MINISTRY OF FOREIGN RELATIONS.

PROTEST OF COLOMBIA

AGAINST THE TREATY BETWEEN PANAMA AND THE UNITED STATES.

TRANSLATED FROM THE SPANISH

—BY—

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DEDICATION.

TO SEÑOR DON LUIS CARLOS RICO.

Entertaining, as I do, the sincerest admiration for the great learning and research, the high diplomacy and intense and fervent patriotism which characterize the compilation of this Protest, I resolved to attempt an English translation of the same so that English-speaking persons may be afforded the opportunity of perusing this able, eloquent and convincing State document. The task has been to me a pure labour of love, and I now respectfully dedicate the same, even though it be but the humble effort of a patriotic Colombian, to you in the hope that you may long be spared to defend the interests of our common country in the same very able and effective manner in which this Protest has been framed.

F. LÓPEZ POMAREDA.

Kingston, Jamaica,
January, 1905.

DEDICATORIA.

Sintiendo la más profunda admiración, por el inteligente y sabio exámen, el alta diplomacia, cono intenso y ferviente patriotismo que caracteriza la compilación de esta "Protesta," me indujeron á intentar su traducción al inglés, de modo que aquellas personas que solamente hablan ese idioma, puedan tener la oportunidad de leer y examinar atentamente este hábil cuanto elocuente y convincente documento de Estado. La obra ha sido para mí, pura y simplemente, una labor de corazón, la cual dedico respetuosamente,—aunque ella no tiene otro mérito que el humilde esfuerzo de un Colombiano,—al Sr. Dr. Lius Carlos Rico, aquien deseo le sean deparados largos años de vida, para que pueda emplearlos en la defensa de nuestra Patria, en la misma hábil y efectiva manera, en la cual esta Protesta ha sido ideada.

F. LÓPEZ POMAREDA.

MINISTRY OF FOREIGN RELATIONS,

BOGOTA, 12th APRIL, 1904.

TO THE

Honble. ALBAN G. SNYDER,

Chargé d'Affairs of the United States in Colombia.

SIR,—In a note which I addressed to your Honorable Legation on the 12th of November last, concerning the Separatist Rebellion on the Isthmus of Panama, I forecasted that, in some way or other, the Treaty of 1846 would be violated. I transmitted, through His Excellency Mr. Beaupré, to the United States Government, an exposition of the circumstances which would arise if that compact were infringed or violated, feeling confident that the United States Government would act with justice towards the Government of Colombia in accordance with the stipulation contained in the said Treaty and with a due regard to International Rights.

The stipulation referred to is contained in clause 5 of Article 35 of the Treaty and reads as follows:

"If any of the Articles contained in the Treaty are violated or infringed, it is expressly stipulated that neither of the two contracting parties shall order or authorise acts of reprisal nor shall declare war against the other for acts of an insulting or damaging character until the offended party shall have previously presented a statement of the alleged injuries, supported by absolute proofs, and demanded justice and satisfaction; and in the event of these being denied such denial would be judged to constitute a violation of International Law and Right."

Your Excellency's Government has not only dealt unjustly towards the Government of Colombia in violating the Treaty of 1846 and International Rights, but has also infringed the provisions of the said Treaty in the following manner:

1.—By formally recognizing, as an independent Republic, the revolutionary department of Panama.

2.—By officially receiving as a Minister Plenipotentiary an Agent of the Revolutionists.

3.—By Admiral Coghlan's notification to the General-in-Chief of the Atlantic Army of Colombia that he had

received instructions not to permit the landing of Colombian troops on the Isthmus.

4.—By the notification, in a special despatch to the Colombian Minister in Washington, that the Treaty concluded with the Secessionists (although the same had not yet received the sanction of the United States Senate) made it obligatory on the United States to maintain the independence of the Isthmus and the preservation of peace and order, and pointing out the serious consequences that would follow an invasion of the Isthmus of Panama by Colombian troops; also that it appeared to the United States that the time had arrived for closing the chapter of the Civil War on the Isthmus.

5.—By reiterating the statements contained in the former note of the 30th December in which it was expressed that the formal attitude of the American Government would be indicated and governed according to circumstances and that that Government would be sorry to be provoked into assuming an hostile attitude.

6.—By celebrating a Treaty with the Revolutionary Government of Panama for the opening of an Interoceanic Canal through the Isthmus.

7.—By the guarantee given in the aforesaid Treaty assuring the independence of the Isthmus in direct contravention of the Treaty made by the United States with Colombia guaranteeing the latter her property in, and sovereignty over, the same territory.

To further demonstrate that the attitude assumed by the United States Government towards the Secessionists was not in conformity with the terms of the Treaty of 1846 and with International Rights is wholly unnecessary. The accomplished facts are in such open contradiction to the terms of the Treaty and to the principles of right that any additional reasoning on the subject would be superfluous.

Neither in the Act of Independence of the City of Panama, nor in the Manifesto of the Assemby called "the Government" do the rebels say that the Isthmus has ever been an independent State; but, that Panama, in separating herself from Spain, spontaneously linked her fate with that of the Republic of Colombia.

From the Act of Independence of the 28th November, 1821, I copy the following:

1.—Panama, spontaneously and in conformity with the

unanimous vote of her people, declares herself free from, and independent of, the Spanish Government.

2.—The territory of the Provinces of the Isthmus belong to the Republic of Colombia and shall be represented in Congress by its Deputies.

It is, therefore, clearly seen that the Provinces of the Isthmus were formed without the intervention or consent of the Viceroy of Santafé. Notwithstanding this historical fact, the United States informed me, through its Legation, on the 11th November last, that the people of Panama had re-assumed their independence, intending thereby to suggest the erroneous idea that the Isthmus had been once an independent State.

The United States Government, in the treaty agreed upon with the Agent of the Revolutionists for the opening of the Canal, besides guaranteeing the independence of the Isthmus, accepted the stipulations I mention below which are extracted from the Treaty and have been published by the newspapers of the United States.

Article 2 of the Treaty grants to the United States dominion over a zone of five miles on either side of the Canal and over an extension of three nautical miles at each end of the Canal, together with the lands necessary for the construction and conservation of the Canal and its dependencies. The same Article also grants to the United States the perpetual use and occupation of, and dominion over, all the islands lying in the Bay of Panama called Perico, Naos, Flamenco and Culebra.

By Article 3 Panama grants to the United States the right to exercise over the zone mentioned in Article 2 the same power and authority that the United States would have had if that country had possessed the right of sovereignty over the Isthmus, to the exclusion of the exercise of this right and power by Panama.

By Article 4 the Republic of Panama grants to the United States the perpetual use of the rivers, streams, lakes and other navigable bodies of water within its limits which may be necessary for the construction and maintenance of the Canal and its sanitation.

In effect, Article 5 cedes perpetually to the United States the monopoly of any system of communication over the Isthmus by a Canal or by railways.

These concessions are equivalent to an alienation or grant to the United States of all the territory to which they refer.

This compact was agreed upon a few days after the initiation of the Separatist rebellion which latter had not even been properly organized to indicate that it was the outcome of popular feeling. And to this hurried and precipitate act must be added, as I have already said, the putting into force of the compact guaranteeing the independence of Panama before the same was ratified or perfected.

These incidents will, doubtless, convey to the mind of every one the idea that the United States acted in this way so that under her open and unconcealed military protection the Isthmus might gain its independence, the object, of course, being to obtain those advantages under the Treaty above referred to which are, substantially, in excess of those offered by Colombia; for it is undeniable that the concessions made by the so-called Republic of Panama to the United States ensures to the latter complete dominion and government over the zone and other lands and territorial waters. This deduction would not have been so tenable if the compact had not been celebrated at the commencement of the insurrection.

If the existence of this compact and the fact that Colombian troops were not permitted to land on the Isthmus are not sufficient to prove what I have above stated, strong confirmatory evidence is found in certain diplomatic documents which I proceed to cite.

