

DIPLOMATIC HISTORY OF THE PANAMA CANAL

CORRESPONDENCE

RELATING TO
THE

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



WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

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63D CONGRESS : : 2D SESSION

DECEMBER 1, 1913-OCTOBER 24, 1914

SENATE DOCUMENTS

VOL. 15

WASHINGTON : : GOVERNMENT PRINTING OFFICE : : 1914



341.273
u 582d

REPORTED BY MR. HITCHCOCK.

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

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

Attest:

JAMES M. BAKER, *Secretary.*

CONTENTS.

PART I.

	Page.
Bryan, William J., Secretary of State, letter to the President, April 23, 1914.....	ix
Choate, Joseph H., American ambassador to Great Britain:	
Telegram to Mr. Hay, January 11, 1901.....	9
Letter to Mr. Hay, January 12, 1901.....	9
Letter to Lord Lansdowne, January 4, 1901.....	9
Telegram to Mr. Hay, February 19, 1901.....	11
Extracts from private letter to Mr. Hay, June 24, 1901.....	22
Letter to Mr. Hay, August 16, 1901.....	31
Letter to Mr. Hay, August 20, 1901.....	34
Letter to Mr. Hay, September 3, 1901.....	38
Telegram to Mr. Hay, September 20, 1901.....	39
Letter to Mr. Hay, September 21, 1901.....	40
Letter to Mr. Hay, September 25, 1901.....	42
Telegram to Mr. Hay, September 27, 1901.....	44
Letter to Mr. Hay, September 27, 1901.....	44
Telegram to Mr. Hay, October 2, 1901.....	45
Letter to Mr. Hay, October 2, 1901.....	46
Letter to Mr. Hay, October 9, 1901.....	48
Telegram to Mr. Hay, October 9, 1901.....	49
Hay, John, Secretary of State:	
Letter to Mr. White, December 7, 1898.....	1
Letter to Mr. Choate, December 22, 1900.....	6
Letter to Lord Pauncefote, December 22, 1900.....	7
Telegram to Mr. Choate, December 29, 1900.....	8
Letter to Mr. Choate, January 25, 1901.....	10
Telegram to Mr. Choate, February 16, 1901.....	10
Telegram to Mr. Choate, March 13, 1901.....	18
Telegram to Mr. Choate, March 15, 1901.....	19
Letter to Lord Pauncefote, March 25, 1901.....	19
Extract from private letter to Mr. Choate, April 27, 1901.....	21
Telegram to Mr. Choate, August 22, 1901.....	35
Extracts from private letter to Mr. Choate, September 2, 1901.....	36
Extracts from private letter to Lord Pauncefote, September 2, 1901.....	37
Telegram to Mr. Choate, September 21, 1901.....	42
Telegram to Mr. Choate, September 29, 1901.....	45
Telegram to Mr. Choate, October 2, 1901.....	45
Telegram to Mr. Choate, October 3, 1901.....	48
Letter to Lord Pauncefote, November 8, 1901.....	52
Letter, explanatory of provisions of second treaty, addressed to Hon. S. M. Cullom, chairman Senate Committee on Foreign Relations, December 12, 1901.....	53
Letter to Lord Pauncefote, December 16, 1901.....	68
Letter to Lord Pauncefote, February 20, 1902.....	68
Hay-Pauncefote treaty (November 18, 1901):	
Original draft submitted to Lord Lansdowne.....	20
Amendments to Mr. Hay's original draft proposed by Lord Lansdowne....	29
History of amendments proposed and considered which resulted in second treaty.....	61
Lansdowne, the Marquis of:	
Letter to Lord Pauncefote, February 22, 1901.....	11
Letter of Mr. Lowther, August 3, 1901.....	25
Memorandum transmitted to Mr. Lowther, August 3, 1901.....	25
Amendments to Mr. Hay's draft of second treaty proposed by.....	29
Letter to Mr. Lowther, September 12, 1901.....	38
Letter to Lord Pauncefote, October 23, 1901.....	50

