PANAMA

PROPOSALS BY PANAMA TO MODIFY THE UNPERFECTED TREATY BETWEEN THE UNITED STATES AND PANAMA, SIGNED JULY 28, 1926[1]

819.154/236

The Panaman Legation to the Department of State

[Translation]

The National Government has reached the conclusion that for the needs of the country construction of the highways north of Alhajuela should be of a more economical type of roads than that stipulated in Article II of the treaty.[2] To that end it makes the following proposal: In order to clarify Article II: Within ninety days following the exchange of ratifications of the treaty the Government of the United States will deposit to the order of the Government of Panama the sum of $1,250,000 mentioned in the said Article, the latter undertaking on its own account the construction of the said roads with the maximum breadth of fifteen feet and it remains with the National Government to choose the type of roads most suitable for each section of the work. To obtain the amount necessary to complete the amount of the cost of the said roads the Government of the United States will lend to Panama the necessary cooperation and assistance.

[WASHINGTON,] *January 6, 1927.*

819.154/236a : Telegram

The Secretary of State to the Minister in Panama (South)

WASHINGTON, *January 19, 1927—1 p. m.*

3. The Panaman Government appears to be dissatisfied with the assurance that the United States Government will undertake, as soon as possible after the ratification of the treaty by both parties, the construction of the road from Colon to Puerto Bello or from Colon to Alhajuela, whichever the Government of Panama may prefer, expending thereon the sum of $1,250,000., and that from the point thus reached the United States Government will continue the construction of the road as soon as funds are deposited by the Republic of Panama

[1] For previous correspondence, see *Foreign Relations*, 1926, vol. II, pp. 828 ff.
[2] *Ibid.*, pp. 833, 834.

to the credit of the Panama Canal, using these funds as they accrue until the road program is completed.

The Panaman Government considers this to be an advance of funds by the Panaman Government rather than a reimbursement of expenditure. Article II of the treaty provided that provisions shall be made for reimbursement by Panama for all costs of construction over $1,250,000. and that when such provision is made the United States will enter on the construction of the highways. Panama has never been willing to indicate what provision she was prepared to make for this reimbursement but has stated that the Panaman Government cannot see its way to raise the amount which will probably be necessary to pay Panama's share of the road construction. The proposal of the United States Government, described above, was intended to assist Panama by providing for the immediate construction of a part of the road which it was hoped would enable Panama to obtain the trans-Isthmian highway at an early date with only a moderate amount of expense to Panama. Of course the Panama Canal cannot advance funds for the completion of this road until (1) provision has been made for reimbursement, and this must be arranged by the Government of Panama, or (2) funds are advanced to cover the outlay made by the Panama Canal.

The Panaman Government has now proposed to the United States that the following arrangement be agreed upon:

"Within ninety days following the exchange of ratifications of the treaty the Government of the United States will deposit to the order of the Government of Panama the sum of $1,250,000., the latter undertaking on its own account the construction of the said roads with the maximum breadth of fifteen feet and it remains with the National Government to choose the type of roads most suitable for each section of the work."

The War Department has forwarded the text of this proposal to Governor Walker and he has been requested to state his views.

[Paraphrase.] Although the Department would be loath to conclude any agreement like the above altering the specifications of the road and providing that Panama rather than the United States undertake the construction, nevertheless the Department of State would be prepared, if the War Department offers no objection, to make this concession rather than jeopardize the ratification of the treaty by Panama. The Department learns from the Panaman Legation in Washington that it can expect no action by the Congress of Panama until a reply is received to this last proposal. Kindly take up this matter with Governor Walker and wire your carefully considered views as to whether the Panaman Assembly would fail to ratify the treaty if the United States should decline to make this further concession. [End paraphrase.]

KELLOGG

819.154/237 : Telegram

The Minister in Panama (South) to the Secretary of State

[Paraphrase]

PANAMA, *January 21, 1927—9 p. m.*
[Received January 22—1:30 a. m.]

7. Department's telegram number 3 dated January 19, 1 p. m. I do not think the course suggested in last paragraph would materially influence Assembly's decision because opposition to treaty has been based largely on other reasons. Governor Walker concurs in this opinion, but can see no objection to changing road specifications or permitting Government of Panama to construct it. My personal belief is that neither the military nor the Canal authorities are now especially interested in that type of construction. My feeling is that it would be only reasonable to agree to a cheaper and narrower road which would be amply sufficient for all traffic needs. I perceive no objection to permitting the Government of Panama to undertake the construction of the road . . .

SOUTH

711.192/294 : Telegram

The Minister in Panama (South) to the Secretary of State

[Paraphrase]

PANAMA, *January 27, 1927—9 a. m.*
[Received 3:30 p. m.]

9. Last night the Assembly unanimously voted to suspend consideration of the treaty until the President should have the opportunity to negotiate for changes which would completely satisfy the national aspirations. In the preamble of the resolution reference was made to the popular opposition to the treaty and to the fact that the Senate of the United States had not yet considered the treaty although it was nearing the end of its present session.

Yesterday the President and Foreign Minister informed me that they expected a further postponement of action by the Assembly. They did not, however, intimate that the Assembly would virtually reject the treaty in its present form. The Assembly's action, I believe, is chiefly due to the Government's fear of the political effect of insisting upon ratification at the present time. It is clear that the President has been intimidated by the agitation against the treaty. . .

SOUTH

711.192/321

Memorandum by the Acting Chief of the Division of Latin American Affairs (Morgan)

[WASHINGTON,] *January 28, 1927.*

The Chargé d'Affaires of Panama [3] called at my request in connection with the Panaman Treaty. Since a letter was received this morning from the War Department [4] saying that it had no objection to an exchange of notes for the purpose of clarifying Article II of the Treaty with Panama in accordance with the last proposal of the Panaman Legation, I told Mr. Chevalier that the Department agreed in principle to this proposal and would be willing to effect an exchange of notes in the premises, the substance of the notes to read as follows:

"In order to clarify Article II: Within ninety days following the exchange of ratifications of the treaty the Government of the United States will deposit to the order of the Government of Panama the sum of $1,250,000. mentioned in the said Article, the latter undertaking on its own account the construction of the said roads with the maximum breadth of fifteen feet and it remains with the National Government to choose the type of roads most suitable for each section of the work."

Mr. Chevalier inquired whether he might inform his Government to that effect and I told him that if he thought it advisable he might telegraph his Government that the State Department agreed in principle to the suggestion of the Panaman Government and that the notes would be exchanged without delay.

Mr. Chevalier then went on to say that, as was reported in the local press this morning, the Panaman Assembly had returned the Treaty to the Executive with a resolution to the effect that it did not fully satisfy the aspirations of the nation and requesting that further negotiations be carried out with a view to having it modified. Mr. Chevalier had received a telegram from his Government giving the text of this resolution of the Assembly but it did not state exactly what provisions of the Treaty were unsatisfactory to the Assembly or what changes they desired made. I asked Mr. Chevalier whether he thought the exchange of notes which we had in mind would clarify the situation and be sufficient to obtain the ratification of the Treaty. He said he thought not, that the main objection in Panama was directed against the Treaty as a whole and especially the clause providing for an alliance between Panama and the United States in time of war, and that it had been fomented by the vigorous anti-American campaign in Latin America which had been so active during the last

[3] Don Juan B. Chevalier.
[4] Not printed.

few weeks. Mr. Chevalier was inclined to believe that his Government intended to delay returning the Treaty to the Assembly for the present in order to let popular opinion cool off and to let the people learn the actual advantages of the present Treaty over the Treaty of 1903.[5] In a few months the Assembly could be called in special session again, the Treaty could be resubmitted and would, he thought, be ratified without great difficulty.

I pointed out to Mr. Chevalier that our own Congress adjourned on March 4, and therefore if the Treaty had not been ratified by Panama before that date it could not be ratified by the United States until next December. Mr. Chevalier said that he thought this was of comparative little importance since he understood that once the Treaty had been ratified by Panama no serious objection was to be expected in the United States Senate and he did not think that a delay of nine or ten months in the exchange of ratifications would be harmful to the interests of either country.

I told Señor Chevalier that if the Treaty was to be held in abeyance for a few months and if, as it seemed possible, the Panaman Government was going to make some further suggestions it would be better not to effect any exchange of notes until we knew all the views of the Panaman Government. To this Mr. Chevalier agreed.

[STOKELEY W.] MORGAN

711.192/309

Memorandum by the Chief of the Division of Latin American Affairs (Morgan)

[WASHINGTON,] *March 1, 1927.*

Doctor Alfaro[6] called for the first time since his return from Panama to discuss the treaty. He went over the whole history of the negotiations explaining various contentions of the Panaman delegates which had not been accepted by the United States. He said that the Panaman Government had hoped that the new treaty would clear up the difficulties which had arisen between Panama and the United States through the difference in interpretation of the Treaty of 1903 but to their great disappointment the Panamans had found the Department insisting absolutely on the American interpretation of the Treaty of 1903. The points on which the Panamans felt most keenly, namely, the establishment of bonded warehouses in the Zone, the wide extension of commissary privileges and the sale of supplies to ships transiting the Canal, had all been insisted upon by the Department

[5] *Foreign Relations*, 1904, p. 543.

