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

Amendments:

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

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

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

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

For article 3A substitute:

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

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

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

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

Choate.

Mr. Choate to Mr. Hay.

London, October 2, 1901.

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

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

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

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

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

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

Joseph A. Choate.

Mr. Hay to Mr. Choate.

[Telegram.]

Department of State,
Washington, October 3, 1901.

All amendments cordially approved.

Hay.

Mr. Choate to Mr. Hay.

London, October 9, 1901.

Dear Col. Hay: I called on Lord Lansdowne yesterday in the hope of learning that he had heard from some other of his colleagues to whom he had submitted the treaty besides the Lord Chancellor, but he had not. Vacation is still the paramount interest, and why not; for they did not get away until after the middle of August. However, he was most sanguine, said he apprehended no difficulty, and that I might go away with a light heart. "The most pessimistic view," he said, "might be some verbal suggestions or change of some very minor detail." He said that this matter had been discussed so much among them that he knew the minds of his colleagues in regard to it, and seemed to have no doubt of their approval. His plan seemed to be to get the approval of four or five of his leading colleagues, and then to submit it to the others with the sanction of their approval; all of which, of course, will take considerable time, and there is to be no cabinet meeting, to which, I suppose, it will have to be formally submitted, until November. Lord Lansdowne himself left last night for Scotland for about a week. He showed me a print of the text as he had submitted it to his colleagues. There were one or two verbal differences from that which I cabled you, but which are of absolutely no moment; for instance, in "four," he had not substituted "such ship canal" for "the before-mentioned canal,"
which he had himself suggested and had sent me in writing as an amendment, and the words inserted in the preamble after “Oceans” are “by whatever route may be considered expedient” instead of “decided expedient,” as I had the word of absolutely identical meaning. Doubtless after all is arranged it will be left for you and Lord Pauncefote to revise the verbiage of the text. I saw Lord Pauncefote yesterday after my interview with Lord Lansdowne. He, like Lord L., thinks there is no doubt of the satisfactory result, and hopes to bring the treaty settled home with him on the 26th, on which day he will certainly sail. They both seem to know Lord Salisbury’s mind pretty well, and expect no difficulty from that quarter, though he may take his time in attending to it. Lord Pauncefote suggested, and Lord L. seemed to concur, that when the treaty was in final shape it would be a good opportunity for you to offer it as finally settled, with a memorandum showing why you regarded it as satisfactory and expedient for the United States, and for him to supply you with a similar memorandum showing why it was regarded as satisfactory to Great Britain, thus giving each a chance to explain it to his constituents. Of course, a name will have to be given to the treaty by you and Lord Pauncefote. I should think it would not be bad to call it just as it is, “Convention superseding the convention of 19th April, 1850, and providing for the building under the auspices of the United States of a neutral ship canal.” The first clause would commend it to the Senate, though standing alone it would not be approved here.

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

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

Yours, most truly,

Joseph H. Choate.

Mr. Choate to Mr. Hay.

[Telegram.]

Confidential.] American Embassy, London, October 9, 1901.

(Received 8.48 p.m.)

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

Choate.

42112—8. Doc. 474, 63-2—4
Mr. White to Mr. Hay.

[Telegram.]

American Embassy,
London, October 23, 1901.

(Received 7.05 p. m.)

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

White.

The Marquis of Lansdowne to Lord Pauncefote.

Foreign Office, October 23, 1901.

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

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

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

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

1 British Blue Book, United States, 1902.
I admitted that there was some force in the contention of Mr. Hay, which had been strongly supported in conversation with me by Mr. Choate, that Article III—A, as drafted by His Majesty’s Government, gave to Article VIII of the Clayton-Bulwer treaty a wider application than it originally possessed.

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

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

I am, etc.,

LANSDOWNE.

Mr. White to Mr. Hay.

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

Confidential.]  

American Embassy,  
London, October 26, 1901.

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

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

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

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

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

I have, etc.,

Henry White.

Mr. Hay to Lord Pauncefote.

Washington, November 8, 1901.

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

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

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

I have, etc.,

John Hay.

Lord Pauncefote to the Marquis of Lansdowne.²

Washington, November 19, 1901.

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

I have, etc.

Pauncefote.

¹ Printed, ante.
² British Blue Book "United States, 1902."
[Telegraphic.]

