the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for Canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

ARTICLE XII

The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the Canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said Canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

ARTICLE XIII

The United States may import at any time into the said zone and auxiliary lands, free of customs duties, imposts, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation and protection of the Canal and auxiliary works, and all provisions, medicines, clothing, supplies and other things necessary and convenient for the officers, employees, workmen and laborers in the service and employ of the United States and for their families. If any such articles are disposed of for use outside of the zone and auxiliary lands granted to the United States and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama.

ARTICLE XIV

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of
The Hay-Bunau-Varilla Treaty

Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition to all other benefits assured to the Republic of Panama under this convention.

But no delay or difference of opinion under this Article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this convention in all other respects.

ARTICLE XV

The joint commission referred to in Article VI shall be established as follows:

The President of the United States shall nominate two persons and the President of the Republic of Panama shall nominate two persons and they shall proceed to a decision; but in case of disagreement of the Commission (by reason of their being equally divided in conclusion) an umpire shall be appointed by the two Governments who shall render the decision. In the event of the death, absence, or incapacity of a Commissioner or Umpire, or of his omitting, declining or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated. All decisions by a majority of the Commission or by the umpire shall be final.

ARTICLE XVI

The two Governments shall make adequate provision by future agreement for the pursuit, capture, imprisonment, detention and delivery within said zone and auxiliary lands to the authorities of the Republic of Panama of persons charged with the commission of crimes, felonies or misdemeanors with-
out said zone and for the pursuit, capture, imprisonment, detention and delivery without said zone to the authorities of the United States of persons charged with the commitment of crimes, felonies and misdemeanors within said zone and auxiliary lands.

ARTICLE XVII

The Republic of Panama grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the Canal enterprise, and for all vessels passing or bound to pass through the Canal which may be in distress and be driven to seek refuge in said ports. Such vessels shall be exempt from anchorage and tonnage dues on the part of the Republic of Panama.

ARTICLE XVIII

The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section I of Article three of, and in conformity with all the stipulations of, the Treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

ARTICLE XIX

The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

ARTICLE XX

If by virtue of any existing treaty in relation to the territory of the Isthmus of Panama, whereof the obligations
The Hay-Bunau-Varilla Treaty

shall descend or be assumed by the Republic of Panama, there may be any privilege or concession in favor of the Government or the citizens or subjects of a third power relative to an interoceanic means of communication which in any of its terms may be incompatible with the terms of the present convention, the Republic of Panama agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting its modifications or annulment, the Republic of Panama agrees to procure its modification or annulment in such form that there shall not exist any conflict with the stipulations of the present convention.

ARTICLE XXI

The rights and privileges granted by the Republic of Panama to the United States in the preceding Articles are understood to be free of all anterior debts, liens, trusts, or liabilities, or concessions or privileges to other Governments, corporations, syndicates or individuals, and consequently, if there should arise any claims on account of the present concessions and privileges or otherwise, the claimants shall resort to the Government of the Republic of Panama and not to the United States for any indemnity or compromise which may be required.

ARTICLE XXII

The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the Canal under Article XV of the concessionary contract with Lucien N. B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, con-
The Hay-Bunau-Varilla Treaty

firms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Panama at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above mentioned party and companies, and all right, title and interest which it now has or may hereafter have, in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

The aforesaid rights and property shall be and are free and released from any present or reversionary interest or claims of Panama and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute, so far as concerns the Republic of Panama, excepting always the rights of the Republic specifically secured under this treaty.

ARTICLE XXIII

If it should become necessary at any time to employ armed forces for the safety or protection of the Canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

ARTICLE XXIV

No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United
The Hay-Bunau-Varilla Treaty

States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

ARTICLE XXV

For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific Coast and on the western Caribbean Coast of the Republic at certain points to be agreed upon with the President of the United States.

ARTICLE XXVI

This convention when signed by the Plenipotentiaries of the Contracting Parties shall be ratified by the respective Governments and the ratifications shall be exchanged at Washington at the earliest date possible.

In faith whereof the respective Plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their respective seals.