[6] Dr. Ricardo J. Alfaro, Panaman Minister at Washington.

although in the opinion of the Panamans they were absolutely contrary to Article XIII of the Treaty of 1903.

Mr. Morgan then went over with Doctor Alfaro the list of advantages accruing to Panama from the treaty which Mr. Morgan had drawn up some time ago and discussed them in detail with the Minister. Doctor Alfaro contended that some of these advantages were mere acts of justice which the United States could not possibly withhold, others were reciprocal and the rest amounted to very little. In short, Doctor Alfaro said that the Panaman Commissioners had been greatly disappointed and dissatisfied with the treaty but that they had met with such a firm attitude in the State Department that they had finally, after two years negotiations, been confronted with the alternative of either signing the treaty as it was or going on without it under the Treaty of 1903 as interpreted by the United States. Thus they had nothing to hope for except the choice of two evils. Faced with this dilemma they had signed the treaty and then gone to Panama and explained to the people the situation telling them that in the opinion of the Government it would be best for Panama to accept the new treaty, unsatisfactory as it was and unjust as it was to Panama, rather than to continue under the American interpretation of the Treaty of 1903. However, much to the surprise of the Commissioners and the Panaman Government the people of Panama had absolutely refused to have anything to do with the new treaty saying that they gained nothing by it; that it put it out of the question that they should ever be able to improve their condition or get what they considered justice and fair treatment from the United States. In short, if they signed it the country was hopelessly ruined; they would prefer to go on with the Treaty of 1903 struggling against the American interpretation thereof and still hoping for a fairer treatment some time in the future. Doctor Alfaro was particularly impressed by the fact that the merchants of Panama, whom he had expected to favor the treaty, were almost unanimously against it. They did not feel that the comparatively unimportant assurances granted them under Article IV anywhere near balanced the grave injustices done them in confirming the right of the United States to establish bonded warehouses and to make sales to ships. Furthermore, they were very bitter at the wide extension of the commissary privileges. Above all, Doctor Alfaro said, the people of Panama had been much incensed at the language of the treaty which they felt was not only unnecessarily harsh but in some cases practically insulting to the Panaman people. They felt, as Doctor Alfaro explained it, that the language of the treaty was "rubbing it in". The Minister had a good deal to say about the complete lack of sympathy of the United States Government and

the absence of any sign of a desire to show any friendship or helpfulness to Panama.

Mr. Morgan then asked the Minister what the Panaman Government desired to do, what concrete proposal, if any, he had to lay before the Department. The Minister said that he had not worked this out yet, he wanted to discuss the whole subject with the Department and try to work out some plan together; he was preparing a memorandum on the subject which he hoped to lay before the Department in a few days. Mr. Morgan said that the Secretary was out of town for two weeks but that Mr. Morgan would be glad to have the memorandum and study it before the Secretary returned and then he and the Minister could take the matter up with the Secretary when the Minister had some definite suggestions to make.

[STOKELEY W.] MORGAN

STATEMENT BY THE DEPARTMENT OF STATE THAT THE UNITED STATES DOES NOT INTEND TO SUPERVISE ELECTIONS IN PANAMA

819.00/1398

The Representatives of the National Coalition Porrista Party to the Secretary of State[7]

WASHINGTON, *December 14, 1927.*

DEAR MR. SECRETARY: We the undersigned, members of the National Coalition Porrista Party, of the Republic of Panama, have been commissioned by it to lay before you and the American Government the present political situation in our country, and we respectfully invite your attention to a consideration of the following facts:

The next general and Presidential election in Panama will take place August 5th, 1928. January 1st the Electoral Grand Jury, four of the five members of which are selections and partisans of President Chiari, will convene, and be in session for ten days, for the purpose of naming election officers for the said election for the entire Republic. Preceding the election there is or should be a general registration of the citizens who are eligible and desire to vote at that election.

We and the leaders, officials and members of our party have reason to believe that those citizens opposed to the Chiari Government and the Chiari candidates will not be permitted to enjoy a fair and free election, that they will be deprived of their civil rights, and that the will of the people will be stifled and suppressed.

The former and present acts and utterances of Rodolfo Chiari, and his associate leaders of his party, indicate that the forthcoming election will not be fairly conducted. The treatment accorded by

[7] Handed to the Secretary of State on Dec. 15, 1927, by ex-President Belisario Porras.

the Government to its political adversaries, and the abuses already increasing in number, further shows that they can not expect to enjoy their political rights in the approaching campaign and at the next election.

The members of our party, composing 80% of the eligible voters of our country, ask for no favors at that election. Their appeal and only request to you and your Government is for the assurance that you favor fair and honest elections in our country; that they will be so held and conducted and that you will exercise your influence and power, and in every way meet your Government's obligations, to that end, and that you will let it be known, and especially in Panama, as did President Roosevelt in 1908, under somewhat similar circumstances, that fraud will not be tolerated and that no President chosen by fraudulent methods will be recognized by the Government of the United States.

We would call your attention to the fact that the present Government of Panama, which is making so determined an effort to continue itself in power, has recently, and in violation of the Constitution of the country, changed the electoral law by eliminating the provision of identification, a safeguard against repeating at the polls, and also the right of appeal of citizens who may be unlawfully denied registration or deprived of rights they have under the law to the Courts of the country. Such appeal now must be made to the election officers appointed by President Chiari and his associates. The object and purpose of the repeal of those two very important and long existing provisions is obvious to any one.

We do not ask for or desire intervention or anything like it. Our main object and purpose, and we believe it is also your desire, is to avert the necessity of or occasion for that very thing. But, some kind of positive declaration on the part of the United States, and perhaps surveillance or supervision may be necessary in order to guarantee and give the people of our country a fair and honest election, and a peaceable one, and thus avert disorders and such serious conditions that they may lead to intervention.

If the present Government of Panama is not planning and intending to commit fraud on a big scale at the said next election, and if President Chiari and his associates believe they have the confidence and support of a majority of the Panamanian people, they will not oppose our request for assurances by and guarantees from your Department and Government to the effect that such election will be free, honest and fair, and that the President must be chosen without resort to abuses and fraudulent methods, otherwise he will not be recognized by the United States.

For the purpose of showing our reason for coming to you with, and our belief in the result of, our appeal to you in this matter, may we

and the about 10,000 of our citizens who have sent their written and signed petition to you through your Minister in Panama, Mr. South, cite Article 136 of the Constitution of Panama, and call your attention to that part of it whereby your Government assumes the obligation of preserving Constitutional order in our country, which provision was placed in it at the special request of your Government. That obligation, we respectfully contend, carries with it the duty to prevent or check the causes or conditions that may lead to violations of the Constitution and consequent disorders; and also to guarantee the civil rights of our people as provided in that Constitution.

Article 136 of our Constitution, is as follows:

"The Government of the United States of America may intervene in any point of the Republic of Panama, to re-establish Public Peace and Constitutional Order, should same have been disturbed, in case that, in case of public treaty, that nation should assume, or should have assumed, the obligation to guarantee the independence and sovereignty of the Republic." [8] (Such a treaty was entered into, and the United States assumed that very obligation; and it is still in force.) [9]

Also, in 1908, when conditions in our country were very similar to those now existing, though perhaps not so threatening, or, serious as they will be later on, and especially should the said requested guarantees be not given, or be refused to us, President Roosevelt addressed the following note to Secretary of War Taft relative to the then existing political and election situation in our country:

"You are instructed to say to President Amador that *the Government of the United States will consider any attempt at fraudulent methods* and to refuse a large number of the people the opportunity of casting their votes in the presidential elections, *as an act which* constitutes disturbance of the public peace, which, according to the Constitution of Panama, calls for intervention, *and that this Government will not allow the Government of Panama to pass into the hands of any one elected in such a manner.*"

The honorable policy of your Government, as formulated, declared and put into force by that President of your country, who was so beloved and whose memory is now so revered by all our countrymen, as by yours, stands unimpugned and unrevoked. May we hope that

[8] Cf. the following translated text, from *Foreign Relations*, 1904, pp. 562, 578: "The Government of the United States of America may intervene in any part of the Republic of Panama to re[e]stablish public peace and constitutional order in the event of their being disturbed, provided that that nation shall, by public treaty, assume or have assumed the obligation of guaranteeing the independence and sovereignty of this Republic."

[9] Convention between the United States and the Republic of Panama for the construction of a ship canal to connect the waters of the Atlantic and Pacific Oceans, signed Nov. 18, 1903, *Foreign Relations*, 1904, p. 543.

your Government still respects it, and will now not hesitate to reaffirm it. In the interests of democracy, of fair and honest elections, and of good government, is not that policy one of the best guarantees your Government can give, adopt or follow, and applicable as well to your country as to ours?

That is all that we have come to you to ask. Is it too much? May we hope you will not refuse it to us.

