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

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

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

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

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

**Article I.**

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

**Article II.**

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

**Article III.**

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

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

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.
3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force and with only such intermission as may result from the necessities of the service.

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

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

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

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

**Article IV.**

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

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

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

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**Mr. Hay to Mr. Choate.**

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

DEPARTMENT OF STATE,

Washington, April 27, 1901.

Private and personal.]

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

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

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¹ See printed ante, Lord Pauncefote to Marquis Lansdowne, Apr. 25, 1901.
bers of the Senate. You will see, by a careful perusal of it and comparison with the extinct treaty, that it contains substantially all that was asked for in the amended treaty, but in a form which, I hope, will not be objectionable to the British Government. The provision superseding the Clayton-Bulwer treaty is, as you see, contained in a special article instead of being introduced in a parenthesis. In Article III you will notice that the United States "adopts" the rules of neutralization instead of making it a joint guaranty in company with England. The seventh section of Article III is left out entirely, and the provision for the military police of the canal is transferred to section 2. The question of fortification is thus passed sub silentio. I hope it will not be considered important enough for the British Government to take exceptions to this omission. In this new reduction the Davis amendment disappears, as you see, entirely. By eliminating the words "in peace as well as in war," in the first section of Article III, and by the omission of the seventh section it has been thought by many Senators that the necessity for the Davis amendment has disappeared. The third section, omitted by the Senate, is also omitted in this new draft. If we release Great Britain from the obligation of the joint guaranty there is no reason why the rest of the world should not be released in like manner, and the United States assume alone the duty of guaranteeing the neutrality of the canal. Nobody loses by it except ourselves.

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

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

Very sincerely, yours,

John Hay.

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

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

You must not think, from hearing nothing from me thus far, that the canal business is being neglected. On Lord Pauncefote's
arrival, I asked for an interview and put myself at his service, telling him that you had written me that he was fully possessed of your views, and that you wished me to talk the matter fully over with him. But he said, sensibly enough, that perhaps it would be better not to go into the matter with me until he had discussed it with his own people—and I have reason to think that he has ever since been so engaged. I know that he has gone over it with the lord chancellor, upon whose advice on legal construction Lord Lansdowne naturally relies, and with Lord Lansdowne himself, and I believe that it has been once at least considered by the cabinet. Lord Lansdowne told me week before last that he and Lord Pauncefote both would be ready to talk with me about it in a few days, from which I infer that Lord Pauncefote's reticence was not self-imposed. He also intimated, or at least I so understood him, that they were preparing a new draft as a counter proposition, which probably accounts for the delay. If they do, I hope any change will be all in the direction of general expressions, avoiding detailed phraseology over which Senators may dispute. Would not an ideal treaty under all the circumstances be in three articles? (1) Abrogating the Clayton-Bulwer treaty; (2) providing that the canal should be wholly American in building, ownership, and control; (3) that it should be absolutely neutral, and free and open to the ships of all nations on equal terms? Under such a treaty, would not all questions about war settle themselves, or rather could any such questions arise?

