, 2.10 p. m.)

The report of the committee referred to in my telegram of September 30 will be presented this afternoon. Informed the principal recommendation will be to annul the arrangement made with the canal company in 1900 extending its concession. By such action Colombian Government evidently hopes to renew the negotiations without any reference to company, and by this means United States of Colombia would be enabled to accept the money compensation otherwise accruing to the company.

Will advise further as soon as I can see report.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, October 10, 1903. (Received October 14, 2.59 p. m.)

October 10, 1 p. m. Presentation of the committee report postponed until 12th. My telegram of September 30 states the first two

clauses of the report. The third and last presents a project for law approving extension in time granted canal company. Apparently this is proposed with the expectation that the Senate will negative the project and annul extension, thus accomplishing the object stated in my telegram, 9th. However, I think in case most of them vote, extension in time to the company will be annulled. The probability is that Congress will adjourn without taking conclusive action on this report.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 176.]

LEGATION OF THE UNITED STATES,
Bogotá, October 10, 1903.

SIR: I have the honor to make reference to my telegrams of yesterday and to-day concerning the probable terms of the report to be presented by the commission of three Senators to whom the project of law authorizing the Government to negotiate for the construction of an interoceanic canal across the Isthmus of Panama was referred.

I had been given to understand that this report was to be presented and discussed yesterday, the 9th instant. On sending to the Senate, however, I was told that the canal question would not be brought up, and several Senators informed me that they were not even aware of the terms of the report, but that the question would in all probability be brought before the Senate on Monday next, the 12th instant.

My only source of information was therefore of an entirely private nature. Through ——— I obtained a summary, the substance of which was contained in my telegram to the department.

As I telegraphed the commission has decided that there is no need for the rejection of the treaty to be reaffirmed by the Senate; that neither is it advisable to pass the special law authorizing the Government to conclude a fresh treaty for the construction of an isthmian canal on certain basis, thinking it best not to tie the hands of the Government with hard and fast conditions. Lastly, the commission suggest that the Senate should settle the question of the extension of time to the New Panama Canal Company and present a project of law approving the action of the Colombian Government in this matter.

With regard to this extension of time, known as "proroga," there is no doubt that many people high in authority have cherished the hope that some means might be found to undo this act of the Sanclamente Government. The feeling of the Bogota public on this question is, moreover, very patent. The have been led to believe through the medium of the press that, could the "proroga" be annulled, Colombia would thereby inherit the whole of the money compensation otherwise accruing to the French company. However, as I reported in my No. 164 of September 30, 1903, I am informed that there is no danger of this taking place. Such men as Senators Caro, Pedro Nel Ospina, and even Perez y Soto thoroughly realize that the preceding Government and this one are equally involved in the "proroga." The Sanclamente Government agreed upon the grant of an extended time limit, while the Marroquin Government received the 5,000,000 francs, the price paid for that exten-

sion. Besides, it is the view of these senators that the "proroga" was a contract concluded in good faith between the Colombian Government and the canal company, and to rescind this contract will need the consent of both parties to it. It is, therefore, thought that while the "proroga" may be used as a means of bringing up a discussion in Congress with the view to censuring the Government, no act of that body can have the effect of annulling the extension contract without the consent of the other party to it—the New Panama Canal Company. Because of the attitude of these and other senators, there is decided ground for believing that this project of law approving the extension will be passed.

Monsieur Mancini, the local agent of the canal company, is taking an active interest in this matter, and takes every opportunity to impress upon the Senators the fact that even should the contract now held by the French Company lapse, the Colombian Government would be no better off than they are at present, for the reason that, in such event, all the material would remain the property of the French Company, leaving the Colombian Government merely in possession of the ditch itself. The Panama Railroad, however, remains. Since the French Canal Company owns the majority of the shares in that railroad, it has practical control of the undertaking. Now, the canal works have been carried on within the zone of territory controlled by the railroad company, and could only be continued subject to the consent of that company. Therefore, even though the concession held by the French Company lapse, that company nevertheless retains control of the territory, and its previous consent would be required before the Colombian Government could dispose of its rights over the canal zone.

Monsieur Mancini informs me that he had made this point clear to the principal members both of the Government and of Congress, and that many concur in his views. Moreover, that some time before the rejection of the Hay-Herran treaty, he wrote to Mr. Cromwell informing him that in all probability an attempt would be made to override the rights of the French Company and to call in question the validity of the extension of time granted to it. To this he received no reply beyond the mere acknowledgment of his message, and his only instructions have been not to move in the matter at all. He therefore concludes, so he told me, that the United States Government and the French Company have arrived at some satisfactory understanding.

I desire to take this opportunity to state that my position during the whole course of the canal negotiations has been a most embarrassing one. I have thoroughly realized what must have been the anxiety of the department to be well informed of the progress of events. And yet, although it is nearly four months since Congress met, there have been but four or five days during which the canal question was considered, from the initiation of the discussion up to the present time. I have kept in touch with the principal members both of the Government and Congress, and whenever I have succeeded in getting any reliable news, which has not been often, I have reported it. During the long intervals between the days above mentioned there was really nothing to report, except street gossip and wise people's predictions. I have, therefore, had to choose between adopting the attitude of the newspaper reporter and forward such as news, or limit

myself to the scanty facts I was able to gain from authentic and official sources. I chose the latter course. When I did obtain information which I deemed of sufficient importance to cable, I have had the misfortune to have some of my most important messages mutilated in transmission.

During the long interims, when the canal treaty was buried with inactive committees, there was apparently an absolute lack of interest in the matter on the part both of the Government and Congress. One would have thought that the question was some matter of trivial or temporary importance to judge by the attitude in official circles. During one of these periods, when Congress was devoting its attention to resolutions concerning prominent individuals who were killed in the late revolution, the Liberal daily *El Comercio* said:

"Cover with laurels dead heroes, praise the memories of your illustrious men, make panegyrics over this who have served in your cause; all this is very well, and we do not wish to discuss it; but, Mr. Legislators, why sing songs of love to God over these things when you ought to consider the great questions which compromise the tranquillity and life of the Republic?"

Except then, on the few days heretofore mentioned, there was no reliable or satisfactory information to send to the department.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, October 15, 1903. (Received 6.20 p. m., 18.)

The report of the committee referred to in my telegram of the 10th has been read in the Senate, was ordered printed, and will probably be discussed next week. It is true that the committee proposes a project for law ratifying the time extension granted canal company, but the tone of report clearly gives to understand that Colombia would greatly benefit by the canceling of the extension, and states that in that case Colombia would next year obtain possession of all the rights and properties of the canal company [and] thereby be free to come to terms with Government of the United States under most advantageous circumstances. The committee provides for the case of the annulment of time extension by recommending the appropriation of the necessary sum for the repayment with interest of the 3,000,000 francs paid by the French company.

In view of developing sentiment, my opinion of final result is less decided than stated in my telegram of 10th.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 179.]

LEGATION OF THE UNITED STATES,
Bogotá, October 16, 1903.

SIR: I have the honor to report that in compliance with the request contained in a newspaper article written by Dr. Emilio Ruiz Bar-

reto, that the candidates for the presidency should publicly express their views on certain named questions of national interest, Gen. Joaquín F. Vélez publishes a signed communication in to-day's issue of *El Nuevo Tiempo*.

It is apparent that General Vélez will be the candidate for President to be named in opposition to the one selected by the Government, for he has demonstrated far more strength than anyone else mentioned. As the election will take place on the first Sunday of December next, it becomes interesting to know General Vélez's views on the Panama Canal question, and I inclose herewith a copy and translation of that portion of his communication dealing with this subject.

General Vélez has some very remarkable ideas concerning public construction, the duties of foreigners, etc., some of which he very freely expressed when he was governor of the Department of Bolívar in a letter addressed to Mr. George Colvig, United States consul at Barranquilla, on February 11, 1902.

A copy of this letter was set to this legation by the Department in its No. 385 of March 26, 1902,¹ as one of the inclosures in a letter from the Board of Foreign Missions of the Presbyterian Church in the United States, dated March 19, 1902, and I respectfully refer to it.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Translation.]

Overcoming numerous difficulties, I have assisted at the late sessions of the Senate with the main, if not the sole, object of voting against the Hay-Herran treaty, as I was rejoiced to do at the celebrated session of August 12, a session at which that august body rejected that treaty in first debate and by a unanimity of votes. That treaty was a violation of our fundamental institutions, of the sovereignty of our nation. I say, therefore, that any other project respecting the building of an interoceanic canal presented to the Senate and having implicitly or explicitly any of the numerous mistakes which rendered the treaty in question unacceptable to the common sense and dignity of Colombia, will always receive my adverse vote. The integrity of its territory, the attributes of independence and sovereignty, and other important points which form the principal constituents of a civilized country are absolutely inviolable. This is a universal and unalterable canon which may not be altered out of false considerations of worldly or territorial purposes, and still less for a certain kind of pessimism engendered by errors and false views in governments or by vile speculation. Nations, like families, in their development and growth, must use their own forces without defiling the natural laws of growth with exotic stimulants, which paralyze or unnerve even when they do not ruin. Foreign aid will be beneficial under our own intelligent and well-supported direction. Our beautiful country will surely acquire in epochs that are, who knows, not far off the tranquillity and maturity, the practical spirit and the political wisdom, which nations of all races have been without for long periods of time; nations which, while certainly being models of culture, have been powerless to do good.

Of life-giving wisdom there is more than enough; all that is wanting is a man of superior talents who will put that knowledge into practice. In one word, I desire, as do many of my countrymen, that any canal that shall cross our isthmus shall be for all time, in the rigorous significance of the word, a Colombian canal; and if it is not to be a Colombian canal, that it shall not be constructed. Better times will come which will admit of the carrying out of that gigantic work without detriment to the national existence, and in a way satisfactory to the sentiments of patriotism.

¹ Published in Foreign Relations, 1902, p. 293.

Mr. Beaupré to Mr. Hay.

No. 181.]

LEGATION OF THE UNITED STATES,
Bogotá, October 16, 1903.

SIR: I have the honor to inclose herewith a copy and translation of the report of the committee to whom was referred the project of law authorizing the Executive of the Republic to negotiate for the construction of a Panama canal. This report was read in the Senate on the 14th instant.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Inclosure with No. 181, October 16, 1903, from Mr. Beaupré—translation.]

MAJORITY REPORT OF THE PANAMA CANAL COMMITTEE.

Honorable Senators:

Colombia desires the construction of a canal via the Isthmus of Panama that will bring the two oceans into communication with each other. Since it became independent our Republic has considered such a work as an enterprise of universal progress. In 1825, at the initiative of this country, an effort was made to organize a company for this purpose. In 1828 and 1829 the liberator president gave wise and precise orders looking to the construction of a canal, and to that end a scientific commission began the work, made a survey of the route, and explored the entire distance between the two oceans.

On the 27th of May, 1835, the Congress of New Granada issued a decree for the development of the enterprise, granted a privilege to Baron de Thiérri, and in 1838 sanctioned a legislative decree making a concession to the company organized in France and New Granada.

After several years of exploration, the reports of the company were so satisfactory that the Government of France appointed, in 1843, a special commission which finished its examination with the most hearty support of the Government of New Granada.

We deem it unnecessary to enumerate here the successive efforts and concessions which, during seventy years, seconding the initial thought of the liberator, Colombia has made in behalf of the interoceanic canal.

We will recall, in passing, some of the various official acts designed to promote the work.

Decree of Congress in 1835; legislative decree of 1838; decree of Congress in July, 1842; legal convention of 1851; official instructions of 1843; law 60 of 1866; treaty of January, 1869; congressional instructions of 1869; treaty of January, 1870; law of approval, July, 1870; law of authorization, 1876; treaty of May, 1876; treaty and law of approval, 1878; extension granted by law 107 of 1890; new second extension granted by law 91 of 1892; contract for extension, April, 1893; legislative decree granting extension in 1900.

As is seen, Colombia, by solemn public acts, has shown that she considers the construction of the canal as a great national work and as a necessity for the commerce of the world. Although the Senate unanimously rejected the Herran-Hay treaty, it did so not with a view to opposing so glorious and necessary a work, but from the fairest and highest motives.

The foreign press affirms our right to reject said treaty, and it is recognized by the chairman of the Interoceanic Canal Committee. That remarkable public man who for more than a quarter of a century has fought for an interoceanic canal controlled by the United States, hearing of the rejection, expressed his views as follows:

"If the Colombian Congress has rejected the treaty, it is because that country respects its constitution, is mindful of the integrity of its territorial limits, desires to maintain its friendly relations with the United States, and is watchful of its financial interests. All this will raise that Republic in the estimation of other peoples and nations."

We will now examine the bill ratifying the rejection and authorizing the Government to negotiate for the construction of an interoceanic canal via the Isthmus of Panama.

As is seen, the said bill has two objects, viz. to confirm the Senate's rejection of the treaty between the Republic of Colombia and the United States of America, concluded at Washington January 22, 1903, and to invest the President of the Republic with such powers as will enable him to conclude public treaties or conventions relative to the Panama Canal or to contract for the same work with private companies.

We consider that the first object is not only superfluous, because the rejection by the Senate is based upon constitutional provisions to which an authentic interpretation has been given and which have constantly been put into practice in the same sense, which interpretation and practice render the rejection sound and correct in the form in which it was made, but also that the new form of ratification which is proposed would introduce a doctrinal theory different from that already established and accepted for seeking to decide a special case of grave import, to which, for this and many other reasons, it would be wholly inapplicable.

In fact, it is a constitutional provision that every proposed law by means of which the legislative houses exercise, or seek to exercise, their powers in conformity with article 76 of the constitution, may be rejected in any of their debates, thereby fulfilling the negative in contrast to the positive form, both of which are the outcome of the twentieth provision of said article.

If this were not so, the members of the houses would be deprived of the necessary freedom in their opinions and votes, and both would cease to be deliberative bodies.

The authentic interpretation to which we refer is contained with great clearness in article 323 of the rules of the Senate, identical with article 322 of those of the house of delegates, which we here insert:

"As it is not possible for a treaty to be constitutionally approved otherwise than by Congress, with the sanction of the Executive, but as it may be rejected by the Senate or House of Representatives, like any other proposed law, according to the constitution, if any decree should come from the House of Representatives totally and absolutely rejecting a treaty, it shall return it, stating that the Senate is apprised of its rejection."

When the said article 76 of the constitution provided that the Congress should exercise by law the powers enumerated in that article, among which is the power to approve or reject public treaties, it tended to prevent the exercise of those powers, notwithstanding the prohibition contained in paragraph 2 of article 78 of the same constitution, by means of simple resolutions, but it did not pretend to compel the legislators to vote in a determinate sense or to pass laws, even those most necessary.

The second object of the proposed law concerning authorizations consists in finding a way to satisfy the desire of the Colombian people regarding the excavation of the Panama Canal in harmony (says the proposition approved by the Senate on the 13th of August last) with the national interests and respect for law, which has been on this solemn occasion the guide of the Senate.

Your committee considers that the proposed law relative to authorizations is unconstitutional. Article 120 of the constitution says:

"It shall be the duty of the President of the Republic, invested with the supreme administrative authority * * * 10. To direct diplomatic and commercial relations with other powers and Governments * * * and to conclude treaties and conventions with foreign powers. Treaties shall be submitted to Congress for approval and conventions shall be approved by the President during the recess of Congress, with the advice and consent of the ministers and council of state. The proposed law shall not modify the provisions of the constitution."

Besides, that law is not only unconstitutional, but fails to meet its object because the instructions which would be given to our diplomatic agents, instead of being necessarily confidential, would be public, and known to the other Government or to the contracting company, which would consequently have an indisputable advantage in the case.

