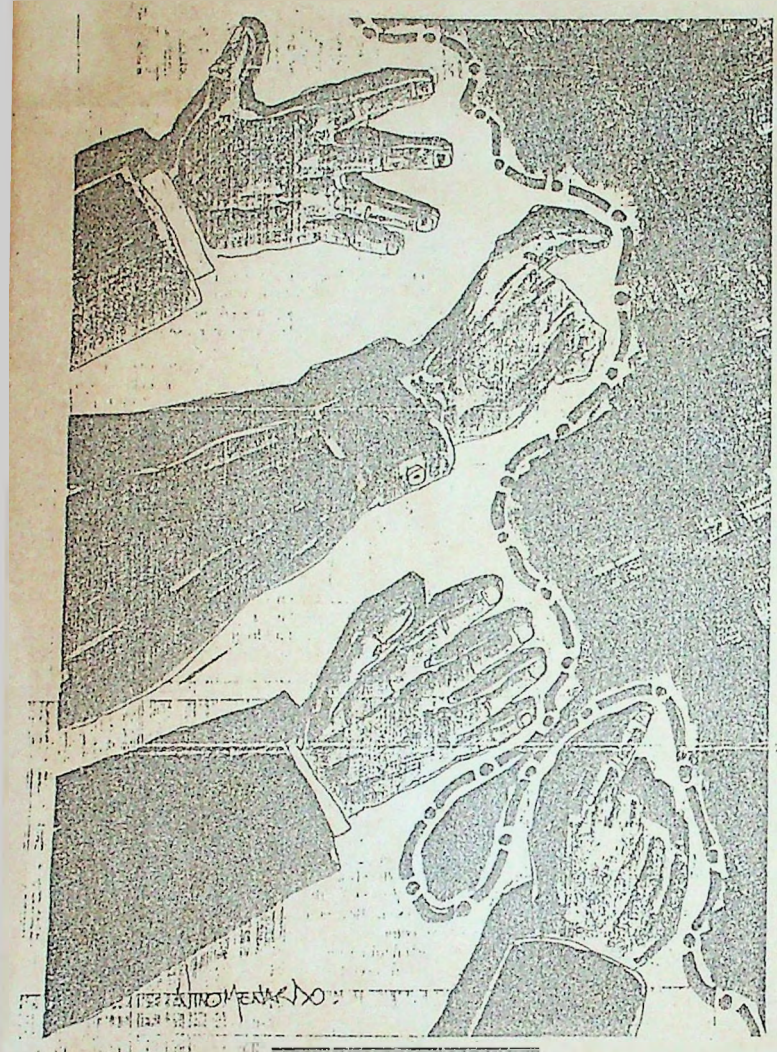


Al ex seminarista Ojer

La influencia del odio



ISIDRO MORALES PAUL

No tengo intención de polemizar con quien no ha demostrado tener verdadero respeto por la patria de adopción ni conocimientos jurídicos de ninguna clase. Influenciado por odios provenientes de un claro resentimiento con la Cancillería venezolana desde el oscuro caso de una sustracción de documentos, pretende constituirse en portador exclusivo de la verdad o en fiscal de los máximos intereses nacionales y de paso endosarnos al Dr. Rafael Pizani y al suscrito responsabilidades ajenas. Ya denominándose "experto" presentó un dictamen jurídico sobre la nulidad del Laudo Arbitral del 3 de octubre de 1899 que tuvo el tupé de discutir con el representante legal de Gran Bretaña.

En ese mismo orden de ideas el acusador es responsable del Acuerdo de Ginebra, del Protocolo de Puerto España como "experto en la materia", asesor en el Ministerio de Relaciones Exteriores durante años.

En cuanto al fondo del asunto quiero destacar los siguientes elementos:

1) Si la responsabilidad que se nos atribuye se refiere a los conceptos y criterios aplicados, la tenemos únicamente en la medida en que el Acta de San Pedro Alejandrino coincida con lo propuesto por nosotros en nuestro informe final. Al respecto, es necesario dejar muy claro que el informe presentado por nosotros al gobierno nacional el 19-3-90 contiene apreciaciones y proposiciones que exceden lo dispuesto en el Acta y que aún hoy en día no han sido cumplidos. Nuestras observaciones finales dicen textualmente:

"3a) La Comisión de Delimitación de Areas Marinas y Submarinas debe estar integrada por tres representantes designados por las principales agrupaciones políticas del país: AD, Copei y MAS".

"3b) Para ampliar el peso político de respaldo a la Comisión de Delimitación se debe crear un consejo asesor compuesto por 15-20 personas, de la más variada orientación ideológica, con técnicos o estudiosos de la materia, Iglesia, Pédecámaras, CTV.

Así como personas que han asumido posiciones no coincidentes con los procedimientos adoptados, en la medida en que no constituyen una verdadera obstrucción al proceso".

"3c) La Comisión de Delimitación, con el apoyo del Consejo Asesor debe intentar elaborar, en la medida de lo posible, una tesis nacional que incluya los parámetros de negociación dentro de los cuales pueda actuar la Comisión de Delimitación de Areas Marinas y Submarinas".

"3d) Atribuimos particular importancia a la participación de las Fuerzas Armadas Nacionales. Creemos que debe mantenerse el Grupo de contacto creado por el presidente Pérez que preside el Jefe del Estado Mayor Conjunto. En todo caso, creemos que debe haber una representación de las Fuerzas Armadas, por lo menos, en el Consejo Asesor".

"3e) Una idea complementaria sería la de agregarle a la Comisión de Delimitación otros temas íntimamente conexos tales como Cuencas Hidrográficas, Ríos Internacionales, Hitos y la parte estratégica del Transporte Internacional".

"4) El resto de los temas sería competencia de la Comisión Coordinadora que habrá que facultar para crear las subcomisiones que fuesen necesarias".

Como puede apreciarse, a) no ha sido creado ni el Consejo Asesor que debería estar presidido por el cardenal Lebrún, b) con participación de personas que hubiesen asumido posiciones no coincidentes con los procedimientos adoptados, c) no conocemos la tesis nacional que debía incluir los parámetros de negociación dentro de los cuales debía actuar la Comisión de Delimitación de Areas Marinas y Submarinas, d) Tampoco nos consta la existencia del grupo de contacto directo con las Fuerzas Armadas, presidido por el Jefe del Estado Mayor Conjunto, etc.

