

- 1. The Clayton-Bulwer Treaty**
- 2. Hay-Pauncefote Treaty of 1902**
- 3.**

United States and Great Britain, negotiated in 1850 by John M. Clayton and Sir Henry Lytton Bulwer (Lord Dalling), in consequence of the situation created by the project of an interoceanic canal across Nicaragua, each signatory being jealous of the activities of the other in Central America. Great Britain had large and indefinite territorial claims in three regions Belize or British Honduras, the Mosquito Coast and the Bay Islands.¹ On the other hand, the United States, without territorial claims, held in reserve, ready for ratification, treaties with Nicaragua and Honduras, which gave her a certain diplomatic vantage with which to balance the de facto dominion of Great Britain. Agreement on these points being impossible and agreement on the canal question possible, the latter was put in the foreground. The resulting treaty had four essential points. It bound both parties not to " obtain or maintain " any exclusive control of the proposed canal, or unequal advantage in its use. It guaranteed the neutralization of such canal. It declared that, the intention of the signatories being not only the accomplishment of " a particular object " i.e. that the canal, then supposedly near realization, should be neutral and equally free to the two contracting powers " but also to establish a general principle," they agreed " to extend their protection by treaty stipulation to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America." Finally, it stipulated that neither signatory would ever

¹ The claims to a part of the first two were very old in origin, but all were heavily clouded by interruptions of possession, contested interpretations of Spanish-British treaties, and active controversy with the Central American States. The claim to some of the territory was new and still more contestable. See particularly on these claims Travis's book cited below.

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" occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America," nor make use of any protectorate or alliance, present or future, to such ends. The treaty was signed on the 19th of April, and was ratified by both governments; but before the exchange of ratifications Lord Palmerston, on the 8th of June, directed Sir H. Bulwer to make a " declaration " that the British government did not understand the treaty " as applying to Her Majesty's settlement at Honduras, or its dependencies." Mr Clayton made a counter declaration, which recited that the United States did not regard the treaty as applying to " the British settlement in Honduras commonly called British-Honduras . . . nor the small islands in the neighbourhood of that settlement which may be known as its dependencies"; that the treaty's engagements did apply to all the Central American states, " with their just limits and proper dependencies "; and that these declarations, not being submitted to the United States Senate, could of course not affect the legal import of the treaty. The interpretation of the declarations soon became a matter of contention. The phraseology reflects the effort made by the United States to render impossible a physical control of the canal by Great Britain through the territory held by her at its mouth the United States losing the above-mentioned treaty advantages, just as the explicit abnegations of the treaty rendered impossible such control politically by either power. But great Britain claimed that the excepted " settlement " at Honduras was the " Belize " covered by the extreme British claim; that the Bay Islands were a dependency of Belize; and that, as for the Mosquito Coast, the abnegatory clauses being wholly prospective in intent, she was not required to abandon her protectorate. The United States contended that the Bay Islands were not the " dependencies " of Belize, these being the small neighbouring islands mentioned in the same treaties; that the excepted " settlement " was the British-Honduras of definite

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extent and narrow purpose recognized in British treaties with Spain; that she had not confirmed by recognition the large, indefinite and offensive claims whose dangers the treaty¹ was primarily designed to lessen ; and that, as to the Mosquito Coast, the treaty was retrospective, and mutual in the rigour of its requirements, and as the United States had no de facto possessions, while Great Britain had, the clause 1 The claims to a part of the first two were very old in origin, but all were heavily clouded by interruptions of possession, contested interpretations of Spanish-British treaties, and active controversy with the Central American States. The claim to some of the territory was new and still more contestable. See particularly on these claims Travis's book cited below. binding both not to " occupy " any part of Central America or the Mosquito Coast necessitated the abandonment of such territory as Great Britain was already actually occupying or exercising dominion over; and the United States demanded the complete abandonment of the British protectorate over the Mosquito Indians. It seems to be a just conclusion that when in 1852 the Bay Islands were erected into a British " colony " this was a flagrant infraction of the treaty; that as regards Belize the American arguments were decidedly stronger, and more correct historically; and that as regards the Mosquito question, inasmuch as a protectorate seems certainly to have been recognized by the treaty, to demand its absolute abandonment was unwarranted, although to satisfy the treaty Great Britain was bound materially to weaken it. In 1859-1860, by British treaties with Central American states, the Bay Islands and Mosquito questions were settled nearly in accord with the American contentions.² But by the same treaties Belize was