Furthermore, the Senate does not overlook the fact that if this law concerning authorizations should be passed, and if the Executive, basing his action upon it as upon a firm basis, should expedite a negotiation and conclude a treaty, he would perhaps give occasion to the power with which the treaty was concluded to complain, subsequently, that a Congress had rejected what this Congress and the Executive branch of the Government had presented as a basis of negotiations.

Moreover, the matter being carefully considered, no negotiations could, in any case, be properly carried on upon the bases that would be presented to this Congress by that law; and the law would not have the serious and efficient character which every law ought to have.

Your committee thinks that this law is not only unconstitutional and ill adapted to meet its purpose, but that it is unnecessary. The constitution which has provided for the independence of the different branches of the Government, thus consecrating a principle which has been recognized since the adoption of the constitution of 1811, has also traced limits for those branches, and, although it leaves to the Executive the power to conclude treaties, it makes it absolutely obligatory upon him at the same time to submit them to the legislative branch for its approval. Article 57 says: "All branches of the Government shall be limited, and shall exercise their respective powers separately." And article 76 says that it shall be the duty of the Congress "to approve or reject such treaties as the Government may conclude with foreign powers."

Even if a law concerning authorizations should be passed, the treaty that should be concluded in virtue thereof by the Government would necessarily have to be submitted to the approval of another legislature, which might fail to pass it.

What would, therefore, be gained by a law that would give no force to the treaty which would be concluded on the bases and authorizations which it contained?

We present these abstract considerations, and they would all be pertinent even if the Executive were free to conclude treaties looking to the construction of the Panama Canal, but it is known that the Government of Colombia is not at liberty to do so; a contract exists which binds it, and this link has not been broken.

This is, in our opinion, the greatest obstacle to the law in question, which would be premature if not calculated to defeat its own object. We think it useless to demonstrate that the fundamental point to which the attention of the Senate should be confined is the one relating to the validity of the engagement already contracted by the Government.

The Herran-Hay treaty has ceased to exist, both because of its unanimous rejection by the Senate and because the time for the exchange of its ratifications, the 22d of September, has already expired, without any extension having been provided or asked for. Consequently the state of the case is the same that it was before the conclusion of the treaty. The first condition therein established was the permission granted to the new company to transfer its rights. The Senate having refused to accept this condition, the company has remained under obligations to fulfill its contract, and the Colombian Government is still under obligations to respect all its provisions and to cause them to be respected.

How can it be asked that Congress shall enact a law of authorizations to negotiate with a foreign government when the rights and privileges of the New Panama Canal Company are still in force?

The treaty concluded April 4, 1893, which amended those of March 23, 1878, and December 10, 1890, granted to the New Panama Canal Company an extension of ten years—that is to say, until December 31, 1904. Consequently, even without a new extension, the company will be in the full enjoyment of its rights and privileges until October of the coming year. But there is another consideration: The legislative decree No. 721 of 1900 granted to the company a new extension of six years, which begins to be reckoned next year and will end October 31, 1910.

One point now remains to be examined, which has so often been discussed by the press, a point which, now that the matter is under discussion, should be defined.

Is the extension granted by that legislative decree valid or not? In the first case—that is to say, if it is considered valid—seven years must elapse before the extension expires, and therefore any law concerning authorizations seems premature, as three sessions might still be held which would be able to examine the matter and to legislate concerning it with better data and evidence than the present Congress has; and if the extension is not valid, the aspect of the question changes entirely, and the basis of discussion will be quite different. By the 31st of October of next year—that is to say, when the next Congress shall have met in ordinary session—the extension will have expired and every privilege with it. In that case "the Republic will become the possessor and owner, without any need of a previous judicial decision and without any indemnity, of the canal itself and of the adjuncts that belong to it, according to the contracts of 1878 and 1900."

When that times arrives, the Republic, without any impediment, will be able to contract, and will be in more clear, more definite, and more advantageous possession both legally and materially. The authorizations which would then be given by the next Congress would be very different from those that can be given by the present one.

It is seen, therefore, that it is the duty of Congress to decide, as a previous question that can not be shirked, concerning the validity of the extension granted in 1900. We venture nothing on the subject, and we respect, in advance, the decision of Congress in so delicate a matter. Supposing that it does not ratify said extension, it is well to observe now that it would be necessary to include in the budget the appropriation that would be necessary to repay to the company the sum of 5,000,000 francs with interest.

In view of all the foregoing, we conclude our report by laying before you a draft of a law whereby a contract is approved, and by submitting to your consideration the following:

Let the discussion of the draft of a law whereby a rejection is ratified and authority is granted to the Government to negotiate for the construction of an interoceanic canal across the Isthmus of Panama be indefinitely postponed.

Honorable Senators:

GUILLERMO QUINTERO CALDERON.
J. M. RIVAS GROOT.
LUIS MARIA CALVO.

Mr. Beaupré to Mr. Hay.

[Telegram.]

LEGATION OF THE UNITED STATES,
Bogotá, October 17, 1903.
(Received October 19—2.20 p. m.)

Have received information, confidentially, that there was a meeting of the cabinet yesterday to discuss the question of renewing canal negotiations with the United States and that the adjournment of congress will be followed by the mission of special envoy to Washington for that purpose. The president's message dissolving the congress will be delivered probably before 30th instant.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 183.]

LEGATION OF THE UNITED STATES,
Bogotá, October 19, 1903.

SIR: I have the honor to inform you that during the evening of the fateful 12th of August last, on which day the Hay-Herran treaty was rejected by the Colombian senate, I sent the department three telegrams concerning the matter. Two of these reached the Department with an interval of about a week between them, but the third, the one of most timely import of all, was never received, or at least has not been acknowledged. This telegram was sent at 10 o'clock p. m. of that day and was confirmed in my No. 104 of that date.

I beg that the department will accept the cipher dates of my telegrams as in all cases correct. The open date given by the telegraph office is made to suit its convenience.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 185.]

LEGATION OF THE UNITED STATES,
Bogotá, October 20, 1903.

SIR: I have the honor to inform you that it would be of great utility and satisfaction to me to be kept posted as to the course of events on the Isthmus, and, if not inconsistent with the rules, I would be glad to have it arranged so that our consular officers at Panama and Colon could send me copies of their dispatches to the department on the political situation, and that the consul-general at Panama could telegraph me whenever anything of unusual importance occurs.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 186.]

LEGATION OF THE UNITED STATES,
Bogotá, October 21, 1903.

SIR: I have the honor to inform you that there is no disguising the alarm existing as to the possible action of the Government of the United States should the feeling of disaffection undoubtedly existing in the Department of Panama find expression in overt acts. This alarm took the form of a heated debate in the Senate yesterday when the Government was again attacked for the appointment of Señor Obaldia as governor of Panama. The reply elicited from the minister for foreign affairs was rather significant. He read an extract from the treaty of 1846, in which the United States guaranteed Colombian sovereignty on the Isthmus, and assured the Senate that in case of an insurrection in the Department of Panama the United States would be bound to support the Government.

In the course of this debate Señor Caro said that the minister for foreign affairs had the notes of the American minister read to the Senate, in secret session, with the object of convincing that body of the necessity of accepting the Hay-Herran treaty, in view of the menacing attitude outlined in those communications. Finding in that secret session that the Senate disapproved the treaty and was determined to act accordingly, the Government, through Senator Lorenzo Marroquin, its spokesman, obtained a resolution demanding that those notes be read in public session, with the object of making it appear that the rejection of the treaty was influenced by a sentiment of indignation at the threatening attitude assumed by the United States minister. This comedy became known to the Government of the United States, and it has resented it. He was not influenced, generally, by what was reported in the newspapers, but the statement universally given expression to in the press of the United States that the Washington Government resented the criticism made against the United States minister in carrying out the orders emanating both from the President and Secretary Hay can not be without foundation. This was only one instance proving that the Colombian Government had not acted in good faith in these negotiations. The refusal on the part of President Marroquin to sign the treaty

before presenting it to the Senate was another. Whatever reasons the Government adduced as to there being no necessity for such a signature was outside the point. The intention was clear that the treaty was not signed because the Government wanted to have a loophole whereby to escape their obligations to the United States. In other words, it did not want to be under the obligation of coming forward to defend and support a treaty which was signed by its order. It was bound in good faith to the United States to do so. It was for Congress alone to accept or reject it. Had such a course been followed there would have been no reason to look forward with alarm to the attitude which the United States might adopt. The Colombian Government had nothing to fear from the United States had it clearly done all in its power in supporting the treaty. No responsibility would then have attached to this country for the rejection of the treaty by Congress, a body which had the perfect right to reject or accept as it pleased. What he feared was that the United States might take the Isthmus from us under the just plea that we had acted in bad faith with them. The only strength which a small nation has is its good faith.

In reply the minister for foreign affairs said that the press of the United States was given entire liberty of public discussion, but that the statements made therein were not always to be accepted as entire statements of fact. That he had just received positive information that no resentment was entertained by the Washington Government for this Government's action in having Mr. Beaupré's notes read.

The report of the committee on the canal question, which was read in the Senate on the 14th instant, has not yet been called up for discussion. As a matter of fact, the Government and Congress are playing a waiting game. At various times it has been announced authoritatively that the Congress would adjourn at a given date, but thus far there have been timely reconsiderations and other dates fixed. Last week it was said that the President had certainly and definitely concluded that an adjournment must take place on the 30th instant, now that it has been determined that the closing day shall be the 14th proximo.

As a matter of fact, the Government and the Congress have waited and are waiting to ascertain, if possible, the final attitude of the Government of the United States concerning the canal matter before the life of this Congress is ended.

An effort was made by the Government to falsely place the blame for the rejection of the Hay-Herran treaty upon the notes addressed by this legation to the minister for foreign affairs, and the result was awaited in the belief that this view would be accepted by the Government of the United States. This attempt failed; the situation is disturbing; and now the further delay is, quite apparently, for the purpose of awaiting the action of President Roosevelt in his message to the special session of our Congress which is to meet, it is understood here, on the 9th proximo, and the attitude of that Congress upon receiving the President's message.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Hay to Mr. Beaupré.

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 22, 1903.

Referring to your telegram 17th, if you find disposition on the part of Colombia to ask terms more favorable to Colombia than those heretofore negotiated, you may intimate orally, but not in writing, that it will be useless to send a special envoy.

HAY.

Mr. Beaupré to Mr. Hay.

No. 188.]

LEGATION OF THE UNITED STATES,
Bogotá, October 23, 1903.

SIR: Referring to my No. 160¹ of September 29, 1903, concerning the taxes and charges on shipping at Panama, I have the honor to inclose herewith a copy and translation of a note from the minister for foreign affairs on the subject.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

[Inclosure with No. 188, October 23, 1903—Translation.]

MINISTRY OF FOREIGN RELATIONS,
Bogotá, October 19, 1903.

MR. MINISTER: On account of the presence of an alarming degree of bubonic plague in various points on the Pacific coast it was determined to use a Government ship for a lazaretto in the Bay of Panama, and in accordance with law 106 of 1892, authorizing the organization of the sanitary service in the marine ports of the Republic in time of peace and placing an extraordinary contribution on the boats which arrive in Colombian ports, the governor of the department, using these legal rights, issued the decrees of June 24 and August 4 of this year, by which a tax was temporarily levied on boats of more than 1,000 tons register arriving in the ports of Panama and Colon, proceeds of which were to defray the expenses of that lazaretto. The urgency of the case prevented notice of such police measures being given to the public sooner than their insertion in the official publication.

The ports of Panama and Colon being united by rail, the same measures taken in either of these benefit the other and are taken not only to attend to transit sickness and to avoid contagion, but to favor navigation in both oceans. This shows how fair it is that not only the ships arriving at Panama but also those entering Colon should pay the tax for the plague hospital.

To facilitate foreign commercial relations as those of importation, exportation, and transit, etc., which are or are not permitted to be executed in the ports of the Republic, the law divides these into free and closed ports.

The designation of free ports does not come from any international pact, neither does it signify that the vessels arriving in those ports are exempt from the payment of taxes or contributions. In the binding treaty between Colombia and the United States it is stipulated that the citizens of each of the contracting parties may frequent all the coasts and territories of the other, and reside therein and do business in all classes of productions, manufactured goods, and merchandise; that they will enjoy all the rights, privileges, and exemptions in navigation and commerce which the citizens of that country enjoy or may enjoy in accordance with the laws, decrees, and uses established there, and that no other or higher duties will be levied on the tonnage of the respective ships.

¹ Not printed.

The free transit of the Isthmus of Panama is conceded to the citizens of the United States and the transport of their products, manufactures, or merchandise of lawful commerce without the imposition of other taxes or contributions other than those placed on the natural products of the country (Panama) under similar circumstances.

There are these advantages of an equal treatment, and there is no other in favor of the ships of the United States.

In the polite note of September 29 last your excellency informs me that you have received a protest from the vice consul general of the United States against the taxes and contributions on shipping levied in the port of Panama, and especially against said decree No. 91.

In reference to the different points treated of in said note, in which your excellency is also pleased to express the hope that means will be taken in the matter, I have the honor to inform your excellency, in addition to what I have expressed in this note, that according to the information which has been given me in this matter, it is hoped that in a short time all fears of the invasion of the bubonic plague on the Isthmus will have ceased, and immediately the tax levied for the lazaretto will be rescinded.

I avail myself of this opportunity, etc.,

LUIS CARLOS RICO.

His Excellency A. M. BEAUPRÉ, etc.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,

Bogotá, October 23, 1903.

(Received October 24, 5.23 p. m.)

October 23, 11 a. m. The report of the committee not yet discussed. It appears to me the Congress is playing a waiting game, evidently with the object of ascertaining attitude of the President of the United States in his message to the extra session of Congress and of that body. It is said that Congress will not adjourn until 14th proximo. Minister for foreign affairs gives me private information that at the next meeting the Cabinet will again discuss canal question, it being proposed to send an envoy extraordinary and minister plenipotentiary and also a commission of three prominent men to Washington to renew negotiations.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,

Bogotá, October 27, 1903. (Received 10.15 p. m., 29.)

October 27, 7 p. m. Report of the committee was discussed to-day in the Senate. Only four Senators spoke. Caro opposed the proposed law authorization as unconstitutional, on the ground that any future action which the Government might take and was free to take was subject to approval of future Congress, and that this Congress has no right to bind the action of the next one. He strongly denounced the treaty itself and the selfish motives of the United States in desiring such a treaty. Senator Groot, one of the authors of the report, spoke in the same tone. Senator Ospina defended the pro-

posed law of authorization. Finally Senator Arango, after pointing out the futility of the proposed law, which was only the treaty with modifications which the Government of the United States has declared unacceptable, proposed that the discussion of the whole matter be postponed indefinitely, as there was no time for the Senate to discuss it. The Senators appeared to agree to the proposal, but the presiding officer closed the debate without vote having been taken. Action may be taken to-morrow or, as is also probable, the matter may be allowed to drop entirely. Congress will adjourn on the 31st instant.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, October 29, 1903.
(Received 6.55 p. m., November 6.)

October 29, 1 p. m. Please give instructions to consul general at Panama; keep me advised by cable matters of consequence.
Canal situation unchanged.

BEAUPRÉ.

Mr. Hay to Mr. Beaupré.

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 30, 1903.

You may avail yourself of leave of absence under authorization cabled to you July 9.

HAY.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION AT BOGOTÁ,
October 31, 1903. (Received November 6, 1903.)

Congress adjourned to-day. No action has been taken upon the last report concerning the canal. Therefore nothing more than the vote of August 12 rejecting treaty done.

The people here in great anxiety over conflicting reports of secession movements in the Cauca and Panama.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, November 1, 1903.
(Received 7.15 p. m., November 8.)

November 1, 10 a. m. The Government issued manifesto to the nation to-day severely criticising acts of Congress and discussing

important questions which have been presented and unsatisfactorily dealt with. With regard to canal, states that Colombian chargé d'affaires has been instructed to inform the Government of the United States that the Colombian Government would consider new negotiations, which it is believed will be accepted by the next session of Congress. Therefore, if the Government of the United States still desires to open canal, which it is presumed that it does, as neither by act nor word has it shown any other intention, it is to be hoped that the great work will be carried out in the end through Colombian territory.