In conclusion, may we say that we and our friends in Panama, and the at least 80% of the people there for whom we speak, and who are now anxiously awaiting your answer to our and their appeal, are not revolutionists, nor even interventionists; that we believe in and want to live under a reign of law and order; that we are, have always been, and desire to continue to be friends and admirers of your wonderful people and prodigious and powerful nation; that we trust in your sense of fairness and justice; and that we want to co-operate with you in every way that will be for the good, benefit and prosperity of our country and the credit and honor of yours.

With great esteem, and thanking you for the audience you have so graciously accorded us, we remain [etc.]

BELISARIO PORRAS
J. A. JIMÉNEZ

819.00/1408

The Panaman Minister (Alfaro) to the Secretary of State

[Translation [10]]

No. 373–D WASHINGTON, *December 15, 1927.*

EXCELLENCY: Pursuant to instructions from my Government, I beg Your Excellency kindly to inform me whether the policy outlined by Secretary of State Elihu Root in his notes of December 4, 1905,[11] and February 21, 1906,[12] and by Secretary of War William H. Taft in his instructions to the Governor of the Canal Zone, Mr. Magoon, on April 26, 1906,[13] continues to be the policy of the Government of Your Excellency in connection with the question of intervention by the United States in the internal affairs of the Republic of Panama.

My Government is especially interested in obtaining from the Government of Your Excellency an express statement on this point at the present moment.

With the expression [etc.] R. J. ALFARO

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[10] Supplied by the editor.
[11] *Foreign Relations*, 1905, p. 719.
[12] *Ibid.*, 1906, pt. 2, p. 1203.
[13] *Ibid.*, p. 1206.

819.00/1408

The Secretary of State to the Panaman Minister (Alfaro)

WASHINGTON, *December 23, 1927.*

SIR: I have received your note No. 373–D of December 15, 1927, inquiring, pursuant to instructions from your Government, whether the policy outlined by Secretary Root in his notes of December 4, 1905, and February 21, 1906, and by Secretary of War Taft in his instructions to the Governor of the Canal Zone, Mr. Magoon, on April 26, 1906, continues to be the policy of the United States Government in connection with the question of intervention by the United States in the internal affairs of the Republic of Panama.

In reply I am pleased to inform you that the policy outlined in the communications referred to above continues to be the policy of this Government. As stated in substance by Secretary Root, the primary duty to maintain order and to enforce the election laws devolves upon Panama. As between the two parties, the United States will maintain absolute impartiality and will not, directly or indirectly, lend support to any candidate for president or other office. The United States will, of course, carry out its treaty obligation guaranteeing to maintain the independence of Panama, and will exercise the treaty right to maintain order in Panama, Colon and the territories and harbors adjacent thereto but it does not intend to supervise the election in Panama. Of course, it is the earnest wish of the United States that there should be a free, fair and honest election in Panama, as such elections are necessary to the peace and prosperity of the state, but the United States cannot assume the primary obligation of supervising the election.

I am enclosing herewith an extra copy of this communication which I have the honor to request you to be so good as to transmit to Doctor Belisario Porras in reply to the letter and memorandum [13a] which he left at the interview which he had with me in your presence on December 15.

Accept [etc.] FRANK B. KELLOGG

819.00/1401

Doctor Belisario Porras to the Secretary of State

NEW YORK, *December 28, 1927.*

[Received December 29.]

MY DEAR MR. SECRETARY: Agreeably to Your Excellency's request, Doctor Alfaro, the Minister of Panama, has transmitted to me Your Excellency's note of December 23rd in reply to Doctor Alfaro's inquiry

[13a] Memorandum not printed.

respecting the policy of the United States Government as to American supervision of the Panaman elections of 1928. I note from Your Excellency's communication that it was also intended to serve as a reply to the letter and memorandum which I had the honor to hand to Your Excellency on December 15th wherein I asked the United States Government on behalf of that branch of the Liberal Party, which I represent, to give assurance and guarantee to the people of Panama free and fair elections in 1928.

It is with deep regret that I have to point out that Your Excellency, in his note to Señor Alfaro, did not see fit to meet the issues posed in my said letter and memorandum, except by a curt declaration that the United States "does not intend to supervise the elections in Panama."

Your Excellency's statement that "the primary duty to maintain order and to enforce election laws devolves upon Panama" is a matter of common understanding. It is, however, equally a matter of general knowledge that the United States Government has on four separate occasions considered that it shared with the Republic this duty. Irrefutable evidence adduced in my memorandum to show the actual existence of similar conditions to warrant such action on the part of the United States Government next year was entirely ignored in Your Excellency's reply.

It is, naturally, to be supposed "that the United States will maintain absolute impartiality, and will not, directly or indirectly, lend support to any candidate for President or other office." That the "United States will carry out its treaty obligation guaranteeing to maintain the independence of Panama, and will exercise the treaty right to maintain order in Panama, Colon and the territories and harbors adjacent thereto" is to be expected in view of the nature and logical implications of the international servitude imposed by the Hay-Bunau Varilla Treaty[14] upon the Republic of Panama vis a vis the United States.

The expression by Your Excellency of an "earnest wish that there should be a free, fair and honest election" in Panama next year is most laudable, but, it is hardly more than a pious vow which might be appropriately formulated in respect to elections in free democracies everywhere. It is, I beg leave to say, Mr. Secretary, slightly less than the people of Panama feel they have a right to expect of the Nation which created the Republic of Panama and which exercise in respect of it, by virtue of treaty and the Panaman Constitution, the right of intervention whenever, in the judgment of the American authorities, such intervention appears indicated by the exigencies of American interests in the Canal Zone.

[14] Convention signed Nov. 18, 1903, by John Hay for the United States and Philippe Bunau Varilla for Panama, *Foreign Relations*, 1904, p. 543.

The expression of the just mentioned wish, promptly qualified by the statement that the United States "cannot assume the primary obligation of supervising the election" lends itself only to the interpretation that the party in power in Panama is at liberty to disregard Your Excellency's wish and conduct the elections exactly as it pleases and may find to its advantage. Possibly the United States might view with concern or regret a failure on the part of the Panaman Government to respect Your Excellency's wish, but, it is significant that Your Excellency leaves no doubt that the holding of free, fair and honest elections in Panama is not a matter about which the United States Government is disposed to do more than express a wish.

This reserve in regard to the burning issue of the moment in Panama, and possibly a question of life and death for hundreds of people in that country, as a similar issue has proved in Nicaragua, is in striking contrast with the forthright words of President Roosevelt in his instruction to his Secretary of War, the Honorable William H. Taft:

"You are instructed to say to President Amador that *the Government of the United States will consider any attempt at fraudulent methods and* to refuse a large number of the people the opportunity of casting their votes in the presidential elections, *as an act which constitutes* disturbance of the public peace, which, according to the Constitution of Panama, *calls for intervention, and that this Government will not allow the Government of Panama to pass into the* hands of any one elected in such a manner."

Coming down to more recent times one can only be struck by the marked dissonance in tone between the mere expression of a mild wish for fair elections in the Republic of Panama, over which the United States exercises the indubitable right of intervention, and the ringing pronouncements of His Excellency the President of the United States, and also of his Special Representative, Mr. Stimson, in respect of the obligation and determination of the United States to ensure fair elections in Nicaragua, even though it be with the aid of some 2500 Marines and at the cost of hundreds of lives. The contrast is all the more singular as American intervention in Nicaragua to insure fair elections is founded on no authorization of treaty right, or provision of either the American or Nicaraguan Constitutions. As a matter of fact, the express stipulations of either document would seem to inhibit the exercise of political sovereignty by military forces of the United States in Nicaragua in the manner now being followed, especially when one considers that there has been no declaration of war by the American Government, nor any act of Congress authorizing the use of the American forces for the pacification of Nicaragua. In the case of Panama, however, there is both Treaty and Constitutional authority,

as well as numerous precedents for the American supervision of the elections in that country.

A careful analysis of Your Excellency's note would seem to show that the United States Government now proposes to exercise its right of intervention in Panama only if and when public order in that country is disturbed in a manner to cause the appropriate American authorities to recommend such intervention. This means, that, should the elections be unfairly held, and fraudulent methods be used, and should Panaman citizens, victims of such practices, patiently accept the results and endure the conditions so imposed upon them, the United States Government will view the entire proceeding with equanimity and perceive therein no ground for its intervention. On the other hand, should such eventualities not be submissively tolerated, and should an outraged citizenry have recourse to the only means available to an oppressed people for the redress of their wrongs and their liberation from a tyrannous minority government founded only on force, the United States Government will only interest itself in the situation when and if conditions of positive disorder have arisen.

This has been more or less the course of American policy in the recent history of Nicaragua, where American intervention was only made after a long period of civil war and when one party was on the eve of triumph, whereupon the intervening force of the United States was used to stay the onward march of that party and sustain in power its adversary against the vigorous protest of Vice-President Sacasa, the head of the Liberal Party. It would seem, Mr. Secretary, that if American intervention has in the event of civil strife ultimately to be the end and portion of the Isthmian Republics, under President Coolidge's newly announced policy of discouraging revolutions in these countries, that intervention might better be preventive and not merely corrective, or really, as it is in Nicaragua, punitive of a considerable element of the people. In other words, Mr. Secretary, it would appear that if the United States proposes not to allow the people in the Central American Republics in general and Panama in particular to right their political wrongs and resist intolerable abuses in the way that free peoples in all ages and climes have done, then the United States, especially in Panama, should take adequate measures to ensure fair elections, without which a democratic form of government cannot exist, and thereby remove the fundamental cause of such disorders.