Done at the City of Washington the 18th day of November in the year of our Lord nineteen hundred and three.

John Hay [seal]

P. Bunau Varilla [seal]
THE SUEZ CANAL CONVENTION

(Signed at Constantinople October 29th, 1888.)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of Spain, and in his name the Queen Regent of the Kingdom; the President of the French Republic; His Majesty the King of Italy; His Majesty the King of the Netherlands, Grand Duke of Luxemburg, etc.; His Majesty the Emperor of All the Russias; and His Majesty the Emperor of the Ottomans; wishing to establish, by a conventional act, a definite system destined to guarantee at all times, and for all the powers, the free use of the Suez Maritime Canal, and thus to complete the system under which the navigation of this canal has been placed by the firman of His Imperial Majesty the Sultan, dated the 22nd February, 1866 (2 Zilkade, 1282), and sanctioning the concessions of His Highness the Khedive, have named their plenipotentiaries.

ARTICLE I

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

Consequently, the high contracting parties agree not in any way to interfere with the free use of the canal, in time of war as in time of peace.

The canal shall never be subjected to the exercise of the right of blockade.

ARTICLE II

The high contracting parties, recognizing that the fresh-water canal is indispensable to the maritime canal, take note of the engagements of His Highness the Khedive towards the Universal Suez Canal Co. as regards the fresh-water canal;
The Suez Canal Convention

which engagements are stipulated in a convention bearing date
the 18th March, 1863, containing an expose and four articles.

They undertake not to interfere in any way with the se-
curity of that canal and its branches, the working of which
shall not be exposed to any attempt at obstruction.

ARTICLE III

The high contracting parties likewise undertake to respect
the plant, establishments, buildings, and works of the mari-
time canal and the fresh-water canal.

ARTICLE IV

The maritime canal remaining open in time of war as a
free passage, even to the ships of war of belligerents, accord-
ing to the terms of Article I of the present treaty, the high
contracting parties agree that no right of war, no act of hos-
tility, nor any act having for its object to obstruct the free
navigation of the canal, shall be committed in the canal and
its ports of access, as well as within a radius of 3 marine
miles from those ports, even though the Ottoman Empire
should be one of the belligerent powers.

Vessels of war of belligerents shall not revictual or take in
stores in the canal and its ports of access, except in so far as
may be strictly necessary. The transit of the aforesaid vessels
through the canal shall be effected with the least possible de-
lay, in accordance with the regulations in force, and with-
out any other intermission than that resulting from the neces-
sities of the service.

Their stay at Port Said and in the roadstead of Suez shall
not exceed 24 hours, except in case of distress. In such case
they shall be bound to leave as soon as possible. An inter-
val of 24 hours shall always elapse between the sailing of a
belligerent ship from one of the ports of access and the
departure of a ship belonging to the hostile power:

ARTICLE V

In time of war belligerent powers shall not disembark nor
The Suez Canal Convention

embark within the canal and its ports of access either troops, munitions, or materials of war. But in case of an accidental hindrance in the canal men may be embarked or disembarked at the ports of access by detachments not exceeding 1,000 men, with a corresponding amount of war material.

ARTICLE VI

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

ARTICLE VII

The powers shall not keep any vessel of war in the waters of the canal (including Lake Timsah and the Bitter Lakes).

Nevertheless, they may station vessels of war in the ports of access of Port Said and Suez, the number of which shall not exceed two for each power.

This right shall not be exercised by belligerents.

ARTICLE VIII

The agents in Egypt of the signatory powers of the present treaty shall be charged to watch over its execution. In case of any event threatening the security of the free passage of the canal, they shall meet on the summons of three of their number, under the presidency of their doyen, in order to proceed to the necessary verifications. They shall inform the Khedivial Government of the danger which they may have perceived, in order that that Government may take proper steps to insure the protection and the free use of the canal. Under any circumstances, they shall meet once a year to take note of the due execution of the treaty.