I took the opportunity of informal visit to the President yesterday to inform him of substance your cipher telegram October 22.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 199.]

LEGATION OF THE UNITED STATES,
Bogotá, November 2, 1903.

SIR: I have the honor to report that the extraordinary session of the Colombian Congress was adjourned at half past 2 o'clock on Saturday the 31st ultimo.

In so far as the Hay-Herran treaty for the construction of a Panama Canal is concerned, the only definite and recorded action of this Congress is the vote taken on August 12, 1903, rejecting that treaty.

Under article 76 of the Colombian constitution, Congress can exercise its functions in certain cases by the enactment of laws, and in that way only. Thus it is that when such matters are presented, whether by individual members, ministers of the Government, or by committees, they are accompanied by what is termed "projects of law." Under section 20 of said article 76 of the constitution, the Congress, by making a law for that purpose, may "approve or disapprove the treaties entered into by the Government with foreign powers." The vote taken in the Senate on August 12, 1903, rejecting the treaty, is not understood to have been a legal or constitutional disapproval of that pact. It was, in effect, an expression of opinion; but since no other action on this question was taken, and the treaty was not approved within the time fixed for the exchange of ratifications, it has died by limitation rather than by any legal enactment of the Colombian Congress.

It has been understood for some time that in all probability no further action would be taken by Congress in this matter, and when it was finally brought up in the last days before adjournment it was more for the purpose of giving vent to individual opinion than anything else.

On Tuesday, the 27th ultimo, the report of the committee on the project of law authorizing the President to negotiate for the construction of an interoceanic canal was brought before the Senate for discussion. Four senators spoke during the debate.

Senator Caro opposed it on the ground that to grant an authorization to the Government to conclude a treaty, on certain bases, was an absurdity. It was impossible to limit the power of the Executive, who could conclude any treaty it pleased and submit it to the next

Congress. This project of law was, moreover, an unconstitutional one, as this Congress had no right to arrogate to itself the powers and privileges which would legitimately fall to its successor. He then turned to the attitude of the Senate on the canal question. It had been correct on the main point from the beginning. Mistakes there had been, but they were mistakes of which the Government and not the Senate had been guilty. The first great error had been the reading of the correspondence which had passed between the United States minister and the minister for foreign affairs prior to the rejection of the treaty. It had made it appear as if the Senate had rejected the treaty as a protest against the attitude of the United States, and this was tantamount to a reflection on the conduct of President Roosevelt and his Secretary of State, under whose instructions their representative in Bogota had acted. This was how the matter had been viewed in the United States. In support of this statement he quoted various extracts taken from United States newspapers. Among these was an interview by Walter Wellman, who, Senator Caro stated, was well aware of the opinions held by the Department of State. He then emphatically stated that the reading of the American minister's notes had nothing to do with the action taken by the Senate with regard to the Hay-Herran treaty.

The Senate rejected that treaty because its terms were a violation of the constitution and harmful to the interest of the Republic. No reflection could be cast on that body for its action, but the minister for foreign affairs, in causing the notes to be read, had made it appear that the Senate was actuated by motives which did not exist. The second great error committed by the Government was the appointment of Señor Obaldia to the governorship of the Department of Panama. The election of General Reyes to the Presidency of Colombia meant the election of a Congress next year pledged to pass whatever canal treaty the Government should present. Señor Obaldia was therefore a supporter of the candidacy of General Reyes, and it was for this reason that he was appointed governor of the Isthmus. But Señor Obaldia was before all an isthmanian, and he was known to have said that should the department rise in favor of the canal he would be with Panama. Therefore the Government had for electioneering purposes endangered their possession of the Isthmus. He read to the Senate an extract from the New York Herald, containing an interview with Governor Obaldia, in which the above-mentioned facts were stated, and in which Señor Obaldia said that, before leaving Bogotá, he had had several interviews with the American minister, to whom he had communicated these facts, which Mr. Beaupré had doubtless telegraphed to his Government. The reading of this extract caused much excitement. Senator Caro pointed out that whatever the views of President Roosevelt may be, this much was certain, he had no intention of adopting the Nicaragua route. The only possible explanation of the present inactive attitude of the United States Government was that events on the Isthmus were being watched. Senator Caro then, for the first time, openly attacked the policy of the United States Government. Colombia was told that the construction of the canal was essential to the commerce and, therefore, to the progress of the world, and that she should not, therefore, stand in the way of so important an undertaking merely because of

the loss of sovereignty over a small strip of territory. But why, he asked, did the United States wish to deprive Colombia of her sovereignty? It was because the United States wanted the canal for themselves, and not for commerce and civilization.

Senator Rivas Groot, who had reported to the Senate against the granting of authorization to the Government to conclude a canal treaty, then spoke, supporting the views expressed by Senator Caro.

Senator Pedro Nel Ospina's speech was devoted to an explanation and defense of the law of authorization which he had drawn up. Neither of these speeches had any special significance.

The day's debate was, however, closed with an important speech by Senator Arrango, which was the outcome of a tacit understanding with the majority of his colleagues. He pointed out that this project of law, worded in general terms, authorizing the President to conclude a canal treaty with a foreign power or company, was a clumsy attempt to begot the real issue. It was perfectly well known that a canal, if constructed at all, would have to be constructed by the United States Government, and it would, therefore, be more straightforward to frankly own that fact instead of vaguely talking of foreign powers and companies. When the Hay-Herran treaty was brought forward for discussion it was believed that the Senate would be willing to ratify the treaty, with essential modifications. The United States minister had, however, made it clear that his Government would not accept these modifications, and it was, therefore, decided to reject the treaty. Now, this project of law was nothing more or less than the Hay-Herran treaty, with the modifications necessary to have rendered it acceptable to the Senate. If this was the course proposed, it would be a more reasonable policy to reconsider the Hay-Herran treaty, put in the modifications desired by the Senate, and return it, thus amended, to the United States Government for their consideration. An important event had, however, occurred, which rendered any consideration of the canal question useless. The vice president had decided to dissolve Congress on the 31st instant. There remained, therefore, no time for deliberation, and the only possible course for the Senate to adopt was to decide on the indefinite suspension of any further discussion regarding the canal question.

The Senate then adjourned.

On the following day, the 28th ultimo, news of an insurrectionary outbreak in the Department of Panama leaked out, and three members of the cabinet were summoned to the Senate for the purpose of eliciting information on the subject. On the arrival of the minister of war, however, the Senate was declared in secret session.

It was given out that the trouble on the Isthmus consisted merely of an invasion of 70 men from Nicaragua. The president of the Senate, however, informed me that there was much anxiety, both on the part of the Government and Congress, as to the turn events were taking on the Isthmus.

The session of the 29th occupied itself with the passing of laws of minor importance and routine work.

On Friday, the 30th, the Panama Canal question was treated for the last time. The Senate unanimously resolved to adopt the course proposed by Senator Arrango in his speech of the 27th, which was to indefinitely suspend the consideration of the matter.

The Government thus remains with ordinary authority to treat the question afresh, subject to the approval of a future Congress.

Senator Caro spoke with some heat to the effect that the Government had rendered it impossible for the Congress to carry out its work by introducing extra laws which had not been treated of in the message, and then cutting short the deliberations of the legislative body.

Saturday, the 31st ultimo, was the last day of Congress. The members of the Senate met in the forenoon, and the minister of war, who had been specially summoned, was present. He was again questioned, this time publicly, as to the state of affairs in the Department of Panama. The telegram received from Governor Obaldía had, it appeared, been badly transmitted, but he gathered from the message that an invasion of 70 men from Nicaragua and a rising in the frontier province of Veraguas had occurred simultaneously. The secretary of the Senate informed me that in the telegram it was not clear whether the number of invaders was 70 or 700, most probably the latter, and that the feeling of unrest in the Department of Panama was great.

The Senate rose at 11 a. m., and did not return in the afternoon to receive the President's message closing Congress.

The Chamber of Representatives remained sitting until half past 2 o'clock p. m., when Congress was declared officially closed by the Vice President.

Yesterday the Government issued a manifesto to the nation, which has been published and posted on the streets this morning. It severely criticises the action of Congress, and especially that of the Senate, which latter body has wasted its time in attacks on the Executive instead of devoting itself to the consideration of measures necessary to the well-being of the country. As regards the canal, it states that the Government has decided to resume negotiations in the hopes of being able to come to a fresh agreement which shall meet with the approval of the next Congress, and that the Colombian chargé d'affaires at Washington has been instructed to convey this information to the Government of the United States.

I am, sir your obedient servant

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

No. 207.]

LEGATION OF THE UNITED STATES,
Bogotá, November 4, 1903.

SIR: The manifesto issued by the Government of Colombia to the nation on the 1st instant, the day after the closing of Congress, is interesting as a declaration of attitude and policy.

The Government makes reference, in the first place, to the difficulties it had to encounter on first taking charge of the administration; difficulties with the revolution on one hand and with the administration on the other. By difficulties with the administration was evidently meant, though not actually stated, the equivocal position in which the Government found itself after the coup d'état of the 31st of July, 1900. Moreover, the revolutionary party was in a strong

position, as it could count on many elements and on the material help of friends outside the country.

With the termination of the revolution, the difficulties to be faced by the Government were by no means at an end. The country was suffering from stagnation in its industries, paralyzation of its commerce, the innumerable difficulties created by a depreciated currency, penury of the treasury, and a general demoralization.

In the midst of all these difficulties most governors would have been sorely tempted to dictatorially take matters into their own hands, and, providing themselves with the necessary resources, assume the personal powers required for putting an end to the anarchy reigning. The vice president has chosen rather to abide by the provisions laid down by the constitution. He had, therefore, issued the writs for elections for Congress and declared public order restored.

In calling this extraordinary Congress he had hoped for the loyal cooperation of the legislature in aiding the Executive to restore the state of affairs of the Republic to a normal condition. The legislative body had now terminated its labors and it will be for the country to judge impartially both its work and that of the Executive. No one is ignorant of the causes which have rendered this session of Congress only partially fruitful. The disorder reigning between the two chambers has impeded the carrying out of much necessary work. The Executive, while loyally aided by the majority in the Chamber of Representatives, found its work thwarted by the hostility of the majority of the Senators.

The question of almost unique importance, which decided the calling of a special Congress, was that of the construction of an interoceanic canal, to wit, the Hay-Herran treaty. The Senate, after debates in which too much prominence was given to its feeling of hostility toward the Chief of the Government, rejected that treaty. A committee was then appointed to consider on what bases the aspirations of the Colombian people for the construction of an interoceanic waterway could best be satisfied. As the deliberations of the committee were productive of no result, a project of law was presented to the Senate by its committee, ratifying the rejection of the treaty and granting authorization to the Executive for the opening of this waterway. This project was approved on the first reading, and was then referred to a new committee. The committee reported against this project of law, and suggested the suspension of its consideration and raised the question as to the validity of the extension of time granted to the New Panama Canal Company in 1900. The Senate resolved to adopt part of the suggestions of the committee, and indefinitely suspended consideration of the projected law of authorization. Congress has, therefore, amply discussed and definitely decided upon the question which formed the principal motive of its convocation, that of the treaty respecting the construction of an interoceanic canal.

The opening of a canal is, however, a matter of vital interest to the Republic, and especially to the Department of Panama. The Colombian chargé d'affaires at Washington has, therefore, been instructed to inform the United States Government that new negotiations would be set on foot on bases which it was believed would be acceptable to the next Congress. In that case, if the North American

Government persists in its proposal to open the canal, which it is to be presumed it does, as neither by word nor by act has anything to the contrary been done, it is to be hoped that the great work will finally be carried out through Colombian territory.

The Vice President then refers to the character of the Congress which was convoked. The sessions were extraordinary, not ordinary sessions. He was, therefore, constitutionally in his right in limiting the Congress to the consideration of certain matters of vital importance. He showed, however, a generous latitude in this matter, giving to their consideration even such questions as those concerning the legislative decrees issued by the Government during the war—questions which, strictly speaking, belong to the domain of an ordinary Congress. The Senate, however, chose to take an unconstitutional attitude, and assume the character of a body called together in ordinary session, and treated the questions submitted not from the point of view of the national welfare, but to make political capital of its attitude toward the Chief Executive. Fortunately the patriotic spirit shown by the majority of the Chamber of Representatives, in conjunction with the minority of the Senate, helped to some extent to counteract the evil influence which the systematic opposition of one part of the legislative body was trying to exert.

The Vice President then goes on to deal with the constitutional powers of the Executive in its relations to the legislative body. Since the constitution of 1863 it has been decided that the ordinary Congress has one hundred and twenty days allotted for its sessions; but an extraordinary Congress is called for the consideration of certain special matters, and the duration of its session is at the discretion of the Executive. To support this statement, various precedents are quoted.

The honorable Chamber of Representatives, in its session of October 2, resolved that twenty days more would suffice for it to finish the work entrusted to its consideration. The Executive, so as not to feel that it was restricting the time of the legislature, added eleven days to the specified twenty. If the labor of the present legislative body be carefully compared with that of its predecessors it will be clear that the one hundred and thirty-four days which the legislature has had for its deliberations was not merely time strictly necessary, but more than ample to dispose of the matters submitted to its consideration. Its work would have been more beneficial if it had not wasted a large part of this time in fruitless debates.

The Vice President expresses the hope that the ordinary Congress, which is to unite in a little over eight months, will be able to fitly dispose of the questions which the late Congress has left undone.

The hostile attitude of some members of Congress has raised a certain spirit of unrest and agitation. Nevertheless, peace and the stability of constitutional rule has been maintained. There is, therefore, reason to hope that the forthcoming elections will not be the cause of agitation, and that their result may be the genuine expression of the will of the people, the carrying out of which is assured by the laws, and will be respected by the Government.

The manifesto is signed by the Vice President and all the members of his cabinet.

I am, sir, your obedient servant,

A. M. BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

BOGOTÁ, November 4, 1903.

(Received November 6, 1903, 5 p. m.)

Fourth, 5 p. m. Confidential. I have been shown telegram from reliable source in Panama to the effect that Isthmus is preparing for secession and that proclamation of independence may be expected soon. The particulars carefully guarded. Reliable information hard to obtain. This Government is evidently alarmed and troops are being sent to Isthmus. Repeat telegrams of importance from United States consul general. His telegrams to me may be interfered with.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,

Bogotá, November 6, 1903.

(Received November 8, 11.05 p. m.)

November 6, 6 p. m. Knowing that the revolution has already commenced in Panama, ———— says that if the Government of the United States will land troops to preserve Colombian sovereignty and the transit, if requested by the Colombian chargé d'affaires, this Government will declare martial law, and by virtue of vested constitutional authority, when public order is disturbed, will approve by decree the ratification of the canal treaty as signed; or, if the Government of the United States prefers, will call extra session of Congress with new and friendly members next May to approve the treaty. General Reyes has the perfect confidence of vice president, he says, and if it becomes necessary will go to the Isthmus or send representatives there to adjust matters along above lines to the satisfaction of the people there. If he goes, he would like to act in harmony with commander of United States forces. This is the personal opinion of Reyes, and he will advise this Government to act accordingly. There is a great reaction of public opinion in favor of the treaty, and it is considered certain that the treaty was not legally rejected by Congress. To-morrow martial law will be declared; 1,000 troops will be sent from the Pacific side; about the same number from the Atlantic side. Please answer by telegraph.

BEAUPRÉ.

Mr. Hay to Mr. Beaupré.

[Telegram.]

DEPARTMENT OF STATE,

Washington, November 6, 1903.

