

PANAMA

NEGOTIATIONS RELATING TO THE ACQUISITION BY THE UNITED STATES OF LANDS ON THE ISLAND OF TABOGA AND ON LAS MINAS BAY FOR THE BETTER PROTECTION OF THE PANAMA CANAL

819.52/107

The Secretary of State to the Panaman Chargé (Lefevre)

WASHINGTON, *January 19, 1920.*

SIR: With reference to previous correspondence between yourself and the Department relative to the acquisition of a part of Taboga Island, Republic of Panama, by the United States for fortification purposes,¹ I desire to make known to you, at the request of the Secretary of War, that it will be necessary for the safety and protection of the Canal for the United States to acquire a part of the Island in the near future in order to place fortifications thereon.

In order, however, to allay as much as possible any anxiety on the part of the inhabitants of the Island whose land must be expropriated, I desire to assure you that no step will be taken in the expropriation of the inhabitants of the Island without every consideration possible for their interests and convenience. In view of the improbability of initiating the construction of defensive works on a large scale on Taboga Island in the year 1920, the United States Government is anxious to adopt a liberal policy in regard to the removal of inhabitants of that portion of the Island transferred to its jurisdiction.

Accept [etc.]

ROBERT LANSING

819.52/113

The Panaman Chargé (Lefevre) to the Secretary of State

[Translation²]

D-No. 43

WASHINGTON, *January 29, 1920.*

EXCELLENCY: At the end of last week I received a letter from Your Excellency dated the 19th instant, with reference to corre-

¹ Previous correspondence not printed.

² File translation revised.

spondence previously exchanged between the Department of State and this Legation, regarding the proposed acquisition on the part of the Government of the United States of a part of the island of Taboga, which certain military engineers of the War Department consider suitable for the establishment of fortifications for the better defense of the Canal.

In the above-mentioned note Your Excellency thought well to inform me, on behalf of the Secretary of War of this country, that the United States considered it necessary, for the security and protection of the Panama Canal, to acquire a part of the above-mentioned island in the near future with a view to erecting fortifications upon it. At the same time on account of the importance which the Republic of Panama attaches to that portion of its territory, Your Excellency is pleased to assure me that it will not take any steps in regard to the expropriation which it will be necessary to make, without giving all possible consideration to the interests and convenience of the inhabitants of that section, whose natural anxiety it is desired to alleviate as much as possible.

I have taken due note of the important statement made by Your Excellency that, in view of the improbability of beginning in the present year the proposed works of fortification, the Government of the United States has the greatest desire to adopt a liberal policy in respect to the inhabitants of that part of the island of Taboga which will pass to the jurisdiction of the above-referred-to Government.

Permit me to inform Your Excellency, on my part, that I have sent to my Government a copy of the note of Your Excellency, and that I have requested, at the same time, instructions in the case, in order to be able to arrive at satisfactory conclusions which may justly protect the interests of our respective countries.

I avail myself [etc.]

J. E. LEFEVRE

819.52/115

The Panaman Chargé (Lefevre) to the Acting Secretary of State

[Translation ³]

D-No. 60

WASHINGTON, February 17, 1920.

EXCELLENCY: I take the liberty to inform Your Excellency that under date of September 18 of last year the Governor of the Canal Zone wrote a communication to the President of the Republic of Panama in which he informed him that in accordance with article

³ File translation revised.

II of the Canal Treaty the United States Government had occupied a certain tract of Panaman land called Largo Remo in Las Minas Bay adjoining the Panama Canal Zone, deeming it necessary for the protection of the Panama Canal. In order to have this important business transacted through the regular channels, the President of Panama referred that communication from the Governor of the Canal to the Secretary of Foreign Relations; and, in view of the foregoing, the Secretary of that Department has instructed me to say to the Government of the United States through Your Excellency's worthy medium that the Panaman Government regards the proceeding adopted on that occasion by the authorities of the Panama Canal as irregular, as the land above mentioned was occupied without giving any previous notice whatever of that decision, thus apparently ignoring the sovereignty and jurisdiction of Panama over the said land.

The Secretary of Foreign Relations of my country directs me to say to Your Excellency at the same time that my Government trusts that the Government of the United States will, as it has done in former cases, indemnify the Republic of Panama for the loss of the territory just occupied by the Canal Zone authorities, wherein Your Excellency's colleague, the Honorable Newton D. Baker, Secretary of War, concurs.

I further deem it proper most respectfully to draw Your Excellency's attention to the expediency of establishing, through an agreement between the State Department and the Legation, the *modus operandi* to be followed hereafter whenever the Government of the United States may find itself under the necessity of availing itself of the faculty conferred upon it by article II of the Canal Treaty.⁴ That treaty, as is well known to Your Excellency, is a law substantive and therefore requires for its interpretation and application, in cases like that under consideration, a *modus operandi* to be established in the manner observed on a similar occasion under the administration of President Roosevelt who specially delegated to his Secretary of War, the Honorable W. H. Taft, the power to bring to a satisfactory solution the differences of interpretation and action that had then arisen.⁵

Taking into account the fact that the Governments of the United States and Panama are equally interested in having our close relations progress not only in the best harmony and without the slightest friction, but also be marked by a signal spirit of cooperation and inspired by the most cordial sentiments of friendship, I take the

⁴ *Foreign Relations*, 1904, p. 543.