On the 13th June, 1903, His Excellency the Minister of the United States presented me with the following memorandum :—

"I have received instructions by cable from my government that from all appearances the Government of Colombia evidently does not appreciate the gravity of the situation. The negotiations with respect to the Panama Canal were initiated by Colombia and were energetically solicited of my Government for several years. The propositions presented by Colombia, with some small modifications, were finally accepted by us. In virtue of this convention our Congress revoked their former decision and determined that inter-oceanic transit should be by way of Panama. If Colombia now unduly and without reason rejects the Treaty it will retard its ratification, and the friendly relations existing between the two countries will be so seriously compromised that our Congress, during next winter, might take steps for which every friend of Colombia will be sorry."

In his note to me of the 5th August, Minister Beaupré said :—"In virtue of the official data in my possession, I can

affirm that the circumstances which have taken place in all the negotiations with respect to the Canal treaty are of such a nature as to fully warrant the United States considering any modification of the conditions stipulated in the Treaty a violation of the compact which would produce the greatest complications in the friendly relations which, up to the present, exist between the two countries."

To the above quoted Memorandum and Note and to several other Notes from the United States Legation I replied, maintaining the right of our Congress to modify or reject the Treaty without such an act being construed as contrary or opposed to previous negotiations or in the nature of a violation of the promises made by my Government.

My reasoning, although based on the Constitution of this Country and on International Rights, unhappily had not the effect of altering the trend of the intentions forecasted against Colombia in the documents above mentioned—intentions that have taken practical form in the initiation of very grave measures with the qualification, however, that these measures have not originated with the Senate but with the Executive Power of the United States.

It is of the greatest importance to correctly appreciate and understand the procedure of the two Governments in the matter of the Canal, and to recall some past incidents intimately related to the last serious events that have lessened the integrity and sovereignty of this Republic.

On the 14th January, 1869, there was signed by the Plenipotentiaries of Colombia and the United States at Bogotá a treaty for the excavation of a Canal through the Isthmus of Panama joining the Atlantic and Pacific Oceans.

Article 8 of that Agreement reads as follows:—"The United States of Colombia shall conserve and retain its political sovereignty and jurisdiction over the Canal and adjacent territory and not only will she permit but shall guarantee to the United States of America, in conformity with the Constitution and Laws in force in Colombia, the peaceful enjoyment, government, direction and management of the Canal as before stipulated."

Before this Treaty was submitted to the Congress of Colombia for ratification there was substituted for it another Treaty dated the 26th January, 1870, Article 10 of which is as follows:—"As soon as the Canal, with its dependencies and *annexes*, is constructed, the power of inspection, possession,

direction and management of the same shall vest in the United States of America and the same shall be exercised by that Government without any foreign interference ; but the United States shall not exercise jurisdiction or authority in any manner soever over the territory or its population. The United States of Colombia shall conserve and retain its political sovereignty and jurisdiction over the Canal and adjacent territory ; but it shall guarantee and permit to the United States of America, conformably with the Constitution and Laws in force in Colombia, the peaceful enjoyment, the administration, direction and management of the Canal as already stated. This guarantee shall not, however, differ in any respect from that usually conceded under the laws of the Republic of Colombia to persons and interests in Colombian territory ; and in order to ensure the greatest possible security to the Canal undertaking an extraordinary public force will be provided the cost of which shall be borne by the said undertaking."

This compact was not ratified owing to the Colombian Congress making some modifications which the Executive Power of the United States refused to accept : but in both drafts agreed upon, and signed by the United States Minister, the United States Government accepted the provision that Colombia should retain and preserve its full and complete sovereignty and jurisdiction over the Canal and the territory adjacent. It was not until the last Convention was subscribed to in Washington on the 22nd January, 1903, that owing to the persistent demands of the United States—a course first suggested by the Chief of the Isthmian Canal Commission—it was agreed to establish mixed and American tribunals in the Canal Zone for the trial of civil and criminal cases, and the provision was made for conceding, for periods of 100 years at a time, the said Zone and the Canal works to the exclusive will and control of the government of the United States.

This radical change of views on the part of the United States placed the Publicists of Colombia on the alert and had the effect of bringing about the non-ratification of the Treaty especially as the compensation offered was insufficient in view of the fact that Colombia surrendered her right of taking possession, without any indemnification, of the Canal works, the lands, the buildings, the furniture, machinery and materials which would have come to her, at the latest, within six years, as it was well known that it was impossible for the French Company to complete and terminate their agreement : also in view of the fact that the landed and other property together

with the large number of shares in the Panama Railroad Company held by the French Company, all of which the United States was going to acquire for $40,000,000. Colombia had every expectation of obtaining. The small sum of $10,000,000 was offered Colombia by the United States without consideration being had for the true value of the property which Colombia was surrendering, but was offered in accordance with Article 25 of the Treaty which provides that pecuniary indemnification shall be paid Colombia "as price or compensation for the right of use of the Zone granted in this Convention by Colombia to the United States for the construction of the Canal and for the rights of property in the Panama Railroad and the annuity of $250,000 gold which the said Railroad pays to Colombia and also as compensation for any other rights and privileges granted to the United States and in consideration of the increased expenditure in the public administration of the Department of Panama caused by the construction of the Canal."

Colombia, in order to facilitate the negotiations, had agreed that Article 25 of the Treaty should be drawn up in the above form notwithstanding that the $10,000,000 would be insufficient compensation for all the property and other valuable benefits which she renounced. The sum offered, as a fact, did not represent any indemnification for the use of the Zone and the islands of Culebra, Naos, Perico and Flamenco. The agreement, although it was opposed to her interests, was entered into by Colombia because she had considered the matter and had decided not to oppose in any way the execution of the great work needed in the interests of navigation and trade of the whole world and she, therefore, granted the most liberal concessions compatible with her integrity and sovereignty.

The annual rental of $250,000, (which Colombia was to receive from the United States and which would not begin until the expiration of nine years) was to take the place and be in the stead of that which for sixty years the Panama Railroad Co. had agreed to pay to Colombia, and it should not, therefore, appear or be counted as forming part of the compensation to be paid by the United States to Colombia.

Allow me, Your Excellency, to recall to your attention, certain past occurrences which induced the Colombian Government to expect from the United States a different course of action to that which it followed in regard to the Separatist movement on the Isthmus.

In replying to a note from the *Chargé d'Affaires* of Colom-

bia, in which the latter proposed to the then United States Secretary of State, on the 30th March, 1820, that the United States should supply a certain quantity of arms, it being mentioned as a reason for this request that the nations of New Grenada and Venezuela had been united by a law passed by the Sovereign Congress at the unanimous desire of the people of both countries and were forming a Sovereign State, free and independent, under the name of the Republic of Colombia with a provisional Constitution and representative Government, His Excellency John Quincy Adams said: "Whereas the First Magistrate of the Nation had observed, and continues to observe the principle of impartial neutrality in this war, he considers inviolable his obligation to abstain from supplying to one of the two parties in the contest which is being carried on any help that, in similar circumstances, would be denied to the other party. Such is the law of neutrality. This position cannot be deviated from, according to the principles of the Constitution of the United States, excepting only by an Act of Congress."

Your Excellency will observe that although ten years had elapsed since New Grenada and Venezuela had proclaimed their independence and they were still struggling for the same, yet the Government of the United States recognized that the law of neutrality forbade the supply to one of the belligerents of any help that, in similar circumstances, would be denied to the other. Your Excellency will also observe that, contrary to this rule, your Government promptly recognized the independence of the Isthmus so as to harass Colombia and put into force and operation a Compact, not approved or ratified by the Senate, guaranteeing the maintenance of that independence.

In the message of the State Department to Congress, dated the 14th July, 1860, the following passage is found respecting the commercial relations existing between the United States and Spanish-American countries:— "With many of them we have established relations by particular Treaties. The Treaty of 1846 between the United States and New Grenada contains stipulations of guarantee for the neutrality of certain parts of the Isthmus in the territory of Colombia and for the protection of the rights of sovereignty and of property belonging to the nation. That Treaty, therefore, constitutes a true and genuine alliance of *protection* between the United States and that Republic."

In a note dated 30th April, 1866, Mr. Seward, referring to the Sovereignty and Independence of Colombia on the Isthmus,

said that "if those great interests were to be at any time attacked by any power, internal or external, the United States would be ready, in conjunction with the Colombian Government, its ally, to defend them."