	Page.
Papers transmitted in response to Senate resolution 339, April 23, 1914, list of..	xi
Pauncefote, Lord, British ambassador to the United States:	
Letter to Mr. Hay, December 26, 1900.....	8
Letter of Lord Lansdowne, April 25, 1901.....	19
Letter to Lord Lansdowne, November 18, 1901.....	53
Letter to Lord Lansdowne, November 19, 1901.....	52
Telegram to Lord Lansdowne, December 16, 1901.....	53
Letter to Mr. Hay, February 18, 1902.....	68
Spectator, London, editorial in, December 10, 1898.....	4
White, Henry, chargé d'affaires, American Embassy, London:	
Telegram to Mr. Hay, December 21, 1898.....	2
Telegram to Mr. Hay, December 22, 1898.....	2
Letter to Mr. Hay, December 22, 1898.....	3
Telegram to Mr. Hay, October 23, 1901.....	50
Extracts from personal letter to Mr. Hay, October 26, 1901.....	51
Wilson, Woodrow, President of the United States, transmitting correspondence, April 24, 1914.....	ix

PART II.

Bacon, Robert, Secretary of State, letter to Mr. Bryce, February 20, 1909.....	77
Bryce, James, British ambassador to the United States:	
Letter to Mr. Root, January 8, 1909.....	70
Memorandum to Mr. Root, February 3, 1909.....	76
Letter to Mr. Bacon, February 24, 1909.....	81
Reid, Whitelaw, American ambassador to Great Britain:	
Telegram to Mr. Root, January 11, 1909.....	71
Telegram to Mr. Root, January 15, 1909.....	71
Letter to Mr. Root, January 25, 1909.....	75
Memorandum to Sir Edward Grey, January 20, 1909.....	75
Root, Elihu, Secretary of State:	
Letter to Mr. Bryce, January 8, 1909.....	69
Letter to Mr. Reid, January 9, 1909.....	70
Letter to the British ambassador, January 16, 1909.....	72
Telegram to Mr. Reid, January 16, 1909.....	74

PART III.

Bryce, James, British ambassador, Washington, letter to Mr. Knox, February 27, 1913.....	101
Grey, Sir Edward, secretary of state for foreign affairs, Great Britain, letter to Mr. Bryce, November 14, 1912.....	85
Innes, A. Mitchell, British chargé d'affaires, Washington:	
Letter to Mr. Knox, July 8, 1912.....	82
Letter to Mr. Knox, August 27, 1912.....	83
Knox, P. C., Secretary of State, letter to Chargé d'Affaires Laughlin, London, January 17, 1913.....	93
Panama Canal dues, interrogations in the House of Commons (October 11, 1912) concerning.....	84
Phillips, William, American embassy, London, letter to Mr. Knox, October 11, 1912.....	84
Taft, William H., President of the United States, proclamation (Panama Canal toll rates), November 13, 1912.....	100
Wilson, Huntington, Acting Secretary of State, letter to Mr. Innes, August 30, 1912.....	83

PART IV-a.

Adee, A. A., Acting Secretary of State:	
Telegram to Mr. Northcott, October 4, 1909.....	241
Telegram to Mr. Northcott, October 23, 1909.....	244
Arosemena, C. C., Panama minister, telegram to Mr. Root, January 31, 1909...	190
Bacon, Robert, Acting Secretary of State:	
Letter to Mr. Cortes, April 9, 1908.....	174
Telegram to Mr. Dawson, February 9, 1909.....	190
Telegram to Mr. Dawson, February 26, 1909.....	195