Lord Pauncefote to the Marquis of Lansdowne.¹

WASHINGTON, December 16, 1901.

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

Lord Pauncefote to the Marquis of Lansdowne.¹

WASHINGTON, November 18, 1901.

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

I have, etc.

PAUNCEFOTE.

[Inclosure in No. 5.]

Mr. Hay to Lord Pauncefote.

WASHINGTON, November 8, 1901.

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

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

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

I have, etc.

JOHN HAY.

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

DEPARTMENT OF STATE,
Washington, December 12, 1901.

My Dear Mr. Cullom: The treaty with England in respect to the construction of a ship canal between the Atlantic and Pacific Oceans,

¹ British Blue Book "United States, 1902."
which the President has sent to the Senate, is the result of careful
negotiations conducted between the two Governments since the re-
cceipt of Lord Lansdowne's dispatch of the 22d of October last,
whereby His Majesty's Government declined to accept, for the rea-
sons therein stated, the former convention of February 5, 1900, as
amended by the Senate on the 20th of January, 1901. Under the
instructions of the President I have signed on behalf of the United
States the treaty now prepared.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

With the exception of the changes above enumerated, which were made to reconcile conflicting views, care was taken to preserve in the new draft the exact language which had already passed the Senate without objection, and so far as known without criticism. The draft of the new treaty was transmitted by Lord Pauncefote to Lord Lansdowne, and its treatment by him manifested a most conciliatory spirit and an earnest desire to reach a conclusion which should be satisfactory to the United States, if this could be done without departing
from the great principle of neutrality, including the use of the canal by all nations on equal terms, for which Great Britain had always contended.

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

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

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

In view of the permanent character of this treaty, whereby the “general principle” established by Article VIII of the Clayton-Bulwer convention is reaffirmed, the high contracting parties hereby declare and agree that the rules laid down in the last preceding article shall, so far as they may be applicable, govern all interoceanic communication across the Isthmus which connects North and South America, and that no change of territorial sovereignty or other change of circumstances shall affect such general principle or the obligations of the high contracting parties under the present treaty.
The clause so proposed was regarded by the President as more far-reaching than the purpose demanded and as converting the vague and indefinite provisions of the eighth article of the Clayton-Bulwer treaty—which only contemplated future treaty stipulations to be entered into when any other route should prove to be practicable—into a very definite and certain present treaty which would fasten the crystallized rules of this treaty upon every other interoceanic communication across the Isthmus; and as perpetuating in a much stricter and more definite and more extended form, by a revision and re-enactment of the eighth article, the mischievous effects of the Clayton-Bulwer treaty, of which it was the desire and hope of the United States to be relieved altogether.

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

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

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

It transpired, in the course of the discussion already referred to, that although the draft of the new treaty mentioned no particular route which the canal should traverse, there was an apprehension that, as the canal had been so often referred to as the Nicaragua Canal, and the intended treaty as the Nicaragua Canal treaty, it might possibly be claimed that it would not apply to a canal by the Panama route or by any other route, if any such should be selected.
But it had always been the purpose of the President that the treaty should apply to the canal which should be first built, by whichever or whatever route, and when this apprehension was communicated to the President, he declared such to be his purpose, and, to exclude all doubt, it was agreed that the preamble should be amended by inserting, after the word "oceans," the words "by whatsoever route may be considered expedient."

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

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

The omission of the words in the former treaty by which Great Britain was bound jointly with the United States to maintain the neutrality of the canal, enabled His Majesty's Government to waive their former objection insisted upon under the former treaty as amended by the Senate, to an agreement which permitted the United States in time for war or apprehended war to interfere with the canal or its use, as its interests might require, while Great Britain alone, in spite of her vast commercial interests, was precluded from taking any measures to secure her interests in or near the canal. By the omission of the words "in time of war as in time of peace," in the event of the remote and well-nigh impossible contingency of a war between the United States and Great Britain, each party is remitted to its natural right of self-defense, but, even in that emergency, by force of the sixth clause of Article III—which is the only clause in the treaty by its terms expressly applying in time of war as in time of peace—the plant, establishment, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, and shall enjoy complete immunity from attack or injury by the enemy, and from acts calculated to impair their usefulness as part of the canal.
Finally, the absence from the draft treaty of any provision for the adherence of other powers was at first strenuously objected to by the British Government. It protested against being bound by stringent rules of neutral conduct not equally binding upon other powers, and to remedy this proposed the insertion in rule I, after the word "nations," of the words "which shall agree to observe these rules," so as to make it read that "the canal shall be free and open to the vessels of commerce and of war of all nations, who shall agree to observe these rules, on terms of entire equality, so that there shall be no discrimination against any nation so agreeing;" etc.