On the 24th June, 1881, Mr. Secretary Blaine addressed an important note to Mr. Lowell, United States Minister in London, from which I extract the following :—

"In 1846 a memorable and important Treaty was signed between the United States of America and the Republic of New Grenada (now States of Colombia). By Article 35, in exchange for certain concessions to the United States, we guarantee 'positively and effectively' the complete neutrality of the Isthmus and of all ways of inter-oceanic communication which might be established on it and the protection and maintenance of free transit from one ocean to the other, and we bind ourselves, as well, to guarantee the rights of Sovereignty of the United States of Colombia over the territory of the Isthmus comprised within the limits of the State of Panama.

"According to the judgment of the President, this guarantee by the United States of America does not require the adhesion, acquiescence or support of other powers. On more than one occasion has the United States Government had to carry into force and effect its guarantee of neutrality, and nothing at this moment can be seen to warrant a doubt that this nation will fail to comply with, or leave unfulfilled, its guarantee and obligations.

"There has never existed the least doubt, on the part of the United States, regarding the object of the obligation undertaken or respecting the free transit of the commerce of the world through the Canal or the protection of the territorial rights of Colombia against aggression of any kind * * * neither has there ever been cause to discuss the advantages (resulting, naturally, from its geographical position and from its political relations with the Western Continent) which were obtained by the United States from Colombia, the nation which owned the territory, in exchange for this important and extensive guarantee." (*Foreign Relations of the United States*, 1881, pages 537 and 538.)

With reference to the same subject Mr. Blaine transmitted to Mr. Dichman, United States Minister in Bogotá, on the same day (24th June, 1881) the following despatch :—

"Your letter numbered 269 of 9th ulto. informs me of the confidential rumours which reached your ear, viz., that

Colombia is endeavouring to obtain from the European Powers a declaration in common of the neutrality of the Isthmus of Panama and of the Sovereignty of Colombia over that territory.

"Like rumours have reached me from various sources and these reveal a tendency on the part of several maritime powers to consider the propriety of uniting in order to offer such a guarantee. In these circumstances I have prepared circular instructions for the Representatives of the United States in Europe in which I have directed them, in case they are of opinion that such a proposition is likely to assume a tangible form, to call the attention of the respective Governments to which they are accredited, to the opinion of the President that the existing guarantees, entered into under the Treaty of 1846 between the United States and Colombia, are complete and sufficient and do not require additional re-inforcement from any other Power.

"I am not yet prepared to communicate this despatch *in extenso* to the Colombian Government; but if the excitement which was produced by the return of Mr. Santo Domingo Vila to Bogotá (which went so far as to demand your recall) has subsided, giving place to better sentiments and manifesting a return of confidence, you can, if the opportunity offers, inform the Secretary for Foreign Affairs of the measures adopted by this Government for the purpose of preventing the realization of the suspected intent of the European Powers of offering a common guarantee, the same being considered unnecessary and offensive alike to Colombia and the United States."

(*Foreign Relations* 1881, pages 356 and 357.)

The declarations made in the preceding letter produced in this country the belief that our Territorial Rights on the Isthmus of Panama would be protected by the United States "against all aggression" and that the guarantee offered by that Government did not require the co-operation, acquiescence, or support of any other Power, especially as the United States had offered a complete and sufficient guarantee that did not require reinforcement from any other Power.

This guarantee was stipulated in a special clause of the Treaty of Peace, Friendship, Navigation, and Commerce of 1846. And whether this guarantee be considered solely as a clause of this Compact, or as a Treaty of Guarantee, or as an Alliance of Protection, it undeniably is a solemn engagement or obligation which absolutely binds the United States but which now has been wholly departed from and ignored. Such

a procedure on the part of the Guarantor will be correctly judged by History, that Supreme Judge on earth of men and nations.

The Plenipotentiaries of North Germany, Austro-Hungary, Great Britain, Italy, Russia, and Turkey declared "that thay recognized as an essential principle of International Right that no Power could be freed from the obligations of a Treaty or modify or vary its terms in any other manner but by and with the consent of the contracting parties obtained by means of an amicable agreement." (Addition to Protocal the Fifth, 12th January, 1871.)

By the interpretation now given to Article 35 of the Treaty of 1846 by the Government of the United States, it is freed, on its own mere notion and by its own will, and without the consent of Colombia, from the obligation guaranteeing the property and sovereignty of this Republic on the Isthmus; and it arrogates to itself the right and power of thus proceeding—a course of action diametrically opposed to that obligation and one constituting a violation of the essential principle of Public Rights expressly recognized by the above named Powers. Under the aegis of this principle Colombia considered her rights shielded and protected as in an impregnable bulwark as I recently declared before the Senate when fears were being entertained that a Separatist movement was in course of development on the Isthmus.

This confidence on the part of Colombia was not only founded on the principle mentioned but was based also on the terms of the Treaty and on the Note of Mr. Blaine and of that of the 5th August, 1903, addressed to me by the Minister of the United States in which, amongst other very important matters, the following occurs:—

"It is regrettable that in the report of the Committee of the Senate reference is made to the necessity of having the Treaty of 1846-48 declared effective,—a suggestion almost involving a doubt of the good faith and intentions of the United States in complying with the terms of the same. I must assure Your Excellency that unless the Treaty is denounced in accordance with the clause which provides the manner of effecting such, my Government is not capable of violating it neither in letter nor in spirit; nor should Colombia fear that in case the present Treaty be ratified that the Government of the United States would neglect complying with the clauses which guarantee her sovereignty as they are framed in much more precise and solemn terms than those of 1846."

I referred to the foregoing extracts in the Senate and at the same time affirmed my belief that, unless the Treaty was denounced, the possession and sovereignty of Colombia on the Isthmus of Panama were not exposed to any danger whatever.

The declaration of the Representative of the United States and Article 4 of the law of the United States of the 28th June, 1902, which authorizes the construction of the Nicaraguan Canal if the negotiations with Colombia were not effected, (the text of which law was communicated to this Government) justified completely the confident attitude of the latter notwithstanding certain signs, among which were the writings of the Press of the United States and other countries which, in some instances, were in favor of, and, in others, against the revolutionary movement in Panama, because the promises of the Minister and the provisions of the law absolutely deprived of any show of authority the rumors and fears then current on the matter.

If Mr. Beaupré had not made the above quoted very definite and decisive declaration, and had the Government of the United States not formally communicated to Colombia the text of the Law of 28th June, 1902, the Government of this Republic would most assuredly have adopted such precautionary measures as would effectually have checked the revolutionary movement, and the events which took place on the Isthmus on the 3rd November, 1903, and afterwards, would never have occurred.

The Government of the United States has used its military strength on the Isthmus in order to favor and insure the Independence of Panama. This being undoubtedly so, the question that arises is, What will be the future fate of the independence and integrity of the Republics of Central and South America? The logical answer is that they will be at the will and mercy of the powerful and, for them, irresistible Republic of the North.

The inter-oceanic Canal will modify the conditions of navigation between the two seas; but the execution of its excavation in a Zone under the dominion of the United States will result in the destruction of Latin-American solidarity, whilst the official ties which bind the Department of Panama to the Republic of Colombia will be wholly and absolutely ruptured, and those of trust and confraternity which have linked together the inhabitants of this hemisphere will be weakened. I make these very necessary and pertinent observations as Colombia has suffered severely by the application of the new *regime*

which appears like a threat to the integrity, autonomy, and consolidation of the Republics of this Continent. It is expected that the people of the United States, notwithstanding the Treaty which guarantees the independence of Panama, will not consent to the establishment of such a *regime*, and that the solution of the incident which has actually occurred between the two countries will be found in the reintegration of Colombia and the consolidation of the bonds of friendship which should exist between the peoples of the New World so as to give an impulse to the development of progress on the foundation of order and right.