	Page.
Barrett, John, minister to Colombia:	
Letter to Mr. Root, April 7, 1906.....	112
Letter to Mr. Root, May 23, 1906.....	112
Telegram to Mr. Root, June 12, 1906.....	120
Letter to Mr. Root, June 13, 1906.....	120
Letter to Mr. Root, June 13, 1906.....	121
Letter to Mr. Root, June 13, 1906.....	122
Telegram to Mr. Root, July 14, 1906.....	129
Bryan, William Jennings, Secretary of State, letter to President, May 6, 1914, .	105
Calderon, Carlos, minister for foreign affairs, Colombia:	
Letter to Mr. Northcott, October 2, 1909.....	242
Letter to Mr. Northcott, December 20, 1909.....	248
Cobo, Vasquez, minister for foreign affairs, Colombia, confidential memorandum submitted to Mr. Root and Mr. Barrett, September 20, 1906.....	129
Colombia and Panama, protocol transmitted by President Taft, August 17, 1907. .	152
Cortes-Arango protocol, August 17, 1907.....	152
Cortes, Enrico, Colombian minister:	
Confidential memorandum to Mr. Root, November 8, 1906.....	130
Memorandum submitted to Mr. Root, January 3, 1907.....	134
Letter to Mr. Buchanan, March 4, 1907.....	135
Memorandum relating to proposed treaty with Colombia, March 4, 1907..	137
Statement covering views concerning Colombian claims against Panama:	
Costa Rican boundary dispute, etc., March 4, 1907.....	138
Letter to Mr. Buchanan, March 7, 1907.....	147
Letter to Mr. Root, April 25, 1907.....	151
Telegram to Colombian Government, May 10, 1907.....	152
Letter to Mr. Root, August 18, 1907.....	156
Letter to Mr. Root, December 5, 1907.....	157
Letter to Mr. Root, December 20, 1907.....	160
Letter to Mr. Root, December 28, 1907.....	164
Memorandum to Mr. Root, comparing Columbian protocol with protocol of August 17, 1907.....	164
Letter to Mr. Root, January 26, 1908.....	168
Letter to Mr. Root, February 19, 1908.....	170
Letter to Mr. Root, March 12, 1908.....	172
Letter to Mr. Root, March 31, 1908.....	173
Letter to Mr. Root, December 31, 1908.....	180
Letter to Mr. Root, January 10, 1909.....	186
Letter to Mr. Knox, March 16, 1909.....	213
Letter to Mr. Knox, March 22, 1909.....	217
Letter to Mr. Knox, March 24, 1909.....	219
Cromwell, William Nelson, counsel New Panama Canal Co., letter to the President, March 10, 1908.....	172
Dawson, Thomas C., minister to Colombia:	
Telegram to Mr. Root, February 14, 1909.....	193
Telegram to Mr. Root, February 17, 1909.....	193
Letter to Mr. Root, February 17, 1909.....	193
Telegram to Mr. Root, February 23, 1909.....	195
Letter to Mr. Root, February 26, 1909.....	196
Telegram to Secretary of State, March 1, 1909.....	212
Telegram to Mr. Knox, March 10, 1909.....	212
Telegram to Mr. Knox, March 14, 1909.....	212
Telegram to Mr. Knox, March 16, 1909.....	214
Telegram to Mr. Knox, March 18, 1909.....	214
Telegram to Mr. Knox, March 23, 1909.....	218
Telegram to Mr. Knox, March 26, 1909.....	220
Telegram to Mr. Knox, March 27, 1909.....	220
Letter to Mr. Knox (edited), March 29, 1909.....	221
El Nuevo Tiempo, Bogota:	
Article published January 13, 1909.....	187
Article published February 12, 1909.....	191
Hibben, Paxton, chargé d'affaires American Legation, Bogota:	
Letter to Mr. Root, October 6, 1908.....	174
Letter to Mr. Root, January 13, 1909.....	187
Letter to Mr. Root, February 12, 1909.....	191
Telegram to Mr. Knox, May 10, 1909.....	232
Telegram to Mr. Knox, May 12, 1909.....	232