The people of Panama having, by an apparently unanimous movement, dissolved their political connection with the Republic of Colombia and resumed their independence, and having adopted a gov-

ernment of their own, republican in form, with which the Government of the United States of America has entered into relations, the President of the United States, in accordance with the ties of friendship which have so long and so happily existed between the respective nations, most earnestly commends to the Governments of Colombia and of Panama the peaceable and equitable settlement of all questions at issue between them. He holds that he is bound, not merely by treaty obligations, but by the interests of civilization, to see that the peaceable traffic of the world across the Isthmus of Panama shall not longer be disturbed by a constant succession of unnecessary and wasteful civil wars.

HAY.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,

Bogotá, November 7, 1903.

(Received 7.30 p. m., November 10.)

November 7, 2 p. m. General Reyes leaves next Monday for Panama invested with full powers. He has telegraphed chiefs of the insurrection that his mission is to the interests of Isthmus. He wishes answer from you before leaving to the inquiry in my telegram of yesterday and wishes to know if the American commander will be ordered to cooperate with him and with new Panama Government to arrange peace and approval of the canal treaty, which will be accepted on condition that the integrity of Colombia be preserved. He has telegraphed President of Mexico to ask the Government of the United States and all the countries represented at the Pan American conference to aid Colombia to preserve her integrity. The question of the approval of the treaty mentioned in my telegram of yesterday will be arranged in Panama. He asks that before taking definite action you will await his arrival there, and that the Government of the United States in the meantime preserve the neutrality and transit of the Isthmus and do not recognize the new Government. Great excitement here. Martial law has been declared in the Cauca and Panama. Answer.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,

Bogotá, November 7, 1903.

(Received November 10, 7.55 p. m.)

As the Government of the United States has war vessels at Panama and Colon, minister for foreign affairs has requested me to ask will you allow Colombian Government to land troops at those ports—to fight there and on the line of railway? Also if the Government of the United States will take action to maintain Colombian right and

sovereignty on the Isthmus in accordance with article 35, the treaty of 1846, in case the Colombian Government is entirely unable to suppress the secession movement there?

Mr. Beaupré to Mr. Hay.

[Telegram.]

BOGOTÁ, November 9, 1903.

(Received November 11, 12.30 a. m.)

November 9, 9 a. m. I am desired to inform you by General Reyes that Gen. Bedronel Ospina and Lucas Cabellero, prominent party leaders, accompany him on his mission.

Very great excitement here. Large crowds paraded streets yesterday, crying "Down with Marroquin." Mass meeting denounced him; called for a change of government. Hundreds gathered at the palace, and their orator, a prominent national general, addressed the President, calling for his resignation. Troops dispersed gathering, wounding several. Martial law is declared here, and the city is being guarded by soldiers. Legation of the United States under strong guard, but apparently no indications of hostile demonstration.

The residence of Lorenzo Marroquin attacked with stones.

Referring to the question presented by minister for foreign affairs in my telegram of 7th, I have preserved silence, but bear in mind page 578, Foreign Relations, part 3, 1866, and instructions 134 to minister to the United States of Colombia, 1865.

BEAUPRÉ.

[NOTE.—For convenience the above-mentioned instruction, No. 134, is reproduced, as follows:]

No. 134.

DEPARTMENT OF STATE,
Washington, November 9, 1865.

To ALLAN A. BURTON, Esq., etc.,
Bogotá.

SIR: The question which has recently arisen under the thirty-fifth article of the treaty with New Granada, as to the obligation of this Government to comply with a requisition of the President of the United States of Colombia for a force to protect the Isthmus of Panama from invasion by a body of insurgents of that country has been submitted to the consideration of the Attorney General. His opinion is that neither the text nor the spirit of the stipulation in that article, by which the United States engages to preserve the neutrality of the Isthmus of Panama, imposes an obligation on this Government to comply with a requisition like that referred to. The purpose of the stipulation was to guarantee the Isthmus against seizure or invasion by a foreign power only. It could not have been contemplated that we were to become a party to any civil war in that country by defending the Isthmus against another party. As it may be presumed, however, that our object in entering into such a stipulation was to secure the freedom of transit across the Isthmus, if that freedom should be endangered or obstructed, the employment of force on our part to prevent this would be a question of grave expediency to be determined by circumstances. The department is not aware that there is yet occasion for a decision upon this point.

Your dispatches to No. —, inclusive, have been received.

I am, sir, etc..

WILLIAM H. SEWARD.

Mr. Beaupré to Mr. Hay.

[Telegram.]

LEGATION OF THE UNITED STATES,
Bogotá, November 11, 1903. (Received November 14.)

The situation here under control, but how long this will continue is uncertain, as there is intense feeling against the Government. There is also a bitter feeling against the United States because of the belief that the Government of the United States has encouraged the secession movement, and of the statement of telegram received by the Government to the effect that the United States forces interfered with Colombian troops under General Tobar at Colon, necessitating their surrender.

An army ten thousand strong being raised here, and one of five thousand in the Cauca to operate against Panama, commanded by General Reyes, provided the United States will allow Colombia to land troops.

A meeting was held under the leadership of Senator Caro, and a resolution was passed requesting the Government to call a convention for the purpose of amending the constitution in order to render possible immediate ratification of the treaty. This is opposed by the Government and General Reyes as being inopportune.

BEAUPRÉ.

Mr. Hay to Mr. Beaupré.

[Telegram.]

DEPARTMENT OF STATE,
Washington, November 11, 1903. (Sent 12.12 p. m.)

Earnestly desiring an amicable solution of matters at issue between Colombia and Panama, we have instructed our consul general at Panama to use good offices to secure for General Reyes a courteous reception and considerate hearing. It is not thought desirable to permit landing of Colombina troops on Isthmus, as such a course would precipitate civil war and disturb for an indefinite period the free transit which we are pledged to protect. I telegraphed you on November 6 that we had entered into relations with the provisional government.

HAY.

Mr. Beaupré to Mr. Hay.

[Telegram.]

LEGATION OF THE UNITED STATES,
Bogotá, November 12, 1903. (Received November 14.)

I was invited to the palace last night to confer with the President and his cabinet, and communicated the substance of your telegram of the 6th in the form of a note to the minister of foreign affairs. I was asked if I would officially construe the last clause to mean the United States would not permit the landing of Colombian troops. I replied my opinion is that the language used needs no interpretation;

that I had fulfilled my official duty in delivering the note and had no explanation to make. The President then enjoined secrecy upon those present until direct answer has been received to the two questions of the minister for foreign affairs contained in my telegram of the 7th.

There is consternation in Government circles, and I fear serious trouble when the public is informed of the real situation. I believe there is much danger, not only to the Government, but also to Americans in the interior, especially in Bogota.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, November 14, 1903. (Received November 17.)

In an official note, dated 14th, minister for foreign affairs writes me as follows:

The immediate recognition of the so-called Government of Panama by the Government of the United States entering into relations with it is a circumstance aggravated by the fact that such recognition is a violation of the treaty of 1846, which compels the Government of Colombia to protest, as it does in most solemn and emphatic manner, and to consider that the friendship of this Government with the Government of the United States has reached such a grave point that it is not possible to continue diplomatic relations unless the Government of the United States that it is not its intention to interfere with Colombia in obtaining submission of the Isthmus nor to recognize the rebels as belligerents. I hope you will submit these points to your Government immediately, for the army is already marching to the Isthmus of Panama.

The note is very long, to the effect that this recognition is contrary to all precedents and in violation of the treaty of 1846, offering to submit the latter point to The Hague, with the understanding that in the meantime there shall be no interference with the military operations necessary to reestablish integrity of Colombia.

National council—especially elected to advise the Executive in the present emergency—has decided, by 10 votes to 1, to hand me my passport. The Government understands that such action would be tantamount to a declaration of war, and has advised me such a step will not be taken. Send instructions as a guide in case of severance of diplomatic relations.

BEAUPRÉ.

Mr. Beaupré to Mr. Hay.

[Telegram.]

UNITED STATES LEGATION,
Bogotá, November 17, 1903. (Received November 19.)

Minister for foreign affairs sends another note, requesting that I transmit by cable an abstract, as follows:

As the Government of the United States does not definitely state that it will oppose landing of Colombian troops, but will secure hearing for General Reyes, it may be supposed its purpose is to bring about peace in Colombia and Panama, to the end that the latter shall

renounce independence and thus avoid armed action otherwise inevitable. If this is the intention of the United States, Colombia will accept, provided territorial rights of Colombia on the Isthmus are not prejudiced. Maintenance of order falls to the power holding sovereignty, which the United States has heretofore recognized. Accordingly, it is an inadmissible theory that the United States should now permit or aid dismemberment of Colombia merely to prevent temporary disturbance of the transit. Colombia has for fifty years maintained free transit, but she can not be asked to carry this to the extent of agreeing to the loss of precious territory simply from fear some interruption of transit may occur. Sovereignty of nations may not be destroyed for the purpose of avoiding transitory prejudice to commerce—an argument as to the effect of the existing treaty, and that civilization will suffer more by the violation of a public treaty than a temporary interruption of traffic. The most efficient means the United States could employ to prevent interruption of transit would be to notify rebels to abstain from obstructing Colombian Government in reestablishing order and constitutional rule. This is demanded of the United States by treaty. If the United States troops have been used to disarm Colombian army it is in subversion of national sovereignty and contrary to the treaty.

BEAUPRÉ.

Mr. Hay to Mr. Beaupré.

[Telegram.]

DEPARTMENT OF STATE,
Washington, November 18, 1903.

You will once more inform Colombian Government that we have recognized the Republic of Panama; that our action has been taken in the interest of peace and order on the Isthmus; that we earnestly desire an amicable settlement of questions at issue between Colombia and Panama, and would gladly render what services are in our power to that end.

I repeat that you and the secretary of legation are authorized to take your leave of absence whenever you think best, requesting one of your colleagues to take charge of your legation, if both of you come away.

HAY.

No. 14.

**PRESIDENT'S MESSAGE GIVING CORRESPONDENCE SHOWING
RELATIONS BETWEEN THE UNITED STATES, COLOMBIA, AND
PANAMA.**

[Senate Document No. 95, Fifty-eighth Congress, second session.]

**RELATIONS OF THE UNITED STATES WITH COLOMBIA AND THE
REPUBLIC OF PANAMA.**

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING A
REPORT FROM THE SECRETARY OF STATE COVERING COPIES OF ADDITIONAL
PAPERS BEARING UPON THE RELATIONS OF THE UNITED STATES WITH
COLOMBIA AND THE REPUBLIC OF PANAMA.

[January 18, 1904: Read; ordered to lie on the table and to be printed.]

To the Senate and House of Representatives:

I transmit herewith for the information of the Congress a report
from the Secretary of State covering copies of additional papers bear-
ing upon the relations of the United States with Colombia and the
Republic of Panama.

THEODORE ROOSEVELT.

WHITE HOUSE, *January 18, 1904.*

The PRESIDENT:

In continuation of the papers previously submitted, the under-
signed Secretary of State has the honor to lay before the President
additional correspondence touching the relations of the United States
with Colombia and Panama.

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE,
Washington, January 16, 1904.

List of papers.

General Reyes to Mr. Hay, December 23, 1903.
Mr. Hay to General Reyes, January 5, 1904.
General Reyes to Mr. Hay, January 6, 1904.
Mr. Hay to General Reyes, January 9, 1904.
General Reyes to Mr. Hay, January 11, 1904.
Mr. Hay to General Reyes, January 13, 1904.
Mr. Buchanan to Mr. Hay, No. 4, December 25, 1903.
Mr. Buchanan to Mr. Hay, No. 6, December 27, 1903.
Mr. Buchanan to Mr. Hay, No. 7, December 28, 1903.
Mr. Buchanan to Mr. Hay, No. 9, December 28, 1903. (Translations from
Gaceta Oficial of Panama, December 12, 14, and 16, 1903.)
Mr. Bunau-Varilla to Mr. Hay, January 6, 1904.

[Translation.]

General Reyes to Mr. Hay.

LEGATION OF COLOMBIA, ON SPECIAL MISSION,
Washington, December 23, 1903.

MOST EXCELLENT SIR: I have the honor to append to this note a statement of grievances that Colombia wishes to submit to the consideration of your excellency. Its presentation was deferred by reason of the condition of your excellency's health, and I beg that you will put off the consideration of this note until your excellency may be able to give your personal attention to its examination.

If, after so doing, your excellency should wish to have an interview with me, I shall have the honor of calling on you at such place and time as your excellency may be pleased to designate.

With sentiments of the highest consideration and regard, I have the honor to subscribe myself your excellency's very obedient and faithful servant,

RAFAEL REYES.

HON. JOHN HAY,
Secretary of State.

General Reyes to Mr. Hay.

LEGATION OF COLOMBIA, ON SPECIAL MISSION,
Washington, December 23, 1903.

MOST EXCELLENT SIR: The Government and people of Colombia consider themselves aggrieved by that of the United States in that they are convinced that the course followed by its administration, in relation to the events that have developed and recently been accomplished at Panama, have worked deep injury to their interests.

If the matter were one of little importance, even though right were wholly on its side, my Government would not hesitate in yielding some of its advantages out of regard for the friendly relations which have happily existed without interruption between the two countries. But as the facts that have taken place affect not only valuable and valued interests, but also the independence and sovereignty of Colombia, my Government deems it its duty to remind that of the United States of the stipulation contained in section 5 of article 35 of the treaty of 1846, in force between the two countries, which reads word for word as follows:

If, unfortunately, any of the articles contained in this treaty should be violated or infringed in any way whatever, it is expressly stipulated that neither of the two contracting parties shall ordain or authorize any acts of reprisal, nor shall declare war against the other in complaints of injuries or damages, until the said party considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied, in violation of the laws and of international right.

On formulating the statement of "injuries and damages," referred to in the quoted abstract, there is nothing as natural or just as to recall to mind that in the treaty concluded on the 22d of January of

this year between your excellency and the chargé d'affaires of Colombia, Señor Doctor Tomás Herrera, there appears the following stipulation:

The convention when signed by the contracting parties shall be ratified in conformity with the laws of the respective countries, etc.

This condition, which rests at once on a correct conception of the doctrine accepted in such matters by nearly all the constitutional countries in the world, could not be foregone by Mr. Herran, since under our constitution and laws it is for the Congress to approve or disapprove the treaties signed by the Government, so that the said treaties are not valid unless the requirement has been observed, and as it likewise happens that under the law of nations covenants entered into with any authority that may not be competent are null, it is evident that no Colombian representative, in the absence of a pre-existing law conferring such authority could have signed the said convention without the above-quoted reservation. Furthermore, this formality was at the outset admitted by the American Government in the course of the negotiations that preceded the Hay-Herran convention, as shown in articles 25, 26, and 28 of the "Draft of convention" submitted by the American Administration and dated November 28, 1902. Article 25 says, textually, that the convention will be exchanged "after approval by the legislative bodies of both countries."

The Hay-Herran convention did not take in Washington a course different from that it took at Bogotá. The parliamentary debate that took place in the Senate was so full and earnest that it was not approved until the following extraordinary sessions. And if it had been rejected, the disapproval would have involved no grievance for Colombia, for if the mere entering upon negotiations for a convention implied the obligatory approval of the legislative body it would be superfluous to submit it to its decision. Among the precedents of international usage that could be mentioned in this respect there may be cited the case that occurred between the same United States of America and Her Britannic Majesty, when, after the signing of the treaty intended to abrogate the convention known as the Clayton-Bulwer treaty, England, as I understand it, declined to accept the amendment introduced by the Senate, and her refusal delayed for some time the approval and ratification of the treaty.