Agrega el ex seminarista que no es atribuible "todo reclamo territorial de Venezuela en el Inventario de problemas".

Pues bien, en el informe final elaborado por los altos comisionados se identificaron 39 problemas por resolver en el sector terrestre, de acuerdo con los informes elaborados por la Dirección de Fronteras del Ministerio de Relaciones Exteriores. Dice textualmente el informe:

"2 - Determinación de la línea divisoria en el sector Montes de Oca, Perijá, Motilones. En efecto, mientras el canciller colombiano Londoño sostiene que la frontera debe seguir la división geográfica (las más altas cumbres), Venezuela ha sustentado tradicionalmente el criterio de la divisoria hidrográfica (altas cumbres) de acuerdo con las Actas de Majayure de 31 de julio de 1900 que establece: "y desde donde debe seguirse por toda la parte alta de la fila, tomando la línea divisoria de aguas de las dos faldas de dichos montes, hasta donde empalme con la Cordillera de Perijá".

Otra tesis alternativa sostiene que la línea divisoria debe seguir el piedemonte por el lado de arriba del Valle de Upar (Ojer) tesis que sigue, en términos generales, los puntos de vista sustentados por el Plenipotenciario venezolano Dr. Gustavo J. Sanabria (1910-11). Pensamos los altos comisionados que la comisión negociadora debe examinar cuidadosamente las distintas alternativas y posibilidades en el marco global de las cuestiones objeto de análisis.

3.- Caso de las rectas geodésicas:

a) Catatumbo-Tres Hocas
b) Oirá-Arauca
c) Arauca-Meta
d) Yavita-Pimichín

El problema deriva de la errónea ubicación de algunos hitos fronterizos cuya gran distancia de la línea recta y sólo en territorio venezolano, hacen inaceptable su actual ubicación. Pensamos que se trata de una cuestión que incide negativamente sobre las relaciones bilaterales, por lo que debe tenerse particular cuidado en la integración de la Comisión Especial que se cree al efecto. Existen dos informes (Yépez Gil y Jesús M. Poncel) que explican con claridad la intención del Convenio Ibrago Chacín de 1932, de admitir "una línea más cercana a la línea limítrofe" que impida puntos adversos a la integridad territorial venezolana.

4 - Soluciones a los puntos de unión:

Después de un detenido estudio, la Dirección General Sectorial de Fronteras de este Despacho, ha identificado treinta y nueve (39) problemas en materia de demarcación terrestre y fluvial en la frontera venezolana-colombiana".

2) En cuanto a la Isla de Charo, el ex seminarista afirma "como se lo demostramos en reunión con el Dr. Rafael Pizani que la demarcación de 1942-43 es nula".

Si Ojer tiene pruebas de que la demarcación de1942-43 es nula, es su deber intentar la correspondiente demanda de nulidad ante los tribunales competentes y no estar actuando irresponsablemente. Es lo realmente patriótico y el deber de ciudadano.

3) En cuanto a la aplicación del principio de equidad, es la mejor evidencia de la intención premeditada del ex seminarista, sus propias palabras lo revelan: "Pues bien, si es cierto que, la equidad se aplica a la solución de muchos problemas, la Constitución Nacional no lo permite en materia de límites territoriales". Se trata de una afirmación de absoluta mala fe. En efecto, el propio ex seminarista Ojer en el Sumario Fronterizo entre Venezuela y Colombia, afirma: "En la década fundamental", Cap. 11, tratamos cómo el laudo español en el 2º trozo de la sección ha tiene apariencias de reparto equitativo, cuando en realidad fue la consecuencia de sucesivos cortes al territorio que los diversos organismos del gobierno español, durante la preparación del laudo fueron imponiendo en perjuicio de Venezuela (Pág. 42, Nota Nº 49).

Según sus propias palabras no fue equitativo sino en apariencias, precisamente por ser efecto de un despojo territorial.

¿En qué quedamos? La equidad es la aplicación particular de la justicia.

Un despojo territorial no puede ser la base de un resultado equitativo.

✓EN BREVE

BOLIVIA

MAESTROS RECLAMAN AUMENTO SALARIAL

ANSA

Los maestros bolivianos acataron un paro de 48 horas, reforzado con huelgas de hambre y una marcha que avanza desde Oruro hacia La Paz, en reclamo de un aumento salarial de 50%. Los docentes rechazan la municipalización de la educación y la vigencia de los Reglamentos de Unidades Educativas, mientras exigen, además, la reposición del Fondo Complementario y la suspensión de los aportes al Fondo de Vivienda Social. "El paro ha sido acatado en todo el país y se tiene previsto para hoy movilizaciones de protesta", manifestó el dirigente nacional Roberto Baldivieso, y añadió, que en una próxima reunión se decidirá si se aprueba un paro por tiempo indefinido.

ESTADOS UNIDOS

ALARMA REPUBLICANA POR VENTAJA DE GORE

AP

Algunos republicanos prominentes, alarmados por las dificultades de George W. Bush en contener el avance del vicepresidente Al Gore, están formulando nerviosas advertencias a la campaña del candidato presidencial e instándole a revisar sus tácticas. Al responder a informes acerca de las preocupaciones de algunos republicanos ante la recuperación de la popularidad de Gore en encuestas recientes, Bush dijo: "Así es Washington. Ese es el lugar donde la gente está ya lista para salir de las trincheras antes de que se dispare el primer tiro". Pero las encuestas señalan que el gobernador de Texas ha perdido la ventaja que llevaba en muchos estados.

PERÚ

EXIGEN JUICIO IMPARCIAL PARA BERENSON

AP

Tras reunirse con funcionarios del poder judicial, un abogado de la familia de la norteamericana Lori Berenson, acusada de colaborar con la guerrilla, manifestó que muy difícilmente ella reciba un juicio imparcial en Perú. "Pedimos un juicio imparcial para Lori", expresó Ramsey Clark, asesor legal de la familia Berenson. "Pero no creemos que eso sea posible", agregó. Rhoda Berenson, madre de Lori, llegó a Lima con Clark en el curso del fin de semana, varios días después que el gobierno de Lima revocó una condena a cadena perpetua dictada por "jueces sin rostro" y le otorgó la posibilidad de un nuevo proceso en el fuero civil.