	Page.
Hibben, Paxton, chargé d'affaires American Legation, Bogota—Continued.	
Letter to Mr. Knox (edited), May 13, 1909.....	233
Letter to Mr. Knox, May 27, 1909.....	237
Knox, P. C., Secretary of State:	
Telegram to Mr. Dawson, March 15, 1909.....	213
Telegram to Mr. Dawson, March 17, 1909.....	214
Telegram to Mr. Dawson, March 19, 1909.....	215
Memorandum, March 19, 1909.....	215
Telegram to Mr. Dawson, March 19, 1909.....	216
Letter to Mr. Cortes, March 19, 1909.....	216
Letter to Mr. Cortes, March 22, 1909.....	217
Letter to Mr. Dawson, April 19, 1909.....	230
Loomis, Francis, Acting Secretary of State, letter to Mr. Russell, January 9, 1905.....	110
Palau, Dr. Ignacio, interview in Correo Nacional.....	127
Papers transmitted in response to Senate resolution 346 (tripartite treaties), list of.....	107
Northcott, Elliott, minister to Colombia:	
Telegram to Mr. Knox, September 29, 1909.....	238
Letter to Mr. Knox, October 1, 1909.....	238
Letter to Mr. Knox, October 7, 1909.....	242
Telegram to Mr. Knox, October 13, 1909.....	243
Letter to Mr. Knox, October 29, 1909.....	245
Letter to Minister Calderon, October 26, 1909.....	245
Telegram to Mr. Knox, January 5, 1910.....	247
Letter to Mr. Knox, February 18, 1910.....	247
Letter to Mr. Knox, May 13, 1910.....	248
Letter to Mr. Calderon, May 12, 1910.....	249
Reyes, Rafael, President of Colombia:	
Conferences with Mr. Barrett, May 23, 1906.....	113
Memorandum submitted to Mr. Barrett, May 23, 1906.....	117
Summary of proposals to Mr. Barrett, May 23, 1906.....	115
Informal memorandum presented to Mr. Barrett, June 12, 1906.....	124
Telegram to Colombian Legation, January 12, 1909.....	186
Presidential message, February 22, 1909.....	196
Presidential message, February 22, 1909.....	219
Manifesto, May 10, 1909.....	237
Root, Elihu, Secretary of State:	
Telegram to Mr. Barrett, June 14, 1906.....	128
Letter to Mr. Barrett, July 2, 1906.....	128
Interview with Mr. Barrett and Mr. Cobo, Cartagena, Colombia, September 24, 1906.....	199
Letter to Mr. Gualfria, April 24, 1907.....	147
Letter to Mr. Cortes, August 26, 1907.....	157
Letter to Mr. Nolte, transmitting draft of treaty submitted by chargé d'affaires of Panama for agreement between Panama and Colombia, December 17, 1907.....	157
Letter to Mr. Cortes, January 23, 1908.....	168
Letter to Mr. Cortes, February 18, 1908.....	170
Letter to Mr. Cortes, March 17, 1908.....	173
Letter to London & County Banking Co. (Ltd.), March 17, 1908.....	177
Letter to Mr. Cortes, December 29, 1908.....	175
Treaty of Colombia-Panama treaty, December 29, 1908.....	175
Letter to Mr. Cortes, December 29, 1908.....	179
Draft of treaty, United States-Colombia, December 30, 1908.....	180
Russell, William W., United States minister to Colombia:	
Letter to Mr. Hay, December 30, 1904.....	110
Letter to Mr. Hay, January 16, 1905.....	111
Telegram to Mr. Hay, May 8, 1905.....	111
Serrano, C. C., minister to Panama:	
Telegram to Mr. Root, January 30, 1906.....	190
Letter to Mr. Knox, June 17, 1909.....	238
Taft-Orange protocol, August 17, 1907.....	154
Taft, William H., President of the United States:	
Letter to Mr. Wilson, transmitting protocol's between United States and Colombia and between Colombia and Panama, August 17, 1907.....	152
Letter to Mr. Root, March 17, 1908.....	171

	Page.
Triana, Eduardo Perez, chargé d'affaires, Colombian legation at Washington, letter to Mr. Root, July 2, 1906.....	128
United States and Colombia, protocol transmitted by President Taft, August 17, 1907.....	154
Wilson, Huntington, Acting Secretary of State:	
Letter to Mr. Dawson, April 26, 1909.....	230
Letter to Mr. Hibben, May 4, 1909.....	232
Telegram to Bogota Legation, June 11, 1909.....	237
Letter to Mr. Northcott, October 28, 1909.....	244
Letter to Mr. Northcott, November 4, 1909.....	246
Telegram to Bogota Legation, March 24, 1910.....	248
Wilson, Woodrow, President of the United States, message transmitting correspondence relating to tripartite convention and Hay-Concha protocol.....	104

PART IV-b.

Concha, Jose Vicente, Colombian minister:	
Letter to Mr. Hay, April 8, 1902.....	250
Letter to Mr. Hay, July 19, 1902.....	253
Letter to Mr. Hay, September 22, 1902.....	254
Letter to Mr. Hay, October 26, 1902.....	255
Letter to Mr. Hay, November 11, 1902.....	257
Letter to Mr. Hay, November 11, 1902.....	258
Memorandum of remarks, November, 1902.....	258
Letter to Mr. Hay, November 22, 1902.....	263
Memorandum to Mr. Hay, November 22, 1902.....	265
Hay, John, Secretary of State:	
Letter to Mr. Concha, April 5, 1902.....	250
Letter to Mr. Concha, April 18, 1902.....	252
Letter to Mr. Concha, July 18, 1902.....	253
Letter to Mr. Concha, October 28, 1902.....	256
Letter to Mr. Concha, November 5, 1902.....	260
Letter to Mr. Concha, November 18, 1902.....	260
Memorandum to Mr. Concha, November 18, 1902.....	261
Hill, David J., Acting Secretary of State, letter to Mr. Concha, July 21, 1902...	253
Jimenez, Dionisio, Colombian citizen, letter to minister of foreign relations, August 27, 1902.....	270
Papers relating to Hay-Concha protocol, list of.....	250

APPENDIX.