The last-mentioned meetings shall take place under the presidency of a special commissioner nominated for that purpose by the Imperial Ottoman Government. A commissioner of the Khedive may also take part in the meeting, and may preside over it in case of the absence of the Ottoman commissioner.
The Suez Canal Convention

They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

ARTICLE IX

The Egyptian Government shall, within the limits of its powers resulting from the Firmans, and under the conditions provided for in the present treaty, take the necessary measures for insuring the execution of the said treaty.

In case the Egyptian Government should not have sufficient means at its disposal, it shall call upon the Imperial Ottoman Government, which shall take the necessary measures to respond to such appeal; shall give notice thereof to the signatory powers of the declaration of London of the 17th March, 1885; and shall, if necessary, concert with them on the subject.

The provisions of Articles IV, V, VII shall not interfere with the measures which shall be taken in virtue of the present article.

ARTICLE X

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

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

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

**ARTICLE XI**

The measures which shall be taken in the cases provided for by Articles IX and X of the present treaty shall not interfere with the free use of the canal. In the same cases the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited.

**ARTICLE XII**

The high contracting parties, by application of the principle of equality as regards the free use of the canal, a principle which forms one of the bases of the present treaty, agree that none of them shall endeavor to obtain with respect to the canal territorial or commercial advantages or privileges in any international arrangements which may be concluded. Moreover, the rights of Turkey as the territorial power are reserved.

**ARTICLE XIII**

With the exception of the obligations expressly provided by the clauses of the present treaty, the sovereign rights of His Imperial Majesty the Sultan, and the rights and immunities of His Highness the Khedive, resulting from the firmans, are in no way affected.

**ARTICLE XIV**

The high contracting parties agree that the engagements resulting from the present treaty shall not be limited by the duration of the act of concession of the Universal Suez Canal Company.

**ARTICLE XV**

The stipulations of the present treaty shall not interfere with the sanitary measures in force in Egypt.

**ARTICLE XVI**

The high contracting parties undertake to bring the present
treaty to the knowledge of the States which have not signed it, inviting them to accede to it.

ARTICLE XVII

The present treaty shall be ratified, and the ratifications shall be exchanged at Constantinople within the space of one month, or sooner if possible.

In faith of which the respective plenipotentiaries have signed the present treaty and have affixed to it the seal of their arms.

Done at Constantinople, the 29th day of the month of October, in the year 1888.

W. A. WHITE.
RADOWITZ.
CALICE.
MIGUEL FLOREZY GARCIA.
C. DE MONTEBELLO.
A. BLANC.
GUS KEUN.
NELIDOW.
M. SAID.

NEGOTIATION OF THE HAY-PAUNCEFOTE TREATY

Prepared by Mr. Hay.

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,
Negotiations of 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 complete 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 abrogation of an existing treaty, without an opportunity for full consideration 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 counter propositions, to express its views on this and the other amendments, and so by a continuous negotiation to arrive, if possible, at a mutually satisfactory solution of all questions involved. Nevertheless, 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 amend-
ments, 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 free-
dom 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 criticised 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 fu-
ture 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 meas-
ures and another clause (which has now been omitted) pro-
hibiting fortification of the canal were allowed to stand side
by side in the same convention.

This amendment was strenuously objected to by Great Brit-
ain 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 incon-
sistent 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 obliga-
Negotiations of Treaty

tion 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 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 described 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 neutrality of the canal.

In the hope of reconciling the conflicting views thus presented between the former treaty as amended by the Senate and the objections 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 assumes the entire responsibility and burden of enforcing, without the assistance of Great Britain or any other nation, its absolute neutrality.

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
negotiations of treaty consists 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 i, 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 7 of article iii, which prohib-
Negotiations of Treaty

itted the fortification of the canal, and the transfer to clause 2 of the remaining provision of clause 7, 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 with-
out 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 sub-
stantial amendments.

He recognized the weighty importance of the change by
which Great Britain was relieved of all responsibility for en-
forcing 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 na-
tions to the canal, he was not indisposed to consent to the ab-
rogation of the Clayton-Bulwer treaty if the “general princi-
ple” 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 con-
nection 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 Maj-
esty’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 neutralization adopted now for this canal upon every other interoceanic communication 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 international 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 the 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 I 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 I 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 other 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.