Meanwhile, I have been carefully considering your project for a convention, and I understand from the elimination of the words "in time of war as in time of peace," in the first section of Article III, and from Mr. White's recollection of your views, that this project of treaty is not intended to apply to a state of war between the United States and Great Britain; that such a war, while it lasted, would have upon this treaty the usual effect of war upon treaties, and suspend its operation as between us and the enemy. So that during its continuance the canal and the waters adjacent within the 3-mile limit would not as between us and Great Britain be neutral ground. Practically this would be so. The treaty no longer stipulating for the neutrality of the canal in time of war, we should certainly close it in that event against her ships of war, whenever we found it necessary for our safety and interest to do so, and we should not permit a hostile British fleet to go through to destroy San Francisco. Suppose the two hostile fleets to rendezvous in the neighborhood of the canal, as upon the outbreak of war they would be likely to do. Each would certainly do its best to destroy the other wherever it could be found, whether within or without the 3-mile limit, and I understand your purpose to be that this treaty shall not in that case stand in the way; that in case of war, notwithstanding the elision of the Davis amendment, each of the contracting parties is left free to defend itself whenever and wherever, as best it can—or as Lord Lansdowne put it in a desultory talk we had, "In case we got into a war with you we both fall back on our reserved rights." Perhaps in the course of further consideration this idea may be a little more clearly expressed, and not left so much to inference, and I should not wonder if Great Britain ber-
self should suggest some such thing. In this view or construction the word "belligerent" wherever used in Article III would not include the United States and Great Britain when engaged in war with each other. Nor would the first clause of section 2 of that article, "That the canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it," or (sec. 5) "in waters adjacent to the canal within 3 marine miles of either end," apply to either of the combatants in such a war. At first blush this first clause of section 2 might be seized upon by a Senator, not committed to the exact phraseology of the "project" and desirous of defeating it, as stipulating that even in time of war with Great Britain we would not blockade the canal to prevent a British ship of war from going through, or exercise any right of war or commit any act of hostility within the 3-mile limit, but I assume that your answer would be that considering there are rules of neutrality and that nothing belonging to one combatant can be neutral as to the other combatant while engaged in actual war unless so expressly agreed, and so settled by the established rules of international law and considering that the words "in time of war as well as in time of peace" have been studiously omitted, the suggestion of the Senator was not well founded.

Assuming this to be the correct view of the purpose of the "project"—perhaps the sixth clause of Article IV, clause 6, providing expressly that "in time of war as in time of peace" the canal, plant, etc., shall enjoy complete immunity from attack or injury by belligerents, it may be regarded as an exception, and be intended to secure such immunity at all events as against everybody in war and in peace—but as it seems to be limited to immunity from "belligerents," I should like, if universal immunity was intended, to have it made a little more clear. Considering the retention in this "project" of the references to the Suez Canal treaty and to the eighth clause of the Clayton-Bulwer treaty, there is some chance for dispute in the Senate about any construction that may be put upon particular phrases of it, and I am very glad to infer from your letter that the Senate or the necessary two-thirds, are prepared to accept it if it should prove acceptable to Great Britain. What Mr. White understood to be your construction of the "project" conforms to the idea of Mr. Lodge, who has been here, that no treaty could pass the Senate which would permit a war ship of Great Britain to use the canal in time of war between us and that power. He appeared not to have seen the text of your "project," and so I did not feel at liberty to show it to him. He called on Lord Lansdowne at the latter's request, and lunched with Mr. Balfour in company with Lord L. The latter expressed himself to me as much pleased with the interview and with the Senator, and I believe that Mr. Lodge gave him the senatorial view very straight. Perhaps, if I have not correctly apprehended your view as to the intended construction and effect of this "project" you will at once set me right. If they propose a new draft as a counter-project, as I am now expecting, this may not be important, but at any rate I would like to have your views a little more fully and precisely.
The Marquis of Lansdowne to Mr. Lowther.¹

FOREIGN OFFICE, August 3, 1901.

Sir: The draft convention dealing with the question of the interoceanic canal, forwarded in Lord Pauncefote’s despatch of the 25th April, has been most carefully examined.

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

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

I am, etc.,

LANSDOWNE.

[Inclosure 1 in No. 2.]

[Memorandum.]

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

The amendments were three in number, namely:

1. The insertion in Article II, after the reference to Article VIII of the Clayton-Bulwer convention, of the words “which convention is hereby superseded.”
2. The addition of a new paragraph after section 5 of Article II in the following terms:

“It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4, and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.”
3. The excision of Article III, which provides that “the high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers and invite them to adhere to it.”

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

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

¹ British Bluebook, United States, 1902, No. 1.
had, however, been made to ascertain the views of Her Late Majesty's Government. The convention dealt with several matters for which no provision had been made in the convention of February, 1900, and if the former were wholly abrogated both powers would, except in the vicinity of the canal, recover entire freedom of action in Central America, a change which might be of substantial importance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The proposal to abrogate the Clayton-Bulwer convention is not, I think, inadmissible. The United States, under the treaty now in operation, have the right of abandoning the treaty on three years' notice. There is no reason why, if the conditions then existing had been changed, the two Governments should not cave into a new treaty, either in regard to the canal, or the play of the Mouse Coast, or Nicaragua.
general principle" or release the high contracting parties, or either of them, from their obligations under the treaty, and that the rules adopted as the basis of neutralization shall govern, so far as possible, all interoceanic communications across the Isthmus.