LIST OF PUBLIC DOCUMENTS.

1. Clayton-Bulwer treaty. Signed at Washington April 19, 1850. Proclaimed July 5, 1850.....	272
2. Hay-Herran (Panama Canal) treaty. Signed at Washington on January 22, 1903. Approved by the United States Senate March 17, 1903. Never acted upon by the Colombian Congress. (57th Cong., 2d sess., S. Ex. K.).	277
3. First Hay-Pauncefote treaty. Signed February 5, 1900. Amended by the United States Senate and never ratified. (56th Cong., 1st sess.; S. Doc. No. 160.).....	289
4. Hay-Pauncefote treaty. Signed at Washington November 18, 1901. Proclaimed February 22, 1902.....	292
5. Hay-Bunau-Varilla convention (Panama Canal treaty). Signed at Washington November 18, 1903. Proclaimed February 26, 1904.....	295
6. Treaties with Panama and Colombia relating to the Panama Canal. Signed with Panama (Root-Arosemena) January 9, 1909. Signed with Colombia (Root-Cortes) January 9, 1909. Treaty between Panama and Colombia (Cortes-Arosemena). Signed January 9, 1909. Consented to by United States Senate and by Panaman Congress. Never acted upon by Colombian Congress. (60th Cong., 2d sess., confidential, Ex. N.).....	314
7. President Taft's message. August 19, 1912. The Panama Canal. (62d Cong., 2d sess., H. Doc. 914.).....	326
8. Panama Canal act. Approved August 24, 1912. (Public, No. 337, H. R. 21969.).....	328

	Page.
9. Memorandum to accompany canal act. Signed by President Taft August 24, 1912.....	339
10. President's proclamation Panama Canal toll rates. November 13, 1912...	344
11. President's message giving correspondence relating to the revolution on the Isthmus of Panama, November 16, 1903. (58th Cong., 1st sess., H. Doc. No. 8.).....	345
12. Second message giving further correspondence on the same subject, November 27, 1903. (58th Cong., 1st sess., H. Doc. No. 8, pt. 2.).....	368
13. President's message giving correspondence between the United States and Colombia. (58th Cong., 2d sess., S. Doc. No. 51.).....	377
14. President's message giving correspondence showing relations between the United States, Colombia, and Panama, January 18, 1904. (58th Cong., 2d sess., S. Doc. No. 95.).....	480
15. Hay-Concha protocol and correspondence between the United States and Colombia. (57th Cong., 1st sess., H. Doc. No. 611.).....	550
16. President's message giving correspondence showing relations of the United States with Colombia and Panama, December 8, 1908. (60th Cong., 2d sess., S. Doc. No. 542.).....	575

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

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

Respectfully submitted,

W. J. BRYAN.

DEPARTMENT OF STATE,

Washington, April 23, 1914.

LIST OF PAPERS.

PART I.