It follows that the Congress of Colombia, which is vested, according to our laws, with the faculty or power to approve or disapprove the treaties concluded by the Government, exercised a perfect right when it disapproved the Hay-Herran convention. This course did not disqualify the Government for the conclusion of another treaty with the Government of your excellency; and it indeed resolved to make a proposition to that effect, and Mr. Herran, whom our minister for foreign affairs intrusted with that duty by cable, had the honor of bringing this purpose to your excellency's knowledge. Neither did that course imply any slight toward the Government of the United States, and, on the contrary, the Senate, observant of the existing friendly relations, relied on the sentiments of American fraternity, by which it is animated, for the introduction in the new agreement that was to be made of stipulations more consonant with the notion of sovereignty entertained by the people of Colombia.

It is proper to observe that under our constitution the Congress is the principal guardian, defender, and interpreter of our laws. And it can not be denied by anyone, I take it, that the Hay-Herran convention provides for the execution of public works on a vast scale and for the occupancy in perpetuity of a portion of the territory of Colombia, the occupant being not a juridical person whose acts were to be governed by the civil law and the Colombian code, but rather a sovereign political entity, all of which would have given occasion for frequent conflicts, since there would have been a coexistence in Panama of two public powers, the one national, the other foreign.

Hence the earnest efforts evinced by the Senate in ascertaining whether the American Government would agree to accept certain amendments tending especially to avoid as far as practicable any restriction in the treaty of the jurisdiction of the nation within its own territory. There is abundant evidence of the efforts of the Senate in that direction, and I firmly believe that it would have approved the convention with amendments that would probably have been acceptable to the United States had not the American minister at Bogotá repeatedly declared in the most positive manner that his Government would reject any amendment that might be offered.

In a note dated April 24 last he made the following statement to the minister of foreign relations:

With reference to the interview I had with your excellency at which were discussed the negotiations for the annulment of the present concessions of the Panama Canal and railroad companies and other matters I have the honor to inform your excellency that I have received instructions from my Government in that respect.

I am directed to inform your excellency, if the point should be raised, that everything relative to this matter is included in the convention recently signed between Colombia and the United States on the 22d of January last and that, furthermore, any modification would be violative of the Spooner Act, and therefore inadmissible.

The memorandum handed by the same minister to the minister of foreign relations on the 13th of June of this year reads as follows:

I have received instructions from my Government by cable in the sense that the Government of Colombia to all appearances does not appreciate the gravity of the situation. The Panama Canal negotiations were initiated by Colombia and were earnestly solicited of my Government for several years. The propositions presented by Colombia with slight alterations were finally accepted by us. By virtue of this agreement our Congress reconsidered its previous decision and decided in favor of the Panama route. If Colombia now rejects the treaty or unduly delays its ratification the friendly relations between the two countries would be so seriously compromised that our Congress might next winter take steps that every friend of Colombia would regret with sorrow.

In his note of the 5th of August of this year he says this, among other things:

It seems to me that the commission (referring to the Senate commission) has not been sufficiently informed of the contents of my notes of April 24 and June 10 [sic], 1903, or that it has not given them the importance they merit, as being the final expression of the opinion or intentions of my Government. They clearly show that the amendment the commission proposes to introduce in article 1 is, by itself, equivalent to an absolute rejection of the treaty. I deem it my duty to repeat the opinion I already expressed to your excellency that my Government will not consider or discuss such an amendment in any way. There is another important amendment that the commission believes should be introduced in article 3, consisting in the suppression of the tribunals therein dealt with. I consider it my duty again to state my opinion that this will also in no wise be accepted by my Government.

And further, in the same note, he adds:

I avail myself of this opportunity respectfully to repeat that which I already stated to your excellency, that if Colombia truly desires to maintain the friendly relations that at present exist between two countries, and at the same time secure for herself the extraordinary advantages that are to be produced for her by the construction of the canal in her territory, in case of its being backed by so intimate an alliance of national interests as that which would supervene with the United States, the present treaty will have to be ratified exactly in its present form without amendment whatsoever. I say this because I am profoundly convinced that my Government will not in any case accept amendments.

The Congress being unable to accept in its actual wording at least one of the stipulations contained in the treaty, because inhibited from doing so by the constitution, no one will wonder that under the pressure of threats so serious and irritating and in presence of a formal notification from the party which had authority to serve it that no amendment would be accepted, preference was given to disapproval.

The integrity of any nation [said Mr. William H. Seward] is lost, and its fate becomes doubtful, whenever strange hands, and instruments unknown to the constitution, are employed to perform the proper functions of the people, established by the organic law of the State.¹

Before dismissing this point, it is proper to observe, in accordance with article 4 of the Spooner Act:

SEC. 4. That should the President be unable to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia and the rights mentioned in sections one and two of this act, within a reasonable time and upon reasonable terms, then the President, having first obtained for the United States perpetual control by treaty of the necessary territory from Costa Rica and Nicaragua, upon terms which he may consider reasonable, for the construction, perpetual maintenance, operation, and protection of a canal connecting the Caribbean Sea with the Pacific Ocean by what is commonly known as the Nicaragua route, shall, through the said Isthmian Canal Commission, cause to be excavated and constructed a ship canal and waterway from a point on the shore of the Caribbean Sea, near Greytown, by way of Lake Nicaragua, to a point near Brito, on the Pacific Ocean.

This act, on account of its having served as the basis of the treaty draft on the part of the United States, as stated in the preamble, which adds that it is accompanied by a copy of the act, had for Colombia exceptional importance. For it is so imperative that it seems to leave no faculty other than that of selecting one of the two routes, Panama or Nicaragua, and therefore it was to be presumed that the action of the American Government could not overstep the limits therein fixed. Whence it follows that the sole evil that could befall Colombia if her Congress should disapprove the treaty was that the route eventually selected would be that of Nicaragua. It may be that we fell in error when we entertained that belief, but it was sincere, and we were led into it by the profound respect with which the American laws inspire us.

All governments being, as is well known, bound to respect the rights born of the independence and sovereignty of nations, the premature recognition by the United States of the province of Panama, rising in arms to detach itself from the country of which it is a part, while it is a matter of public knowledge that the mother country commands sufficient forces to subdue it, constitutes, according to the most

¹ See p. 109, F. R., 1861, Mr. Seward to Mr. Adams.—Translator.

ancient and modern authorities on international law, not only a grave offense to Colombia, but also a formal attack upon her wealth.

For, as the territory forms the most important part of the national wealth, its dismemberment impairs the revenues applied to the discharge of corporate obligations among which are foreign debts and those enterprises entailed on the insurgent province, from which Colombia derives a considerable income.

If there be an end and eternal and immutable principles in right, that right of Colombia has been injured by the United States by an incredible transgression of the limits set by equity and justice.

Before the coup de main which proclaimed the independence of the Isthmus took place at Panama, there were in this very city agents of the authors of that coup in conference with high personages clothed with official character, as is asserted by reputable American newspapers. I have received information to the effect that a bank in New York opened a considerable credit in their favor, with a knowledge of the general use for which it was intended, even though unaware that it was to be applied in part to the bribery of a large part of the garrison at Panama.

Intercourse of any kind [said Mr. Seward] with the so-called "commissioners" is liable to be construed as a recognition of the authority which appointed them. Such intercourse would be none the less hurtful to us for being called unofficial, and it might be even more injurious, because we should have no means of knowing what points might be resolved by it. Moreover, unofficial intercourse is useless and meaningless if it is not expected to ripen into official intercourse and direct recognition.¹

It will be well to say that before the news was divulged that a revolution was about to break out on the Isthmus, American cruisers which reached their destination precisely on the eve of the movement were plowing the waters of the Atlantic and Pacific Oceans. Cablegrams that are given public circulation in an official document show that two days before the movement the Secretary of the Navy issued orders to those cruisers not to permit the landing of troops of the Government of Colombia on Panama's territory.

A military officer of the Government of the United States stopped the railway from carrying to Panama, as it was under obligations to do, a battalion that had just arrived at Colon from Bogotá at the very time when its arrival in that city would have impeded or suppressed any revolutionary attempt. A few days thereafter, when my Government intrusted me with the duty of leading the army that was to embark at Puerto Colombia to go and restore order on the Isthmus, being unacquainted except in an imperfect manner with the attitude assumed by the American war ships, I had the honor to address a note on the subject to Vice Admiral Coghlan, and in his reply, which was not delayed, he tells me that—

his present orders are to prevent the landing of soldiers with hostile intent within the boundary of the State of Panama.

The Republic of Colombia, with a population of 5,000,000 souls, is divided into nine departments, of which Panama is one of the least populous, as the number of its inhabitants does not exceed 250,000, while there are others in each of which they number over 900,000. The Colombian army at the time consisted of 10,000 men, a force

¹ Mr. Seward to Mr. Adams, No. 10, May 21, 1861.—Translator.

more than sufficient to suppress the Panaman revolution if Your Excellency's Government had not prevented the landing of the troops under my command that were to embark at Puerto Colombia under Generals Ospina, Holguín, and Calballero, who soon thereafter accompanied me to that city, and at Buenaventura, on the Pacific, under Generals Velazco, Domínguez, and others. It is known that there is no overland way to reach Panama with troops from the interior of Colombia.

The gravity of the facts contained in this recital increases as they draw closer to the end.

In the midst of profound peace between the two countries, the United States prevented, by force, the landing of troops where they were necessary to reestablish order, in a few hours, in the insurgent province. Because of this circumstance, and as a coup de main, certain citizens of Panama, without taking into account the consent of the other towns of the department, proclaimed the independence of the Isthmus and organized a government. Two days after effecting that movement they were recognized by the American Government as a sovereign and independent Republic, and fourteen days later the American Government signed a treaty with the Republic of Panama which not only recognized and guaranteed its independence, but agreed to open a canal for the purpose of uniting the waters of the Atlantic with those of the Pacific.

It is well known that the contract which Colombia made with the French company, in the exercise of its perfect right, for the construction of this canal, is in force and will remain in full force and vigor, legally at least, so long as Colombia does not give her consent for its transfer to a foreign government; since, in the aforesaid contract, it is expressly stipulated that a transfer to any foreign government, or any attempt whatever to make a transfer, would be cause for absolute nullification.

The same is true with regard to the Panama Railroad Company; so that without the express consent of Colombia no transfer can have legal effect, because it can not cancel the legal bonds which exist between the Republic of Colombia and those companies—bonds growing out of perfect contracts, which, according to the precepts of universal jurisprudence, can not be disregarded because one of the parties may consider that the strip of land in which the enterprise radicated has been conquered by a foreign country. The lapse of many years is necessary in order that the facts may establish the right, and even without the need of such time elapsing the Colombians feel sure that the justice and equity which control the acts of Your Excellency's Government in its relations with all nations are a sure pledge that our complaints and claims will be heeded.

Nor is it just to expect anything else in view of the constant practice which the United States has established in similar cases. Among many others are set forth in its diplomatic annals the antecedent history relative to the independence of South American States, proclaimed in 1810; that of the new State of Hungary, in the middle of the last century; and that of Ireland, later, in 1866; not to make mention of the practice systematically observed by the powers, of which their procedure when the Netherlands proclaimed independence in the time of the Philips of Spain is an example. In this relation the precedent of Texas, when the United States Senate disap-

proved the treaty signed by the Washington Cabinet with the secessionists of that Mexican province, has an especial significance.

In the note of Mr. Seward, Secretary of State, to Mr. Adams, United States minister, in 1861, this doctrine is found:

We freely admit that a nation may, and even ought, to recognize a new State which has absolutely and beyond question effected its independence, and permanently established its sovereignty; and that a recognition in such a case affords no just cause of offense to the government of the country from which the new State has so detached itself. On the other hand, we insist that a nation that recognizes a revolutionary State, with a view to aid its effecting its sovereignty and independence, commits a great wrong against the nation whose integrity is thus invaded, and makes itself responsible for a just and ample redress. (*Foreign Relations, 1861, pp. 76-77.*)

At another point in the same note the Secretary says to the minister:

To recognize the independence of a new State, and so favor, possibly determine, its admission into the family of nations, is the highest possible exercise of sovereign power, because it affects in any case the welfare of two nations, and often the peace of the world. In the European system this power is now seldom attempted to be exercised without invoking a consultation or congress of nations. That system has not been extended to this continent. But there is even a greater necessity for prudence in such cases in regard to American States than in regard to the nations of Europe. (*Foreign Relations, 1861, p. 79, Mr. Seward to Mr. Adams, No. 2, April 10, 1861.*)

Referring to the consideration which nations should mutually observe, he adds:

Seen in the light of this principle, the several nations of the earth constitute one great federal republic. When one of them casts its suffrages for the admission of a new member into that republic, it ought to act under a profound sense of moral obligation, and be governed by considerations as pure, disinterested, and elevated as the general interest of society and the advancement of human nature. (*Foreign Relations, 1861, p. 79, Mr. Seward to Mr. Adams, No. 2, April 10, 1861.*)

It would seem that nothing could be added to the benevolence of these noble and humanitarian doctrines, written by the great man, who, unhappily for his country and for Colombia, is not living to-day.

If the sovereignty of a nation gives to it especially the power to govern itself; if the right to look after its own interests is an attribute of sovereignty; if upon such right rests the stability and security of international relations, respect for such sovereignty should be the more heeded by one who is obligated, as is the United States, not only by international precepts but also by an existing public treaty from which it has derived indisputable advantages. The pertinent part of the thirty-fifth article of the treaty in force between the United States and Colombia reads as follows:

And in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages and for the favors they have acquired by the fourth, fifth, and sixth articles of this treaty, the United States guarantees, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned Isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guarantees, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

It may be said that the power of the United States is for the time being limitless, not only by reason of its laws and its resources of

every kind, but also on account of the respect with which its greatness inspires the world. But in order to deal justly with a weak country this circumstance should be taken into account—that, in stipulating to guarantee “the perfect neutrality and property of the Isthmus,” it could not be supposed that the words “neutrality” and “property” could be given any other interpretation than the technical one they have. If, by a coup de main, the revolutionists have snatched from Colombia the property of the Isthmus, it seems natural that the United States, in view of the aforesaid stipulation, should return the property to its legitimate owner. It does not seem right to give the word “neutrality” the interpretation that, by its application, the acts of the revolutionists shall be left free, because, among other reasons, the stipulation contained in the thirty-fifth article above quoted excepts no case; nor did it foresee, as it could not have foreseen, that the United States would prevent Colombia from landing her forces in Panama territory in case of secession.

If Colombia had not sufficient force to compel Panama to remain a part of the national unit, it would, without doubt, have asked the mediation of some friendly country in order to reach an understanding with the de facto government which has been established there.

But for it to have been able to subdue it by force it was necessary that Your Excellency's Government should remain neutral in the dispute; in not having done so, your Government, itself, violated “the rights of sovereignty and the property which Colombia has and possesses over the said territory,” not complying, consequently, with the obligation it contracted to guarantee those rights as set forth in the above-cited part of the thirty-fifth article of the treaty. And it may be observed that the United States continues deriving the advantages granted under the treaty, while we lose those which we gave in order to obtain such guarantees.

The true character of the new State of Panama is revealed in the fact that it came into existence by a coup de main, effected by the winning over of troops, valorous without doubt, but who have fought against no one, assaulted no intrenchment, captured no fort—contenting themselves with putting in prison the constituted authorities.

If conserving our national integrity, with a few years of peace we could recover the powers we have lost through unfortunate civil wars and could hope, by reason of the moral and physical capacity of our race, to take a distinguished position in the American continent; but if the Government of the United States, by preventing the military action of Colombia to subject the rebels to loyal obedience, should, in a way, make itself the ally of the Panama revolutionists, that Government will be responsible for any new secession movement that may occur, and also, before history at least, for any anarchy, license, and dissolution which a further dismemberment might occasion. Sad indeed is the fate of my country, condemned at times to suffer calamities from its own revolutions and at others to witness the unexpected attacks of a powerful but friendly State, which for the first time breaks its honored traditions of respect for right—especially the right of the weak—to deliver us pitilessly to the unhappy hazards of fortune.