⁵ See *ibid.*, pp. 585 ff.

liberty of informing Your Excellency that I have my Government's full power to proceed with Your Excellency in bringing about equitable and satisfactory conclusions for the legitimate interests of our two countries which would avert the difficulties and differences that have arisen until now and may arise in the future.

With sentiments [etc.]

J. E. LEFEVRE

819.52/123

The Panaman Chargé (Lefevre) to the Secretary of State

[Translation ^o]

D-No. 208

WASHINGTON, *April 30, 1920.*

EXCELLENCY: Referring to my note D-No. 43 of January 29th, last, answering Your Excellency's very important communication of the 19th of the same month, in relation to the intended acquisition of part of the island of Taboga in the Republic of Panama by the United States of America, with a view to erecting thereon fortifications that are thought to be needed for the defense of the Canal, I have the honor to inform Your Excellency that upon my applying for instructions from my Government to return a final answer to the said note of Your Excellency, I was instructed under date of February 24th, last, that before reaching any decision in that important matter the Government of Panama would like to know what part of the island of Taboga the United States Government considers to be suited to the purposes of defense and protection of the Canal.

My Government has instructed me also to bring the foregoing to the knowledge of the Department of State and asked me at the same time to make known to Your Excellency my country's wish that the cession of that valuable national territory be reduced to the smallest possible area in case it were altogether indispensable for the defense of the Canal, in order that the inhabitants be not compelled to give up drawing their own sustenance from the fields and plantations which form the main wealth of that island.

My Government also wishes me to put it on record that in its opinion the contemplated cession does not come under that part of article II of the Canal Treaty which refers to the auxiliary waters and lands to which the necessities of the said Canal are confined. My Government bases that opinion on the fact that the islands offer a special case as may be clearly deduced from the last part of the article above referred to, which clearly states that the ceded islands

^o File translation revised.

are those of Naos, Culebra, Perico and Flamencø. It is clear therefore that Taboga is not included among those and that as a consequence the United States Government must pay compensation for the property taken over whether public or private.

The undersigned refrained from presenting the foregoing claims in writing because on the strength of Secretary Lansing's note of January 19, heretofore cited, the Legation thought that the most expeditious method was to have preliminary conferences at the Department of State in order to harmonize as far as possible the interests of our respective countries through the most efficacious and friendly cooperation.

At this stage of the proceedings and while the Legation and the State Department were considering the most expedient means to achieve the result which the Government of the United States declared to be its aim according to a positive declaration made in the second paragraph of the said note of January 19th, I received on the 26th of this month a cablegram from my Government by which I am informed that while our Governments were discussing through their respective Legations the area of land which the United States wishes to acquire in Taboga for fortifications, the Canal authorities have sent to that island a land inspector named Genac, accrediting him to the Mayor of the District to settle the claims to land taken on the island.

As a detail pertinent to the question, I take the liberty of informing Your Excellency that the said Genac is the same man who acted as a witness consistently antagonistic to the interests of the persons who applied to the recently dissolved Joint Commission for the settlement of their claims against the American Government. I believe that this circumstance makes it impossible to grant to the said Inspector Genac any claim of impartiality.

On account of the needed expropriation not having yet been granted and as the Republic of Panama is exercising sovereignty over the island, the Mayor of Taboga, as might be expected, would not recognize as official the mission of the said Genac, and the Department of Foreign Relations asked that the work be stopped.

My Government, in view of what has happened, directs me to declare to Your Excellency its great surprise at the action of the authorities of the Canal Zone in attempting to come to an understanding with subordinate officials of the Government of Panama and with private parties, ignoring the regular channels, a proceeding which is inconsistent with international practice. My Government's surprise is all the greater at its being told by the Governor of the Canal that the instructions which he has received from the War Department do not agree with the assurances given by the

State Department to the Government of Panama in the aforesaid note of January 19th, last, to the effect that the contemplated work would not be done on a large scale during the current year and that the inhabitants would be treated with all the consideration that the case admitted, a statement which is not in harmony with the sending of Genac or with his recent doings.

In view of the fact that the State Department officially declared to the undersigned that the work of greater importance for the fortifications of Taboga would not begin in 1920, my Government thinks that the preliminary work could be done without the necessity of condemning land at present.

My Government further thinks that such lands as are condemned should be reduced to a minimum conformably to the declarations made by the Secretary of State, Mr. Lansing, and that before effecting such condemnations, the amount of land indispensable for the intended fortification work should be decided on as well as the fair compensation for the losses and damages caused by the occupancy of that land.

I do not wish to close without saying to Your Excellency how glad I shall be to cooperate with the Department of State so as to carry out the wishes expressed by the Government of the United States in the above-mentioned note of January 19 of this year.

I avail [etc.]