Foto AP

Rhoda Berenson, madre de Lori, llegó a Lima con Ramsey Clark, abogado de la familia

Hallazgo revela nexos entre el narcotráfico y la mafia rusa

Policía colombiana descubrió narcosubmarino en plena construcción

El aparato, que era armado en un astillero clandestino, tenía capacidad para transportar entre 150 y 200 toneladas de cocaína

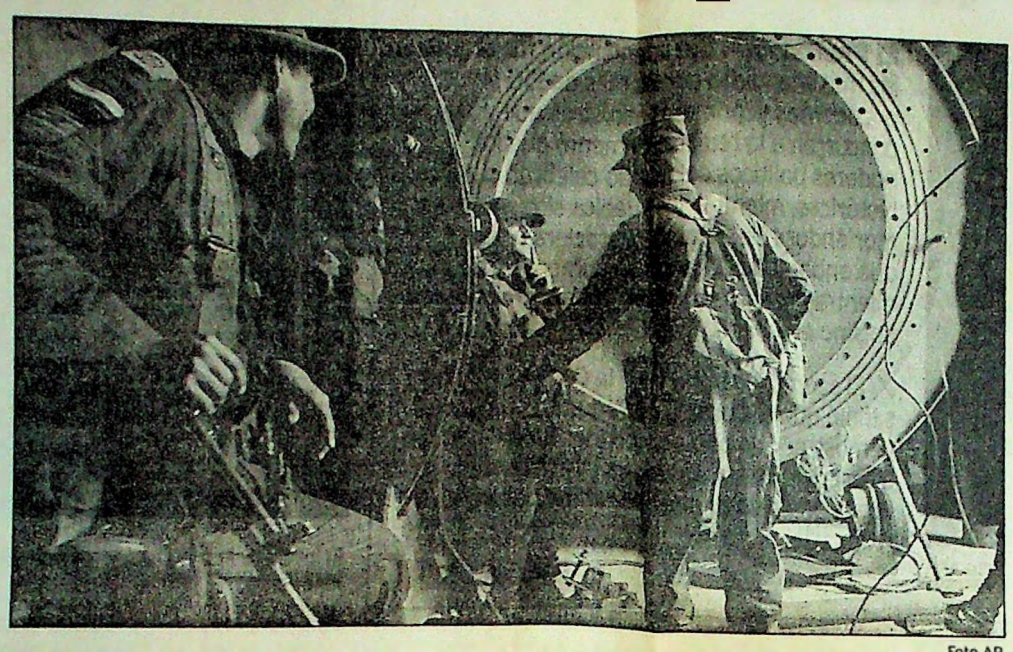


Foto AP

Las autoridades informaron que la nave encontrada tenía listo su cuarto de máquinas

BOGOTA/AFP-AP-REUTERS

Un sofisticado submarino que estaba siendo construido en la población de Facatativá (40 Km al oeste de Bogotá) y que iba a ser utilizado para el tráfico de drogas fue descubierto por la Policía colombiana, informó su director, el general Luis Ernesto Gilibert.

"El submarino tenía capacidad para transportar entre 150 y 200 toneladas de cocaína, y podía llevar hasta unas 12 personas", dijo Gilibert a los periodistas. El aparato fue encontrado tras meses de seguimiento y labores de inteligencia.

"Estaba terminado entre 30% y 40% y con su cuarto de máquinas listo", precisó el jefe policial.

Agregó que en la nave se invirtieron aproximadamente $ 5 millones, y que para su puesta en funcionamiento sería necesaria otra cifra similar "destinada a los motores y la construcción de la sala de máquinas".

"La tecnología es de avanzada y la mano de obra colombiana muy calificada", manifestó Gilibert, quien informó que en la operación no hubo detenidos pues el astillero estaba vacío, pero bajo vigilancia de circuitos cerrados de televisión operados a control remoto.

Gilibert indicó que en la factoría donde se desarrollaba el proyecto fueron encontrados documentos en ruso, traducidos al español, "mediante los cuales se orientaba la construcción de la nave", y no descartó la posibilidad de que un sector de la mafia rusa estuviera involucrado en el hecho.

Explicó que en diversos lugares de la fábrica fueron encontrados, ya terminados, "elementos como la torreta de acceso al aparato y la compuerta de la escotilla superior".

Además, indicó que los presuntos narcotraficantes utilizaron "alta tecnología para la construcción de un casco de gran resistencia". El submarino tiene una eslora de 30 metros, 3,5 metros de manga y un puntal de 3,5 metros.

El diario *El Tiempo* de Bogotá indicó que Gilibert informó que el aparato, dividido en tres partes, estaba listo para ser enviado en gandolas hacia el Pacífico. El viaje hasta la zona tarda más de un día.

SORPRESA EN LA DEA

El director en Colombia de la Oficina Antidrogas de los Estados Unidos, Leo Arreguin, declaró, por su parte, que "en 32 años de trabajo policial nunca vi algo como esto".

"Nunca en 32 años, repito; esto es muy grande, estamos hablando de un cargamento de hasta 200 toneladas de cocaína. Yo creo que se necesitan por lo menos tres personas para operar esto", dijo visiblemente sorprendido el funcionario estadounidense.

Arreguin inspeccionó, junto con Gilibert, las instalaciones de la fábrica, y observó detalladamente las características de la nave.

"Este es un gran golpe, un gran trabajo de la Policía y la Inteligencia colombiana", aseguró, tras señalar que en la acción no participaron miembros de su institución.

El funcionario estadounidense respaldó lo dicho por Gilibert en relación a los nexos entre la mafia local y la rusa. "En poder de las autoridades existe documentación que posiblemente podría probar la participación de rusos y de dos estadounidenses en la fabricación del submarino".

Arreguin recordó que los carteles de la droga de Colombia ya habían utilizado minisubmarinos que transportaban cantidades limitadas de droga hasta buques madres en alta mar y fueron descubiertos en el mar Caribe en 1985 y 1986.