² The islands were ceded to Honduras. The Mosquito Coast was recognized as under Nicaraguan rule limited by an attenuated British protectorate over the Indians, who were given a

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accorded limits much greater than those contended for by the United States. This settlement the latter power accepted without cavil for many years. Until 1866 the policy of the United States was consistently for inter-oceanic canals open equally to all nations, and unequivocally neutralized; indeed, until 1880 there was practically no official divergence from this policy. But in 1880-1884 a variety of reasons were advanced why the United States might justly repudiate at will the Clayton-Bulwer Treaty.³ The new policy was based on national self-interest. The arguments advanced on its behalf were quite indefensible in law and history, and although the position of the United States in 1850-1860 was in general the stronger in history, law and political ethics, that of Great Britain was even more conspicuously the stronger in the years 1880-1884. In 1885 the former government reverted to its traditional policy, and the Hay-Pauncefote Treaty of 1902, which replaced the Clayton-Bulwer Treaty, adopted the rule of neutralization for the Panama Canal.

See the collected diplomatic correspondence in I. D. Travis, *History of the Clayton-Bulwer Treaty* (Ann Arbor, Mich., 1899) ; J. H. Latane, *Diplomatic Relations of the United States and Spanish America* (Baltimore, 1900); T. J. Lawrence, *Disputed Questions of Modern International Law* (2nd ed., Cambridge,

reservation and certain peculiar rights. They were left free to accept full Nicaraguan rule at will. This they did in 1894.

³ It was argued, e.g., that the " general principle " of that engagement was contingent on the prior realization of its " particular object," which had failed, and the treaty had determined as a special contract; moreover, none of the additional treaties to embody the " general principle " had been negotiated, and Great Britain had not even offered co-operation in the protection and neutrality guarantee of the Panama railway built in 1850-1855, so that her rights had lapsed; certain engagements of the treaty she had violated, and therefore the whole treaty was voidable, &c.

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England, 1885) ; Sir E. L. Bulwer in 99 Quarterly Rev. 235-286, and Sir H. Bulwer in 104 Edinburgh Rev. 280-298.

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The Isthmian Canal also received a settlement in this administration by a process which was thoroughly characteristic of the resolution of President Roosevelt. The Clayton- Bulwer . treaty was superseded by the Hay-Pauncefote treaty of 1901, by which Great Britain withdrew her objections to a canal constructed by the United States, and under the sole guarantee of neutralization by the latter power. The treaty also omitted a clause previously insisted on, forbidding the fortification of the canal. Having thus cleared the way, the United States next debated the advantages of the Nicaragua and the Panama routes. Influenced by the cost of acquiring the rights and property of the French company, an American commission reported in 1901 in favour of the Nicaraguan route; but upon receiving information that a smaller sum would be accepted, the Spooner Law was enacted (June 28, 1902) authorizing the president to purchase the rights and property of the Panama Company for \$40,000,000, to acquire upon reasonable terms the title and jurisdiction to a canal strip at least 6 m. wide from Colombia, and through the Isthmian Canal Commission to construct the canal. But if the president was unable to secure a valid title from the French company and the control from Colombia within " a reasonable time and upon reasonable terms " the Nicaraguan route was to be made the line of the canal. With this means of pressure the president acquired the French rights; but Colombia declined to ratify the treaty negotiated for the purpose of giving the United States the specified control, on the terms offered. In this emergency an insurrection broke out in Panama on the 3rd of November 1903. The naval force of the United States, acting

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under the theory that it was obliged to keep open the transit across the isthmus by its treaty obligations, excluded armed forces from the canal strip, and the Republic of Panama, having declared its independence of Colombia, was promptly recognized on the 6th of November. Twelve days later a treaty was negotiated with this republic, by which the United States paid Panama \$10,000,000, together with an annuity of \$250,000 to begin ten years later, and guaranteed the independence of the republic, receiving in exchange the substantial sovereignty and ownership of a ten-mile strip for the canal. This treaty was ratified by the Senate on the 23rd of February 1904, and excavation was begun in 1907. (See PANAMA CANAL)