There shall be a perfect, firm, and inviolable peace [says the first article of the aforesaid treaty], and sincere friendship between the United States of America

and the Republic of New Granada (now Colombia) in all the extent of their possessions and territories, and between their citizens, respectively, without distinction of persons or places.

If the United States repels by force the action of our armies in Panama, is not this a clear violation of this article, since peace in one of the Colombian territorial possessions is broken?

The Panama revolutionists, counseled by speculators from several countries, who had assumed the direction of affairs, did not consult the opinion of the inhabitants of their own territory, for there are good reasons for the belief that there are in that territory thousands of persons who, respecting order and authority, have condemned the separatist movement with a determined will and in most energetic and severe terms.

Colombia, in its internal law, has never recognized the principle of secession, because, among other reasons, the obligations contracted with foreign nations by treaty, or with private parties by contract, rest upon the mass of the assets which the State possessed at the moment when the common authority contracted such obligations.

If the people of Panama, animated by the noble sentiments which induced men of action to seek quicker and more rapid progress, had proclaimed their independence and, without foreign aid, been victorious in battle waged against the armies of the mother country, had organized a government, drawn up laws, and proved to the world that it could govern itself by itself and be responsible to other nations for its conduct, without doubt it would have become entitled to recognition by all the powers.

But none of these things having occurred, and judging by the practice which in similar cases has guided the conduct of the American Government, the belief is warrantable that the recognition that has been given would probably not have been made if there had not existed in Panama the best route for the isthmian canal.

In the former case Colombia would have had no right to complain of the failure to fulfill the existing treaty, nor would it have shunned any legitimate means for seeking an arrangement that should dissolve the civil bonds which unite it with those enterprises radicated on Panama territory by contracts made in the exercise of a perfect right.

But Panama has become independent, has organized a Government, has induced a few powers prematurely to recognize her sovereignty, has usurped rights which do not belong to her in any case, and has ignored the debts, which weigh upon Colombia (debts contracted, many of them, to reestablish order which her sons have often disturbed), because the Government of the United States has desired it; because, with its incomparably superior force, the United States has prevented the landing of Colombian troops destined to reestablish order after our having exhausted every possible means of friendly understanding; because the United States, even before the separatist movement was known in Bogota, had its powerful war vessels at the entrances of our ports, preventing the departure of our battalions; because, without regarding the precedents established by statesmen who have dealt with this matter, the United States has not respected our rights in that strip of land which Colombia considers as a divine bequest for the innocent use of the American family of States; and, finally, because the Government of the United States,

invoking and putting into practice the right of might, has taken from us by bloodless conquest—but by conquest, nevertheless—the most important part of the national territory.

Every nation is responsible to other nations for its conduct, whence it follows that all have among themselves rights and obligations, but these rights and obligations are limited by the right of property. The owner of an estate can not oppose the passage through his land—for example, of a railroad which the community needs—but he may demand that he be indemnified for the damage done him. In the same manner a State should certainly not obstruct the passage through its territory of a canal which the progress of the age and the needs of humanity have made necessary, but it has the right to impose conditions which shall save its sovereignty and to demand indemnification for the use thereof. Reasons based on the needs of humanity are undoubtedly very powerful, but they do not convincingly prove that the legitimate owner shall be deprived of a large part of his territory to satisfy such needs.

It might be said to me that exaggerated demands or obstacles which are intentionally raised are equivalent to a refusal. But this is not our case. Colombia has made divers treaties and contracts with foreign countries for the construction of a Panama Canal, and if they have not been carried into effect, as was the case with the treaty with the United States in 1870 and the contract with the French company later, it was not the fault of Colombia. Our demands have not been exaggerated, inasmuch as the terms of the treaty negotiated with the American representative were more advantageous than those stipulated with the French representative, and the conditions set forth in the Hay-Herran convention were much more disadvantageous than those made with the French company. The fact that the United States demands from us, in order to carry out the enterprise, a part of our sovereignty, which, under our laws, we can not legally concede so long as the constitution is not modified, because the powers that did it would be responsible before the judicial branch, does not mean that we have been opposed nor that we are opposed to the realization of the greatest undertaking of the kind which the past and future centuries have seen or will see.

Civil wars are a calamity from which no nation has ever been able to free itself. This being true, to hold responsible the Government which suffers revolutions because it can not prevent them or because it hastens to remedy them when danger menaces seems a notorious injustice, because, if the principle of foreign intervention in civil conflicts were accepted, there would be few cases that would not be converted in the end into international wars. To refrain from dealing or treating with a State for fear of civil wars might be deemed equivalent to refraining from “constructing ships for fear of shipwrecks or building houses for fear of fire.” Nor is it understood what power there would be that would assume the unhappy task of imposing peace upon the rest, nor under what conditions it would do so, since to take away portions of their territory would be a punishment greater than the fault.

In this crisis of the life of my country, as unlooked for as it is terrible, Colombia rests its most comforting hopes in the sentiments of justice which animate the Government of your excellency, and

confidently trusts that that Government, which has so many times surprised the world by its wisdom, will, on this occasion, astonish it by its example.

In any event, Colombia complies with the duty imposed upon her by the treaty of 1846 in that part of the 35th article which says:

* * * neither of the two contracting parties shall ordain or authorize any acts of reprisal, nor shall declare war against the other on complaints of injuries or damages, until the said party considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied, in violation of the laws and of international right.

Since the aforesaid treaty is the law which governs between the two countries, and now that the weakness and ruin of my country, after three years of civil war scarcely at an end, and in which her bravest sons were lost by thousands, place her in the unhappy position of asking justice of the Government of your excellency, I propose that the claims which I make in the present note on account of the violation of the aforesaid treaty, and all other claims which may hereafter be made in connection with the events of Panama, be submitted to the Arbitration Tribunal of The Hague.

With sentiments of the most distinguished consideration and high esteem, I have the honor to subscribe myself.

Your excellency's very obedient and faithful servant,
RAFAEL REYES.

HON. JOHN HAY,
Secretary of State of the United States,
Washington, D. C.

Mr. Hay to General Reyes.

DEPARTMENT OF STATE,
Washington, January 5, 1904.

SIR: The Government of the United States has carefully considered the grave complaints so ably set forth in the "statement of grievances" presented on behalf of the Government and people of Colombia, with your note of the 23d ultimo.

The Government and people of the United States have ever entertained toward the Government and people of Colombia the most friendly sentiments, and it is their earnest wish and hope that the bonds of amity that unite the two peoples may forever remain unbroken. In this spirit the Government of the United States, mindful that between even the most friendly nations differences sometimes unhappily arise, has given to your representations the most deliberate and earnest attention, and in the same spirit it will employ every effort consistent with justice and with its duty to itself and to other nations not only to maintain but also to strengthen the good relations between the two countries.

At the present moment the questions which you submit can be viewed only in the light of accomplished facts. The Republic of Panama has become a member of the family of nations. Its independence has been recognized by the Governments of the United States, France, China, Austria-Hungary, Germany, Denmark, Russia, Sweden and Norway, Belgium, Nicaragua, Peru, Cuba, Great

Britain, Italy, Japan, Costa Rica, and Switzerland. These solemn acts of recognition carry with them international obligations which, in peace as in war, are fixed by the law of nations and which can not be disregarded. A due appreciation of this circumstance is shown in your admission, made with a frankness and fairness honorable alike to your Government and to yourself, that "Panama has become independent—has organized a government."

The action not merely, as you observe, of a "few powers," but of all the so-called "great powers" and many of the lesser ones, in recognizing the independence of Panama, leaves no doubt as to the public opinion of the world concerning the propriety of that measure. The law of nations does not undertake to fix the precise time at which recognition shall or may be extended to a new State. This is a question to be determined by each State upon its own just sense of international rights and obligations; and it has rarely happened, where a new State has been formed and recognized within the limits of an existing State, that the parent State has not complained that the recognition was premature. And if in the present instance the powers of the world gave their recognition with unwonted promptitude, it is only because they entertained the common conviction that interests of vast importance to the whole civilized world were at stake, which would by any other course be put in peril.

The independence of the Republic of Panama being an admitted fact, the department will proceed to consider the complaints presented by you on behalf of your Government as to the manner in which that independence was established. In performing this task I desire to avoid all appearance of recrimination; and, if I shall not be wholly successful in so doing, it is only because I am under the necessity of vindicating the conduct of this Government against reproaches of the most grave and unusual character. The department is in duty bound to deal with these charges in a spirit of the utmost candor; but in performing this duty it will not seek in unofficial sources material for unjust and groundless aspersions. It is greatly to be regretted that your duty to your Government could not, in your estimation, have been discharged within similar limitations.

With every disposition to advance the purpose of your mission, the department has read with surprise your repetition of gross imputations upon the conduct and motives of this Government, which are said to have appeared in "reputable American newspapers." The press in this country is entirely free, and as a necessary consequence represents substantially every phase of human activity, interest, and disposition. Not only is the course of the Government in all matters subject to daily comment, but the motives of public men are as freely discussed as their acts; and if, as sometimes happens, criticism proceeds to the point of calumny, the evil is left to work its own cure. Diplomatic representatives, however, are not supposed to seek in such sources material for arguments, much less for grave accusations. Any charge that this Government, or any responsible member of it, held intercourse, whether official or unofficial, with agents of revolution in Colombia, is utterly without justification.

Equally so is the insinuation that any action of this Government, prior to the revolution in Panama, was the result of complicity with the plans of the revolutionists. The department sees fit to make these denials, and it makes them finally.

The origin of the Republic of Panama and the reasons for its independent existence may be traced in certain acts of the Government of Colombia, which are matters of official record.

It is a matter of common knowledge that the quest of a way to the westward, across the sea, from Europe to Asia led to the discovery and settlement of the American continents. The process of colonization had, however, scarcely begun when the adventurous spirits of that age, not to be balked in their undertaking by an obstacle that seemed to be removable, began to form projects for a canal to connect the Atlantic and Pacific Oceans. As early as 1528 a proposal was laid before the Emperor Charles V for the opening of such a way across the Isthmus of Panama. From that day to the present the project has continued to occupy a place among the great enterprises yet to be accomplished. It remains unfulfilled only because the experience of four hundred years has demonstrated that private effort is wholly inadequate to the purpose, and that the work must be performed, if at all, under the auspices of a government of the largest resources. There was only one such government in a position to undertake it. By a well settled policy, in which all American nations are understood to concur, the assumption of the task by any of the great governments of Europe was pronounced to be inadmissible. Among American governments there was only one that seemed to be able to assume the burden and that was the Government of the United States.

Such was the precise situation when the United States manifested its determination to construct the great highway across the American isthmus. Its purpose was universally applauded. The circumstance that this Government possibly might, in return for the great expenditures which it was about to hazard, derive from the construction of the canal some special advantage was not thought to be a reason for opposing what was to be of such vast benefit to all mankind. The Clayton-Bulwer treaty was conceived to form an obstacle, and the British Government therefore agreed to abrogate it, the United States only promising in return to protect the canal and keep it open on equal terms to all nations, in accordance with our traditional policy. Nor were indications wanting of appreciation on the part of the American Republics. On January 22, 1902, the second Pan-American conference, sitting at the City of Mexico, adopted the following resolution:

The Republics assembled at the International Conference of Mexico applaud the purpose of the United States Government to construct an interoceanic canal, and acknowledge that this work will not only be worthy of the greatness of the American people, but also in the highest sense a work of civilization and to the greatest degree beneficial to the development of commerce between the American States and the other countries of the world.

Among the delegates who signed this resolution, which was adopted without dissent, was the delegate of Colombia.

At that time the Government of the United States had not formally decided upon the route for the canal, whether by way of Panama or of Nicaragua. Owing to the lack of correct information there had long existed a strong tendency toward the latter route; but, as the result of more thorough investigations, a decided change in opinion had begun to appear. To Colombia this change was understood to be very gratifying. As early as May 15, 1897, the Colombian

chargé d'affaires at Washington, speaking in the name of his Government, represented in a "friendly spirit" that any official assistance extended by the United States to the Nicaraguan Canal Company would work serious injury to Colombia.

In a similar sense Señor Martinez Silva, then Colombian minister at this capital, in a note of December 7, 1901, referring to a press report that the Isthmian Canal Commission had, by reason of the excessive price fixed by the Panama Canal Company, reported in favor of the Nicaraguan route, assured the department that the price was not final, and, after declaring that the matter was one that affected "the interests of the Colombian Government, which is well disposed to facilitate the construction of the proposed interoceanic canal through its territory," said:

It would indeed be unfortunate if, through misunderstandings arising from the absence of timely explanations, the Government of the United States should be forced to select a route for the proposed canal which would be longer, more expensive, both in construction and maintenance, and less adapted to the commerce of the world than the short and half-finished canal available at Panama.

On June 28, 1902, the President of the United States gave his approval to the act now commonly referred to as the Spooner Act, to provide for the construction of the interoceanic canal. Following the report of the Isthmian Canal Commission, which confirmed the opinion expressed by the Colombian Government, it embodied the formal decision of the United States in favor of the Panama route. It accordingly authorized the President to acquire, at a cost not exceeding \$40,000,000, "the rights, privileges, franchises, concessions," and other property of the New Panama Canal Company, including its interest in the Panama Railroad Company, and to obtain from Colombia on such terms as he might deem reasonable perpetual control for the purposes of the canal of a strip of land not less than six miles wide, such control to include jurisdiction to make and, through such tribunals as might be agreed on, to enforce such police and sanitary rules and regulations as should be necessary to the preservation of order and of the public health.

The act also provided, in a clause to which your statement adverts, that, in case the President should "be unable to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia," together with the "rights" mentioned in connection therewith, "within a reasonable time and upon reasonable terms," he should turn to Nicaragua. But this provision, while it indicated that the construction of the canal was not wholly to depend upon the success or failure to make reasonable terms with Colombia and the canal company, by no means implied that the question of routes was a matter of indifference.

In the nature of things it could not be so. Not only was the work to endure for all time, but its prompt construction was felt to be of vast importance; and it could not be a matter of less concern to the United States than to Colombia that this Government might possibly be forced to adopt a route which would, as the Colombian minister had observed—

be longer, more expensive, both in construction and maintenance, and less adapted to the commerce of the world than the short and half-finished canal available at Panama.

Nevertheless, even if the route by Panama had been found to be the only feasible one, it would have been highly imprudent for this Government to expose itself to exorbitant demands.

It possessed, indeed, the gratifying assurance that the Colombian Government was "well disposed to facilitate the construction of the proposed interoceanic canal through its territory," and the department is pleased to add to this your present assurance that Colombia considers the canal strip "as a Divine bequest for the innocent use of the American family;" but it was fully understood that, before the canal was begun, arrangements of a very substantial kind would have to be made; and it was felt that, no matter how generous the views of the Colombian Government might be, the canal company might be indisposed to act in the same liberal spirit.

The Spooner Act, in providing for the acquisition by the United States of a limited control over the canal strip, merely followed the lines of previous negotiations with Nicaragua and Costa Rica. Under any circumstances, the exercise of such control could not have been considered unreasonable, but it was deemed to be altogether essential, in view of the unsettled political and social conditions which had for many years prevailed, and which unhappily still continued to exist, along the canal routes, both in Nicaragua and in Panama. Its necessity was clearly recognized in the Hay-Pauncefote treaty, and it was on all sides fully understood to form a requisite part of any plan for the construction of the canal by the United States. Neither while the Spooner Act was pending before Congress nor at any previous time was it intimated from any quarter that it would form a bar to the carrying out of the great project for which the local sovereigns of the canal routes were then such ardent competitors.