Mientras tanto, el director de la Policía antinarcóticos de Colombia, general Ismael Trujillo Polanco, reveló que en lo que va de año esa institución ha incautado cerca de 22 toneladas de cocaína, ha hallado y destruido cerca de 280 laboratorios de procesamiento de drogas y ha erradicado 36.583 hectáreas de cocales.

Trujillo Polanco precisó que, hasta ahora los agentes antinarcóticos han descubierto 238 laboratorios de base de coca y 40 de clorhidrato de cocaína, así como tres de refinación de heroína.

Paramilitares admiten nexos con empresarios

BOGOTA/AP

Las ultraderechistas Autodefensas Unidas de Colombia admitieron ayer en un comunicado enviado a una comisión senatorial, que reciben financiamiento de empresarios.

"El país entero sabe que nos financiamos con la economía dominante en las respectivas regiones donde actuamos, sea legal o ilegal", decía el texto.

La comunicación salió al paso de unas declaraciones del ministro de Defensa, Luis Fernando Ramírez, quien sostuvo el martes en el Senado que era "hipócrita" acusar solamente a las Fuerzas Armadas de tener nexos con los paramilitares, cuando hay empresarios y civiles que los apoyan.

Ramírez respondió así a las acusaciones de las organizaciones humanitarias que insisten en señalar los vínculos de los militares con grupos de extrema derecha. Admitió que existen nexos, pero sólo de forma aislada.

En el comunicado, los paramilitares afirman que la "hipocresía" que denuncia Ramírez también está incrustada en el Estado.

"Creemos que la `hipocresía y la complicidad' debe investigarse y castigarse en los casos de algunos dirigentes de la Nación y el Estado, quienes toleran y apoyan el cinismo y la mentira de la subversión", indica el texto de las AUC.

Wilhelm deja jefatura del Comando Sur

MIAMI/AFP

El jefe del Comando Sur del Estados Unidos, general Charles E. Wilhelm, uno de los principales promotores del Plan Colombia, dejará su cargo hoy al cumplir tres años al frente del mismo.

Su puesto será ocupado por el general de la marina Peter Pace, aún pendiente de confirmación del Congreso, según informó una fuente del organismo.

Durante sus tres años al frente del Comando Sur del Ejército, Wilhelm fue uno de los mayores defensores del Plan Colombia anti-drogas, supervisó la Misión de observadores militares entre Ecuador y Perú (Momep) tras el conflicto fronterizo entre ambos países, y encaminó ayuda militar a la América Central devastada por el huracán Mitch, destacó una nota de la institución.

El jefe del Comando Sur fue condecorado recientemente por el ministro colombiano de Defensa, Luis Fernando Ramírez.

Washington aprobó el mes de julio una ayuda económica y militar por 1.300 millones de dólares para financiar el Plan Colombia, cuyo objetivo es erradicar los narcocultivos, negociar la paz con las guerrillas y reactivar la economía nacional.

Piden insistir en salida al Atlántico

CAP propone cambiar mar por tierra con Guyana

Venezuela debe renunciar a sus derechos territoriales en la vecina Guyana a cambio de que se le reconozca una salida marítima al Atlántico, sugirió ayer el ex presidente venezolano Carlos Andrés Pérez.

"La insistencia en reclamar una porción de territorio guyanés no lleva a ninguna parte. Lo que hay que hacer es cambiar territorio por mar, y por ahí iban dirigidas las negociaciones cuando fui presidente", indicó Pérez a Globovisión.

Venezuela reclama a Guyana el Esequibo, una franja de terreno de 156.000 kilómetros cuadrados al oeste del río del mismo nombre que representan las tres cuartas partes de su territorio.

Pérez insistió en que es inútil empecinarse en querer obtener una porción de esa zona "porque la que tiene la posesión de territorio es Guyana".

Para el ex presidente, lo que Venezuela debe perseguir es que se le reconozca la soberanía sobre unos 1.000 kilómetros cuadrados de mar que le darían una salida más diáfana al Atlántico.

Pérez, de 76 años, reiteró su oposición a Chávez, quien intentó derrocarlo por la fuerza en 1992 en una intentona militar golpista.

El reciente resurgimiento del conflicto se debe, en opinión de Pérez, a que el actual presidente de [illegible] con utilizar todos los recursos disponibles, menos las armas, para evitar que Guyana persistiese en otorgar licencia a una empresa estadounidense para instalar en el Esequibo una base de lanzamiento de cohetes.

Pero las tensiones entre ambos países amainaron la semana pasada después de que Chávez se reuniera con su colega guyanés, Bharrat Jagdeo, en Brasilia, durante la cumbre de presidentes suramericanos.

CÓMPLICE DE LA GUERRILLA

Pérez apoyó la ayuda norteamericana a Colombia en la lucha contra el narcotráfico y la guerrilla y acusó al mandatario Hugo Chávez de ser cómplice de los insurgentes colombianos. "El Plan Colombia va a ayudar mucho a que los colombianos se liberen de esta tragedia que están viviendo con la narcoguerrilla", dijo.

Chávez tiene una "grave complicidad con la guerrilla colombiana", enfatizó Pérez. El actual mandatario ha expresado su temor a que la ayuda militar norteamericana profundice el conflicto interno en Colombia y lo "convierta en un nuevo Vietnam".

También acusó a Chávez de mantener una abierta actitud de "confrontación con todos los sectores de la sociedad", así como con [illegible] Unidos y, en general, con

Analizarán acciones contra el bloqueo de EE UU

Grupos venezolanos buscan fortalecer solidaridad con Cuba

A partir de hoy y hasta el domingo se realizará en Caracas el VI Encuentro de Coordinación Nacional de Solidaridad con Cuba, que reunirá a unos 25 grupos venezolanos provenientes de diversas áreas de la sociedad nacional que buscan apoyar a la isla caribeña en su defensa contra la omnipotencia de Estados Unidos.

Sólo en América Latina existen 470 organizaciones de este tipo de diversa índole e ideología. De estas, unas 200 están en Estados Unidos.

Sergio Corrieri, presidente del Instituto Cubano de Amistad con los Pueblos y diputado de la Asamblea Nacional de ese país, llegó de La Habana para participar en el encuentro que buscará fortalecer el movimiento de solidaridad cubana en Venezuela.

