

THE TREATY WITH NICARAGUA GRANTING CANAL AND OTHER RIGHTS TO
THE UNITED STATES

After three attempts within the last five years of the Government of Nicaragua to conclude a convention with the United States under the terms of which funds might be secured for rehabilitating the depleted financial and economic resources of the country, due principally to the civil wars and administrative abuses of the Zelaya régime, it now seems probable that Nicaragua's desire is about to be accomplished. On February 18th last the United States Senate advised and consented to the ratification, with certain amendments which will be referred to later, of the convention signed on August 5, 1914, by Secretary of State Bryan of the United States and Emiliano Chamorro, the Minister of Nicaragua, granting to the United States in return for a money payment the right-of-way for the construction of an interoceanic canal through Nicaragua, the lease of certain islands in the Carribbean Sea, and the grant of a naval base on the Gulf of Fonseca. Information received from Managua indicates that the Nicaraguan Congress has ratified the convention, including the United States Senate amendments, so that all that remains to be done are the exchange of ratifications and the appropriation by the Congress of the United States of the sum of money provided in the convention to be paid to Nicaragua.

The first attempt of Nicaragua to secure relief for her financial distress was made when Mr. P. C. Knox was Secretary of State of the United States. On June 6, 1911, he signed a convention with Nicaragua which contemplated a loan from American bankers, to be secured on the customs of Nicaragua, which were to be collected and applied to the purposes of the loan by a collector selected by the fiscal agent of the loan and approved by the President of the United States. The convention followed in its general objects the Dominican Receivership Convention, although differing from it somewhat in details.¹ The convention failed of ratification in the Senate and the subject was dropped by Secretary Knox.

In the summer of 1913 a second attempt was made while Mr. W. J. Bryan was Secretary of State, who laid before the United States Senate a convention which entirely eliminated the loan features of the Knox con-

¹ The text of the convention of 1911 is printed in the SUPPLEMENT to the JOURNAL for that year, Vol. V, p. 291. An editorial comparing that convention with the Dominican Receivership Convention appeared in the October, 1911, JOURNAL, p. 1044.

vention and provided for a direct money payment from the Government of the United States to the Government of Nicaragua in return for an option upon the Nicaraguan canal route, the lease of two small islands in the Caribbean Sea, and the grant of a naval base on the Pacific coast. It was generally reported and accepted at the time that the convention also included provisions similar to what is known as the Platt Amendment to the Cuban Constitution, which were subsequently embodied into a convention between the United States and Cuba concluded on May 22, 1903.² The provisions of the Platt Amendment which might be applied to Nicaragua are to the effect that Cuba may not enter into any treaty with a foreign Power which will impair its independence or permit such Power to obtain control over any portion of the island, that it will not contract any public debt for the discharge of which the ordinary revenues of the island will be inadequate, and that the United States shall have the right to intervene to preserve Cuban independence and an adequate government.

When the provisions of the proposed treaty of 1913 with Nicaragua became known, they aroused considerable opposition in the other republics of Central America, and Costa Rica, Salvador and Honduras filed protests against the ratification of the treaty with the State Department and the United States Senate. The specific objections of these governments will be referred to later. The general objections were to the effect that the treaty would convert Nicaragua to all intents and purposes into a protectorate of the United States, and that such a relationship would make forever impossible the long-cherished union of the Central American republics under one government.³ The opposition of Central America found an echo in the United States and action toward the ratification of the treaty was postponed.

The subject was again revived in 1914 by the signature of the present treaty, from which all stipulations which may be considered as embodying the provisions of the Platt Amendment have been omitted. The treaty as now drawn is short and simple, granting to the United States in return for the payment of \$3,000,000 the exclusive right to construct and operate an interoceanic canal through Nicaragua, the lease of Great and Little Corn Islands in the Caribbean Sea and the right to establish a naval base on the Gulf of Fonseca.

² Malloy, *Treaties, Conventions, etc.*, Vol. I, p. 362.

³ Regarding attempts to form such a union, see editorial in this JOURNAL for October, 1913, p. 829.

It is obviously not the intention of the Government of the United States to undertake the construction of another interoceanic canal so shortly after the completion of the canal at Panama and before the problem of keeping that canal open has been finally solved. The treaty with Nicaragua seems merely to be intended to give the United States an option upon possible canal routes through Nicaragua, so as to prevent any other Power from building a competing interoceanic waterway through the only other route apparently available for that purpose.

The preamble of the treaty recites the desire of the contracting governments "to provide for the possible future construction of an interoceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by any route over Nicaraguan territory, whenever the construction of such canal shall be deemed by the Government of the United States conducive to the interests of both countries."

Article 1 of the convention contains a grant in perpetuity from Nicaragua to the United States of the exclusive proprietary rights necessary and convenient for the construction, operation and maintenance of such canal. The details of the terms upon which the canal shall be constructed, operated and maintained are left to be agreed upon in the future "whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal."