Amongst the documents transmitted by the Colombian Legation in Washington to this Ministry were the Messages of the President of the United States to the Senate dated respectively the 7th December, 1903, and the 4th January, 1904, both of which relate to the Canal and the Separatist movement in Panama. In both messages I find statements made and opinions of much gravity expressed which it is my duty to take into respectful consideration as they directly concern this Republic. It is not my intention to analyze each of these statements and opinions, but I purpose making a brief comment on the most important of them so that it may not be supposed that Colombia accepts or recognizes them as authentic as they are all, or in part, entirely at variance with her traditions and history, and because silence would be taken to mean the acceptance of principles and doctrines contrary to those universally acknowledged and accepted as the prime factors in the maintenance of national integrity and sovereignty and of the letter and spirit of public treaties.

The Treaty of 1846 does not vest in the United States any substantial right of property in the Isthmus of Panama which would lessen those rights of property and sovereignty which New Grenada (now Colombia) had (and Colombia now possesses) in and over the said territory. According to the universally admitted principles of "Public Rights," national territory cannot be transferred without a compact or sale, and in the above referred to Treaty there is no agreement or stipulation of such a nature, neither is there any provision authorizing such sale which, if effected, would be in direct contradiction to the terms of that diplomatic document.

In the Synopsis presented with the Message of the President of the United States to the Senate on the 7th December last, it is stated that according to the reports of the United

States Consuls, 53 revolutionary outbreaks have occurred on the Isthmus in 57 years, 19 of which are made to appear as attempts at incendiarism, revolts or insurrections. As a fact, however, these were mere incidents which by no stretch of imagination, could properly be called revolutions—incidents, which, under other names, have occurred frequently in the most advanced and civilized countries in the New and Old Worlds. Of the remaining 34 ebullitions against public order eight only affected the whole country and 28 were strictly local and of very short duration, the majority of them taking place during the Federal regime which began on the Isthmus in 1855 and ended in 1886.

The revolution that took place in 1899 lasted for three years, but the same has been counted as four separate outbreaks occurring in the years 1899, 1900, 1901 and 1902 thereby quadrupling the one event.

Notwithstanding the revolts that occurred during the existence of the Treaty of 1846 the inter-oceanic transit was very rarely interrupted, and these interruptions were only for a short time. It must also be remembered that long periods of time elapsed without any interruption occurring at all.

It is true that the presence of the ships of the United States and the landing of the troops of that country (although this was of very rare occurrence and without the necessity presenting itself for the troops being obliged to fight) have contributed towards preserving the free and uninterrupted transit of the Isthmus which was precisely the object of Article 35 of the Treaty and for which service Colombia granted the United States sufficient compensation. It is notorious that during the 57 years such a compact has been in force Colombia has been able to fulfil her duties and obligations and peace has been maintained on the Isthmus.

To merely guarantee the preservation of order on the Isthmus is not alone sufficient to warrant the United States assuring to Panama her independence, but the United States should absolutely impose its sovereignty on the Isthmus, for it is well known that nearly all the revolutionary movements which have affected that department have been organized and carried out by the Isthmians themselves and have been of an exclusively political character. Autonomy alone will not make for the accomplishment of constant peace on the Isthmus as has been proven by the history of the peoples of this Continent: but

notwithstanding their revolutions their commerce has prospered and their civilization has advanced.

Doubtless foreseeing the need of providing for the maintenance of peace on the Isthmus the convention between Panama and the United States contained provisions to that effect in Article 7 thereof which is as follows :

" The United States shall have the same right and authority to maintain public order in case the Government of Panama cannot maintain the same in Panama and Colon."

Let me quote another provision of the same compact contained in Article 21 thereof :—

" If at any time the need should arise to employ armed force for the security and protection of the Canal, ships in its use, railways or other enterprises, the United States shall have the right to employ with discretion its police or its naval forces and establish fortifications to accomplish such an end."

In accordance with the above quoted articles the Constitution of the so-called Republic of Panama contained the following provision in Article 131 :—

" The Government of the United States of America can intervene or mediate in any part of the Republic of Panama so as to re-establish public order and uphold the Constitution provided that that Power has, by a Treaty, assumed the obligation of guaranteeing the independence and sovereignty of this Republic."

In virtue of this Article and of the two other preceding ones the autonomy of Panama is entirely illusory

Incontestable proofs that Colombia has not been opposed to free transit across the Isthmus or to the Isthmus being made of general use for the traffic of the world are to be found in the facts that there has been constructed, under contract with Colombia, about one-third part of the Canal and that a French Company is answerable, under bonds, for its delivery, completed, in 1910. As I said on a former occasion : " Colombia has declared the free transit of passengers and merchandize across the Isthmus and has rigidly maintained the same for more than half a century, placing in this manner her territory and her authority at the service of the trade of the world. And further, that, from its foundation, the Republic has, by means of Legislative Acts and various negotiations, demonstrated its strong desire to facilitate in every way the opening of the

Isthmian Canal which was one of the many points of discussion in the Congress of the Republics of the American Continent convened by Bolivar in 1826."

"The United States has decided that no other Government but its own shall construct the Canal." This declaration, as also that made by the Government of Your Excellency that the construction of the Canal cannot be delayed and that the Nicaraguan Canal would not be constructed, established a political doctrine which, logically, conduced to disown Colombian sovereignty on the Isthmus, the Treaty of 1846, and the prescriptions of International Right respecting the recognition of New States or Powers.

In the Hay-Pauncefote Convention it was stipulated that the Canal could be constructed under the auspices of the United States; but from this cannot be deduced any right for the construction of such an undertaking without the consent of the Government of the territory previously agreed upon consideration being had to the convenience of the universal traffic and to the interests of such Government. And in the case of Colombia with so much more reason because she has never attempted in any way to harass or exclude the world-wide traffic of the Isthmus but, on the contrary, she has always striven to facilitate the same by means of negotiations some of which, however, have not been carried into effect through causes over which Colombia had no control.

The offer to the United States Minister by one of the men occupying the highest position in the official circles of Colombia respecting the approval and ratification of the Herrán-Hay Treaty by an act of the Legislature or by a new and complacent Congress did not reach or attain to the proportion of a governmental act. Had it reached this, then the Administration would have fulfilled its promise if such could have been effected by thoroughly constitutional and legal means.

As I have stated already, the Government of Colombia could not attach importance to the reports of the Press concerning the formation and development of the Separatist movement because, as I declared in the Senate, such a movement could not be feared seeing that the Treaty of 1846 was in force and Colombia being absolutely confident that the United States would faithfully fulfil its obligations under that Compact. In these circumstances the Department of Panama could not have obtained her independence without the support of some very powerful nation.

In view of the friendly relations that had subsisted between the two Governments it was obligatory upon the United States to have informed the Colombian Government that, according to information received from its Agents, a revolution was imminent in Panama, the movement having for its object the disintegration of the Republic of Colombia, and that measures had been taken for having its warships near by so as to be able easily to reach the Isthmus when the revolution broke out.

Instead of this friendly proceeding, however, the United States despatched the following order to the Commanders of the *Boston*, *Nashville* and *Dixie* :—

"Maintain free and without interruption the transit. If you are threatened to be interrupted by armed force you are to occupy the Railroad line. Prevent the landing of any armed force with hostile intentions, whether it belongs to the Government or to the Revolutionists, appearing at any point within a Zone of 50 miles from Panama. Get information of the Government forces that are now on their way to the Isthmus. Prevent them landing if, in your judgment, their presence will precipitate a conflict."

These orders are not in accordance with the precedents established by the United States which never, in former revolutions, impeded or prevented the landing of the troops of the Government of Colombia nor the transit of them by the railroad as appears by the orders transcribed in the Message of the President of the United States of the 7th December, 1903, to the Senate, which orders were issued by the United States in the years 1900, 1901 and 1902 in which that Government indicated that it was only disposed to take measures to prevent the transit being interrupted or be put in danger or the Railroad line being converted into a theatre of war.

In September, 1858, it was agreed between the then Minister of New Grenada, General Herrán and the United States Secretary of State, General Casey, that, in future, when the forces of the United States were passing over the Isthmus they should be disarmed and travel like private individuals "without the enjoyment of those privileges usually accorded to troops passing through foreign territory and who are not subject to local jurisdiction." In 1885 the United States despatched troops to Panama and notwithstanding the fact that the Railroad was undefended and that one of the revolutionary parties went to the extreme length of placing in prison the person of the United States Consul in Colon, that Government did not

pretend to execute acts of authority or of jurisdiction, and on the demand of Mr. Becerra, Colombian Minister in Washington, for an explanation as to the reason for the detention on board the U.S. cruiser *Galena* of two of the incendiaries of Colon an order was immediately issued by Mr. Bayard, Secretary of State, for the delivery of the prisoners to the local authorities.