May I respectfully submit, Mr. Secretary, that to tell the Panaman people that the United States Government is not responsible for the manner in which the Panaman Government conducts its elections, but, that the United States Government will not allow the Panaman people

to resort to force to correct a situation which is not otherwise remediable, is tantamount to forcing an oppression on them whenever a regime in power in their country does not conform to the standards of free republican Government.

I hope, Mr. Secretary, that Your Excellency will believe me, when I assure you, that it is farthest from my desire to raise the specter of revolution for my country. I have undertaken merely to bring to the attention of Your Excellency's Government through this note and my previous notes the inescapable logic of the political situation of my country in its peculiar relation to the United States. The question is not one for legalistic sophisms. The issues are vital, human problems, the solution of which can only be reached if the Government of the United States recognizes the obligation to guarantee to its ward, the Panaman Republic, what President Coolidge declared in his speech of last April the United States Government proposes to encourage in Central America, namely, the orderly succession of governments by means of fair elections.

The rights of the United States in and over Panama are indisputable and inevitable. We do not pretend to question them. We merely wish to assert that where there is a right there is an obligation; if not express, then implied; if not legal, then moral. The United States Government cannot assert a right to intervene in the political affairs of Panama and supervise its elections only when and as it may suit American convenience, without thereby assuming the moral obligation to see that political fair play and free elections are always observed by Panaman Governments. It was a due recognition of this moral obligation which unquestionably impelled President Roosevelt to lay down the doctrine set forth in the above extract from his instructions to Secretary of War Taft, which resulted in one of the most peaceful elections and satisfactory governments in the history of Panama. It now remains to be seen whether that lofty statement of policy by President Roosevelt is to be upheld by Your Excellency's Government or repudiated. Moreover, as a matter of self-interest, Your Excellency's Government should feel a vital concern over the maintenance of free republican institutions in Panama.

With the foregoing considerations in view, I desire again to invite your Excellency's attention to my letter and memorandum above mentioned to the end that steps may be taken by the United States Government to ensure the holding of free and fair elections in Panama in 1928.

With great esteem, I am [etc.] BELISARIO PORRAS

RESERVATION BY THE UNITED STATES OF RIGHTS REGARDING RADIO AND RAILROAD CONSTRUCTION IN PANAMA

819.6156 T 61/–

The Minister in Panama (South) to the Secretary of State

No. 1301 PANAMA, *January 25, 1927.*

[Received February 1.]

SIR: I have the honor to report that a contract has recently been signed by the Panaman Government and Mr. Henry Blair, representing the Tonosí Fruit Company, a subsidiary branch of the United Fruit Company established according to the laws of the State of Delaware. According to the terms of this contract, which will soon be presented to the National Assembly for its consideration, the Tonosí Fruit Company will establish at the port of Tonosí in the Province of Los Santos a port similar to the one maintained by the United Fruit Company at Almirante. The Tonosí Fruit Company will expend large sums in construction work in the Tonosí Valley. This work will include the erection of a concrete wharf capable of accommodating steamers drawing as much as 26 feet of water, oil storage tanks with a capacity of 50 or 60 thousand barrels of crude oil, and the construction of a 60 or 70 kilometer railway line, with a steel bridge across the Tonosí River. A large number of dwelling houses will also be constructed to house the four or five thousand laborers who will be employed by the Company. A large village similar to that already erected at Almirante will thus be established in the Tonosí Valley.

Extensive irrigation work including the construction of a dam in the upper Tonosí River will be undertaken. This irrigation work is necessitated by the annual dry season on the Pacific side. After full development about 15 or 16 thousand hectares with an annual production of about four million stems of bananas will be under cultivation.

The banana cultivation at Tonosí will be sufficient to load at least one steamer a week. Developments which the Tonosí Fruit Company contemplates involve an expenditure of from 9 to 12 million dollars.

Mr. Blair informs me that the United Fruit Company is anxious, through its subsidiary, to establish large plantations on the Pacific coast of Panama because their production on the Atlantic coast, particularly in the Bocas del Toro District, is rapidly declining. The United Fruit Company has large areas of reserve banana lands in

other countries but desires to continue business in Panama where its relations have always been so satisfactory with the Government. The United Fruit Company has already carried on extensive explorations in other parts of the Republic of Panama in an attempt to find other regions suitable for large scale agricultural developments.

The text of the Tonosí Fruit Company's contract is transmitted herewith in clipping from *El Tiempo* of January 14th.[15]

I have [etc.] J. G. SOUTH

819.6156 T 61/1 : Telegram

The Minister in Panama (South) to the Secretary of State

PANAMA, *February 12, 1927—11 a. m.*

[Received 6:20 p. m.]

16. My despatch 1301 of January 25. Article 12 of the contract with the United Fruit Company now pending before the Assembly would authorize the Company to establish such radio, telegraph and telephone stations as it may consider indispensable for the service of its plantations at Tonosí. [Paraphrase.] This appears to be a direct violation of the existing arrangement between the United States and Panama regarding wireless control. It is my belief that a protest should be lodged with the Panaman Government to prevent the establishment of a dangerous precedent even if the Department after being properly consulted should be disposed to permit the Fruit Company to erect a wireless on its new plantations. Immediate instructions requested. [End paraphrase.]

SOUTH

819.6156 T 61/1 : Telegram

The Secretary of State to the Minister in Panama (South)

WASHINGTON, *February 14, 1927—7 p. m.*

7. Your 16, February 12, 11 a. m. You are instructed to make an immediate protest, pointing out to the Panaman Government that the proposed Article 12 of the contract which grants the company the right to establish radio telegraphic stations within the territory of the Republic violates the existing arrangement with the United States set forth in Presidential Decree No. 130, August 29, 1914.[16]

KELLOGG

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[15] Not printed.

[16] *Foreign Relations*, 1914, p. 1051.

819.6156 T 61/4 : Telegram

The Minister in Panama (South) to the Secretary of State

PANAMA, *February 17, 1927—10 a. m.*

[Received 2:53 p. m.]

21. The Tonosí contract was approved by the Assembly yesterday. I handed a note to the Minister for Foreign Affairs yesterday afternoon requesting a definite statement that any concession granted to the Tonosí Fruit Company for the erection of wireless station was subject [to] existing arrangement with the United States as embodied in the decree of 1914, and further requesting that similar statement be conveyed to the company. He seemed willing to furnish such a statement and promised a formal written reply in the near future. I have also obtained from the local representative of United Fruit Company a written statement recognizing that the company is "specifically bound with respect to any wireless station in Panama" by the agreement of 1914. [Paraphrase.] Governor of the Panama Canal [17] in a further letter to me states that he does not desire to object to the construction of the Tonosí railroad. He feels, however, that the attention of the Government of Panama should be invited to the fact that the concession of the Panama Railroad Company gives the company the exclusive right to construct railways on the Isthmus of Panama. In order to safeguard the interests of the United States in the future it might be advisable for this Legation to present a note to the Government of Panama setting forth that the failure of the United States to protest in this case should not be regarded as a relinquishment by the Panama Railroad Company of any rights claimed under its concessions. Instructions desired. [End paraphrase.]

SOUTH

819.6156 T 61/4 : Telegram

The Secretary of State to the Minister in Panama (South)

WASHINGTON, *February 19, 1927—5 p. m.*

8. Your 21, February 17, 10 a. m. Please present note as suggested.

KELLOGG

[17] M. L. Walker, also president of the Panama Railroad Company.

819.6156 T 61/6

The Minister in Panama (South) to the Secretary of State

No. 1333 PANAMA, *February 21, 1927.*
[Received March 4.]

SIR: With reference to my telegram of February 17th, 10:00 A. M. and to the Department's reply of February 19th, 5:00 P. M., I have the honor to transmit herewith a copy of a note which was delivered today to the Panaman Foreign Office regarding the railroad concession embodied in the recently approved contract with the Tonosí Fruit Company.

I have [etc.] J. G. SOUTH

[Enclosure]

The American Minister (South) to the Panaman Minister for Foreign Affairs (Alfaro)

[No. 566] PANAMA, *February 21, 1927.*

EXCELLENCY: With further reference to the concession granted by the Government of Panama to the Tonosí Fruit Company, I am instructed to inform Your Excellency that my Government has observed that the concession authorizes the construction by the Fruit Company of a railroad for the service of its agricultural undertakings and also for the use of the public.

While the Government of the United States is not disposed to object in this specific case to the construction of the projected railway line, I am instructed to inform Your Excellency that the fact that no objection is made to the granting without the consent of the United States of the concession referred to is not to be considered as in any way indicating that the United States Government relinquishes any of the benefits enjoyed by the Panama Railroad Company under Article 2 of its concession of 1867.[18]

I avail myself [etc.] [File copy not signed]

819.6156 T 61/11

The Minister in Panama (South) to the Secretary of State

No. 1413 PANAMA, *May 14, 1927.*
[Received May 27.]