- Mr. Hay to Mr. White, December 7, 1898. No. 976.
 Mr. White to Mr. Hay, December 21, 1898. Telegram.
 Mr. White to Mr. Hay, December 22, 1898. Telegram.
 Mr. White to Mr. Hay, December 22, 1898. No. 613.
 Mr. Hay to Mr. Choate, December 22, 1900. No. 518.
 Mr. Hay to Lord Pauncefote, December 22, 1900. No. 2013.
 Lord Pauncefote to Mr. Hay, December 26, 1900. No. 379.
 Mr. Hay to Mr. Choate, December 29, 1900. Telegram.
 Mr. Choate to Mr. Hay, January 11, 1901. Telegram.
 Mr. Choate to Mr. Hay, January 12, 1901. No. 479.
 Mr. Hay to Mr. Choate, January 25, 1901.
 Mr. Hay to Mr. Choate, February 16, 1901. Telegram.
 Mr. Choate to Mr. Hay, February 19, 1901. Telegram.
 The Marquis of Lansdowne to Lord Pauncefote, February 22, 1901.
 Mr. Hay to Mr. Choate, March 13, 1901. Telegram.
 Mr. Hay to Mr. Choate, March 15, 1901. Telegram.
 Mr. Hay to Lord Pauncefote, March 25, 1901. No. 2119.
 Lord Pauncefote to the Marquis of Lansdowne, April 25, 1901.
 Mr. Hay to Mr. Choate, April 27, 1901.
 Mr. Choate to Mr. Hay, June 24, 1901.
 The Marquis of Lansdowne to Mr. Lowther, August 3, 1901.
 Mr. Choate to Mr. Hay, August 16, 1901.
 Mr. Choate to Mr. Hay, August 20, 1901.
 Mr. Hay to Mr. Choate, August 22, 1901. Telegram.
 Mr. Hay to Mr. Choate, September 2, 1901.
 Mr. Hay to Lord Pauncefote, September 2, 1901.
 Mr. Choate to Mr. Hay, September 3, 1901.
 The Marquis of Lansdowne to Mr. Lowther, September 12, 1901.
 Mr. Choate to Mr. Hay, September 20, 1901. Telegram.
 Mr. Choate to Mr. Hay, September 21, 1901. Telegram.
 Mr. Hay to Mr. Choate, September 21, 1901.
 Mr. Choate to Mr. Hay, September 25, 1901.
 Mr. Choate to Mr. Hay, September 27, 1901. Telegram.
 Mr. Choate to Mr. Hay, September 27, 1901.
 Mr. Hay to Mr. Choate, September 29, 1901. Telegram.
 Mr. Hay to Mr. Choate, October 2, 1901. Telegram.
 Mr. Choate to Mr. Hay, October 2, 1901. Telegram.
 Mr. Choate to Mr. Hay, October 2, 1901.
 Mr. Hay to Mr. Choate, October 3, 1901. Telegram.
 Mr. Choate to Mr. Hay, October 9, 1901.
 Mr. Choate to Mr. Hay, October 9, 1901. Telegram.
 Mr. White to Mr. Hay, October 23, 1901. Telegram.
 The Marquis of Lansdowne to Lord Pauncefote, October 23, 1901.
 Mr. White to Mr. Hay, October 26, 1901.
 Mr. Hay to Lord Pauncefote, November 8, 1901.
 Lord Pauncefote to the Marquis of Lansdowne, November 18, 1901.

- Lord Pauncefote to Marquis of Lansdowne, November 19, 1901
Mr. Hay to Senator Cullom, December 12, 1901.
Mr. Hay to the Senate Committee on Foreign Relations. History of the amendments proposed. Printed January 18, 1911. Public Document, Sixty-first Congress, third session, No. 746.
Mr. Hay to Lord Pauncefote, December 16, 1901. No. 2316.
Lord Pauncefote to Marquis of Lansdowne, December 16, 1901.
Lord Pauncefote to Mr. Hay, February 18, 1902
Mr. Hay to Lord Pauncefote, February 20, 1902

PART II.

- Mr. Root to Mr. Bryce, January 8, 1909.
Mr. Bryce to Mr. Root, January 8, 1909.
Mr. Root to Mr. Reid, January 9, 1909.
Mr. Reid to Mr. Root, January 11, 1909.
Mr. Reid to Mr. Root, January 15, 1909. Telegram.
Mr. Root to British ambassador, January 16, 1909.
Mr. Root to Mr. Reid, January 16, 1909.
Mr. Reid to Mr. Root, January 25, 1909. No. 824.
The British ambassador to Secretary of State, February 3, 1909.
Mr. Bacon to Mr. Bryce, February 20, 1909.
Mr. Bryce to Mr. Bacon, February 24, 1909.

PART III.

- Mr. Innes to the Secretary of State, July 8, 1912.
Mr. Innes to Mr. Knox, August 27, 1912.
Mr. Wilson to Mr. Innes, August 30, 1912.
Mr. Phillips to Mr. Knox, October 11, 1912.
The Secretary of State for Foreign Affairs of Great Britain to Mr. Bryce, November 14, 1912.
Mr. Knox to the American chargé d'affaires at London, January 17, 1913.
Mr. Bryce to Mr. Knox, February 27, 1913.

CORRESPONDENCE SUBMITTED APRIL 23, 1914.

LETTERS OF TRANSMITTAL.

To the Senate of the United States:

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

WOODROW WILSON.

THE WHITE HOUSE,
Washington, April 24, 1914.

