

Government retains its full rights unimpaired with regard to the capitulatory régime, including the Mixed Courts." If this should eventuate, then Egypt will have gone much further than may have been desired by some of her wisest patriots. Zaghoul Pasha, the great Egyptian Nationalist leader, said in 1919 that "we seek complete independence but not an independence which shall affect the capitulatory rights of foreigners either as concerns the laws or the jurisdiction of the Mixed Courts."

The United States obviously has not a big stake in Egypt, though curiously enough there are three American judges in the Mixed Courts: Justice Jasper Yates Brinton of the Court of Appeals in Alexandria, Judge Robert L. Henry of the Court of First Instance in Alexandria, and Judge Julien Wright of the Court of First Instance in Cairo. Whatever the issues at stake, the United States is not likely to insist on greater privileges than those which may be claimed or renounced by Great Britain. It is quite clear that the ultimate fate of the capitulatory régime lies in British hands. In any event, Great Britain, by its most adroit statesmanship and diplomacy, has secured, through this Treaty of Alliance with Egypt, an amicable solution of a most embarrassing problem. The best interests of both countries, as well as of other international relations, may have been reasonably insured for another generation.

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THE NEW TREATIES BETWEEN THE UNITED STATES AND PANAMA

On March 2, 1936, the United States and Panama signed four conventions clarifying the relations between Panama and the Canal Zone.¹ These conventions were submitted to the Senate of the United States and the Assembly of Panama for approval. The Assembly consented to the conventions last December, and they are now pending before the Foreign Relations Committee of the United States Senate. The official texts of these conventions have not as yet been made public by the United States Government, and the remarks here made are based upon information regarding these conventions obtained from other sources.

When the so-called Taft Agreement was abrogated by the United States in 1924,² negotiations for a new treaty covering that agreement and other questions were begun, culminating in the signature of the convention of July 28, 1926. This convention was rejected by the Assembly of Panama, and consequently was not passed upon by the United States Senate. The treaty failed in Panama apparently for the reason that when it was made public it was found not to meet the country's aspirations for the exercise of the sovereign powers so much restricted by the Treaty of 1903. This disappointment

¹ The four conventions are: a general treaty revising in some respects the Treaty of 1903, with sixteen exchanges of notes relating thereto; a convention for the regulation of radio communications in Panama and the Canal Zone, with three exchanges of notes; a convention providing for the transfer to Panama of two naval radio stations; a convention with regard to the construction of a trans-Isthmian highway between the cities of Panama and Colon.

² See editorial in this JOURNAL, Vol. 20 (1926), p. 117.

had reference to objectionable powers of the United States in respect of taking additional lands and waters from Panama for the use of the Canal, the general sale through commissaries in the Canal Zone of articles brought in duty-free in competition with Panamanian merchants, the virtual control of cable and radio communication, the freedom from port charges of vessels touching at Panama's own ports in the Zone. Besides, the new treaty insisted on distasteful requirements such as an expensive system of military highways in Panama to be maintained by her and of which the United States had free use, including the right to construct and operate telegraph and telephone lines thereon. The storm of objections to a number of provisions wrecked the hope of approval in Panama.

After the failure of the proposed treaty, it is understood that many provisions of the Taft Agreement were tacitly lived up to by both countries.

Further negotiations between the two countries were at a standstill until President Arias of Panama visited this country in the fall of 1933 for the purpose, among other things, of conferring with President Roosevelt in regard to certain questions pending between the two countries. The two Presidents, on October 17, 1933, issued a joint statement which established the broad lines of a policy of coöperation and became the starting point of new negotiations ending in the treaties signed in March, 1936. It has been the general purpose of the United States to meet the legitimate complaints on the part of Panama without sacrificing "any rights deemed essential by this Government for the efficient operation, maintenance, sanitation and protection of the Canal."³

The treaties signed March 2, 1936, are quite different in text and import from the abortive treaty of 1926. By the former, Panama has regained her status as an independent nation in many respects, and the United States has taken her into partnership in the Panama Canal enterprise.

The United States has given up her guaranty of the independence of Panama, and in place of this both countries make a joint declaration in the sense of the joint Presidential statement of October 17, 1933, that the Treaty of 1903 "contemplates the use, occupation and control by the United States of the Canal Zone for the purpose of the maintenance, operation, sanitation and protection of the Canal," and the two countries declare their willingness to coöperate, so far as it is feasible to do so, for the purpose of ensuring its benefits to all nations. In the event of danger to the security of Panama or the neutrality or security of the Canal, the two countries "will take such measures of prevention and defense as they may consider necessary for the protection of their common interests"; and if such measures may affect the territory under the jurisdiction of either, the matter will be a "subject of consultation between the two Governments." All this is quite different from the crisp unilateral guaranty of 1903.