The preamble further recites the wish of Nicaragua to facilitate in every way possible the successful maintenance and operation of the Panama Canal, and to enable the United States to protect the Panama Canal and the proprietary rights granted in Article 1 of the present treaty, the Government of Nicaragua in Article 2 leases to the United States for the term of 99 years the two small islands in the Caribbean Sea known as Great Corn and Little Corn Islands. These islands are about 100 miles northeast of the mouth of the San Juan River, which would presumably be used as a part of the proposed canal, and about 300 miles northwest of Colon, the Atlantic terminus of the Panama Canal.

In further pursuance of the wish of Nicaragua to enable the United States to protect the Panama Canal and the rights granted in the present treaty, Nicaragua also grants to the United States in Article 2 the right to establish, operate and maintain for the same period a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Gulf of

Fonseca is an arm of the Pacific Ocean into which projects the extreme northwest corner of Nicaragua. Across the Gulf to the northwest lies Salvador and between Salvador and Nicaragua the shores of Honduras form the northeastern border of the Gulf. The Gulf of Fonseca is several hundred miles away from the western terminus of any canal which may be constructed by way of Lake Nicaragua and is about 600 miles west and about 300 miles north of Panama. Nevertheless, a naval base located there would seem to be of strategical importance, as it will afford an American base much nearer than any at present on the Pacific coast, from which to launch a flank attack upon any unfriendly naval demonstration directed against the Panama Canal from the Pacific side.

The foregoing leases and grants are subject to renewal at the option of the United States for a further period of 99 years, and the territory leased and the naval base granted shall be subject exclusively to the laws and sovereign authority of the United States during the terms of the lease and grant.

For these concessions, the United States agrees in Article 3 to pay to Nicaragua, upon the date of the exchange of ratifications of the convention, the sum of \$3,000,000, United States gold. This money is to be deposited to the order of the Government of Nicaragua in such bank or banks as the Government of the United States may determine, and is to be applied by Nicaragua upon its indebtedness or, according to an amendment inserted by the United States Senate, to "other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two high contracting parties." The Senate amendment further provides that all disbursements from this fund shall be made by orders drawn by the Minister of Finance of Nicaragua and approved by the Secretary of State of the United States, or by such person as he may designate. Another amendment inserted by the United States Senate adds to the grant of the canal route in Article 1 the provision that it shall be "forever free from all taxation or public charge."

While the elimination of the Platt Amendment provisions from the Nicaraguan treaty seems at least to have taken the edge from the assertion that the United States proposes to establish a protectorate in Central America, the stipulations retained in the treaty are still unsatisfactory to certain of the Central American governments.

Costa Rica claims that it is impossible to build an interoceanic canal in Nicaragua without affecting Costa Rican lands and waters and denies

that Nicaragua has the power without consulting Costa Rica to conclude a convention granting the right to construct such a canal. In support of this contention, Costa Rica cites the award of President Cleveland rendered on May 22, 1888, as arbitrator in the boundary dispute between Costa Rica and Nicaragua involving the validity and interpretation of the treaty of limits of April 15, 1858, and especially their respective rights in the San Juan River.⁴ By this award, it was held that Nicaragua "remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article 8 of the treaty of limits of the 15th day of April, 1858." Article 8 referred to binds Nicaragua not to enter into any contracts of canalization or transit "without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries, * * * and, if the transaction does not injure the natural rights of Costa Rica⁵ the vote asked for shall only be advisory." President Cleveland's award expressly holds, however, that the treaty of limits of 1858 "does not give to the Republic of Costa Rica the right to be a party to any grants which Nicaragua may make for interoceanic canals." The award further holds that

in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article 8 of the treaty, should be more than "advisory" or "consultative." It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concessions she is asked to make; but she is not entitled as a right to share

⁴ For the text of the award and information regarding the arbitration, see Moore's *International Arbitrations*, Vol. II, pp. 1945-68.

⁵ These natural rights were defined in President Cleveland's award as follows: "The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same."

in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

The objections of Salvador, in which presumably Honduras joins, arise from the geographical position of those two countries, sharing as they do with Nicaragua the shores of the Gulf of Fonseca, upon which Nicaragua grants to the United States the right to establish a naval base. This grant, it is alleged, violates the general treaty of peace and amity concluded on December 20, 1907, at the Central American Peace Conference held in Washington through the good offices and upon the invitation of the United States and Mexico.⁶ It is averred that the possession of a part of the territory of Nicaragua by the United States for military purposes will enable it to dominate the entire country and thus impair the constitutional order of Nicaragua in derogation of Article 2 of the convention at Washington, which declares that "every disposition or measure which may tend to alter the constitutional organization in any of them [the five Central American republics] is to be deemed a menace to the peace of the said Republics."