En la cita, que prevé un intercambio de experiencias entre los movimientos de apoyo procubano en Venezuela, se analizará el bloqueo estadounidense a esa nación y sus implicaciones en Latinoamérica, así como acciones para contrarrestar el embargo comercial.

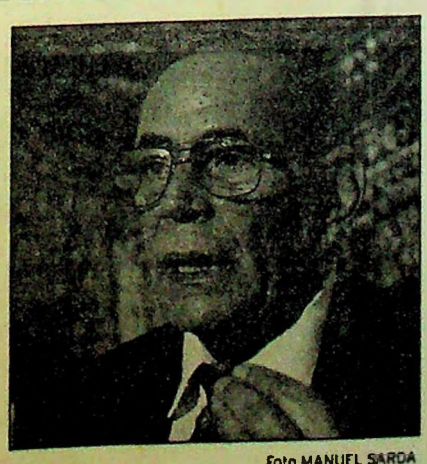


Foto MANUEL SARDA

El diputado y dramaturgo cubano Sergio Corrieri presidirá el encuentro

Corrieri destacó que aunque este año han habido acciones dirigidas a flexibilizarlo, no han servido de nada. Al referirse a la iniciativa de la Cámara de Representantes norteamericana de autorizar la venta de medicinas y alimentos a Cuba, señaló que ello no resuelve el problema. Explicó que su país debe pagar las operaciones en efectivo; tampoco puede vender nada a Estados Unidos, por lo que no se puede hablar de un intercambio comercial real; y se mantiene la prohibición de que los barcos toquen los puertos de la isla.

Por otra parte Corrieri, político de amplia trayectoria en Cuba, destacó la importancia de la Cumbre del Milenio que se celebra en Nueva York. "La ONU es el foro de la esperanza", indicó. Destacó que ese foro tiene una importancia capital, para resolver las desigualdades y el "injusto orden internacional que existe".



Protestas en el día de la Independencia Brasil conmemoró el día de su independencia, con una tradicional parada militar a la que asistió el presidente Fernando Cardoso y su comitiva, pero, centenares de brasileños protestaron en las calles de 3.000 municipios contra los acuerdos suscritos por el Gobierno con el Fondo Monetario Internacional para el pago de la deuda externa. La protesta, denominada "El grito de los excluidos", fue organizada por la Confederación Nacional de Obispos de Brasil, la Confederación Nacional de Iglesias Cristianas, el Movimiento de Trabajadores Rurales sin Tierra, la Confederación Unica de Trabajadores y varios partidos opositores. Brasil tiene una deuda externa de aproximadamente 240 millardos de dólares, de los que 60% fue contraída por el sector privado. El movimiento plantea al [illegible] de un plebiscito en el que el pueblo

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Venezuela había amenazado con utilizar todos los recursos disponibles, menos las armas, para evitar que Guyana persistiese en otorgar licencia a una empresa estadounidense para instalar en el Esequibo una base de lanzamiento de cohetes.

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También acusó a Chávez de mantener una abierta actitud de "confrontación con todos los sectores de la sociedad", así como con Estados Unidos y, en general, con el modelo democrático.

"Sus amigos son (Muammar) Kaddafi, (Saddam) Hussein y Fidel Castro; precisamente quienes están enfrentados con el mundo democrático", señaló.

El Esequibo: a 100 años del despojo

Roberto J. Ball Zuloaga

El 3 de octubre de 1899, el Tribunal Arbitral reunido en el Qual D'Orsay en París emitió su famoso fallo que despojó a Venezuela de 159.500 km2 de territorio que, en derecho, le pertenecía. Es poco lo que yo puedo agregar al inmenso material que han escrito sobre este tema eminentes venezolanos durante el último siglo. Sin embargo, en el contexto de lo que sucede en la Venezuela de hoy, es importante recordar algunos aspectos de ese triste proceso.

En primer lugar, el laudo arbitral es una demostración elocuente de que la corrupción judicial no es un monopolio de la Venezuela contemporánea. El tribunal que se reunió en París a finales del siglo XIX estaba compuesto por algunos de los juristas más respetados de las potencias "civilizadas" de esa época. Por Inglaterra estaban el presidente y un magistrado de la Corte Suprema de ese país, Lord Charles Russell, Barón de Killowon, y Lord Richard Henn Collins; mientras que los jueces designados por Venezuela eran el presidente de la Corte Suprema de los Estados Unidos, juez Melville W. Fuller, y el magistrado David J. Brewer. El tribunal lo contemplaba un tercer juez "imparcial", el ruso Federico de Martens, respetado jurista, experto en derecho internacional. El tribunal tenía la obligación de llegar a un fallo basado en las estipulaciones del tratado firmado entre Venezuela e Inglaterra en 1897, que establecía que los jueces deberían determinar la línea fronteriza basándose en principios del derecho internacional, aunque podían también tomar en cuenta factores como el control efectivo de un territorio por un período no mayor de 50 años. Sin embargo, hoy sabemos sin ninguna duda que el fallo no fue más que una componenda entre los dos jueces ingleses y Federico de Martens, quienes ignoraron el Tratado y determinaron una frontera que injustamente le quitaba a Venezuela la casi totalidad del territorio en disputa.

El fallo fue por decisión unánime, ya que Martens amenazó a los jueces americanos que de no ser así, Venezuela perdería también las bocas del Orinoco.

Esto se conoce en detalle gracias al memorándum dejado por Severo Mallet Prevost, miembro del equipo legal que defendió la posición de Venezuela ante el tribunal, publicado después de su muerte en 1949. Más breve y elocuente es la nota que escribió en su diario el señor J.R. Block, secretario del primer ministro británico Lord Salisbury el 2 de octubre de 1899, un día antes de que el Tribunal hiciera público su fallo: "Acuerdo con Martens nos da la victoria".

Terrorismo judicial

Indefensa ante el poder de la nación que para entonces era la más poderosa del mundo, Venezuela confió en que el respeto a los tratados y al derecho internacional velaría por el cumplimiento de la justicia. Pero en cambio, nuestro país fue víctima de un craso acto de terrorismo judicial.