In giving an account of the Conference that took place in the Department of State in Washington on the 4th November, 1902, regarding the negotiations for the Canal Treaty, Dr. Concha, the Colombian Minister, said, in relation to the events which took place on the Isthmus in September and October of the same year, "Mr. Hay referred directly and spontaneously to the attitude assumed by Admiral Casey in those events and added that he had addressed to the U.S. Minister in Bogotá a note directing him to signify to the Colombian Minister of Foreign Affairs the cordial friendship of the United States Government and the wish of the latter to avoid any act or procedure which would offend the dignity of Colombia or lessen her rights as an independent nation: that, in this connection, the U. S. Government had addressed, by cable, communications to Admiral Casey to the end that he should regulate and adjust his proceedings in accordance with the feelings and spirit of his Government, and that the aspect of matters had very much changed on the Isthmus and that at present there was complete harmony on that territory between the authorities of both nations."

In my note of 19th November, 1903, addressed to your honorable Legation the following occurs:—

"The recognition, as a State, by one Power, of a Department whose aim and intention is the separation from the Nation to which it belongs neither justifies nor legalizes the intervention of that power in the struggle which a Separatist movement might produce. And although in this present emergency of affairs the United States has wholly neglected to fulfil its obligation under the Treaty of 1846 to guarantee the prosperity of Colombia in, and its sovereignty over the Isthmus and insists in maintaining such an attitude, it was, at least, expected by Colombia that the United States would remain neutral and abstain from recognizing the rebels as belligerents."

I quote the preceding paragraph so that it may be remembered that the Government of Colombia has made no de-

mand on the United States for the submission of the rebels because it refused to permit the landing of Colombian troops sent to effect such submission.

The Commander of the United States fleet addressed on the 4th November, an official letter to the Commander of the battalion *Tiradores* which is as follows : -

"I have information that the situation in Panama is such that any movement effected by the Colombian troops, stationed in Colon, towards that neighborhood, will provoke a conflict and threaten the free and uninterrupted transit of the Isthmus, which latter the Government of the United States is compelled by Treaty obligations to maintain. I have, therefore, the honor to inform you that I have directed the Superintendent of the Panama Railroad in Colon not to permit the transportation of the Colombian troops or those of the opposite party. Hoping that this action on my part will receive your cordial assent.

I have the honor to be

Very respectfully.

JOHN HUBBART.

Commander of the U.S. Fleet.

According to the information supplied by General Tobar this order was carried out in respect of Colombian troops : the Commander-in-Chief of the Panama Army and other military officers were conveyed by the Railroad and were escorted by the soldiers of the rebels. These had the Railroad placed at their services constantly. It is also known that the Superintendent of the Panama Railroad refused to transport the battalion *Tiradores* from Colon to Panama with the assent, of course, of Commander Hubbart who, as will be seen from his note, had assumed supreme authority in regard to the conveyance of the military over the Isthmus by Railroad.

In the statements made by the Colonel of the *Tiradores* to the Commander-in-Chief of the Army in Carthagena, there is to be found evidence of the facts that on the 4th and 5th November, 1903, troops and artillery men landed in Colon from the U.S. fleet ; that these forces were stationed in the Railway offices and that they constructed trenches ; that the Colonel having communicated with the United States Consul on the subject, that official replied by asking the Colonel to remove his forces from the town, and that one of the causes which

determined the return to Carthagena of the battalion was the threatening attitude of the United States troops and their officers.

On the 8th November, Mr. Manuel Amador Guerrero, the then Chief of the Separatist movement and at present President of the so-called Republic of Panama, visited the General-in-Chief of the Atlantic Army of Colombia, who was confined in prison at Panama. Mr. Guerrero, at that interview, confessed to the General-in-Chief that the events which had occurred were the result of a plan well-matured, lengthily discussed in Panama and in Washington, and executed under the protection and guarantee of the United States Government with which government he, personally, had come to an understanding and from which he had received two and a half millions of dollars to be employed in defraying the initial expenses of the new Republic; that there were several American warships at Colon ready to protect the revolutionary movement, all resistance against which would be futile, and, in conclusion, suggested that the General, actuated by a spirit of humanity, should order the re-embarcation of the battalion *Tiradores*.

Messrs. Tomas Arias and Federico Boyd, members of the Junta of Government, made similar statements.

I have been informed that Mr. Amador Guerrero has contradicted General Tobar's statements, but it is not known whether Messrs. Arias and Boyd have done the same either in respect of General Tobar's statements or in respect of those made by General Amaya, Chief of Staff of the Atlantic Army, who was also in prison in Panama.

Although it is alleged by the United States Executive that the presence in Isthmian waters of the U. S. fleet did not lend support to the revolutionists it cannot for a moment be doubted that the presence of that fleet encouraged the revolutionists, and that the action of the Commanders of the fleet had the effect of paralyzing the effects of the Colombian authorities in meeting the rebels.

That the citizens of Panama were desirous of proceeding to Colon for the purpose of attacking and expelling the Colombian troops from that town is a circumstance not mentioned by Commander Hubbart in his despatches and was only brought to light in an article which appeared in the *New York Evening Post*. If, therefore, this object was not accomplished it was from no lack of will to do so, but only because it was considered unnecessary in view of the attitude assumed by the

United States in preventing the re-occupation of the Isthmus by Colombian troops—an attitude that has been persistently maintained and one that has been declared in the following terms :— "It is almost wished that, on our part, there shall not be any imprudent conduct that would cause Colombia to become engaged in a war that cannot result in the restitution of her dominion on the Isthmus, but would cost much blood and suffering." It is only because the United States has undertaken the defence of the rebels that Colombia has not by force of arms attempted to regain her dominion on the Isthmus. This she could easily have accomplished as her Military forces are notoriously greater than those of the small Department of Panamá.

The action of the people was not in any way unanimous. In this regard, as in many others, the Government of the United States has been erroneously informed. Natural born Isthmians, certainly the most important section of the community, have not acquiesced in the act of secession, and among these are such prominent and reputable citizens as Messrs. José Marcelino Hurtado, ex-Minister Plenipotentiary, Senator D. Juan B. Pérez y Soto, Representative Oscar Terán, Belisario Porras, Carlos Vallarino and Alejandro V. Orillac. Dr. Pablo Arosemena, ex-Colombian Secretary of State, explained in the Press that he was not a party to the Separatist Movement, but he accepted it as he thought it irrevocable. The people of Colon did not know that on the night of the 3rd November a revolutionary movement was being effectuated in Panamá. So it was with the majority of the inhabitants of the Isthmus. It seems, however, that afterwards they all accepted the situation for the same reason assigned by Dr. Arosemena.

Against the supposed unanimity on the subject of the revolution is there the fact that a large number of the Isthmians of high position signified through the Press their opposition to the ratification of the Herrán-Hay treaty and joined in the issue of leaflets throughout the City of Panamá expressive of this opposition.

The Government of the United States admits that in recognizing the independence of Panamá it has acted against the generally recognized rule of not recognizing the independence of a new state until the same has demonstrated its ability to maintain its independence ; but the United States justifies its procedure in this case for the following three reasons :—

(1st) The rights acquired under Treaty ; (2nd) Its national

interests, and security; (3rd) The collective interests of civilization.