No. 1.

Lord Pauncefote to the Marquis of Lansdowne.

WASHINGTON, December 24, 1900.

(Received Jan. 7, 1901.)

My Lord: I have the honor to transmit to your lordship a copy of a note which I have received from the United States Secretary of State, formally announcing to me, for the information of Her Majesty's Government, the ratification of the Nicaragua Canal treaty by the Senate on the 20th instant, with three amendments.

Mr. Hay, after giving the text of those amendments, states that he has instructed the United States ambassador in London to express to your lordship the hope of his Government that the amendments will be found acceptable to that of Her Majesty.

I have, etc.,

Pauncefote.

[Inclosure 1 in No. 1.]

Mr. Hay to Lord Pauncefote.

DEPARTMENT OF STATE,
Washington, December 22, 1900.

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

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

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

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

3. Article III reading:

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

is stricken out.

4. Article IV is made Article III.

I inclose a printed copy of the convention as signed,¹ and a copy of it showing its reading as amended by the Senate.

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

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

I have, etc.  

JOHN, HAY.

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[Inclosure in No. 1.]

Convention of February 5, 1900, as amended by the Senate.

The United States of America, and Her Majesty, the Queen

¹ See United States No. 1 (1900.)
Negotiations of Treaty

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

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

And Her Majesty the Queen of Great Britain and Ireland, Empress of India, the Right Honorable Lord Pauncefote, G.C.B., G.C.M.G., Her Majesty’s ambassador extraordinary and plenipotentiary to the United States;

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

ARTICLE I

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

ARTICLE II

The high contracting parties, desiring to preserve and maintain the "general principle" of neutralization established in Article VIII of the Clayton-Bulwer convention, which convention is hereby superseded, adopt, as the basis of such neutrali-
Negotiations of Treaty

zation, the following rules, substantially as embodied in the convention between Great Britain and certain other powers, signed at Constantinople, the 29th October, 1888, for the free navigation of the Suez Maritime Canal, that is to say:

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

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it.

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

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

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

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

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

7. No fortifications shall be erected commanding the canal or the waters adjacent. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

ARTICLE III

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged at Washington or at London, within six months from the date hereof, or earlier, if possible.

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

Done in duplicate at Washington, the 5th day of February, in the year of our Lord, 1900.

John Hay.
Pauncefote.

No. 2.

The Marquis of Lansdowne to Lord Pauncefote.

Foreign Office, February 22, 1901.

My Lord: The American ambassador has formally communicated to me the amendments introduced by the Senate of the United States into the convention, signed at Washing-
Negotiations of Treaty

ton in February last, to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans.

These amendments are three in number, namely:

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

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

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

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

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

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

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

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

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

This passage in the message having excited comment, your excellency made inquiries of the Secretary of State in order to elicit some information as to the attitude of the President. In reply, the views of the United States Government were very frankly and openly explained. You were also most emphatically assured that the President had no intention whatever of ignoring the Clayton-Bulwer Convention, and that he would loyally observe treaty stipulations. But in view of the strong national feeling in favor of the construction of the Nicaragua Canal, and of the improbability of the work being accomplished by private enterprise, the United States Government were prepared to undertake it themselves upon obtaining the necessary powers from Congress. For that purpose, however, they must endeavor, by friendly negotiation, to obtain the consent of Great Britain to such a modification of the Clayton-Bulwer Treaty as would, without affecting the "general principle" therein declared, enable the great object in view to be accomplished for the benefit of the commerce of the world. Although the time had hardly arrived for the institution of formal negotiations to that end, Congress not having yet legislated, the United States Government, nevertheless, were most anxious that your excellency should enter at once into pourparlers with a view to preparing, for consideration, a scheme of arrangement.
Her Majesty's Government agreed to this proposal, and the discussions which took place in consequence resulted in the draft convention which Mr. Hay handed to your excellency on the 11th January, 1899.