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

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

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

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

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

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

This is a most important consideration. In my despatch of the 22d February I dwelt upon the strong objection entertained by His Majesty's Government to any agreement under which, while the United States would have a treaty right to interfere with the canal
in time of war, or apprehended war, Great Britain alone, in spite of her vast possessions on the American Continent and the extent of her interests in the East, would be absolutely precluded from resorting to any such action, or from taking measures to secure her interests in and near the canal. The same exception could not be taken to an arrangement under which, supposing that the United States, as the power owning the canal and responsible for the maintenance of its neutrality, should find it necessary to interfere temporarily with its free use by the shipping of another power, that power would thereupon at once and *ipso facto* become liberated from the necessity of observing the rules laid down in the new treaty.

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

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

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

**Lansdowne.**

August 3, 1901.

[Inclosure 2 in No. 2.]

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

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

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

And His Majesty the King of Great Britain and Ireland, etc., the Right Honourable Lord Pauncefote, G. C. B., G. C. M. G., His Majesty's ambassador extraordinary and plenipotentiary to the United States;
Who, having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following articles:

**Article I.**

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

**Article II.**

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

**Article III.**

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

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

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

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

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

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

5. The provisions of this article shall apply to waters adjacent to the canal within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.
6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof for the purposes of this treaty, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

**Article III-A.**

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

**Article IV.**

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

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

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

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

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

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

¹ Not on State Department files.
“neutrality,” but merely agrees to extend the “protection” of the two Governments to other routes, and that in granting such joint “protection” the understanding is that canals by another route shall be open on equal terms to the subjects and citizens of the two nations and of every other State which is willing to grant the same “protection.” All of which was extremely vague and uncertain, and omitted the “guaranty of neutrality”; that wanting to get rid of the Clayton-Bulwer treaty altogether, we shouldn’t want to make any part of it by a new covenant stronger than it was before. Whereas his new Article III–A makes the eighth article a great deal stronger than it was before, and saying nothing about “protection,” which is, of course, inapplicable to a canal wholly American, fastens the rules of neutrality of Article III, which he calls “stringent rules,” upon all future routes. He said he thought Article VIII of the Clayton-Bulwer treaty clearly inferred neutrality. But I said it was only an inference—the word used was “protection.” (I know that the “general principle” referred to in the eighth article is recited in the preamble of the Hay-Pauncefote treaty and of your new “project” and of his amended draft as the “general principle” “of neutralization,” but it seems to me there is no reason why we should make it any stronger than it was and define in advance the exact rules to be applied to any future canals. However, as no more than one canal will ever be built, you may not think it worth while to take any such point.)

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

I said to him that I supposed his mind was still open to conviction, and he said, oh, yes; of course—Mr. Hay’s project was only tentative. He asked Lord Pauncefote to sound me, and I have made these suggestions in the hope of coming to an agreement, and herewith expect you to offer your counter suggestions. I don’t really see why they insist on lugging in the other nations. The reason given by him that Great Britain objects to being bound to stringent rules of neutral conduct not equally binding upon other powers seems to me without substance. It is we that are bound by stringent rules. We accord to Great Britain clear contract rights to have these rules observed by us as owners of the canal; and the other nations can only use it under the same rules.
Great Britain has something to give us in exchange for this agreement with her—the relinquishment of her rights under the C.-B. treaty—but the other nations part with us and no such consideration. I also told Lord Lansdowne, in respect to this clause 1 of article 3, that in one respect it was worse than the provision [art. 3] of the H.-P. treaty which the Senate struck out. That only invited the other nations to come in, and left it optional with them to stay out, as they did under the C.-B. treaty, but this actually compels them to come in at the start. They can not use the canal, as I read it, unless they agree. The question is whether, if they agree as he proposes, they would become parties to the agreement in the sense in which they would have done under article 3 of the H.-P. treaty, which the Senate vetoed. I've not had time to study this question carefully, but my present strong impression is that they would. Lord Lansdowne claims to desire only that the other nations parting with nothing should not be on a better footing with respect to the canal than Great Britain, who parts with so much, and that she shall not be bound by these “stringent” rules of neutrality, while the others are not so bound. I think they are practically all treated alike by the instrument as you have drawn it. I venture, however, to suggest, in view of his amendment of clause 1, article 3, that it might possibly meet the views both of the Senate and the British Cabinet if you should propose further to amend by striking out the words “agree” and “so agreeing,” which I dislike so much, considering the previous action of the Senate, and make it read, “The canal shall be free and open to the vessels of commerce and war of all nations observing these rules,” etc.