Otro aspecto importante de esta historia es la participación que tuvo los Estados Unidos en el diferendo, que quizá pocos venezolanos hoy conocen. La usurpación de nuestro Esequibo comenzó con la publicación de un mapa por el señor Roberto Shomburgk, bajo auspicio del gobierno británico, en 1840. De allí en adelante, Inglaterra nos fue quitando territorio de manera constante e ininterrumpida, sin que Venezuela pudiese hacer nada para impedirlo. Se firmaban tratados que eran sistemáticamente violados por los ingleses, se protestaba, se rompían relaciones diplomáticas, etcétera. Sin embargo, la expansión territorial a nuestra expensa se mantenía y se acrecentaba, hasta el punto que los ingleses pretendían las mismas bocas del Orinoco y buena parte del oriente venezolano hasta Upata. Fue entonces cuando los Estados Unidos decidió intervenir en el asunto en 1895, considerando que la usurpación de territorio por parte de Inglaterra comprendía una violación de la Doctrina Monroe que estipulaba que toda incursión por las potencias europeas en el Hemisferio Occidental amenazaba su propia seguridad.

Estados Unidos estaba dispuesto a ir a la guerra por el problema fronterizo de Venezuela. Así lo entendió el mundo entero

El gobierno del entonces presidente Cleveland intentó al principio actuar como mediador entre dos naciones amigas, proponiendo al gobierno inglés que el asunto se decidiera por arbitraje internacional. Sin embargo, la actitud de Inglaterra era que no había nada que negociar, y que el asunto no era de la incumbencia de los Estados Unidos.

La actitud inglesa era explicable. El imperio británico comprendía una quinta parte de la superficie de la Tierra, con casi 300 millones de súbditos. Su marina de guerra era la más poderosa del planeta, sus bancos financiaban la expansión de la revolución industrial, y sus barcos mercantes transportaban 2/3 de la carga marítima de todo el mundo. En contraste, los Estados Unidos no era entonces una superpotencia. Su ejército contaba con apenas 25.000 hombres, y su marina de guerra con apenas un acorazado.

EEUU Interviene

Aún así, los norteamericanos endurecieron su posición ante la intransigencia británica. El 17 de diciembre de 1895, el presidente Cleveland dirigió un discurso a una sesión conjunta del Congreso que había sido convocada para tratar el caso del Esequibo. En su discurso, el Presidente solicitó que se nombrase una comisión para determinar, de una vez por todas, cuál era la verdadera frontera entre Venezuela y la Guayana Británica. Cleveland dijo enfáticamente que una vez que esta comisión presentara su informe, los Estados Unidos deberían resistir "por cualquier medio, como si fuese una agresión a sus propios derechos e intereses" la apropiación por Inglaterra de territorios que en derecho pertenecen a Venezuela.

El Presidente culminó sus palabras diciendo: "Estoy consciente de la responsabilidad incurrida, y me doy perfecta cuenta de las consecuencias que pueden suceder".

En otras palabras, EEUU estaba dispuesto a ir a la guerra por el problema fronterizo de Venezuela. Así lo entendió el mundo entero. Los mercados financieros entraron en pánico, y la Bolsa de Nueva York cayó estrepitosamente. Sin embargo, el Congreso apoyó al presidente Cleveland y la comisión fue nombrada.

Fue esta valiente y honrosa actitud de los Estados Unidos lo que obligó a Inglaterra a iniciar las negociaciones que finalizaron con el Tratado de 1897.

Si bien el resultado no fue el esperado, por el terrorismo judicial del que fuimos víctima, Venezuela logró mantener la soberanía sobre el hoy Estado Delta Amacuro y sobre todo el oriente de Bolívar.

En los 100 años que han transcurrido Venezuela ha mantenido una infranqueable actitud de defender lo que en derecho nos pertenece. Debemos perseverar en la lucha por recuperar el Esequibo, a la vez de no olvidar la infamia de jueces sin honor, así como la nobleza y dignidad de nuestros verdaderos amigos.

rjball@cantv.net

Inogl. era la mayoría. "If you cannot decide them, join them" hicieron los VS. se arregla con p. el canal & y "Cedieron" s. Vuez (y en límites con Laos ?)

1965
25 feb.: Visité a Lord Harlech (Embay. GB) s. Guayana Brit.
8 Sept. Habló en OEA s. Guayana
28 Nov. HS Inogl. contra invasión

Secretaria
"The trouble with Vzla, you know..." es siguiendo el acuerdo de Ginebra

Lord Aberdeen a Fortique:
F. "My Lord, el nombre de un mapa en 5 (Scripture) y el pabellón brit. no significan nada?
A: "Ese es un problema de Guayana no vale nada, tenemos mucha"

1) El 5/diciembre del Tratado de Mallet-Prevost
2) 100 años del Laudo.
3) 34 años del Ac. de Ginebra de 1966.
4) 11 de Buen Oficiante!

"Gu. ha violado sus [illegible] el Acuerdo de Ginebra" al negarse a buscar una solución satisfactoria para el arreglo práctico de la Controversia"
MRE 20 nov 81

Fortique logró mucho pues
1) Tesis "retirada"
2) Vuez era respet.
(3) le aclamaban que les [illegible]

Vuez:
1) Nunca Guerra!
2) Paz de Muerte!
3) Iguald. Soc.!

A Vuez le va mal cuando Tiene situac. internas desorden. o reprobable:
Fortique / Falcón / Guzmán / Castro...

Rob Ball 2: 24/3/00
"Ts nuestros derechos perdidos sin recuperación. Hay si pensamos nuestra casa en orden y actuamos con unidad y audacia"

Rob Ball 3
"En los años 60 era un [illegible] demostrar, [illegible] aliado con Gu. en la guerra [illegible]
*"Para Inogl, que tuvo nuestro cariño personal..."

Apreciado Dr. Tejera: Adjunto le hago llegar el trabajo que amablemente me permitió leer. Muchas gracias.

FERNANDO LUIS EGAÑA

Como siempre, quedo de usted, a su orden.

F

20/Feb/94

INFORME ESPECIAL

Visita del canciller Rohee

Retorna diálogo Venezuela-Guyana

CLEMENT ROHEE estima prudente analizar la controversia sin "sentimientos emocionales" y avanzar en lo político

Antonio Fernández Nays
El Universal

Caracas.- Después de la tormenta desatada entre Caracas y Georgetown las semanas pasadas debido a diferencias en torno a la controversia territorial y el otorgamiento de concesiones en territorio esequibo, llegó la calma con las conversaciones entre los cancilleres José Vicente Rangel y Clement Rohee.