The sovereignty and constitutional order of Nicaragua is further alleged to be impaired by the control retained by the Government of the United States over the expenditure of the \$3,000,000 granted to Nicaragua in return for her concessions. It is interesting to recall in this connection that on January 10, 1911, three years after the convention of Washington, and five months before the original loan convention was negotiated with Nicaragua, Honduras signed with Secretary Knox a convention identical in terms with the Nicaraguan loan convention, providing for a loan to be secured upon its customs, which could not be altered without agreement with the Government of the United States, and which were to be collected and administered by a collector approved by the President of the United States. This convention further provided that detailed statements of the operations under the arrangement were to be submitted to the Department of State of the United States.⁷ The convention with Honduras failed of ratification along with the first Nicaraguan loan convention.

Finally, it is asserted by Salvador that the establishment of a naval base on the Gulf of Fonseca violates the neutrality of Honduras which

⁶ This convention is printed in the SUPPLEMENT to the JOURNAL for 1908, Vol. II, p. 219.

⁷ For the text of this convention, see SUPPLEMENT to the JOURNAL for 1911, Vol. V, p. 274.

is provided for in Article 3 of the Convention of Washington of 1907 as follows:

Taking into account the central geographical position of Honduras and the facilities which owing to this circumstance have made its territory most often the theater of Central American conflicts, Honduras declares from now on its absolute neutrality in event of any conflict between the other Republics; and the latter, in their turn, provided such neutrality be observed, bind themselves to respect it and in no case to violate the Honduran territory.

It is contended that the neutrality of navigable waters places upon bordering states the obligation not to fortify their coasts, citing Article 13 of the Treaty of Paris of 1858, Article 9 of the Congo agreement of November 4, 1911, between France and Germany, and Article 7 of the agreement of April 8, 1904, between France and England regarding the Straits of Gibraltar. These precedents are relied upon to establish the principle of international law that the fortification of points near neutral waters is prohibited as a menace to the existence of a state of neutrality. Consequently, it is maintained that the Government of Nicaragua can not authorize the establishment of a naval base which practically menaces the safety of the immediate neutral territory. It is further asserted that it is not lawful for the United States to infringe upon the neutrality of Honduras, as the character of mediator which it assumed in the Central American Conference prohibits it from being a party to the violation of the stipulations of the treaties which were the result of its good offices and mediation.

The protests of Costa Rica, Salvador and Honduras apparently received careful consideration in the United States Senate, for in giving its advice and consent to the ratification of the treaty, the Senate added the following amendment:

Provided, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said convention in the fear or belief that said convention might in some respect impair existing rights of said states; therefore, it is declared by the Senate that in advising and consenting to the ratification of the said convention as amended such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said convention is intended to affect any existing right of any of the said named states.

Even this assurance seems unsatisfactory, for Salvador has filed a formal notice with the United States that "it does not recognize the validity of the Nicaraguan treaty, which establishes a naval base in the

Gulf of Fonseca, and that consequently the Government of Salvador will always work against the said treaty, with all the means and lawful procedures which existing conventions, international law and justice grant it, in order to invalidate the same in its effects." Costa Rica has also indicated its unwillingness to accept the treaty by bringing an action against Nicaragua to test its legality in the Central American Court of Justice.

GEORGE A. FINCH.

THE ENTRY OF PORTUGAL INTO THE EUROPEAN WAR

On February 23, 1916, the Portuguese Government seized German merchant vessels lying within its jurisdiction, claiming to do so under the provisions of certain treaties between Germany and Portugal. Germany protested against the seizure as unauthorized by the treaties in question and demanded the release of the vessels. This Portugal declined to do and on March 9, 1916, the German Minister at Lisbon handed the Portuguese Minister for Foreign Affairs the following declaration of war:

Since the outbreak of the war the Portuguese Government, by actions which are in conflict with her neutrality, has supported the enemies of the German Empire. The British troops have been allowed four times to march through Mozambique. The coaling of German ships was forbidden. The extensive sojourn of British war vessels in Portuguese ports, which is also in conflict with the laws of neutrality, was allowed; Great Britain was also permitted to use Madeira as a *point d'appui* for her fleet. Guns and materials of war were sold to Entente Powers, and even a destroyer was sold to Great Britain.

German cables were interrupted, the archives of the Imperial Vice-Consul in Mossamedes were seized, and expeditions sent to Africa were described as directed against Germany. At the frontier of German South-West Africa and Angola the German district commander and two officers and men were tricked into visiting Nauhla, and on October 19, 1915, were declared to be under arrest. When they tried to escape arrest they were shot at, and forcibly taken prisoners.

During the course of the war the Portuguese press and Parliament have been more or less openly encouraged by the Portuguese Government to indulge in gross insults on the German people. We repeatedly protested against these incidents in every individual case, and made most serious representations. We held the Portuguese Government responsible for all consequences, but no remedy was afforded us.

The Imperial Government, in forbearing appreciation of Portugal's difficult position, has hitherto avoided taking more serious steps in connexion with the attitude of the Portuguese Government. On February 23 the German vessels in Portuguese ports were seized and occupied by the military. On our protest, the Portuguese Government declined to go back from these forcible measures, and tried to justify