SIR: Referring to my despatch No. 1333 of February 21, 1927, enclosing a copy of a note sent on that date to the Panaman Foreign Office regarding the railroad concession embodied in a contract between the Panaman Government and the Tonosí Fruit Company, I have the honor to transmit herewith a copy, with translation, of a note dated April 27, 1927, from the Acting Secretary of Foreign Relations

[18] For text of article 2, see memorandum on railroad construction, etc., p. 504.

acknowledging my note and stating that it is the opinion of his Government that the 1867 concession cannot be interpreted as having conferred the exclusive right to build railroads on the Isthmus and that the right should be understood as limited to railways between the Caribbean Sea and the Pacific Ocean under Article V of the Hay-Bunau Varilla Treaty.[19]

The monopoly rights of the Panama Railroad Company for the construction of railroads on the Isthmus have long been differently interpreted by the Governments of the United States and Panama and have been the subject of voluminous correspondence between the two Governments without an agreement being reached. As the subject is not covered in the memoranda on the history of diplomatic relations between the United States and Panama prepared in the Division of Latin American Affairs in 1924,[19a] an outline of the attempts at railroad construction in Panama and their relation to the monopoly rights of the United States and the Panama Railroad Company has been prepared by a member of the staff of the Legation and is transmitted herewith.

I have the honor to request the Department's instructions as to the answer which should be made to the Acting Secretary's note of April 27, 1927. Inasmuch as a thorough exposition of the contentions of the Government of the United States was made in the notes of the Legation to the Foreign Office in 1919, 1920 and 1921 relating to the so-called Hyatt concession, as indicated in the enclosed memorandum,[20] and inasmuch as the note of March 3, 1921, does not ever appear to have been answered by the Foreign Office, it is respectfully suggested that I be authorized to inform the Acting Secretary that the views of the Government of the United States have not changed and to refer him to the Legation's note of March 3, 1921.

I have [etc.] J. G. SOUTH

[Enclosure 1—Translation]

The Panaman Acting Minister for Foreign Affairs (Morales) to the American Minister (South)

S. P. No. 804 PANAMA, *April 27, 1927.*

MR. MINISTER: I have the honor to refer to Your Excellency's courteous note No. 566, dated February 21st, last,[21] in which you state that the fact that the Government of Your Excellency does not make any objection to the concession given to the Tonosí Fruit Company to construct a railroad in the province of Los Santos, "is not to be considered as in any way indicating that the United States Govern-

[19] *Foreign Relations*, 1904, p. 543.
[19a] Not printed.
[20] See *post*, pp. 512 ff.
[21] *Ante*, p. 502.

ment relinquishes any of the benefits enjoyed by the Panama Railroad Company under Article 2 of its concession of 1867."

The opinion of my Government with respect to this subject is that the concession given to the Panama Railroad Company by the Republic of Colombia in 1867 cannot be interpreted as having conferred the exclusive right to construct railroads in all directions on the Isthmus of Panama. Such concessions must be understood as being limited to railways between the Caribbean sea and the Pacific ocean, in the same terms as were accepted by the Government of Panamá in Article 5 of the Hay-Bunau Varilla Treaty.

I take [etc.] RICARDO A. MORALES

[Enclosure 2]

Memorandum on Railroad Construction and Monopoly Rights of the United States and the Panama Railroad Company [22]

MONOPOLISTIC PROVISIONS OF PANAMA RAILROAD COMPANY CONCESSION

The contract between the United States of Colombia and the Panama Railroad Company made in 1867 to last for a period of ninety-nine years completely superseded the prior contract made in 1850. By the terms of the 1867 contract, the Panama Railroad Company was granted monopoly rights for the duration of the concession covering (1) the construction of any railroad on the Isthmus of Panama and (2) the establishment of any carriage roads across the Isthmus. These two exclusive rights were granted, respectively, in Articles II and V of the concession. These articles are as follows, in the original Spanish of the concession:

. . . . . .

The true translations of the articles appear to be those given below:

"ARTICLE II

The Government of the Republic binds itself, during the time that the exclusive privilege which is conceded to the Company for the working of the railroad remains in force, not to construct for itself, nor to concede to any person or company, by any title whatever, the power to establish any other railroad on the Isthmus of Panama and it also stipulates that, while the said privilege continues in force, the Government shall not have the power of undertaking for itself, nor permitting any person to undertake, without the concurrence and consent of said Company, the opening or working of any maritime canal which may unite the two oceans across the said Isthmus of Panama to the west of the line of Cape Tiburon on the Atlantic and Point Garachiné on the Pacific. But it remains stipulated that the right which is conceded to the Company to give its consent does

[22] Prepared by Allan Dawson, third secretary of the American Legation in Panama.

not extend to its opposing the construction of a canal across the Isthmus of Panama (except on the actual route of the railroad itself), but only to its exacting an equitable price for such privilege, and as indemnification for the damages which the Railroad Company may suffer by the rivalry or competition of the canal.

If the sum which may be demanded by the Company shall not appear equitable to the Government of the United States of Colombia, then it shall be fixed by arbitrators in New York or Panama, one to be named by the Government and the other by the Company, and in case of their not agreeing the two shall name a third, whose decision shall be without appeal.

In pronouncing their decision the arbitrators shall take into consideration the grounds upon which the Company rests, and the information which the Government shall give upon the matter, and in view thereof they shall decide without appeal as they may deem most just and equitable.

The sum, whatever it may be, which shall be finally designated, shall belong one-half to the Railroad Company and one-half to the Government of Colombia."

"ARTICLE V

During the whole term of this privilege the Company shall have exclusive right to establish across the Isthmus of Panama within the zone indicated in Article Second, any class of carriage-roads whatever, from one ocean to the other. The Colombian Government binds itself not to undertake for itself, nor to permit any other company or person to undertake within said zone any other carriage-road, either macadamized, or of plank, or of any other class suitable for the use of wheeled vehicles, between the two oceans across the Isthmus of Panama. It being nevertheless well understood that the privilege of which this article treats cannot and must not in any manner prevent the construction of any kind of roads in a direction distinct from that expressed, nor the completing, preserving, and improving of roads already existing, or which are actually being constructed on said Isthmus."

The contract made in 1867 was modified by contracts made in 1876 and 1880 and by amendments agreed upon on August 18, 1891, but none of the modifications affected Articles II or V.

CONFIRMATION OF MONOPOLY PRIVILEGE DURING COLOMBIAN RÉGIME

The first question regarding the monopoly granted in Article II of the 1867 concession appears to have arisen in 1881. Under date of January 25, 1881, the Departmental Government of Panama conceded to José Augustin Arango the right to build a streetcar system in Panama City. The Panama Railroad Company protested that under the terms of its concession the Government could not concede such a right. Its contention was confirmed by the Senate of Plenipotentiaries of the Sovereign States of Colombia in a resolution dated May 14, 1884. This decision sustained the Panama Railroad Com-

pany's monopoly right to construct railroads on the Isthmus. It may be found in 19–C–X3, 4 and 5, Old French Files, in the Legal Library of the Canal Zone but is probably not available in Washington.

Acquisition by the United States of the Panama Railroad Company

In accordance with the provisions of a Congressional Act "to provide for the construction of a canal connecting the waters of the Atlantic and Pacific Oceans" approved June 28, 1902,[23] the rights, real property, etc. of the New Panama Canal Company, including all the capital stock of the Panama Railroad Company held by the latter, were purchased by the United States in 1903. By this purchase the United States obtained possession of about sixty-nine seventieths of the Panama Railroad Company's stock.

Relevant Provisions of the Hay-Bunau Varilla Treaty[24]

By Articles VIII and XXII of the 1903 Treaty for the construction of a Ship Canal, negotiated between the United States and the Republic of Panama, the United States acquired all the present, future, and reversionary rights that Panama, which had succeeded to Colombia's sovereign power on the Isthmus, might have in the Railroad concession. These two articles of the treaty are as follows:

. . . . . .

By Article V of the 1903 treaty the United States acquired in perpetuity a monopoly for the construction, maintenance and operation of any canal or railroad across the Isthmus. The wording of this article is:

. . . . . .