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

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

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

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

I am, etc.,

JOHN HAY.

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

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

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

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

AS TO THE ABROGATION OF THE CLAYTON-BULWER TREATY.

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

There was in this connection an apparent misconception on the
part of His Majesty’s Government in respect to the proper function
of the Senate in advising the ratification of a treaty with amendments
proposed by it. It seemed to be regarded as an attempt on the part
of the Senate to accomplish by its own vote, as a final act, the abro-
gation of an existing treaty, without an opportunity for full consid-
eration of the matter by the other party. It was overlooked that the
Senate was simply exercising its undoubted constitutional function
of proposing amendments to be communicated to the other party to
the contract, to ascertain its views upon the question, and it was
hoped by the President—and the hope was expressed in submitting
the treaty as amended by the Senate to the British Government—
that the amendments would be found acceptable by it. Failing this,
there was a full opportunity for His Majesty’s Government, by coun-
ter propositions, to express its views on this and the other amend-
ments, and so by a continuous negotiation to arrive, if possible, at a
mutually satisfactory solution of all questions involved. Neverthe-
less, in view of the great importance of the Senate's amendments, taken together, it was deemed more expedient by Lord Lansdowne to reject them, but to leave the door open for fresh negotiations, which might have a more happy issue; and he earnestly deprecated a final failure of the parties to agree, and emphatically expressed the desire of his Government to meet the views of the United States on this most important matter.

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

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

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

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

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

Moreover, it was insisted that by this amendment, in connection with the third amendment, which excluded other powers from becoming parties to the contract, Great Britain would be placed at a great disadvantage as compared with all other powers, inasmuch as she alone, with all her vast interests in the commerce of the world, would be bound under all circumstances to respect the neutrality of the canal, while the United States, even in time of peace, would have a treaty right to interfere with the canal on the plea of necessity
for its own safety, and all other powers not being bound by the
treaty could at their pleasure disregard its provisions.

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

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

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

The substantial differences from the former treaty are as follows:

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

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

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

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

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

Third. The next important change from the former treaty con-
sists in the omission of the words "in time of war as in time of peace"
from clause 1 of Article III.
No longer insisting upon the language of the Davis amendment—which had in terms reserved to the United States express permission to disregard the rules of neutrality prescribed, when necessary to secure its own defense, which the Senate had apparently deemed necessary because of the provision in Rule 1, that the canal should be free and open “in time of war as in time of peace” to the vessels of all nations—it was considered that the omission of the words “in time of war as in time of peace” would dispense with the necessity of the amendment referred to, and that war between the contracting parties, or between the United States and any other power, would have the ordinary effect of war upon treaties when not specially otherwise provided, and would remit both parties to their original and natural right of self-defense and give to the United States the clear right to close the canal against the other belligerent, and to protect it and defend itself by whatever means might be necessary.

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

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

Fifth. The next change from the former treaty is the omission of the provision in clause 1 of Article III, which prohibited the fortification of the canal, and the transfer to clause 2 of the remaining provision of clause 1, that the United States shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

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

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

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

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

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

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

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

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

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

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

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

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

This proposed article was regarded by the President as too far-reaching for the purpose in view, and as converting the vague and indefinite provisions of the eighth article of the Clayton-Bulwer treaty, which contemplated only future treaty stipulations when any
new route should prove to be practicable, into a very definite and
certain present treaty, fastening the crystallized rules of neutrality
adopted now for this canal upon every other interoceanic communi-
cation across the Isthmus, and as perpetuating in a more definite
and extended form, by a sort of reenactment of the eighth article,
the embarrassing effects of the Clayton-Bulwer treaty, of which the
United States hoped to be relieved altogether.