After the Spooner Act was approved, negotiations were duly initiated by Colombia. They resulted on January 22, 1903, in the conclusion of the Hay-Herran convention. By this convention every reasonable desire of the Colombian Government was believed to be gratified. Although the concession to the United States of the right to construct, operate, and protect the canal was understood to be in its nature perpetual, yet, in order that no technical objection might be raised, it was limited to a term of one hundred years, renewable at the option of this Government for periods of a similar duration. The limited control desired by the United States of the canal strip for purposes of sanitation and police, not only in its own interest but also in that of Colombia and all other governments, was duly acquired. But in order that neither this, nor any other right or privilege, granted to the United States, might give rise to misconception as to the purposes of this Government, there was inserted in the convention this explicit declaration:

The United States freely acknowledges and recognizes this sovereignty [of Colombia] and disavows any intention to impair it in any way whatever or to increase its territory at the expense of Colombia or of any of the sister Republics in Central or South America; but, on the contrary, it desires to strengthen the power of the Republics on this continent, and to promote, develop, and maintain their prosperity and independence.

This declaration was, besides, confirmed by the reaffirmation of article 35 of the treaty of 1846, as well as by the stipulations made with reference to the protection of the canal; for it was expressly provided that only in exceptional circumstances, on account of unfore-

seen or imminent danger to the canal, railways, or other works, or to the lives and property of the persons employed upon them, should the United States employ its armed forces without obtaining the previous consent of the Government of Colombia, and that as soon as sufficient Colombian forces should arrive for the purpose those of the United States should retire.

Moreover, in view of the great and to some extent necessarily unforeseen expenses and responsibilities to be incurred by the United States, the pecuniary compensation agreed to be made to Colombia was exceedingly liberal. Upon the exchange of the ratifications of the convention, \$10,000,000 in gold were to be paid, a sum equivalent to two-thirds of what is reputed to be the total amount of the Colombian public debt; and, in addition to this, beginning nine years after the same date, an annual payment of \$250,000 in gold was to be made, a sum equivalent to the interest on \$15,000,000 at the rate at which loans can be obtained by this Government.

Such was the convention. The Department will now consider the manner in which it was dealt with.

In the "statement of grievances," to which I have now the honor to reply, a prominent place is given to the stipulation that the convention when signed should be "ratified according to the laws of the respective countries," and it is said that the course taken in Washington was not different from that at Bogota. In a narrow, technical sense this is true, but in a broader sense no supposition could be more misleading. The convention was submitted to the Senate of the United States on the day following its signature. From first to last it was cordially supported by the Administration, and on the 17th of March it was approved without amendment.

The course taken at Bogota affords a complete antithesis. The department is not disposed to controvert the principle that treaties are not definitely binding till they are ratified; but it is also a familiar rule that treaties, except where they operate on private rights, are, unless it is otherwise provided, binding on the contracting parties from the date of their signature, and that in such case the exchange of ratifications confirms the treaty from that date. This rule necessarily implies that the two Governments, in agreeing to the treaty through their duly authorized representatives, bind themselves, pending its ratification, not only to oppose its consummation but also to do nothing in contravention of its terms.

We have seen that by the Spooner Act, with reference to which the convention was negotiated, the President was authorized to acquire, at a cost not to exceed \$40,000,000, "the rights, privileges, franchises, concessions," and other property of the New Panama Canal Company. It was, of course, well known to both Governments that the company under the terms of the concession of 1878 could not transfer to the United States "its rights, privileges, franchises, and concessions" without the consent of Colombia. Therefore the Government of the United States before entering upon any dealings with the New Panama Canal Company negotiated and concluded the convention with Colombia. The first article of this convention provides:

The Government of Colombia authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties, and concessions, as well as the Panama railroad and all the shares or part of the shares of that company.

The authorization thus given, in clear and unequivocal terms, covers expressly the "rights, privileges, * * * and concessions" of the company, as well as its other property.

Some time after the convention was signed the Government of the United States learned, to its utter surprise, that the Government of Colombia was taking with the canal company the position that a further permission, in addition to that contained in the convention, was necessary to the transfer of its concessions and those of the Panama Railroad Company, respectively, to the United States, and that, as a preliminary to this permission, the companies must enter into agreements with Colombia for the cancellation of all her obligations to either of them under the concession. This proceeding seemed all the more singular in the light of the negotiations between the two Governments. The terms in which the convention authorized the New Panama Canal Company to sell and transfer its "rights, privileges, properties, and concessions" to the United States were the same as those embodied in the original draft of a treaty presented to this Government by the Colombian minister on March 31, 1902.

No change in this particular was ever suggested by Colombia, in all the discussions that followed, until November 11, 1902. On that day the Colombian minister presented a memorandum in which it was proposed that the authorization should be so modified that "the permission accorded by Colombia to the canal and the railroad companies to transfer their rights to the United States" should "be regulated by a previous special arrangement entered into by Colombia." To this proposal this department answered that "the United States considers this suggestion wholly inadmissible." The proposition was then abandoned by Colombia, and the convention was nearly three months later signed without any modification of the absolute authorization to sell.

The notices actually sent to the companies went, however, even further than the rejected and abandoned proposal presented by the Colombian minister, since they required the companies to cancel all obligations of Colombia to them, and thus to destroy the rights, privileges, and concessions which she had by the convention solemnly authorized the canal company to sell and transfer to the United States. The whole superstructure so laboriously reared was thus threatened with destruction by the removal of one of its foundation stones.

It was against this act of the Colombian Government itself that the remonstrance made by the American minister, Mr. Beaupré, by instruction of his Government, on the 24th of April last, was presented. Great stress is laid upon this remonstrance in Colombia's "statement of grievances," as the first of a series of three diplomatic representations which, by assuming to deny to the Colombian Congress the exercise of its constitutional functions, affronted that body and led the Colombian Senate to reject the convention. Unfortunately for this supposition, the Colombian Congress was not in session. It had not then been convoked; nor did it meet until the 20th of June. The representation was made solely with a view to recall to the Colombian Government the terms of the agreement which it had itself concluded, but of which it seemed to have become oblivious. The second representation was made, as you state, on the 18th of June, two days before

Congress met, but the cabled instruction under which it was made was sent by this Government on the 9th of June. The third was made on the 5th of August, while the Congress was in session. Its obvious purpose was, if possible, to exhibit the situation in its true light.

The department would here gladly end its recital of the course of the Colombian Government with what has already been exhibited, but the circumstances do not permit it to do so. As the "statement of grievances" presented on behalf of Colombia is founded upon the tacit assumption that her present plight is due solely to wrongs committed by this Government, it is necessary that the facts should be disclosed.

The violation by the Colombian Government, long before the Congress assembled, of its agreement to the sale and transfer to the United States of the rights and concessions of the canal and railway companies was not the only act by which it manifested its purpose to repudiate its own engagements. For some time after the convention was signed, its terms appeared to be as satisfactory to the people of Colombia as they seemingly had been to the Colombian Government.

This state of affairs continued until General Fernandez, in charge of the ministry of finance, issued, more than a month before the Congress was convoked and more than two months before it met, a circular to the Bogota press, which, as Mr. Beaupré reported, "had suddenly sprung into existence," inviting discussion of the convention. The circular in substance stated, according to Mr. Beaupré's report, that the Government "had no preconceived wishes for or against the measure;" that it was "for Congress to decide," and that Congress would be largely guided by "public opinion." In view of what the Government had already done, it is not strange that this invitation to discussion was followed by violent attacks upon the convention, accompanied by the most extravagant speculations as to the gains which Colombia might possibly derive from its rejection. No thought whatever seems to have been taken of the incalculable benefits that would accrue to Colombia as the direct and necessary result of the construction of the canal. Only the immediate possibilities, which the resources of this Government and the situation of the canal company served to suggest, seem to have been taken into account.

It is entirely impossible [said Mr. Beaupré, writing on May 4, 1903] to convince these people that the Nicaragua route was ever seriously considered by the United States; that the negotiations concerning it had any other motive than the squeezing of an advantageous bargain out of Colombia; nor that any other than the Panama route will be selected. * * * Therefore, it is contended, and generally believed, that there is no immediate necessity of confirming the Hay-Herran convention; that the negotiations can be safely prolonged, in the end securing very much better terms for Colombia. The public discussion is largely along the lines of the loss of national honor by the surrender of sovereignty; * * * private discussion, which perhaps more clearly reflects the real situation, is to the effect that the price is inadequate.

That Mr. Beaupré's summary of the situation—a situation which seems logically to have followed from the Government's own measures—was correct is amply demonstrated in the sequel. The department deems it unnecessary to enter into any argument upon the question raised at Bogota as to Colombia's "sovereignty." The convention speaks for itself, and its provisions for the acknowledgment and assurance of Colombia's sovereignty have already been set forth.

The explanations put forward in Colombia's "statement of grievances" merely repeat the pleas devised at the Colombian capital. The sudden discovery that the terms of the convention, as proposed and signed by the Colombian Government, involved a violation of the Colombian constitution, because it required a cession to the United States of the "sovereignty" which is expressly recognized and confirmed, could be received by this Government only with the utmost surprise. Nevertheless, the Colombian Senate unanimously rejected the convention.

This fact was communicated to the department by Doctor Herran on the 22d of August last, by means of a copy of a cablegram from his Government. In that telegram the "impairment" of Colombian "sovereignty" was mentioned as one of the "reasons advanced in debate" for the Senate's action; but joined with it there was another reason, with which the department had long been familiar, namely, the "absence" of a "previous agreement" of the companies with the Colombian Government for the transfer of their privileges. To these reasons there was added a reference to the representations made by Mr. Beaupré; but it was said to be "probable" that the Colombian Congress would "provide bases" for "reopening negotiations."

No such action, however, was taken by the Colombian Congress. On the contrary, by a report of the majority of the Panama Canal committee, read in the Colombian Senate on the 14th of October last, it was recommended that a bill which had been introduced to authorize the Government to enter upon new negotiations should be "indefinitely postponed." The reason for this recommendation is disclosed in the same report. By a treaty concluded April 4, 1893, the original concession granted to the Panama Canal Company was extended until December 31, 1904.

By a legislative act in 1900 a new extension was made till October 31, 1910; but the report, adopting a suggestion which had been put forward in the press, raises a question as to whether this legislative extension was valid, and adds that if it was not valid the aspect of the question would be entirely changed in consequence of the fact that when a year later the Colombian Congress should meet in ordinary session the extension of 1893 would have "expired and every privilege with it." In that case, the report goes on to say, the Republic would become the "possessor and owner, without any need of a previous judicial decision and without any indemnity, of the canal itself and of the adjuncts that belong to it," and would not only be able to "contract * * * without any impediments," but would be in more clear, more definite, and more advantageous possession, both legally and materially.

This programme, if not expressly, was at least tacitly, adopted by the Colombian Congress, which adjourned on the 31st of October without providing any bases for the reopening of negotiations. It was a scheme to which this Government could not possibly have become a party. Of this fact the Colombian Government was duly notified when the first intimation of its purpose was, long anterior to the assembling of the Congress, first disclosed. The Colombian Government was expressly informed that such action on its part, or on that of the companies, would be inconsistent with the agreements already made between the United States and the canal company with the act

of June 28, 1902, under the authority of which the convention was made, and with the express terms of the convention itself. It was, under the circumstances, equivalent to a refusal of all negotiation with this Government.

Under these circumstances it was the intention of the President before further action to submit the matter to Congress, which was then soon to assemble. The situation, however, was presently changed. If the Government at Bogota, as the "statement of grievances" assures us, "fell into error" in supposing that the only consequence of its rejection of the convention would be the abandonment of the Panama route by this Government, its blindness to a situation at home that was attracting the attention of the world can only be imputed to itself. Reports of impending trouble, as the result of what was going on at Bogota, were rife.

Advices came to this Government, not only through the press but also through its own officials, of the existence of dangerous conditions on the Isthmus, as well as in the adjacent States whose interests were menaced. Disorders in that quarter were not new. In the summer of 1902, as well as in that of 1901, this Government had been obliged by its forces to maintain order on the transit route, and it took steps, as it had done on previous occasions, to perform a similar duty should the necessity arise. The form the trouble might take could not be foreseen, but it was important to guard against any destructive effects.

The reasonableness of these precautions soon became evident. The people of Panama rose against an act of the Government at Bogota that threatened their most vital interests with destruction and the interests of the whole world with grave injury. The movement assumed the form of a declaration of independence. The avowed object of this momentous step was to secure the construction of the interoceanic canal. It was inspired by the desire of the people at once to safeguard their own interests and at the same time to assure the dedication of the Isthmus to the use for which Providence seemed to have designed it.

The situation thus suddenly created, as the direct and immediate consequence of the act of the Government at Bogota, was, as has already been observed, one that deeply concerned not only this Government but the whole civilized world; but the interests of the United States were especially implicated by reason of the treaty of 1846 with New Granada. This treaty is frequently cited in Colombia's "statement of grievances," and the United States is repeatedly charged with having violated it. But, while its terms are employed as the basis of every accusation against this Government that they can with any plausibility be made to support, its great and fundamental design, the disregard of which by Colombia produced the revolution on the Isthmus, is wholly passed over and neglected. The department is obliged to remedy this defect.

In speaking of the treaty of 1846 both Governments have in mind the thirty-fifth article, which forms in itself a special and distinctive international engagement. By this article—

the Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be free and open to the Government and citizens of the United States.

In return—

the United States guarantees positively and efficaciously to New Granada * * * the perfect neutrality of the before-mentioned Isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed.

And—

in consequence the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

The circumstances in which these engagements originated are matters of history. For some years exceptional efforts had been put forth to secure the construction of an interoceanic canal, and it was commonly believed that certain European Governments, and particularly that of Great Britain, were seeking to obtain control of the transit routes. That no capitalist could be found to engage in the construction of a canal without some greater security for their investments than the feeble and irregular local governments could afford was universally admitted. But, on the other hand, it was apprehended that the introduction of European monarchical interests would prove to be but the beginning of a process of colonization that would in the end be fatal to the cause of republican government.

In this predicament all eyes were turned to the United States. The first result was the conclusion of the treaty of 1846 with New Granada. Its primary object was to assure the dedication of the Isthmus to purposes of interoceanic transits, and above all to the construction of an interoceanic canal. President Polk, in submitting it to the Senate, assigned as the chief reason for its ratification that a passage through the Isthmus—

would relieve us from a long and dangerous navigation of more than nine thousand miles around Cape Horn, and render our communication with our own possessions on the northwest coast of America comparatively easy and speedy.

It is true that the treaty did not require Colombia to permit such a passage to be constructed; but such an obligation was so obviously implied that it was unnecessary to express it.

Apart from the adaptation of the Isthmus to interoceanic transit, and its use for that purpose, there existed, as between the United States and New Granada, no common reason for the treaty's existence. This has always been well understood by both Governments. In a note of the Colombian chargé d'affaires at Washington, of January 3, 1899, commending the Panama enterprise to the good will of this Government, reference is made to the advantages which the United States "would derive from the Panama Canal, when studied in the light of that international agreement," the treaty of 1848. The same treaty was expressly incorporated into and perpetuated in the Hay-Herran convention. And it may be added that the Panama Canal, so far as it has progressed, was built under the protection of the same engagement.

The guaranty by the United States of the neutrality of the Isthmus, and of the sovereignty and property of New Granada thereover, was given for the conservation of precisely this purpose. To this end the United States undertook to protect the sovereignty of the Isthmus from attacks by foreign powers. The powers primarily in view were

those of Europe, but the treaty made no discriminations. The theory on which the "statement of grievances" proceeds, that the treaty obliged the Government of the United States to protect the Government of New Granada against domestic insurrection or its consequences, finds no support in the record, and is in its nature inadmissible.

Only a few years before the treaty was made the original Republic of Colombia was dissolved into the States of Venezuela, Ecuador, and New Granada, and since the treaty was made the Republic of New Granada has been successively transformed into the United States of Colombia and the present Republic of Colombia. With these internal changes the Government of the United States was not permitted to concern itself, so far as they did not affect its treaty rights and obligations. Indeed, it is not to be imagined that New Granada desired or that the United States would have been willing to take part in the former's internal revolutions.