Relationship of the United States and the Panama Railroad Company

The United States has exercised close control over the Panama Railroad Company since purchasing the greater part of its stock. The Governor of the Panama Canal is also the President of the Railroad and the officers and directors are chosen by the United States and the two enterprises are accordingly coordinated. There is not, however, any formal agreement between the Government of the United States or the Canal Zone and the Railroad. None of the Acts of Congress and Executive Orders dealing with the Railroad seem to have defined the relation between the American Government or the Canal Zone

[23] 32 Stat. 481.
[24] *Foreign Relations*, 1904, p. 543.

and the Railroad, or to have enunciated any policy for the conduct of the latter. The Panaman Government has at various times questioned the legal status of the Railroad. For an outline of this phase of the subject see Miss Atcherson's "Outline of the General Legal Status and the Incidental Activities of the Panama Railroad Company, Part I, General Legal Status" dated February 8, 1924, of which there is a copy in the Division of Latin American Affairs.[25]

First Attempt of Foreign Capital to Secure Concession

The first occasion to question the right of Panama to grant a concession for a railroad without previously consulting the United States or the Panama Railroad Company apparently arose early in 1907. A bill granting a railway concession from Panama to Chiriqui to a British syndicate was introduced into the National Assembly. On being informed by Minister Squiers of the proposed concession, the Department replied on January 4, 1907 by telegraph: "Your telegram in regard to Chiriqui Railway Concession. Of course Panama cannot grant any such concession without the consent of the United States. Ascertain and report facts fully." The National Assembly closed its ordinary session without acting on the bill and the Secretary of Foreign Relations assured the Minister orally that the President had no intention of granting the concession in question.

Construction of Tramway System

In 1910, a project for the construction of a tramway system in the City of Panama and its surroundings was formulated and discussed by the promoters with the President of the Panama Railroad Company who was also Chairman of the Isthmian Canal Commission. License for the Panama Tramways to operate in the Canal Zone was issued on December 6, 1910, and the concession of the Municipality of Panama was not made until June 21, 1911. While formal permission to construct the part of the street railway which was to be in Panaman territory does not appear actually to have been granted by the United States Government or the Panama Railroad Company, the granting of a license for operation in the Canal Zone was in effect such a grant.

Dziuk Concession

In 1910 the Balboa and Pacific Estates, Limited, a British corporation controlled by a Herr Dziuk and other German capitalists, applied for a concession from Panama for the construction of a narrow gauge railroad in the Darien region. The Department, through the Chargé d'Affaires ad interim, suggested a modification in the proposed con-

[25] Not printed.

tract. The modification was incorporated in a second draft of the concession which was formally approved early in 1911. In the final contract, the concessionary was given an option to construct any branches deemed necessary for the development of the enterprise upon written application to the Executive Power for permission to begin to locate such branches.

Shortly after the concession had been granted, the concessionaries began efforts to secure from the President of the Republic authority to extend the railroad to Panama City. When this came to the Department's attention it directed the Legation to intimate that the President of Panama would be expected to defer granting the application pending full consideration by the Government of the United States. The President agreed to defer granting permission for the proposed extension and the matter was taken under consideration by the State and War Departments and the Canal Zone authorities.

Department's Statement of Policy Regarding Foreign Concessions

Finally, on September 20, 1911, the Department sent the Minister an instruction to be read to the Minister for Foreign Affairs objecting to the extension of the Dziuk concession and setting forth concretely for the first time the contentions of the United States with regard to railroad concessions in Panama.[26] In the instruction was embodied the following statement of policy:

"As to the Dziuk railroad concession, the Department does not believe that it will ever come to anything without a branch beyond the Chucunaque River or a trans-Continental connection, and the Government of the United States is entirely unable, for fundamental strategic and political reasons in which the interests of the Government of Panama are equally involved, to acquiesce, under any circumstances, in further railway extension beyond the limits herein indicated. (i.e., the original limits of the Dziuk concession—A.D.) . . ."

In general, as to foreign railway or other concessions having a possible bearing upon the strategic and political interests of the two countries, while very sensible of every legitimate interest of Panama and very desirous of fostering in every way the growth and prosperity of the Republic, the Government of the United States feels that it will be more regardful of the interests of Panama to examine in advance and express itself after ample deliberation upon any project than it would be to keep silent and then perhaps be obliged at a later date to assert its treaty rights in a manner which might involve the Republic of Panama in serious financial losses.

In giving to the Government of Panama the reply of the Government of the United States that it cannot acquiesce in the extension of the proposed railway concession, or any other foreign railway project involving an important extension up the River Chucunaque, or in any such manner as either to approach in effect a trans-continental line

[26] *Foreign Relations*, 1912, p. 1171.

or to approach at all within the vicinity of the Canal Zone, you will add that any question of railway lines deemed to be really necessary would receive the earnest study of this Government."

The Department based its contention on the right of the Government of the United States to intervene in the granting of concessions by Panama on its treaty obligation to protect and to maintain the Republic of Panama and the corollary right to do the things necessary to such protection. It was stated that:

"It would appear that if rights or properties so needed for the protection of both countries and the control of which was at any time desired by the United States for these broad purposes should have been meanwhile made the subject of concessions by Panama to foreign capitalists, then in the expropriation and adjustment which it would fall to Panama to carry out, the Government of Panama might find itself under serious foreign embarrassment and subject to large international reclamations.

As to any question of Panama's being a party to any concession for a trans-continental railroad, this would be in point-blank violation of the treaty."

Eleven articles of the Panama Canal Treaty were cited but Articles VIII and XXII, by which the United States was confirmed in the rights acquired by it from the New French Canal Company and set forth in Articles II and V of the Panama Railroad Company's 1867 concession were not included. No distinction was made in the instruction between railroad and other concessions. Apparently, the Department was not then in possession of the facts concerning the monopoly rights which had been granted in the 1867 concession.

As a result of the representations made, the right to extend the proposed Darien railroad to Panama City was refused by the President. The concessionaries appear to have abandoned their plans completely after a time.

Projects for Railroad Owned by Panaman Government

On January 6, 1909, the National Assembly approved Law 6*a* of that year, which provided for the construction, operation and ownership of railroads by the Panaman Government. No action under the authorization was then taken by the Government of Panama and no protest appears to have been made by the United States.

In January, 1911, the National Assembly passed Law 2 which authorized the construction of a railroad from Panama to David by contractors for the account of the Government and bids were asked for on March 6, 1911. Various bids by American and foreign firms were made but they were considered unsatisfactory by the Government and action on them was delayed until after the purport of the Department's instruction of September 20, 1911, referred to above,

was made known to the Secretary of Foreign Relations. In December, 1911, a draft contract between the Secretary of Public Works and an American firm for the construction of a section of the Panama–David Railway was submitted by the Secretary of Public Works to the Legation with the request that it be transmitted to the Government of the United States for its consideration in accordance with the suggestions made in the instruction of September 20, 1911. After consultation between the State and War Departments a board composed of the Minister, a member of the Isthmian Canal Commission and the Chief Engineer of the Panama Railroad Company was appointed to consider the technical merits of the proposed contract and it recommended certain changes. After further negotiation between the Government of Panama and the bidders the project seems to have been temporarily abandoned.

Duncan Concession

On December 30, 1912, a contract for the construction of a railway to have its eastern terminus at the Chagres River was signed by the Secretary of Public Works and Mr. B. B. Duncan, an American citizen. As soon as the Minister learned of the contract he asked that further action on it be delayed pending its consideration by the Government of the United States. The request was complied with although the Secretary of Foreign Affairs stated orally to the Minister that he understood the Department's instruction of September 20, 1911, to refer only to foreign concessions and not to those granted to Americans. A commission similar to the one which had considered the proposed contract for the construction of a railroad from Panama to David was organized. Its report was unfavorable to the Duncan contract and after this was made known to the Panaman Government the contract was withdrawn.[27]

In later years, Mr. Duncan applied for new concessions which were modifications of his original contract and they were considered by the Panaman Government, in one case the application being actually sent to the National Assembly. In each case, the Legation informed the Foreign Office that the United States still objected to the contract and it was quashed.

Renewal of Project for Government Owned Railroad

On January 14, 1913, a copy of a draft of a new law for the construction of the proposed railway from Panama City to David for the account of the Government was transmitted to the Minister by the Secretary of the President. On being informed of the railway construction bill, the Department instructed the Minister to request the

[27] See *Foreign Relations*, 1913, pp. 1081 ff.

Panaman Government to delay the presentation of the bill to the National Assembly until the Government of the United States could give it consideration and the Secretary of Foreign Affairs advised the Minister that further consideration of the bill would be delayed as requested. The bill was nevertheless presented to the National Assembly. While it was under consideration there, protest against the wording of two of its articles regarding provisions for financing was made by the Legation pursuant to instructions from the Department. The bill was passed without change as Law 29 and signed by the President of Panama in the face of the protest but the latter stated orally to the Minister that the Department's wishes regarding financing would be followed.[28]

Hebard Concession

In February, 1914, a contract for the construction of a railroad from Pedregal to Boquete and Concepcion for the account of the Government of Panama was signed by the President of Panama and R. W. Hebard and Company, Incorporated. The method of financing the project was left open for consultation in the United States between the contracting parties and the Department. On March 20, 1914, the Panaman Minister in Washington applied through the Secretary of War to the Panama Railroad Company for its consent to the construction of the Pedregal–Boquete–Concepcion line and also a proposed line in the province of Los Santos. A resolution granting the desired consent was unanimously adopted by the Board of Directors of the Panama Railroad Company on March 25, 1914.