Frente a frente, los ministros coincidieron en lo básico: priorizar el diálogo bilateral antes de cualquier interpretación, dinamizar y enriquecer el mecanismo de los buenos oficios de la ONU, y ampliar de forma paralela la relación hacia otros ámbitos como el económico, cultural y político.

Según Rohee, quien conversó con su par venezolano durante cuatro horas, acompañado del embajador guyanés en Caracas, Bayney Karram, las conversaciones aclararon "percepciones existentes que parecían nublar algo de las realidades existentes".

"Guyana no tiene claramente ningún interés de estar ocultando el problema. Sabemos que Venezuela también tiene su propia posición al respecto. Ambos tenemos que reconocer que nuestra meta es la de buscar una solución práctica a la controversia", admitió Rohee, para sorpresa de quienes han percibido en Georgetown una actitud reticente a negociar las cuestiones relativas a territorio.

Al reiterar de parte de Caracas "el mejor espíritu de diálogo, el mejor propósito de entendimiento", el ministro Rangel subrayó que el tema del Esequibo es muy importante, "pero lo es más la relación entre los dos países".

En su conversación, que prosiguió en horas de la tarde luego del almuerzo, los cancilleres acordaron impulsar el trabajo realizado por las Comisiones Binacionales de Alto Nivel (Coban).

Apartar lo emocional

Rohee eludió pronunciarse sobre los términos en que Georgetown cumple el Acuerdo de Ginebra (1966), que ordena a ambos países a resolver amistosamente la controversia pendiente en forma que resulte aceptable para ambas partes. Arguyó que "esta es una materia que exige un tratamiento y discusión muy sobria y profunda sin que se involucren sentimientos emocionales".

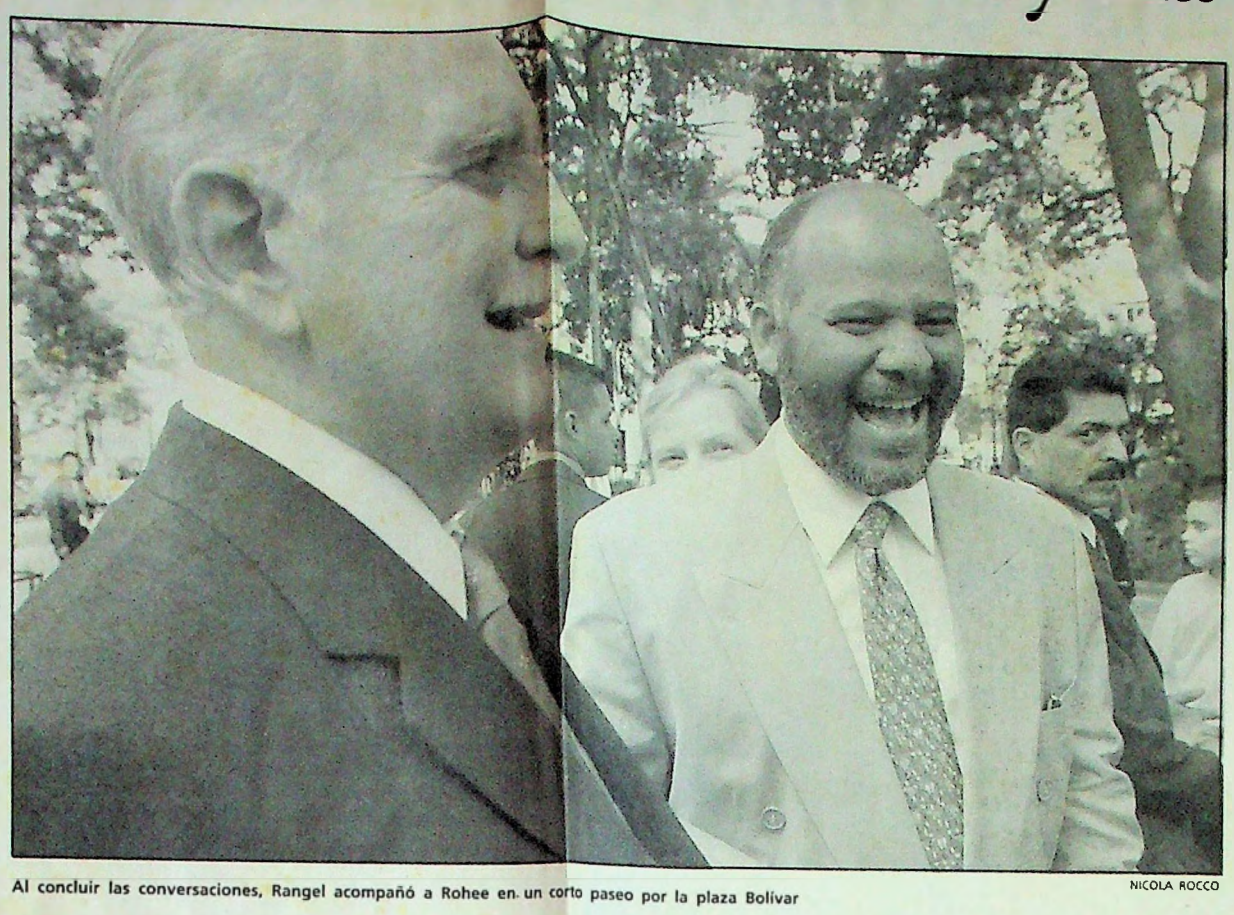
"Una vez que nosotros nos expliquemos nuestras posiciones, lo que hay a favor y en contra, allí es cuando podremos tener un mejor entendimiento de todo este asunto", añadió.

A su juicio, es necesario priorizar "el enfoque político" antes de entrar a interpretaciones del mencionado tratado, sobre todo en su artículo 5, según el cual "ningún acto o actividad que se lleve a cabo mientras se halle en vigencia este Acuerdo, constituirá *fundamento* para hacer valer, apoyar o negar, una reclamación de soberanía territorial".

Rangel añadió que "el tema tiene un contenido jurídico, histórico pero es esencialmente en este momento político".