That the United States has faithfully borne, during the long period since the treaty was concluded, the full burden of its responsibilities does not admit of question.

A principal object of New Granada [said Mr. Fish, in a note to the Colombian minister of May 27, 1871] in entering into the treaty is understood to have been to maintain her sovereignty over the Isthmus of Panama against any attack from abroad. That object has been fully accomplished. No such attack has taken place, though this department has reason to believe that one has upon several occasions been threatened, but has been averted by warning from this Government as to its obligations under the treaty.

In January, 1885, when Colombia appealed to the United States in the hope of averting the hostilities with which she was believed to be threatened on account of the Italian subject, Cerruti, this Government caused an intimation to be made of the serious concern which it—

could not but feel were a European power to resort to force against a sister republic of this hemisphere as to the sovereign and uninterrupted use of a part of whose territory we are guarantors, under the solemn faith of a treaty.

Such is the spirit in which the United States has on various occasions discharged its obligations.

The United States has done more than this. It has assumed and discharged, as if primarily responsible, duties which in the first instance rested on Colombia. According to the language of the treaty, the right of the Government and people of the United States to a free and open transit across the Isthmus was guaranteed by New Granada; but the United States has been able to secure the benefits of it only by its own exertions; and in only one instance, and that as far back as 1857, has it been able to obtain from Colombia any compensation for the injuries and losses resulting from her failure to perform her obligation. The department deems it unnecessary now to enter into particulars, but is abundantly able to furnish them.

Meanwhile, the great design of the treaty of 1846 remained unfulfilled; and in the end it became apparent, as has heretofore been shown, that it could be fulfilled only by the construction of a canal by the Government of the United States. By reason of the action of the Government at Bogota in repudiating the Hay-Herran convention, and of the views and intentions disclosed in connection with that repudiation, the Government was confronted, when the revolution at Panama took place, with the alternative of either abandoning the

chief benefit which it expected and was entitled to derive from the treaty of 1846, or of resorting to measures the necessity of which it could contemplate only with regret.

By the declaration of independence of the Republic of Panama a new situation was created. On the one hand stood the Government of Colombia invoking in the name of the treaty of 1846 the aid of this Government in its efforts to suppress the revolution; on the other hand stood the Republic of Panama that had come into being in order that the great design of that treaty might not be forever frustrated, but might be fulfilled. The Isthmus was threatened with desolation by another civil war, nor were the rights and interests of the United States alone at stake, the interests of the whole civilized world were involved. The Republic of Panama stood for those interests; the Government of Colombia opposed them. Compelled to choose between these two alternatives, the Government of the United States, in no wise responsible for the situation that had arisen, did not hesitate. It recognized the independence of the Republic of Panama, and upon its judgment and action in the emergency the powers of the world have set the seal of their approval.

In recognizing the independence of the Republic of Panama the United States necessarily assumed toward that Republic the obligations of the treaty of 1846. Intended, as the treaty was, to assure the protection of the sovereign of the Isthmus, whether the government of that sovereign ruled from Bogotá or from Panama, the Republic of Panama, as the successor in sovereignty of Colombia, became entitled to the rights and subject to the obligations of the treaty.

The treaty was one which in its nature survived the separation of Panama from Colombia. "Treaties of alliance, of guarantee, or of commerce are not," says Hall, "binding upon a new state formed by separation;" but the new state "is saddled with local obligations, such as that to regulate the channel of a river, or to levy no more than certain dues along its course." (International Law, 4th edition, p. 98.) To the same effect, it is laid down by Rivier "that treaties relating to boundaries, to water courses, and to ways of communication," constitute obligations which are connected with the territory and follow it through the mutations of national ownership. (*Principes du Droit des Gens*, I, 72-73.) This Government, therefore, does not perceive that, in discharging in favor of the present sovereign of the Isthmus its duties under the treaty of 1846, it is in any way violating or failing in the performance of its legal duties.

Under all the circumstances the department is unable to regard the complaints of Colombia against this Government, set forth in the "Statement of grievances," as having any valid foundation. The responsibility lies at Colombia's own door rather than at that of the United States. This Government, however, recognizes the fact that Colombia has, as she affirms, suffered an appreciable loss. This Government has no desire to increase or accentuate her misfortunes, but is willing to do all that lies in its power to ameliorate her lot. The Government of the United States, in common with the whole civilized world, shares in a sentiment of sorrow over the unfortunate conditions which have long existed in the Republic of Colombia by reason of the factional and fratricidal wars which have desolated her fields, ruined her industries, and impoverished her people.

Entertaining these feelings, the Government of the United States would gladly exercise its good offices with the Republic of Panama, with a view to bring about some arrangement on a fair and equitable basis. For the acceptance of your proposal of a resort to The Hague tribunal, this Government perceives no occasion. Indeed, the questions presented in your "statement of grievances" are of a political nature, such as nations of even the most advanced ideas as to international arbitration have not proposed to deal with by that process. Questions of foreign policy and of the recognition or nonrecognition of foreign states are of a purely political nature, and do not fall within the domain of judicial decision; and upon these questions this Government has in the present paper defined its position.

But there may be, no doubt, other questions which may form a proper subject of negotiation; among them, for instance, the establishment of diplomatic relations between the Republics of Colombia and Panama, the delimitation of their respective boundaries, the possible apportionment of their mutual pecuniary liabilities. If the Government of Colombia will take these matters up, with any others which they think may require discussion, and will put their suggestions in regard to them in a definite and concrete form, they will receive at the hands of this Government the most careful consideration, with a view to bringing them, in the exercise of good offices, to the attention of the Government of Panama.

Accept, sir, the renewed assurances of my highest consideration.

JOHN HAY.

[Translation.]

General Reyes to Mr. Hay.

LEGATION OF COLOMBIA
ON SPECIAL MISSION,
Washington, January 6, 1904.

MR. SECRETARY: I have received the note which your excellency did me the honor to address to me under date of the 30th of December last, in answer to mine of the 29th of the same month. I transmitted it by cable to my Government and have received from it instructions to make to your excellency's Government the following declarations:

First. That the said note of the 30th of December from your excellency is regarded by my Government as an intimation that the Colombian forces will be attacked by those of the United States on their entering the territory of Panama for the purpose of subduing the rebellion, and that for that reason, and owing to its inability to cope with the powerful American squadron that watches over the coasts of the Isthmus of Panama, it holds the Government of the United States responsible for all damages caused to it by the loss of that national territory.

Second. That since the 3d of November last the revolution of Panama would have yielded, or would not have taken place, if the American sailors and the agents of the Panama Canal had not prevented the Colombian forces from proceeding on their march toward Panama, and that I, as commander in chief of the army of Colombia, would have succeeded in suppressing the revolution of Panama as

early as the 20th of the same month if Admiral Coghlan had not notified me in an official note that he had orders from his Government to prevent the landing of Colombian forces throughout the territory of the Isthmus.

Third. That the charges officially made again the Government and Senate of Colombia that it was opposed to the work of the Panama Canal, and that its purpose was to obtain a greater amount of money from the American Government and to recover the concession of the French company are unfair and groundless, and the proof of this assertion is that the Colombian Senate refused to ratify the Hay-Herran treaty, not because a greater sum of money was demanded, but because the treaty was contrary to the constitution of the country, which prohibits the cession of sovereignty over national territory; but the necessity of the canal is so well recognized in Colombia that it was proposed, in the discussion of the Senate, to amend the constitution in order to remove the constitutional difficulty, and the minister of foreign relations, after the sessions of Congress were closed, directed the *chargé d'affaires*, Doctor Herran, to advise the Government of your excellency that that of Colombia was ready to enter into renewed negotiations for a canal convention, and that it purposed to remove the existing constitutional difficulties. The charge made against the Government of Colombia that it purposed to cancel the concession of the French company vanishes as soon as it be known that under the latest extension granted to it by Colombia the said concession would not lapse until the year 1910.

Fourth. That the failure of the Colombian Senate to ratify the Hay-Herran treaty, for the reasons above stated, can not be regarded as an act of discourtesy or unfriendliness, as the minister of foreign relations of Colombia, Señor Rico, told the minister of the United States, Mr. Beaupré, at Bogota, because a treaty prior to its ratification is nothing but a project which, according to the laws of nations, neither confers rights nor imposes obligations, and therefore its rejection or delay in its ratification gives no ground for the adoption of measures tending to alter the relations of friendship between the two countries. If it were not so, the mere act of preparing a public treaty would be an occasion for serious danger instead of an element of peace and progress, which is the predicament in which Colombia finds herself at present, owing to her weakness.

Fifth. That while the treaty of 1846 gives to the Government of the United States the right to maintain and protect the free transit of the Isthmus at the request of Colombia and when the latter is unable to do so, it places it under the obligation of enforcing the respect of Colombia's sovereignty over the territory of the Isthmus and that the American Government has now not only failed to discharge that duty, but has prevented the Colombian forces from recovering the national sovereignty on the Isthmus, and thus the said treaty of 1846 being in full force, Colombia holds that the Government of the United States has no other reason than that of its own strength and of Colombia's weakness for interpreting and applying it in the manner it has; that is to say, for availing itself of the advantages and rights conferred by the treaty, and refusing to fulfill the obligations imposed thereby.

Sixth. That it is known, from sworn statements, that the garrisons of Panama and Colon were bought with gold brought from the

United States, toward the end of October, by the Panama revolutionists.

Seventh. That if these revolutionists had not relied, and did not now rely, on the armed protection of the United States, whose powerful squadrons on both the Pacific and Atlantic Oceans have prevented, and are preventing, since the 3d of November, the Colombian army from landing its forces, the Panama revolution would have been foiled by Colombia in a few hours.

Eighth. That the Government of Colombia, holding a perfect right that the cession of the compact with the French canal company be not effected without its express consent, has instituted an action against the said company before the French courts and asked that the contract made with the American Government be declared null and void.

Ninth. That on the grounds above stated, the Government of Colombia believes that it has been despoiled by that of the United States of its rights and sovereignty on the Isthmus of Panama, and not being possessed of the material strength sufficient to prevent this by the means of arms (although it does not forego this method, which it will use to the best of its ability), solemnly declares to the Government of the United States:

First. That the Government of the United States is responsible to that of Colombia for the dismemberment that has been made of its territory by the separation of Panama, by reason of the attitude that the said Government assumed there as soon as the revolution of the 3d of November broke out.

Second. That the contract made between the United States and the French canal company is null, since it lacks the consent of Colombia, and the latter has already brought suit against the said canal company before the French courts in the defense of its interests.

Third. That the Government of Colombia does not nor will it ever relinquish the rights it possesses over the territory of the Isthmus of which it is now despoiled by the American forces, and will at all times claim the said rights and try to vindicate them by every means within its reach, and that for that reason the title over the territory of the Isthmus that may be acquired by the United States for the opening of the canal is void, and Colombia reserves to herself the right to claim the said territory at any time.

Fourth. That if the work of the Panama Canal is undertaken and carried to completion in disregard and trespass of the rights of Colombia, the latter puts it on record that she was denied justice by the United States; that she was forcibly despoiled of the territory of the Isthmus in clear violation of the treaty of 1846, and that she does not relinquish the rights she possesses over the said territory, and holds the United States responsible for the damages caused to her.

Fifth. That Colombia, earnestly wishing that the work of the canal be carried into effect, not only because it suits her interest but also those of the commerce of the world, is disposed to enter into arrangements that would secure for the United States the execution and ownership of the said work and be based on respect for her honor and rights.

Sixth. That the United States has never protected Colombia on the Isthmus of Panama against foreign invasion, and that when it has

intervened to prevent the interruption of the traffic it has been in help, or be it at the suggestion of the Government of Colombia. In this one instance it did so on its own initiative, with the obvious purpose of protecting the secession of the Isthmus. The guaranty of neutrality, if it were privileged, would estop the sovereign of the land from maintaining order, which is contrary to the fundamental principles of every Government; and

Seventh. That the course followed by the American Government at Panama at the time when Colombia enjoyed peace, after overcoming a revolution of three years' duration, which left her exhausted, is in favor of any rebellion, but not of the maintenance of order, which is contrary to the principles and antecedents of the policy of this great Nation as established in the war of secession.

As the treaty with Panama, by which the rights of Colombia on the Isthmus are plucked from her, is now under discussion in the American Senate, I respectfully ask of your excellency that my note of December 23 and the present one be submitted to that high body, so that they may be taken into account in the discussion of the rights of Colombia.

Inasmuch as official charges have been made against my country in the documents sent to the Senate, I give notice to your excellency that, in reply to those charges, I will publish my note of the 23d of December and the present one.

I beg that your excellency will answer, as soon as possible, my aforesaid note of 23d of December.

I have the honor to be, with sentiments of the highest consideration,
Your excellency's obedient servant,

RAFAEL REYES.

Mr. Hay to General Reyes.

DEPARTMENT OF STATE,

Washington, January 9, 1904.

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's note of the 6th of January, 1904, which I have read with most respectful care.

I find that almost all the propositions brought forward in this communication have been considered and fully answered in advance in the note I had the honor to address you on the 5th day of January. I need, therefore, only briefly refer to a few matters which you have brought forward for the first time in your note of the 6th of January. In the first paragraph of your note you state that your Government regards my note to you of the 30th of December as an intimation that the Colombian forces will be attacked by those of the United States on their entering the territory of Panama. This inference of yours is wholly gratuitous. We have considered it our duty to represent to you the serious responsibility which would have been assumed by Colombia in a hostile demonstration of the character you mention, and, at the same time, you were assured that the United States Government in that event would reserve its liberty of action and be governed by the circumstances of the case.

Your excellency is pleased to assert that if this Government had not intervened to preserve order on the Isthmus you would have been able to put an end to the revolutionary government of Panama in a

few hours. This is hardly consistent with your statement that the late insurrection in Panama lasted three years. No human sagacity can decide with certainty what would have been the duration or result of such a conflict as would have ensued, nor what would have been the amount of bloodshed and devastation which would have afflicted the Isthmus, or the sum of the injury which would have resulted to the world at large if this Government had not taken the action of which you complain.

In the third paragraph of your note you repeat your claim that the action of your Government in respect to the canal treaty was not prompted by any desire for additional compensation, but solely by a regard for your constitutional law. In reply to this I can only refer your excellency to the repeated intimations we received during the discussion of the treaty in Bogota from the highest and most honorable personages in the Republic, that a large increase of the pecuniary consideration would result in the ratification of the convention; to the attempt which was made to induce the French canal company to pay an enormous sum for permission to dispose of their property; and to the report of the canal committee to the Colombian Senate, suggesting the delay of all proceedings until the coming year, when the extension of the concession might be declared invalid and the nation might be in condition to deal with us without regard to the French shareholders. Your reference to the constitutional question I have already answered. The treaty which Colombia made and then rejected contained no cession of sovereignty; but, on the contrary, preserved the sovereignty of Colombia scrupulously intact.

I do not consider that this Government is called upon to take notice of your statement as to the sources from which the revolutionary government obtained its funds. As this Government had no participation in the preparation of the revolution, it has no concern with the details of its history.

I note with regret the continued protest you make in the name of your Government against the events which have taken place in Panama, and the determination of Colombia not to accept the situation to which they have given rise. I am in harmony with the sincere desire of the Government and the people of the United States in hoping that your Government may see its way to conclusions more in accordance with its true interests and those of its sister American Republics, and that it may not reject the friendly assurances I am charged to convey to you.

I will not for a moment accept the imputation of unfriendly motives or sentiments on the part of this country toward Colombia, and, even if Colombia should persist in assuming a hostile attitude toward us, it will only be after the most careful deliberation and with extreme reluctance that this Government would shape its course in accordance with the deplorable conditions thus created.

I am, Mr. Minister, with sentiments of the highest consideration,

Your obedient servant,

JOHN HAY.

Gen. RAFAEL REYES.

*Envoy Extraordinary and Minister Plenipotentiary
on Special Mission.*