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

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

Upon the whole the prospect of a satisfactory settlement of this troublesome matter seems to me better than it has ever been before,
and I am sure that you will appreciate the friendly tone of Lord Lansdowne's advances. I have not yet seen Lord Pauncefote, but have an appointment with him for Tuesday, after which I may write to you again.

Yours, very truly,

Joseph H. Choate.

Mr. Choate to Mr. Hay.

London, August 20, 1901.

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

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

Although naturally this point did not impress him as much as the other. But the more thought I give it the more substantial it seems. As article 8 stands in the C.-B. treaty it undoubtedly contemplates further treaty stipulations—not "new" treaty stipulations, in case any other interoceanic route, either by land or by water, should "prove to be practicable," and it proceeds to state that the general principle to be applied is to be, viz, no other charges or conditions of traffic thereon "than are just and equitable," and that said "canals or railways" being open to the subjects and citizens of Great Britain and the United States on equal terms shall also be open on like terms to the subjects and citizens of other States, by which I believe to be the real general principle of neutralization (if you choose to call it so) intended to be asserted by this eighth article of the C.-B. treaty. But under cover of reasserting this "general principle" this new Article III-A instead of postponing the making of new treaty stipulations as to other routes until some other route by land or by water proves to be practicable immediately and for all time fastens these six crystallized rules of Article III upon all interoceanic communications across the Isthmus as well as providing that no change of sovereignty or other change of circumstances shall affect such "general principle or the obligations of the high contracting parties under the present treaty," and I shall be surprised if objection is not encountered in the Senate to this result of making the old eighth article of the C.-B. treaty so much more comprehensive,
definite, and binding than it was before. The idea "change of sovereignty," of course, relates to the report of an intention on the part of the United States to acquire a strip of territory on each side of the canal, and "other change of circumstances" is aimed at the argument in some future epoch against the continuance of this treaty that has often been directed against the continued binding force of the C.-B. treaty that "change of circumstance" since 1850 has put an end to it.

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

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

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

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

Yours, very truly,

JOSEPH H. CHOATE.

Mr. Hay to Mr. Choate.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 23, 1901.

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

HAY.

1 See Marquis of Lansdowne's note, Aug. 3, 1901. Ante.
I suggested that you would make it a matter of your private correspondence — I think it probable that the subject might be treated differently if you addressed yourself to Mr. Pauncefote, in the first instance, than if you went to the President. I wish, however, that you would confer with Lord Lansdowne, as Lord Pauncefote cannot be reached until next week. But, of course, you may wait that time; and I am not sure that it would not be better if you would confer with Lord Lansdowne. As I have the satisfaction of knowing that you are not disposed to treat the President disagreeably, though it may be possible that you may fail to meet with a satisfactory answer, I think you would confer a public credit and a personal advantage on Lord Pauncefote, by conferring with Lord Lansdowne, instead of immediately addressing yourself to the President. I would not, however, advise you to bring your article to Washington, as the President has been extremely cautious in his communications to Lord Pauncefote, and it is not likely that Lord Pauncefote would have known anything about it. But, of course, it is not necessary for you to do anything further in the matter unless you wish.

Yours,

[Signature]
Mr. Hay to Lord Pauncefote.

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

Newbury, N. H., September 2, 1901.