The United States pretends to derive its rights from that part of Article 35 of the Treaty of 1846 which says :—

"The Government of New Grenada guarantees to the government of the United States that the right of way or transit across the Isthmus of Panama by any means of communication which now or in future may exist will be free and expeditious for the citizens and the government of the United States, and for the transportation of any articles or products, manufactures or merchandize of legitimate trade belonging to the citizens of the United States: and the citizens of the United States shall not be called upon to pay any charges or fees for the passage of their merchandize through any Canal or Railroad that might be constructed by the Government of New Grenada or with its authority but those which, in similar circumstances, are imposed or charged on the citizens of New Grenada: that products, manufactures or merchandize of the United States which pass in any direction from one sea to another, for the purpose of exportation to any foreign country, shall not be subjected to any import duty, and if the same shall have been paid the amount so paid shall be returned: and that the citizens of the United States, in passing through the Isthmus, shall not be subjected to any other duty, fees or tax but those to which the citizens of New Grenada are liable"

The United States Government interpreted the above provision in the sense that if the Treaty of 1846 did not compel, in terms, New Grenada to grant concessions for the construction of interoceanic means of communication it was only because the United States did not at the time the Treaty was drawn up force New Grenada to do so; but that as it was expressly stipulated that the Government of the United States, in return for its guarantee of the sovereignty of New Grenada, would enjoy the right of free and expeditious transit by any way of communication that might be constructed, the very clear intention of the Treaty made unnecessary, if not superfluous, stipulation, in specific terms, that permission would not be denied the United States for the construction of such way of communication.

This interpretation is not in accordance with the general rules guiding the intelligent construction of Treaties. There is no rule which authorises the contention that a Compact

expresses or means anything beyond what has been expressly stipulated in it, and it is perfectly clear that what the government of New Grenada guaranteed to the United States was but the right of transit over the Isthmus of Panama by any means of communication then existing or which in future might exist, and that there should be no imposition upon the citizens of the United States, or upon their merchandize passing over the Isthmus by any road or Canal that might be constructed by New Grenada or under its authority of any other duty or tax but that imposed upon the citizens of New Grenada. Here, of course, reference is made to a Canal which might be constructed by New Grenada (now Colombia) or under its authority; but in no part of the Treaty is it shown that the construction of the Canal was the cardinal idea or intention of the Treaty and much less that the government of Colombia could not deny the United States the privilege of constructing it.

The peculiar interpretation placed upon the Article of the Treaty above referred to by the United States gives to that Government power to make additions to the Treaty. In these circumstances Colombia is forced to declare that she utterly repudiates the contention of the United States Government that it was superfluous to express, in terms, any concession intended to be granted by the Treaty, and she also declares that the interpretation given by the United States to the said Treaty is in every way unjustifiable, and introduces a system of deduction and implicit promises which is at variance with international practice, with the will and intention of the contracting parties, and with those universally accepted rules and principles which make public treaties the basic law of all civilized nations.

The importance of the Isthmus is to be found in its geographical position, and the Colombian government has for many years been struggling to accomplish the betterment of the transit, so as to obtain easy and expeditious means of transport, by railways and an interoceanic Canal.

The Colombian government having received notice that the Government of the United States would not permit the landing of Colombian troops on the Isthmus, I, personally, asked Mr. Beaupré to put the following question to his government:—

1st—If the United States, which had several warships at Colon and Panama, would prevent Colombia landing her troops for combat in those ports and on the railway line if necessary?

2nd—If, in the event of Colombia being able to check the

development of the Separatist movement, the United States Government would be disposed to assist her action so as to maintain the property and sovereignty of Colombia on the Isthmus in accordance with the provisions of Article 35 of the Treaty of 1846?

It was clearly foreseen by the Colombian government that it could not check the Separatist movement because the United States would place obstacles in the way of doing so: this being the case it was the clear duty of the United States to, itself, oppose the movement and restore order in consonance with its Treaty obligations.

The doctrine advanced as a second reason for the recognition by the United States of the so-called Republic of Panama, viz., that such recognition was imposed upon the United States by a supreme consideration for the interests and security of that government is not based upon any known principle of Public Right. Besides, if in the fulfilment of a Treaty the interests and security of one of the contracting parties are challenged such party has the right to denounce the Treaty but not to proceed in a sense contrary to the express stipulations of the Compact. If the United States, in conformity with sub-clause 3 of Article 35 of the Treaty of 1846, had notified to Colombia its wish for a re-drafting, or alteration, or modification of such Treaty in regard to its guarantee. Colombia once informed of the danger that was threatened, would have made provisions to avoid it by means of other and new negotiations for the construction of the Canal.

The existing Treaty was, and is, an insuperable obstacle in the way of the United States proceeding exclusively in protection of its own interests and security: but if even this Compact had not existed the procedure adopted by the United States to prevent Colombia employing its forces to suppress the revolution cannot be justified but on the principle of a strong nation dominating a weaker one. This, however, is in open contradiction to the principles of liberty and autonomy which the great North American people always professed to defend and protect.

The policy that establishes the practice of strong powers modifying or changing the limits of a country by reason of interest or convenience or for the alleged necessity of territorial expansion is founded only on the conception or principle that the territorial expansion of a nation rises above and is altogether superior to, the quality of justice.

The alleged necessity for building the Canal is not so pressing that it could not be delayed, and to demonstrate this I shall transcribe Article 24 of the Herrán-Hay Treaty.

ARTICLE XXIV.

"The United States Government undertakes to complete the preliminary works of the Canal in the shortest possible time, and within two years, counted from the date of the exchange of ratification of this treaty, shall begin the effective construction of the same which shall be open for the purposes of commerce between the two seas twelve years after the two years mentioned. In case, however, difficulties and obstacles, at present unforeseen, arise in the construction of the Canal and in consideration of the good faith of the United States Government as shown by the amount expended on the work, and judging from the nature of the diffiulties met with, the Colombian government shall extend the time stipulated in this Article for 12 years more for the termination of the construction of the Canal.

"But if at any time the United States should determine to construct a tide-level Canal in such case the term shall be extended to 10 years longer."

A work which requires two years for preliminary operations, twelve years for its construction, twelve more if difficulties are encountered and ten more if it be constructed on the tide-level principle—making a total of 36 years—is certainly not of such urgent necessity that would not admit a delay of a few months pending the adjustment of new negotiations with the real and legitimate government of the country through which it is to be constructed.

The report of a Committee of the Colombian Senate, presented to that body on the 14th October, contains, *inter alia*, the recommendation that before Colombia negotiates any treaty with the United States for the construction of the Canal she should wait until the expiration of the period of prolongation granted to the French Company. This recommendation did not, however, receive the approval of the Senate. It is true that the Senate did not authorize the Government to enter into any new negotiations concerning the Canal, but I can inform Your Excellency that if such authorization was withheld it was, very probably, because the Senate considered that the Executive Power had, under the Colombian Constitution, authority to make treaties, but that it was not relieved of the obligation of submitting such treaties for the approval of Congress.

In view of the possession by the Executive of the authority above referred to I addressed on the 8th September to our *Chargé d'Affairs* in Washington the following cable message :—

"Confidentially communicate to the State Department that whether the proposal presented to the Senate relative to new negotiations concerning the Canal Treaty be adopted or not, the Colombian Government shall propose to the United States Government to re-open negotiations upon bases, which it judges acceptable to the Congress of next July."

There is not in existence a single act or thing to indicate that the Government intended to declare null and void the prolongation of the period for the construction of the Canal to 1910 conceded to the French Company; and Congress not only did not dictate or suggest this, but the report of the Senate Committee contained a recommendation that a law be passed approving of the contract granting the concession of the prolongation. This recommendation received unanimous approval in the first debate thereon, but no definite or final action was taken in regard to the passing of such a law up to the time the session of Congress terminated. But it was, nevertheless, clearly demonstrated that the sense of this Chamber was favorable to the validity of the concession of prolongation.

The third reason assigned by the United States for recognizing the so-called Republic of Panama is that such recognition was an act performed in the interests of civilization.

Civilization stands for or represents the intellectual, moral and material progress of the world. The first two rule and govern the conduct of nations and without which the nations would be engaged in perpetual warfare. If for the furtherance of material interests intellectuality and morality are ignored, or the obligations under public contracts are unobserved the fundamental bases of modern civilization are undermined and we retrograde and return to that condition which, in ancient times, such as during the reign of Roman Caesars, took the form of domination by right of conquest.

It is not believed that the people of the United States, or their Government, desire to associate themselves with such an unjustifiable course of action merely for the sake of expediting by a few months the construction of the Canal when such an undertaking, by its very nature, requires a long period of time to be carried out; and when such construction, too, should be with the consent of the true and legitimate govern-

ment of the country in accordance with those principles of right upon which the civilization of the world is founded.