J. E. LEFEVRE

819.52/132

The Panaman Chargé (Lefevre) to the Secretary of State

[Translation ⁵]

D-No. 220

WASHINGTON, *May 7, 1920.*

EXCELLENCY: Supplementing my note D-No. 208 of April 30th, last, relative to the proposed occupation of part of Taboga Island for the purpose of building fortifications for the better defence of the Panama Canal, I have the honor to lay before Your Excellency the substance of my Government's wishes in this delicate matter as follows:

1. Reduction to a minimum of the area to be occupied, as I said in my above-mentioned note of April 30th. My Government believes that 250 (two hundred and fifty) hectares would answer the purpose, and that to take more would force the Tabogans to emigrate and abandon their homes.

⁵ File translation revised.

2. The land should be condemned only as it is needed for the work under way, and the condemnation should be with the assistance of the Panaman Government or through the Joint Commission created by the Canal Treaty.

3. The Tabogans should not be deprived of those things which a community must have for its immediate subsistence and hygiene; for instance, an attempt has been made to take their water supply, and occupy the cemetery where the remains of their forefathers lie.

I take the liberty of most respectfully calling Your Excellency's attention, in connection with point 3 of this note, to the advisability of having the military authorities solve the question of drinking water by artesian or deep wells, for the boring of which there is available machinery in the Isthmus. No heavy outlay would thereby be entailed upon the United States Government, while the cutting off of drinking water would work untold injury upon the Tabogans.

I avail myself of this opportunity to renew to Your Excellency my earnest offer to cooperate with the State Department in having all that relates to the subject under consideration settled in a manner satisfactory to both parties in the most friendly cooperation.

I take [etc.]

J. E. LEFEVRE

819.52/132

The Secretary of State to the Panaman Chargé (Lefevre)

WASHINGTON, *May 19, 1920.*

SIR: I have the pleasure of acknowledging the receipt of your communications of April 30 and May 7 relative to the acquisition of land required for defensive purposes on Taboga Island.

In reply I have the pleasure of informing you that the several points to which you allude in these two communications are receiving the Department's serious consideration in view of the desire of this Government to conciliate the best interests of the residents of Taboga Island with the strategic requirements of the Canal Zone.

Accept [etc.]

For the Secretary of State:

FRANK L. POLK

819.52/145

The Secretary of War (Baker) to the Secretary of State

[Extract]

WASHINGTON, *July 14, 1920.*

SIR: With reference to previous correspondence relative to the acquisition of land on Taboga Island, Republic of Panama, I have

the honor to invite your attention to the enclosed copy of a letter from the Governor of the Panama Canal, dated June 18, 1920,⁶ and enclosures thereto.⁷

Respectfully,

NEWTON D. BAKER

[Enclosure—Translation]

The Panaman Sub-Secretary of Foreign Relations (Hazera) to the Executive Secretary of the Panama Canal (McIlvaine)

S.P.No. 1362

PANAMA, June 12, 1920.

MY DEAR MR. SECRETARY: I received in due time the courteous letters dated the 25th of May and the 9th of June, from the Executive Department of the Panama Canal, in the first of which, Acting Governor Col. Morrow transmitted the cablegram from His Excellency the Secretary of War of the United States, dated the 22nd of May, relative to Taboga Island and in the last one it was asked that the President of the Republic approve a plan inclosed therewith and issue certain orders to facilitate the purchasing of the property marked in such plan as required by the Government of the United States of America.

I transmitted such letters to the President, and he has asked me to answer them as follows:

“The question of the acquisition by the Government of the United States of a portion of the island of Taboga for the defense of the Canal, has been and at present is the subject of diplomatic negotiations between the Governments of our two countries by the means used in such cases, and up to now the two Governments have not reached an understanding as to the absolute necessity of using the said portion of the island of Taboga, nor have they come to an understanding as to the interpretation to be given to article II of the Canal Treaty.”

The Panama Government insists that in order that the government of the United States may obtain a legal valid title over any portion of the island of Taboga, a special agreement must be entered into between the two countries, as the jurisdiction and domain of the Sovereign cannot be transferred by official communications exchanged between subordinate employees.

But as the Panama Government does not wish to hamper the work of the Governor of the Canal Zone, as the same might have an urgent nature, it agrees in the provisional occupation of the areas

⁶ Not printed.

⁷ Only one enclosure printed.

marked in the map attached, which cover in all an extension of 14 hectares, 9500 square meters, leaving to the pending diplomatic negotiations the question of arranging the form that this concession should have in order to make it valid and final, as well as the procedure for the indemnification to the private owners and the compensation to which the Republic is entitled. Therefore, the Executive Power has issued Decree No. 15 today, provisionally permitting the Government of the United States to use, occupy and control the areas mentioned, commencing on the 16th instant.

It must be likewise understood that there shall remain excluded from such areas, the road that leads from the town to the port or cove of Ancon, so that the inhabitants may always enjoy the right-of-way while going from the northern to the southern part of the island, by the road over which they transit now.

In accordance with your request, I return herewith one of the plans sent by you. The other one shall be kept confidentially as desired by you.

I am [etc.]

EVENOR HAZERA