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

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

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

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

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

**Article IV.**

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

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

I am, my dear Lord Pauncefote,

Faithfully, yours,

J. Hay.

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**Mr. Choate to Mr. Hay.**

[Extract.]

**London, September 3, 1901.**

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

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**The Marquis of Lansdowne to Mr. Lowther.**

**Foreign Office, September 12, 1901.**

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

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1 British Blue Book "United States, 1902, No. 1."
Mr. McKinley regarded, as did Mr. Hay, the consideration shown to the last proposals of the United States Government relative to the interoceanic canal treaty as in the highest degree friendly and reasonable.

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

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

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

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

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

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

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

I am, etc.,

LANSDOWNE.

Mr. Choate to Mr. Hay.

Confidential.] American Embassy,
London, September 20, 1901.
(Received 5.40 p. m.)

Have had long interview with British ambassador at Washington. British minister for foreign affairs still absent in Ireland. British
ambassador at Washington thinks amendments of clause 1, Article III, striking out "which shall agree to observe" and substituting "observing" and striking out "so agreeing," will be acceptable. Assuming this, would you not consent to add to your Article IV, in letter to British ambassador at Washington, if accepted as a substitute for III-A, these words:

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

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

Choate.

Mr. Choate to Mr. Hay.

Private and confidential.]

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

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

I then called his attention to your Article IV in your letter, which did seem to me to cover and secure all that he now claimed and insisted on. He said no; that it only preserved the principle of neutralization, which, it might be insisted on, did not include freedom of passage for all nations and equality of terms, and that without an explicit provision, which should leave that freed from doubt, he could not expect to sustain it before the Parliament and people. I insisted that those ideas were already included in your IV. i. e., within the words "the general principle of neutralization," especially in the light of that phrase as used in the preamble, where it is "neutralization established in Article VIII of the C.-B. treaty"; that if not included within that it certainly was in the phrase "obligations of the high contracting parties under this treaty," for what could be clearer than our obligation by Article III to keep it open
and on terms of equality as provided there, and what your IV meant was that no change of territorial sovereignty should affect any of the obligations of the present treaty, including that. He still insisted that it should not be left to the construction of general clauses, but should be explicitly stated. Believing, as I do, that you had no thought of escaping from the obligations of Article III, clause 1, in any such contingency as change of territorial sovereignty, and that you had intended it to be included in your language in IV, I wrote down the words "or the freedom of passage of the canal to the vessels of commerce and of war of all nations on terms of entire equality and without discrimination, as provided by Article III," and asked him if those words were added to your IV, it would satisfy him as a substitute for Lord Lansdowne's III-A. He said it would, and that with those words added the treaty could, he thought, be sustained before Parliament and the British public; that he should approve it, and he thought Lord Lansdowne could and would, although it would have to be submitted to the cabinet or to a majority of its members. This seemed to bring the matter to a very satisfactory point so far as we could go, and I agreed to cable our result to you, in the hope of getting your approval before he submitted it to Lord Lansdowne. I did not give him the words I wrote on paper, but said I would cable them to you. (Memo.—I observe that in the brevity of my cable I omitted the words "and without discrimination," but I don't see that the omission affects the meaning at all, as it is all included in the words "on terms of entire equality, as provided by Article III." But if on reading this you think it does make a difference, please cable me.) It still looks to me most propitious for a satisfactory conclusion being reached.

Yours, very truly,

JOSEPH H. CHOATE.

Mr. Hay to Mr. Choate.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 21, 1901.

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

HAY.

Mr. Choate to Mr. Hay.

LONDON, September 25, 1901.

Dear Col. Hay: I received your cipher dispatch of the 21st on Sunday the 22d, instructing that if the British Government strongly insisted on the proposed addition to article 4, I might accept it, and that you thought we were to be congratulated on this happy conclusion of the matter.
It can hardly be regarded as concluded yet, for it is one thing to satisfy Lord Pauncefote, and quite another to satisfy Lord Lansdowne and the cabinet, especially the late chancellor.