To the PRESIDENT:

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

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

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

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

THE [illegible] OF [illegible]

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DIPLOMATIC HISTORY OF THE PANAMA CANAL.

PART I.

PAPERS SUBMITTED.

Mr. Hay to Mr. White.

No. 976.]

DEPARTMENT OF STATE,
Washington, December 7, 1898.

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

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

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

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

I am, etc.,

JOHN HAY.

Mr. White to Mr. Hay.

[Telegram.]

AMERICAN EMBASSY,
London, December 21, 1898.

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

WHITE.

Mr. White to Mr. Hay.

[Telegram.]

AMERICAN EMBASSY,
London, December 22, 1898.

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

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

WHITE.

Mr. White to Mr. Hay.

No. 613]

AMERICAN EMBASSY,
London, December 22, 1898.

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

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

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

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

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

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

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

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

HENRY WHITE.

[Inclosure to No. 613.]

[From the Spectator, December 10, 1898.]

THE NICARAGUA CANAL.

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

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

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

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

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

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

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

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

3. Article III, reading—

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

is stricken out.

4. Article IV is made Article III.

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

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

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

I am, sir, etc.,

JOHN HAY.

Mr. Hay to Lord Pauncefote.

No. 2013.]

DEPARTMENT OF STATE,
Washington, December 22, 1900.

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

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

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

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

3. Article III, reading—

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

is stricken out.

4. Article IV is made Article III.

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

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

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

I have, etc.,

JOHN HAY.

Lord Pauncefote to Mr. Hay.

No. 379.]

BRITISH EMBASSY,
Washington, December 26, 1900.

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

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

I have, etc.,

PAUNCEFOTE.

Mr. Hay to Mr. Choate.

[Telegram.]¹

Confidential.]

DEPARTMENT OF STATE,
Washington, December 29, 1900.

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

HAY.

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

Mr. Choate to Mr. Hay.

[Telegram.]

AMERICAN EMBASSY,
London, January 11, 1901.

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

CHOATE.

Mr. Choate to Mr. Hay.

No. 479.]

AMERICAN EMBASSY,
London, January 12, 1901.

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

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

I have, etc.,

JOSEPH H. CHOATE.

[Inclosure to No. 479.]

Mr. Choate to Lord Lansdowne.

AMERICAN EMBASSY,
London, January 4, 1901.

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

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

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

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

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

3. Article III, reading—

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

is stricken out.

4. Article IV is made Article III.

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

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

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

I have, etc.,

JOSEPH H. CHOATE.

Mr. Hay to Mr. Choate.

DEPARTMENT OF STATE,
Washington, January 25, 1901.

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

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

Yours, faithfully,

JOHN HAY.

Mr. Hay to Mr. Choate.

[Telegram.]

DEPARTMENT OF STATE,
Washington, February 16, 1901.

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

¹ Not on State Department files.

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

HAY.

Mr. Choate to Mr. Hay.

[Telegram.]

Confidential.]

AMERICAN EMBASSY,
London, February 19, 1901.

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

CHOATE.

The Marquis of Lansdowne to Lord Pauncefote.

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

FOREIGN OFFICE, *February 22, 1901.*

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

These amendments are three in number, namely:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The practical effect of the amendment can best be understood by reference to the inclosed copy of the articles of the treaty, Nos. I and VI, which, assuming that the United States Government would undertake all the obligations imposed by Article IV of the treaty, contain the only provisions¹ not replaced by new provisions covering the same ground, in the convention.

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

¹ Printed in italics.

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

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

The other two amendments present more formidable difficulties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I am, etc.,

LANSDOWNE.

[Inclosure.]

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

ARTICLE I.

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

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

ARTICLE VI.

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

Mr. Hay to Mr. Choate.

[Confidential—Telegram.]

DEPARTMENT OF STATE.

Washington, March 13, 1901.

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

HAY.

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

Mr. Hay to Mr. Choate.

(Telegram.)

DEPARTMENT OF STATE,
Washington, March 15, 1901.

Paragraph is omitted at our request. Most confidential.

HAY.

Mr. Hay to Lord Pauncefote.

No. 2119.]

DEPARTMENT OF STATE,
Washington, March 25, 1901.

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

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

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

I have, etc.,

JOHN HAY.

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

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

No. 1.

Lord Pauncefote to the Marquis of Lansdowne.

WASHINGTON, *April 25, 1901.*

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

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

I have, etc.,

PAUNCEFOTE.