The financing of the construction was taken up by the Panaman Minister with the Department later. A loan to be floated in New York was, after consideration, approved by the Department under certain conditions but the contract as a whole was not submitted to it. Further negotiations between the American and Panaman Governments regarding the Hebard contract were concerned for the most part with the financing of the construction.[29]

Branch of Chiriqui Railroad

On July 28, 1916, the Panaman Minister in Washington addressed a note to the Department asking for its approval of the construction of a branch of the Chiriqui railroad.[30] A bill authorizing the construction was passed by the National Assembly without awaiting the answer of the Department. Consent in principle to the construction of the extension was given by the Department in notes addressed to

[28] See *Foreign Relations*, 1913, pp. 1094 ff.
[29] See *ibid.*, 1914, pp. 1028 ff.
[30] *Ibid.*, 1917, p. 1179.

the Panaman Legation in Washington on August 14, 1917 [31] and June 8, 1922.[32] The project to build the branch was dropped during the war period but taken under consideration again in 1922 and construction finally undertaken in 1926.

Panama Sugar Company's Concession

Late in 1918, the Panama Sugar Company, an American Company, applied for a concession allowing it to build a short railway line in Western Chiriqui in order to bring its produce to a sea port. The application was made through the Legation and the contract was approved by the Panaman Government. Because of the form of presenting the application, formal submission to the Department was evidently not deemed necessary.

Hyatt Concession

The following year the Republic of Panama gave Mr. J. M. Hyatt, an American citizen, a concession for the construction of a narrow gauge railroad near Porto Bello. The Minister under date of November 1, 1919, addressed the Secretary of Foreign Affairs in part as follows:

"The Honorable, The Secretary of War of my Government points out that, it would appear that Your Excellency's Government had entered into this contract without first ascertaining the views of the Government of the United States regarding the proposition.

I am instructed by the Department of State of my Government to bring this matter to the attention of Your Excellency's Government, and to refer to the position steadily maintained by my Government respecting railroad construction in Panama, that no contract for such construction should be concluded by the Government of Panama without first submitting the proposition to the Government of the United States."

The Secretary of Foreign Affairs replied on December 26, 1919, citing Article V of the Canal Treaty, stating that the concession was not in opposition to that article, and asking that he be informed of the part of the treaty which the projected railroad was thought by the Government of the United States to contravene.

The Minister's reply, dated January 14, 1920, referred the Secretary to the Panama Railroad Company's concession and to Articles VIII and XXII of the Canal Treaty.

Statement of Panama's Interpretation of Railroad Monopoly Rights

On July 10, 1920, the Acting Secretary of Foreign Affairs replied in a note which gave a complete exposition of the contentions of the

[31] *Foreign Relations*, 1917, p. 1183.
[32] Not printed.

Government of Panama. The essential parts of the Acting Secretary's note were:

"I note that the objection which your Government makes to the said concession (i. e., the Hyatt concession—A. D.) is based on the privilege given to the Panama Railroad Company by the contracts celebrated between said Company and the Republic of New Granada in 1850 and 1867, which were confirmed in subsequent modifications thereof.

I suppose that that objection has in view specially Article 2 of the contract celebrated July 5, 1867 . . . .

If the foregoing disposition (Article 2—A. D.) be considered by itself, there would not be any doubt that the objection of the Panama Railroad Company is in conformity with the agreement. Nevertheless, for the proper interpretation of a contract it is necessary to take account of all its clauses in order to make them harmonize. Therefore, in my opinion, Article 5 of the same contract modifies in a substantial manner the extent of what is established in Article 2 . . . .

Taking together, then, the two dispositions transcribed, (Articles 2 and 5—A. D.) it is clearly seen that the obligation which Colombia imposed on itself (which has passed to Panama) consists of not constructing or permitting 'the construction of any kind of roads' across the Isthmus of Panama.

That this is the correct interpretation of the agreement is shown, furthermore, by the fact that the 'Panama Railroad Company' did not oppose the construction of the urban railroad between Panama and Balboa, Canal Zone, and between Panama and Las Sabanas.

On the other hand, in the Canal Treaty there are various stipulations which show, if said treaty be interpreted in a spirit of equity, that your Government obligated itself to subrogate the rights and obligations contained in the agreements with the Panama Railroad Company, as they were modified by the said treaty. Article V of that treaty provides that the United States has only the monopoly of the construction of any system of communications across the Isthmus, 'between the Caribbean Sea and the Pacific Ocean.' According to this, the United States could not oppose itself to the construction of a railroad between Boqueron and the Atlantic coast."

Contentions of the United States

On March 3, 1921, the Minister answered the Foreign Office in a note, the vital portions of which were as follows:

"Even a cursory reading of Articles II and V of the Railroad Company's concession indicates that Article II grants the Railroad Company the exclusive right of building, owning and operating railroad lines on the Isthmus of Panama, which phrase comprises the whole of what is now the Republic of Panama, excepting the Canal Zone. The monopoly is absolute and includes the building, owning and operating of railroads wholly or partially crossing the Isthmus or running at any angle from a direction taken by an ocean to ocean railroad. On the other hand, Article V of the concession relates exclusively to wagon, cart, or carriage roads,—roads for wheeled vehicles, in general,—and whereunder there is granted to the Rail-

road Company the exclusive right to construct such a road from ocean to ocean on the Isthmus of Panama; the grant under this article of the concession, however, distinctly stipulates that such exclusive right to build highways across the Isthmus from ocean to ocean does not prevent the construction of wagon roads by the grantor or some other person or company in a direction other than across the Isthmus from ocean to ocean.

The two Articles quoted by the Foreign Office for Panama cover distinct matters, and the provisions of one of said Articles, it is represented, can not and does not modify or limit the provisions of the other. The fact that Article V of the concession reserves to the Panaman Government the right to itself to build and the power to grant to another person or company the right to build wagon roads in any direction distinct from that which would be followed by a highway running across the Isthmus from ocean to ocean does not justify, we believe, Your Excellency's Office in its argument that such reservations justified the Panaman Government in having granted to Mr. Hyatt the right to build a railroad from the headwaters of the Boqueron River to the Atlantic coast.

The second point raised in the note from Your Excellency's Office is that by inference the Panama Railroad has previously accepted the interpretation placed by the Panama Foreign Office on Articles II and V of the concession as the correct interpretation of those Articles, for the reason that the Panama Railroad Company did not oppose the construction of the Panama Tramway Company's line from the City of Panama to Balboa and to Las Sabanas.

The Panama Tramways Company is operating a street car system in the City of Panama under a concession which was granted that corporation by the Municipality of Panama on June 21, 1911. The system was extended, and now extends into the Canal Zone under authority of a revocable license granted the Tramway by the President of the United States under date of December 16, 1910, or more than six months prior to the date of the Tramway Company's concession from the Municipality of Panama. It might be added that prior to the boundary convention between the United States and Panama of September 2, 1914,[33] more than one-half of the Tramway Company's line of railroad was within the Canal Zone. The United States was the sovereign within the Canal Zone and also owned all shares of stock of the Panama Railroad Company, which facts were known to the Republic of Panama. No other inference can be drawn from the known relationship between the United States and the Panama Railroad Company and the fact that the Tramway Company had already been granted the aforementioned license by the United States at the time the Tramway Company obtained its concession from the Municipality of Panama than that the Panama Railroad Company had given its tacit consent to the granting by the Municipality of Panama of the aforementioned concession to the Tramway Company. The view of Your Excellency's Office, as expressed in said note, can not be accepted by my Government, as justified.

The third point raised by Your Excellency's Office is that Article V of the Treaty between the United States and Panama of November

[33] Convention between the United States and Panama defining the boundary line of the Panama Canal, signed Sept. 2, 1914, *Foreign Relations*, 1915, p. 1123.

18, 1903, if fairly interpreted, indicates that it was intended to subrogate to the United States all the concessionary rights and obligations obtained by the Panama Railroad Company under its concession from Colombia and that under the provisions of Article V even the United States itself could not protest against the granting by the Panaman Government to Mr. Hyatt of the right to construct a railroad running only part way across the Isthmus. . . .

The argument here advanced by Your Excellency's Office again is not well founded, we contend. The United States by virtue of the treaty was not subrogated to all the concessionary rights of the Panama Railroad Company on the other hand, Articles VIII and XXII of the Treaty subrogate to the United States any property rights in the Panama Railroad Company which the Republic of Panama theretofore had or would in the future acquire under the terms of the Railroad Company's concession from the Republic of Panama. The concessionary rights of the Panama Railroad Company were in no manner affected by the Treaty between the United States and Panama except to the extent that Article V granted to the United States the exclusive right to construct, operate, and maintain a railroad across the territory of the Republic of Panama from ocean to ocean. Article II of the Railroad Company's concession had previously granted to the Panama Railroad Company the same exclusive right and to which extent there is seemingly a conflict between the rights of the United States under its Treaty with Panama and the rights of the Panama Railroad Company under Article II of its concession. The interests of the United States and of the Panama Railroad Company being identical, neither our Government or the railroad company nor the Panaman Government is or can be prejudiced by such seeming conflict. The grant to the United States under Article V of the Treaty in no way limits the Railroad Company's right, acquired by virtue of Article II of its concession from Colombia, to insist upon being protected by the Panaman Government against the building by the Panaman Government, or the building by any other person or company, by any title whatever, of any other railroad on the Isthmus of Panama, excepting from the right to such insistence for protection, the grant to the United States by Panama of the exclusive right under Article V of the Treaty, to build a railroad across the Isthmus from ocean to ocean. . . ."