On Monday, the 23d, I had an interview with Lord Pauncefote and tried, as I had before, to persuade him that it was neither wise nor necessary to make your Article IV useable, or better, to add a clause to your Article IV. He still proposed the clause. But he thought as he said, 'we may as well strongly insist on it.' I told him I was not sure he was the right man for the purpose, that with the understanding and the British press and public could be made to see he was not necessary. He thought it very necessary that the matter should be very emphatically stated. Although they were in the Bulwer treaty, they had preserved the principle; I might as well be the law, and I might be very strongly governed by the law. I have not given anything for nothing, and I can appeal to the apparent equivalent, for reasons unconnected with the communication.' So I gave him the interview, but he did not appear to think that the word 'null' was necessary, that it would not alter the meaning and his clause. I suggested the clause that you agreed with me that it did not really alter the meaning of the clause, and I did not realize the importance of the specification of what was there meant. He said, 'I am not calling to have it rest upon a precedent, but I wish to keep it, and I wish to be able to point to the clause as the only one. Meantime, bearing this very secret.'

Friday, and thinking what I might be cabled to you asking I had recalled, then when you desired I should not have seen the language of your original draft over and over, a different idea of its substance. I have thus communicated to Lords confidentially.

I am very much delighted with the result. My cordially approves draft of canal treaty, the know that he would and have every reason to discretion. The general disposition far better than ever, and I have every hope that it can be reached here. There may be some difficulties, but they are not very well understood. I have asked the members of the cabinet about the four the four days since I suppos...
the Panama route, that we should take it cum onere; and he said that in fact our whole program about any canal was to have it neutral. He evidently will impress himself very strongly upon Lord Lansdowne to the effect that no provision about any other canal is necessary in this treaty.

Yours, very truly,

JOSEPH H. CHOATE.

Mr. Choate to Mr. Hay.

Confidential.

AMERICAN EMBASSY,
London, September 27, 1901.

(Received 12.55 p. m.)

[Telegram.]

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

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

CHOATE.

Mr. Choate to Mr. Hay.

London, September 27, 1901.

DEAR COL. HAY: Lord Pauncefote called upon me yesterday to say that upon an examination of the existing treaties bearing upon a canal by the Panama route, he found he was mistaken in what he said to me the other day, and that there were no provisions satisfactorily securing the neutralization of the canal. He also called my attention to an elaborate article in yesterday's Times, which I inclose, the last paragraph of which seemed somewhat to imperil his "general principle of neutralization." He also alluded to the rumors now very rife here that we might after all decide to acquire and complete a canal by the Panama route and abandon the Nicaragua route altogether, in which case it had been suggested to him by some of the experts at the foreign office that it might be claimed that our treaty as it now stands is for a canal by the Nicaragua route only and does not apply at all to the Panama route, which, of course, as he said would place the British Government in the most ridiculous position of having signed a treaty abrogating the Clayton-Bulwer treaty, and yet having no reference to the canal that we were actually proceeding to build. He could not conceal his disturbance of mind at this suggestion. I told him I was sure you had no such idea as that, or of putting them in such a predicament—that, of course, this had always been called the Nicaragua Canal treaty; that the original H.-P. treaty was for a Nicaragua canal, because it left the C.-B. treaty with its preamble and its eighth article in force; but that by the plain reading of this treaty, abrogating the C.-B.
treaty, and retaining no reference to any particular route, it would apply to the first canal that we should build by whichever route, and that there was so little possibility of any second canal being built that it was not worth while to think about it or to provide for it, and this I think was his own view. I saw him again to-day, and he was just going to see Lord Lansdowne, who has unexpectedly come to London. He has prepared a memorandum to submit to Lord L., showing the propriety of their accepting your 4 for his 3A. If they adhere to the point suggested, as raised at the foreign office, he may want to insert a few words in the preamble or elsewhere to remove all doubt that it is to apply to the canal we actually first build by whichever route. On conference with him I sent you to-day the confidential cipher cable, of which I inclose a copy. Lord Pauncefote is quite hopeful of satisfying Lord Lansdowne to adopt 4 as amended.

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Mr. Hay to Mr. Choate.

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

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

Hay.

Mr. Hay to Mr. Choate.

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

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

Hay.

Mr. Choate to Mr. Hay.

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

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