He believed that now that a canal is about to be built at the sole
cost of the United States for the equal benefit of all nations, it was
sufficient for the present treaty to provide for that one canal, and
that it was hardly within the range of possibility that the United
States would ever build more than one canal between the two oceans.
The President was, however, not only willing, but desirous, that
the "general principle" of neutralization referred to in the preamble
of this treaty should be applicable to this canal now intended to
be built, notwithstanding any change of sovereignty or of interna-
tional relations of the territory through which it should pass. This
"general principle" of neutralization had always in fact been insisted
upon by the United States, and he recognized the entire justice of
the request of Great Britain that if she should now surrender the
material interest which had been secured to her by the first article
of the Clayton-Bulwer treaty, which might result in the indefinite
future should the territory traversed by the canal undergo a change
of sovereignty, this "general principle" should not be thereby
affected or impaired.

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

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

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

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

His Majesty's Government at first strenuously objected to the
absence from the treaty of any provision for other powers coming in,
so as to be bound by its terms. It protested against being bound by what it regarded as stringent rules of neutrality which should not be equally binding upon other powers.

Lord Lansdowne accordingly proposed the following amendment, viz:

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

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

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

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

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

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

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

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

Thus the whole idea of contract right in the other powers is eliminated, and the vessels of any nation which shall refuse or fail to observe the rules adopted and prescribed may be deprived of the use of the canal.
One other amendment proposed by Lord Lansdowne was regarded by the President as so entirely reasonable that it was agreed to without discussion. This was the insertion at the end of clause 1 of Article III the words: "Such conditions and charges of traffic shall be just and equitable," and the word "convention," wherever it occurs, has been changed to "treaty."

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

Mr. Hay to Lord Pauncefote.

No. 2316.]

DEPARTMENT OF STATE,
Washington, December 16, 1901.

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

Congratulating you on this successful outcome of our labors,
I have, etc.,

JOHN HAY.

Lord Pauncefote to Mr. Hay.

No. 49.]

BRITISH EMBASSY,
Washington, February 18, 1902.

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

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

PAUNCEFOTE.

Mr. Hay to Lord Pauncefote.

No. 2372.]

DEPARTMENT OF STATE,
Washington, February 29, 1902.

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

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

JOHN HAY.
PART II.
PAPERS SUBMITTED.
Mr. Root to Mr. Bmiee.
Department of State, Washington, January 8, 1909.
Dear Mr. Ambassador:
I send you confidentially a memorandum regarding an arrangement which Ave are proposing to bring about between Panama and Colombia and the United States, and which we consider of importance as enabling the United States to execute peaceably the purposes of the Hay-Pauncefote treaty concluded between the United States and Great Britain on November 18, 1901.
Very sincerely, yours,
Elthu Root.

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

As a part of this same arrangement of separation and to help bring it about, the United States is about to agree to the continuance of the right of passage on the part of Colombia which was formerly stipulated in the Hay-Herran treaty. The United States has not been unmindful of the provision of the Hay-Pauncefote treaty under which the Suez rules were adopted as bases for the neutrality of the canal, including the rule against discrimination between different nations; but we have assumed that that rule had no relation to the terms by means of which the title to the site of the canal and the opportunity to build might be obtained.
The Government of the United States will communicate a copy of the different treaties immediately upon the final settlement of their terms, and hopes that the accomplishment of this very important step toward executing the purposes which the United States and Great Britain have shared for so many years, and an expression of which is embodied in the Hay-Pauncefote treaty, will be received by Great Britain with special satisfaction.

Department of State,
Washington, January 8, 1909.

Mr. Bryce to Mr. Root.

British Embassy,
Washington, January 8, 1909.

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

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

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

James Bryce.

Mr. Root to Mr. Reid.

[Telegram.]

Department of State,
Washington, January 9, 1909.

Following memorandum was sent yesterday to Ambassador Bryce:¹

* * * * * * * * * * *

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

* * * * * * * * * * *

Root.

¹ Printed ante.
Mr. Reid to Mr. Root.

[Telegram.]

American Embassy,

(Received 11.15 p. m.)


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

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

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

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

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

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

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

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

Reid.

Mr. Reid to Mr. Root.

[Telegram.]

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

American Embassy,

(Received 7.08 p. m.)

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

Reid.
Mr. Root to the British Ambassador.

Department of State,

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

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

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

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