The action of several of the Powers of Europe and America in following the example of the United States in recognizing the independence of the so-called Republic of Panama is considered by the government of Colombia solely due to the fact of the United States having recognized such independence and sustained the same by force and not because the creation of the new Republic would expedite the construction of the Canal; so much so that if the United States would withdraw its recognition of, and protection from Panama those nations, I am sure, would regard very quietly and without surprise the re-incorporation of the Department of Panama with the Republic of Colombia.

The opinion expressed in the Message of the President of the United States to Congress that any disinterested and judicious observer could not but admit that Panama was fully justified in separating from Colombia is itself an act of interference or intervention in the domestic affairs of a foreign State—an act, as is admitted in another part of the Message, very exceptional, and only justified by the exceptional nature of the case. But this act of intervention or interference by the United States is not included or comprehended in those cases in which the International Right of Intervention is admitted; and the conduct of a government, however censurable it might be (the conduct of Colombia does not admit of or merit reproach) so long as it does not lessen or threaten the rights of other sovereign powers, does not give to any power the right of intervention in its affairs. (Heffter, Derecho International de la Europa, pages 95 to 98. Berlin, 1873.)

The conduct of Colombia has neither threatened nor lessened the acquired rights of the United States which power could not even adduce by way of a reason for its action that it had suffered by its being contiguous to Colombia.

The Isthmus of Panama enjoyed peace up to the 3rd November, 1903, and it is highly probable that the rebels would have come to an understanding in Colon with General Reyes and so have avoided the effusion of blood if the United States had not intervened to prevent the landing of Colombian troops; therefore the procedure of the United States cannot even be said to have been dictated by reasons of humanity.

If the recognition of Panama as an independent Republic is considered by the United States an accomplished fact and as

such irrevocable, without stopping to demonstrate the illegality of this theory. I contend that the recognition of the independence of Panama by the United States and other powers does not annul the rights of Colombian sovereignty over the Isthmus, and that this Republic does not admit the principle that such recognition is irrevocable.

General Rafael Reyes, Special Colombian Envoy, presented in the name of the government and people of Colombia, on the 23rd December last, to the United States Department of State, a statement of the injuries inflicted on Colombia. In the reply which Mr. Secretary Hay gave to this there are several additional statements to those already made in the Messages of the President which I must take into consideration and which, in defence of the rights of Colombia, call for some observations.

Mr. Hay maintains that Treaties, save when they relate to private rights, and unless the contrary is stipulated, are obligations on the contracting parties from the date they are signed, and that the exchange of ratifications confirm the Treaties from the date they are so ratified. "This rule," he says, "necessarily implies that the two governments, between whom the Treaty is celebrated, through their duly authorized representatives, are under the obligations, pending its ratification, not only not to oppose such ratification, but also to do nothing that is in contravention to its stipulations."

This doctrine that Treaties are obligations which are in force, entirely or in part, before they are ratified in conformity with the laws of the respective countries between which they have been celebrated gives rise to reflections regarding the extraordinary obligation laid on Colombia by the United States. Wheaton in his "International Rights" Vol. 1, page 239, expresses himself thus :—

"The Civil Constitution of each particular State determines in whom is vested the power to ratify Treaties negotiated and concluded with foreign Powers. In absolute Monarchies this prerogative is vested in the Sovereign who confirms the acts of his Plenipotentiaries by his definite sanction. In certain limited or constitutional monarchies the consent of the Legislature of the nation is, in some cases asked for. In some Republics, like that of the United States of America, the opinion and consent of the Senate are necessary and essential to legalize and make valid the act of the Executive Chief of the State who pledges the National faith in that form. Consequently, in all these cases, the condition is implied in all negotiations with

foreign powers that Treaties concluded by the Executive Power are subject to ratification in the manner prescribed by the fundamental laws of the State."

In the Herrán-Hay treaty it was expressly reserved in Article XXVIII. that the same should be ratified in conformity with the laws of the United States and Colombia. This recognition of the fact that ratification was of the essence of the whole proceeding has been observed from the most ancient times down to the present day, and if the United States otherwise interprets this doctrine of International Right, such interpretation does not bind the other Powers which recognize the principle that "the Constitution of each particular State determines in whom is vested the power to ratify Treaties negotiated and concluded with foreign powers thereby constituting it the guardian of the Nation." This principle is that generally observed and adopted in substance by such accredited expositors of international law as Vattel, Klüber, G. F. Martens, Despagnet, Vergé and Pradier-Fodéré. The Executive Power in Colombia cannot perfect international compacts because the Constitution confers on Congress the power of approving or disapproving of Public Treaties.

The Government of Colombia not only did not oppose the ratification of the Treaty relating to the construction of the Canal, but it convened an extraordinary meeting of Congress for the express object of considering the same and the compact was submitted to the Senate during the first days of the Session. The regulations of the Senate prescribed that in the first debate the propriety of legislating upon any subject proposed for legislation should be discussed. In the first debate after the Treaty was submitted I spoke lengthily, emphasizing the great importance of the negotiations and denying the accusations which had been formulated against the Government for having celebrated such a compact. My speech concluded as follows:

"His Excellency the Vice-President of the Republic has requested me to furnish this Honorable Senate with these explanations. It had been clearly proven that the initiation of the Treaty was due to, and had been actuated by, the highest motives, that the negotiations had been conducted with ability and judgment, and that if the conditions of the compact did not wholly accord with the desire and wish of the people of Colombia it was only because the other high contracting party would not accede to propositions more advantageous. In a word, the Government of Colombia had proceeded in this very important

matter with the greatest circumspection and had been inspired by a feeling of the purest patriotism."

This speech affords irrefragable proof that the Government did not oppose the ratification of the Treaty; and it is with regret that I now recall the fact that I directed attention to the Memorandum and other communications presented to me by Mr. Beaupré pointing out the injurious effect which the disapproval by the Senate of the Treaty would produce in the relations between the United States and Colombia, and that any modifications made by the Colombian Senate to the Treaty would be considered as a violation thereof by the United States. The Senate did not consider the Treaty at the first debate thereon and for that reason this Government was not afforded the opportunity of explaining its provisions. There was not, therefore, anything in the nature of opposition in the conduct of the Government in respect of the Treaty.

On the 10th June, 1903, Mr. Beaupré addressed to this Department a Note detailing the objections that his government had made to the Notes that had passed between the Colombian Minister of the Interior, the new Canal Company and the Panama Railroad Company, in which these Companies had been informed that in order to legally transfer their contracts to the United States the permission of the Colombian Government to do so was necessary.

In my reply to Mr. Beaupré dated the 27th of the same month, I called attention to the dates of the Notes which the Department of the Interior had addressed to those Companies, viz.: the 25th and 27th December, 1902, respectively, and that the date of the Treaty agreed upon, by Plenipotentiaries in Washington, for the construction of the Canal, was the 22nd January, 1903. A comparison of these dates shows that the condition imposed by Colombia upon these companies was communicated to them about a month before the Treaty had been subscribed to. After this had been signed the Department of the Interior did not interfere further in the matter, and as the explanations on this point made by me to the United States Legation preceded by four months the Separatist Movement and as my note was very promptly published, it is plain that the pretended exigencies of the situation neither called for nor excused the initiation and execution of such a movement.

The Colombian Government did not suddenly discover after the Convention had been subscribed to that it contained stipulations subversive of the sovereignty of the Republic in

the Zone set apart for the construction of the Canal. Ever since the government of the United States submitted the projected treaty notice was taken of these stipulations notwithstanding which, however, the Minister in Washington, charged with the duty of negotiating the Treaty was ordered to sign the same, the object of the Colombian government being to facilitate and assure the execution of the great work in the hope that in the end Congress might be induced to make such declarations or to take such measures as would cure the constitutional defects which, in our judgment, marred the compact.

Simply changing the name of a country neither alters nor modifies the situation of its frontiers and less even if, as in the case of the country which took the name of New Grenada in November, 1831, those frontiers or boundaries have been fixed by the Constitution.