At that time the joint high commission over which the late Lord Herschell presided was still sitting. That commission was appointed in July, 1898, to discuss various questions at issue between Great Britain and the United States, namely, the fur-seal fishery, the fisheries off the Atlantic and Pacific coasts, the Alaskan boundary, alien-labor laws, reciprocity, transit of merchandise, mining rights, naval vessels on the Great Lakes, definition and marking of frontiers, and conveyance of persons in custody. But serious difficulties had arisen in the attempt to arrive at an understanding, and it had become doubtful whether any settlement would be effected.

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

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

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

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

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

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

In these circumstances Her Majesty's Government consented to reopen the question, and, after due consideration, determined to accept the convention unconditionally, as a signal proof of their friendly disposition and of their desire not to impede the execution of a project declared to be of national importance to the people of the United States.

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

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

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

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

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

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

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

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

Under Article I of the Clayton-Bulwer Treaty the two powers agreed that neither would occupy or fortify or colonize, or assume or exercise any dominion over any part of Central America, nor attain any of the foregoing objects by protection afforded to or alliance with any State or people of Central America. There is no similar agreement in the convention. If, therefore, the treaty were wholly abrogated, both powers would, except in the vicinity of the canal, recover entire freedom of action in Central America. The change would certainly be of advantage to the United States, and might be of substantial importance.

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

The other two amendments present more formidable difficulties.

The first of them, which reserves to the United States the

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

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

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

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

In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this article provides, the signatory powers of

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

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

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

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

the declaration of London shall be notified thereof by the Imperial Ottoman Government.

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

It is, I understand, contended in support of the Senate amendment that the existence of the above provisions in the Suez Canal Convention justifies the demand now made for the insertion of analogous provisions in regard to the proposed Nicaragua Canal.

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

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

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

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

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

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

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

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

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

I am, etc.,

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

ARTICLE I

The Governments of Great Britain and the United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America, or of assuming or exercising dominion over the same. Nor will Great Britain or the United States take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any State or Government through whose territory the said canal may pass for the purpose of acquiring or holding, directly or indirectly, for the subjects or citizens of the one, any rights or advantages in regard to commerce or navigation through the said canal, which shall not be offered, on the same terms, to the subjects or citizens of the other.

ARTICLE VI

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

Correspondence Respecting the Treaty Signed at Washington November 18, 1901, Relative to the Establishment of a Communication by Ship Canal between the Atlantic and Pacific Oceans.

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

No. 1.

Lord Pauncefote to the Marquis of Lansdowne.

Washington, April 25, 1901.

My Lord: Since the rejection by His Majesty's Government of the amendments introduced by the Senate in the Inter-oceanic Canal Convention of the 5th of February, 1900, Mr. Hay has been engaged in framing a new draft, which, as I
understand, he has drawn up after consultation with promi-

nent Senators, and which he trusts will be acceptable to His

 Majesty's Government.

Mr. Hay has handed me a copy of the draft, which I have

the honor to forward herewith for your lordship's considera-

tion.

(I have, etc.,)

PAUNCEFOTE.

[Inclosure in No. 1.]

Draft of convention relative to the construction of an inter-
oceanic canal.

The United States of America and His Majesty the King

of the United Kingdom of Great Britain and Ireland, Em-

peror of India, being desirous to facilitate the construction

of a ship canal to connect the Atlantic and Pacific Oceans,

and to that end to remove any objection which may arise out

of the convention of the 19th April, 1850, commonly called the

Clayton-Bulwer Treaty, to the construction of such canal un-
der the auspices of the Government of the United States,

without impairing the "general principle" of neutralization

established in Article VIII of that convention, have for that

purpose appointed as their plenipotentiaries:

The President of the United States, John Hay, Secretary

of State of the United States of America;

And His Majesty the King of Great Britain and Ireland,

Emperor of India, the Right Honorable Lord Pauncefote,

G. C. B., G. C. M. G., His Majesty's ambassador extraor-
dinary and plenipotentiary to the United States;

Who, having communicated to each other their full powers,

which were found to be in due and proper form, have agreed

upon the following articles:

ARTICLE I

The high contracting parties agree that the present con-

vention shall supersede the aforementioned convention of the

19th April, 1850.