No answer to the note of March 3, 1921, appears to have been received. Construction of the railroad was not, however, undertaken.

Hurtado Concession

On September 15, 1922, the Panaman Government granted Mr. Enrique L. Hurtado a concession giving him the right to construct a railroad from Calidonia Bay to the Chuquenaque River. The concession was amended on February 17, 1923, by the addition of a provision concerning the rights of the United States as follows:

"There are excepted the rights arising by concession to the Panama Railroad Company in Colombian times and recognized by the Republic of Panama."

The effect of this provision was to put the concessionary in the position of having received notice of the rights of the United States. It did not, however, absolve the Panaman Government from the duty of consulting with the proper authorities of the United States before granting such a concession.

Acting under the instructions of the Department, the Minister, in a note dated February 18, 1924, pointed out that the Government of Panama had entered into the contract without first consulting the Government of the United States and referred to the position maintained by the United States that no contract providing for the construction of a railroad in Panama should be concluded by the Panaman Government without first submitting the proposition to the Government of the United States. No answer to this note was found in the files of the Legation. No railroad construction has been carried out under the concession.

CONCESSION OF THE TONOSÍ FRUIT COMPANY

. . . . . .

EXISTING RAILROADS NOT DISCUSSED THROUGH DIPLOMATIC CHANNELS

Several small plantation railway systems existing in Panama, including those of the United Fruit Company in Bocas del Toro, the Henriquez plantation in Cocle and the San Blas Development Company at Puerto Nicuesa do not appear to have ever been made the subject of diplomatic enquiry.

819.6156 T 61/11 : Telegram

The Secretary of State to the Minister in Panama (South)

WASHINGTON, *June 3, 1927—2 p. m.*

42. Your despatch 1413, May 14. In reply to Government's note you may inform Secretary of Foreign Affairs that the position of the United States has not in any way changed since the presentation of the Legation's note of March 3, 1921.

KELLOGG

819.6156 T 61/13 : Telegram

The Minister in Panama (South) to the Secretary of State

[Paraphrase]

PANAMA, *August 6, 1927—2 p. m.*

[Received 7 p. m.]

78. Legation's telegrams of February 12, 11 a. m. and February 17, 10 a. m. The Chiriqui Land Company, a subsidiary of the United Fruit Company, has been authorized by a contract with the Government of Panama, approved July 19th, to construct railroads and estab-

lish radio, telegraph, and telephone stations in Chiriqui Province. Neither the Governor of the Panama Canal nor I can perceive any objection to the construction of this railway. Nevertheless, it is my opinion that notes similar to the ones presented relative to similar authorizations in the Tonosí Fruit Company contract should be presented. I await instructions. According to local press reports a concession has been awarded to Enoch I. Hooper to construct a bamboo railroad having its terminus on Lake Gatun. The Governor of the Panama Canal is not yet prepared to express an opinion on the Hooper contract.

SOUTH

819.6156 T 61/13 : Telegram

The Secretary of State to the Minister in Panama (South)

[Paraphrase]

WASHINGTON, *August 10, 1927—3 p. m.*

52. Legation's telegram number 78, August 6, 2 p. m. As no reply to your note regarding the Tonosí wireless concession appears to have been received, you should see the President and ask him when a reply may be expected. You should make it plain that the Department expects the reply will be favorable.

When you have received assurances that the Government of Panama shares the views of the Department as to the establishment of radio stations and the construction of railroads in Panama you may inform the President orally that the Department is not disposed to object to the contract between the Government of Panama and the Chiriqui Land Company, but that the position of the Department with regard to the question of radio and railroads remains as expressed to the Government of Panama in former communications.

KELLOGG

819.6156 T 61/14 : Telegram

The Minister in Panama (South) to the Secretary of State

[Paraphrase]

PANAMA, *August 12, 1927—5 p. m.*

[Received 9 p. m.]

79. Department's telegram number 52, August 10, 3 p. m. As the Government of Panama has already expressed its disagreement with the views of the Department relative to railroad construction (see despatch No. 1413, May 14), I am withholding action upon paragraph 2 pending further instructions.

SOUTH

819.6156 T 61/14 : Telegram

The Secretary of State to the Minister in Panama (South)

[Paraphrase]

WASHINGTON, *August 16, 1927—3 p. m.*

55. Legation's telegram No. 79, August 12, 5 p. m. The Department presumes that you have carried out its instructions as set forth in its telegram No. 42, of June 3, 2 p. m. It does not, therefore, feel that any useful purpose will be served by presenting another note at this time refuting the position of the Government of Panama with regard to railroad construction in Panama. You may, however, again inform the President of Panama that the failure of the United States to protest against the contract between the Government of Panama and the Chiriqui Land Company does not alter its position with regard to the question of railroads and radio as expressed to the Government of Panama in former communications.

KELLOGG

PROTEST BY PANAMA AGAINST DIRECT NEGOTIATIONS BETWEEN CUBA AND THE AUTHORITIES OF THE PANAMA CANAL IN AN EXTRADITION CASE

211f.37 C 88/1

The Panaman Minister (Alfaro) to the Secretary of State

[Translation]

[No.] D–145 WASHINGTON, *May 3, 1927.*

MR. SECRETARY: Through a note dated March 14 last the Minister of the Republic of Cuba in Panama applied to the Government of Panama for the provisional detention of Luis Calcaño Crossa charged with the offence of obtaining money by false pretences in the sum of $20,000 in the city of Habana to the detriment of the branch of the National City Bank of New York. Crossa was reported to be bound for the port of Cristobal where he was to land on the 16th of the said month as a passenger on the steamship *Atenas.*

The Department of Foreign Relations of Panama entertained the application of the diplomatic representative of Cuba, took legal action thereon, and in a note asked the Canal Zone authorities for the co-operation of their police in effecting the arrest of the fugitive and eventually delivering him to the Panaman police in accordance with the provisions of Article XVI of the treaty of November 18, 1903.[34] The Executive Secretary of the Canal Zone was also informed that the fugitive was not one of those persons permitted to immigrate and

[34] *Foreign Relations,* 1904, p. 543.

who under Article XII have free access to the lands and workshops of the Canal and other auxiliary works, and therefore was under the control of the Government of Panama as regards his entrance into the territory of the Republic.

The Cuban Minister was informed that the necessary steps had been taken in accordance with his request to effect the provisional detention of the fugitive.

The Executive Secretary of the Canal Zone replied to the Government of Panama stating that by virtue of a cablegram from the Cuban Secretary of State, Señor Rafael Martines Ortiz, requesting that Crossa be detained, Crossa had been arrested. Later the Cuban Minister in Panama made a formal requisition to the authorities of the Canal Zone for the extradition of the fugitive, but the judicial authorities of the Zone did not take action thereon because the Cuban accused waived the formalities of extradition and was, in consequence, delivered on a warrant of the District Judge of the Canal Zone to the agents of the judicial police of Habana.

It appears, then, that in the case under consideration the Canal Zone authorities entered into direct negotiations with the Government of the Republic of Cuba, in the form that is customary with entities in their international relations.

Those facts have given occasion for the Government of Panama to present a formal protest to the Government of the Republic of Cuba which by its conduct has encroached upon the sovereignty of Panama and its international individuality.

My Government adheres to the opinions set forth in the notes which I had the honor to address to the Department of State under dates of May 24, June 25 and September 6, 1923,[35] and in consequence has instructed me to present to the Government of Your Excellency, as I do by this note, the most respectful, but at the same time the most formal and energetic protest, against the manner in which the extradition of the fugitive from the justice of Cuba, Luis Calcaño Crossa, was effected.

I renew [etc.] RICARDO J. ALFARO

211f.37 C 88/1

The Secretary of State to the Panaman Minister (Alfaro)

WASHINGTON, *May 13, 1927.*

SIR: I have the honor to acknowledge the receipt of your note of May 3, 1927, in which you advise me of the action taken by the authorities of the Panama Canal upon an application made by the Government of Cuba for the provisional arrest and detention of one

[35] Notes not printed.

Luis Calcaño Crossa, with a view to his extradition. You add that your Government has presented a formal protest to the Government of the Republic of Cuba on the ground that its conduct in this matter "has encroached upon the sovereignty of Panama and its international individuality". Furthermore, you state that your Government adheres to the opinion set forth in your notes to this Department under dates of May 24, June 25 and September 6, 1923, in regard to proceedings taken upon the request of the Government of Chile for the extradition from the Canal Zone of persons charged with murder in Chile, and that you have consequently been instructed to enter a protest with this Department against the proceedings in the instant case.

In reply I beg to state that this Government adheres to the views expressed in its notes to you of June 12, July 7, and October 13, 1923,[36] which were sent in reply to the notes above mentioned.

Accept [etc.] FRANK B. KELLOGG

[36] *Foreign Relations*, 1923, vol. II, pp. 704–710.