³ Department of State Press Release, March 2, 1936.

The United States also has renounced the grant made to it "in perpetuity" of the right to acquire additional lands and waters for use in connection with the Canal in exchange for the recognition of the "joint obligation" of the two countries "to ensure the effective and continuous operation of the Canal and the preservation of its neutrality." If further lands and waters should prove to be necessary, the two countries "will agree upon such measures as it may be necessary to take in order to ensure the maintenance, sanitation, operation and protection of the Canal." In addition, the United States has given up the right to acquire property in the cities of Panama and Colon and adjacent waters and territory by the exercise of eminent domain, leaving only the right to acquire such property by negotiated purchase. These provisions remove a menacing cloud which Panama felt was creeping over her territory in and along the Canal Zone.

In an effort to solve the questions left open by the termination of the so-called Taft Agreement, the proposed treaties endeavor to regulate the commercial relations between the Canal Zone and Panama more or less along the lines indicated in the joint Presidential statement above mentioned. Thus, it is recognized that Panama, as a sovereign Power, is entitled to the commercial advantages inherent in her geographic position on the great Isthmian waterway. Consequently, in the new treaty the articles of the proposed treaty of 1926 relating to the sale of duty-free goods by United States commissaries to Panamanians and to ships transiting the Canal were retained and amplified so that Panamanian merchants shall have opportunity to supply this trade and not be subjected to unfair competition. The idea is that the Zone should be occupied and controlled exclusively for the purposes of the Canal and not be opened to the commerce of the world as an independent colony in the midst of Panama. The United States is to permit defined classes of persons to live in the Canal Zone, generally persons having something to do with the Zone, the Canal, the Panama Railroad and certain religious and welfare work, and only to these persons residing in the Zone are the commissaries allowed to sell. Moreover, the United States is not to permit any new business to be established in the Zone except in "direct relation" to the Canal enterprise.

Article IX of the 1903 treaty is superseded. Panama acquires the right to impose taxes and other charges on vessels touching at Colon and Panama and on the officers, crews and passengers if they enter the Republic. Panama also obtains the right to establish at the terminal ports of the Canal Panamanian customs houses and guards for the collection of duties on imports destined for Panama, the prevention of smuggling and the control of immigration into the Republic of Panama. The United States is to provide free sites for these customs houses, within which Panama is to exercise exclusive jurisdiction as set forth in the treaty.

By this suppression of Article IX of the old treaty, the United States appears to recover the right to impose taxes, tolls and other charges at the

entrance ports of the Canal, but apparently loses the general advantage of free ports at these points and at Panama and Colon, as well as the rights of anchorage, repairing, transshipping, etc., in the latter cities. Both countries are to enjoy somewhat reciprocal tax exemptions as to goods and persons passing between the Zone and the Republic under certain conditions.

The Treaty of 1903 provided for an annuity to Panama of \$250,000 in "gold coin of the United States" in compensation for the rights accorded to the latter country. After the action of Congress devaluing the dollar and invalidating the gold clauses in contracts, the United States offered the payment of this annuity in current dollars, but Panama refused to accept such payment in lieu of "gold coin." The Panamanian contention was that an international agreement could not be changed, diminished or impaired by the act of only one of the parties and that Congress might continue to reduce the gold content of the dollar until the annuity became valueless. In recognition of this argument, the United States under the new treaty has agreed to pay 430,000 balboas, or approximately \$430,000, yearly, in order to equalize the disparity in the present gold value of the dollar.

In place of the system of military highways set forth in the proposed treaty of 1926, the new treaties provide for a corridor under the jurisdiction of Panama to the city of Colon, a corridor under the jurisdiction of the United States to the Madden Dam, and a trans-Isthmian highway largely in Panamanian territory from Panama to Colon—all practically open to equal use by both countries. It is interesting to note the more or less reciprocal nature of these grants.

Instead of the virtual American control of radio communication contended for by the United States under the 1903 treaty, the new conventions on this subject provide for the transfer of two naval stations to Panama and for the coöperation of the two Governments in regulating the interference and operation of their neighboring stations on the Isthmus with special reference to the operation, protection and neutrality of the Canal. In time of peace there is to be more or less independent control on a basis of coöperation, but in time of emergency there is to be joint control—"everything relating to radio communication, including broadcasting, shall be done or supervised jointly." One exception is that all traffic relating to the operation and protection of the Canal is to be handled by United States stations.⁴

Panama has bided her time until the pendulum has swung toward the satisfaction of national aspirations based on the principle of equality of nations. She has desired new treaty relations with the United States inspired by the high purposes: not to diminish her prestige as a nation, not to reduce the revenues of her Government, and not to injure the prosperity of her people. It may be said that she has achieved a notable success in these directions.

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⁴ The nature and scope of the Radio Conventions can not be adequately presented in the space here available.