If, as was said by Mr. Secretary Fish, in a Note dated the 27th May, 1871, the principal object of New Grenada (now Colombia) in celebrating the Treaty of 1846 was the conservation and maintenance of the Sovereignty of the country against foreign aggression, the recognition of the independence of Panama by the United States created a situation of affairs which compels the United States to prevent the so-called Republic attacking the property and Sovereignty of Colombia on the Isthmus, because by virtue of such recognition such attacks must be regarded as being made by a foreign power; and, if instead of preventing those attacks, the United States favor and support the destruction of Colombia's sovereignty in that Department of the Republic, such a proceeding cannot otherwise be regarded but as being in direct antagonism to the letter, the spirit and the intelligence of the Treaty as construed by Mr. Fish.

From the above observations the insurmountable logical conclusion is arrived at that the United States cannot assume towards Panama the obligations under the Treaty of 1846 because the property and sovereignty of that Department and the property and sovereignty of Colombia over the same Department of Panama have been set aside and ignored simultaneously, in consequence of which the Isthmus has not acquired a title to enjoy those rights or is it subject to the obligations of the said Treaty.

On the other hand, the doctrine of Hall is not applicable to the point in question, because Colombia had not contracted the obligation to permit the United States to construct the

Canal, a work which in no way is similar to laying out the bed of a river, which was cited as an example. For the same reason the opinion of Rivier is not applicable, as Article 35 of the Treaty of 1846 does not refer to limits, or streams of water, or ways of communication which did not then, or at present exist. The interpretation given to the above Compact by the government of the United States does not coincide with the doctrines above quoted, and the United States cannot arrange with the *de facto* government of the Isthmus for the performance of those duties which it had contracted with Colombia to perform.

The Government of Colombia dissents from the opinion held by the United States that its claims are of a purely political nature; and holds that special circumstances place those claims in the category of those of a judicial character.

The claims of Colombia are:—

1st.—The violation, on the part of the United States Government, of the Treaty of 1846.

According to the doctrine propounded by Piédelièvre in his "Public International Rights" Vol. II., page 76, questions of this kind are of a judicial character and susceptible of being arbitrated with the greater reason because from them others are derived such, for example, as the great damage caused to this Republic which is, incontestably, of the same character.

2nd.—The violation of the neutrality laws established by International Right.

In regard to claims founded on a violation of neutrality, the United States contributed very largely towards establishing the precedent that I now proceed to mention. I refer to the claims generally known as the "Alabama claims," in which Great Britain had so completely neglected to fulfil the obligations of neutrality imposed upon her by the Rights of Nations as to afford the United States ample and just cause for declaring war. Lord Russell denied the legality of these claims and peremptorily refused to submit the same to arbitration in 1865; but Mr. Secretary Seward persisted in the suggestion of arbitration as being a prudent and honorable course to be followed by both nations. Upon the invitation of the British Government negotiations were reopened with the result that on the 8th May, 1871, a treaty was concluded between the two nations under which the Alabama claims were submitted to a tribunal of Arbitrators.

Article 6th of this treaty provided that the questions to be submitted to the Arbitrators should be governed by three rules, proposed by the United States, regarding neutrality, notwithstanding the fact that the same Article contained the following:—"Her Britannic Majesty has charged her High Commissioners and Envoys Plenipotentiary to declare that the government does not admit that the preceding rules are to be considered as expositions of the principle of the Rights of Nations in force at the time the United States made the claims mentioned in Article 1; but that, in order to prove her wish to strengthen the amicable relations existing between the two countries and to provide useful measures for the future, the government of Her Majesty consents to have the questions which these claims have given rise to decided on the understanding that the Arbitrators shall bear in mind that the English government has no intention of departing from the principle enunciated in the preceding rules."

The High Contracting Parties agreed to observe these Rules in their reciprocal dealings in future and to bring them to the notice of the other Maritime Powers and invite them to adopt and adhere to the same.

The doctrine laid down in these three Rules received the confirmation of The Institute of International Rights which body adopted the following resolution:—

"The three rules of the Treaty of Washington, dated 8th May, 1871, are but the application of the recognized principles of the Rights of Nations: that a neutral state desirous of remaining at peace and in friendship with the belligerents was bound to abstain from taking any part whatever in a war towards lending military aid to one or both of the belligerents, and was also bound to exercise such due vigilance in its territory that no act could be construed into constituting one of co-operation in the war."

The Colombian Government, supported by such an authoritative precedent, invokes the proper authorities of the United States and of the Institute of National Rights to rule that acts which constitute a violation of neutrality fall within the category of those matters which should be referred to arbitration for settlement.

3rd.—The celebration of a Compact with the so-called Republic of Panama for the opening of the interoceanic Canal notwithstanding that at the time there was in existence a

Treaty of Peace, Friendship, Navigation and Commerce between New Grenada (now Colombia) and the U. S. of America.

The government of the United States gave to Article 35 of that Treaty a construction which the government of Colombia judged to be contrary to the rules of interpretation generally admitted and usually applied in dealing with such cases before Arbitral tribunals and propounded by Klüber in his "Rights of Nations," page 35, as follows:—"When a Public Treaty is framed in a doubtful sense it cannot receive *authentic interpretation* without a declaration by the contracting parties or by those who have appealed to Arbitration. The same preliminary question of discerning what really is meant when expressed in a doubtful sense cannot be decided except by a similar Convention."

In the present case the matter turned, in the first instance, on the preliminary question as to whether the sense of the Treaty was doubtful or not; although I am bound to say that the opinion of Colombia on the point was clear and complete and the same had been unanimously agreed upon by both governments, but which agreement has now been departed from by the United States.

The *Chargé d'Affairs* of Colombia in Washington informed me by Cable that the Senate of the United States had approved the Treaty with Panama respecting the construction of the Canal. That treaty, as I have already said, contains in its first clause the obligation of the United States to maintain the independence of Panama,—a clause which declares to the world that Panama cannot exist independently of Colombia without the military support of the United States.

As the above-referred to Treaty is in direct opposition to that of 1846 made between Colombia and the United States, let us suppose—a supposition admitted by the United States but denied by Colombia—that Panama is an independent nation: the co-existence, therefore, of these two treaties justifies the application of the doctrine propounded by Vattel that "treaties cannot be made contrary to those existing"—a doctrine exemplified by G. F. Martens in his "Rights of Nations" page, 167, Vol. I. in these terms: "When two treaties are concluded with different nations, if incompatible, the older of the two should be preferred, and indemnification should be given to the nation whose treaty has been set aside if the collision could have been foreseen or prevented." If the Isthmus of Panama was really a Republic the United States,

which must have been aware of the collision that would occur, is under obligation to grant an indemnity because it cannot fairly evade the fulfilment of the terms of the Treaty of 1846. If the justice of this doctrine is not admitted the practice would obtain that a nation, acting as judge in its own cause, could evade the fulfilment of its treaty obligations merely by contracting with the insurrectionary section of the country with which it has made treaties, or with a third power—a practice which would result in ending the guarantees of public treaties which safeguard national rights.

The Government of Colombia considers that the Treaty for the construction of the Canal which the United States has concluded with the *de facto* government established in the Colombian Department of Panama is in violation of that celebrated with this Republic in 1846, and protests against the validity of the same and demands the observance of the obligations of the said Treaty of 1846, especially of that portion which obliges the United States of America to guarantee the property of Colombia in, and its sovereignty over the Isthmus of Panama.

I have the honor to refer to the Presidential Messages and to the Notes of Mr. Secretary Hay addressed to General Reyes confirming the declarations of his government and his own arguments, because the approval of the Treaty with Panama by the Senate and the ratification and exchange of that Treaty were acts performed posterior to the date on which General Reyes was absent from the United States, and also because of the observations I have made vigorously advocating the adoption of a mode which would be honorable to both parties and be at once an equitable and conciliatory means of arriving at a solution of our differences—a mode which would harmonize with the wish often expressed by the United States of doing nothing to the prejudice of this Republic.

I also have the honor to return my most sincere thanks to the United States Government for the tender of its good offices to amicably arrange matters between Colombia and Panama—an offer made, doubtless, in the belief that this Government would accept as definitive the situation created by the Separatist rebellion on the Isthmus.

Once more I reiterate to your Excellency the assurances of my distinguished consideration.

LUIS CARLOS RICO.