Tampoco Rohee quiso entrar en detalles en cuanto a las concesiones otorgadas en el Esequibo por Georgetown, limitándose a convocar el diálogo político para lograr una percepción precisa del asunto. Igual consideración hubo para con la explotación conjunta de recursos en áreas marinas: como Caracas no ha formalizado la propuesta nada hay que discutir ni especular.

Como si nada se hubiesen reprochado ambos gobiernos entre sí hace apenas unos días, Rohee comentó que "no hay que ver dragones disfrazados", porque "si los políticos nos dejamos llevar por la dirección por donde nos lleva la prensa, podemos terminar en el sitio erróneo".



Al concluir las conversaciones, Rangel acompañó a Rohee en un corto paseo por la plaza Bolívar

NICOLA ROCCO

Agenda abierta en Brasilia

Todo está listo para que la entrevista de los presidentes de Venezuela, Hugo Chávez, y de Guyana, Bharrat Jagdeo, quede a pedir de boca.

Los cancilleres José Vicente Rangel y Clement Rohee examinaron "el orden del día" que deberían cubrir ambos mandatario en el encuentro programado para Brasilia, el próximo 1 de septiembre en el marco de la Cumbre de Jefes de Estado de América del Sur, convocada por el presidente de Brasil, Fernando Henrique Cardoso.

Según Rangel, la agenda, como corresponde a los jefes de Estado, es abierta, aunque habrá temas de obligada referencia: el trabajo de la Comisión Binacional de Alto Nivel, controversia territorial, concesiones y caso Beal Aerospace, cooperación en combate a las drogas, medio ambiente y educación. Posiblemente los mandatarios aprovecharán para aclarar sus declaraciones públicas.

"Quizás lo más importante es que existe la más absoluta disposición para el encuentro y para el diálogo", subrayó el ministro venezolano.

El canciller Rohee informó a Rangel que el presidente Bharrat Jagdeo está sumamente interesado en esa reunión y Rangel le explicó que Chávez tiene igual propósito. AFN



Chávez cambia la tónica

Caracas.- Al igual que los cancilleres de Guyana y Venezuela, Clement Rohee y José Vicente Rangel, el presidente de la República, Hugo Chávez Frías, anunció ayer que bajará el tono en torno al diferendo limítrofe que desde ambos países se ha avivado en los últimos días.

Sin embargo, dejó ver que el Ejecutivo no desistirá en su objetivo de retomar la discusión. Eso sí, "pacíficamente".

Las fricción entre las partes cobró vida en los últimos meses, después que Guyana autorizó a la empresa estadounidense Beal Aerospace Technologies Inc para construir una base de lanzamiento de satélites en el Esequibo.

A propósito de la determinación guyanesa, Chávez ha expresado que su gobierno no está dispuesto a aceptar la construcción de la instalación aeroespacial en el Esequibo.

Pero ayer el propio primer mandatario cambio la tónica, al conocer del pacto de caballeros logrado por los representantes diplomáticos de ambos países. "Yo estoy de acuerdo con eso, Venezuela lo único que está planteando es que se discuta en torno al Acuerdo de Ginebra. Esa es nuestra solicitud, desde el primer día de gobierno", dijo al ser abordado por los periodistas, al tiempo que Rohee y Rangel conversaban al respecto.

No obstante destacó que no puede entender que "alguien diga que no hay problemas".

"Y si no hay problemas por qué eso está en Naciones Unidas y por qué hay un señor Jackman, que anda viajando por todo el mundo y por qué el Acuerdo de Ginebra y un *Protocolo de Puerto España", se preguntó. "Claro que hay un* problema ahí", remató luego.

Oliver Jackman es el buen oficiante de la Secretaría General de la Organización de las Naciones Unidas (ONU), para dirimir la controversia que mantienen ambas naciones. "Y lo más importante es que reconozcamos todos, de Guyana y Venezuela, que existe un problema y pongamos toda nuestra voluntad para solucionarlo. Pacíficamente, por su puesto", señaló el jefe de Estado.

Al ser interrogado en cuanto a las tendencias que sigue la diplomacia de Guyana precisó: "No quiero hacer especulaciones, más bien prefiero bajar el tono de las declaraciones públicas. Y tendré un gran gusto en hablar con el presidente de Guyana, Barrat Jagdeo, en Brasilia".

Consideran oportuno el momento político para resolver disputa

Cheo Goiricelaya
El Universal

Caracas.- "Es un momento apropiado para resolver el conflicto de Venezuela y Guyana, fundamentalmente por la popularidad del presidente Chávez, ya que estos acuerdos requieren política y constitucionalmente del respaldo de los venezolanos".

La afirmación la hizo la internacionalista Elsa Cardozo, quien considera que el momento también es oportuno, estratégicamente hablando, "para promover una solución que tenga como componente fundamental la proyección de áreas marinas y submarinas".

Aseguró que dejar pasar este momento sería perjudicial porque se está hablando de una reclamación sobre una zona muy grande para los guyaneses, pues representa lo que ellos consideran es 73% de su territorio.

Cardozo advierte que, de todos modos, la negociación no va a resultar fácil. "Resultará costoso para Venezuela, ya que en este momento uno de los argumentos del Gobierno guyanés es que las protestas venezolanas tienden a obstaculizar las posibilidades de desarrollo que tiene un país pequeño", explicó.

Vecino rico

En cuanto al propósito que tiene Venezuela de otorgar cédulas de identidad a quienes hayan nacido en el Esequibo, aseguró que es posible, "de hecho, y es una propuesta que asume y tiene el propósito de cambiar la imagen que pueda tener la población guyanesa de Venezuela".

Considera que Venezuela es vista como el vecino rico que no tiene grandes dificultades y que está presionando al otro país para quitarle parte de su territorio. "En estos momentos Guyana piensa que estamos saboteando su establecimiento, siendo esta percepción difícil de cambiar, y eso que por algún tiempo el Gobierno venezolano puso empeño para modificar la imagen de Venezuela hacia el Caribe, que es una caja de resonancia muy importante para Guyana", aseguró Cardozo.

Sin embargo, dijo que no cree que se esté irrespetando el acuerdo de Ginebra, ya que éste no le prohíbe a Guyana hacer nada en la zona en reclamación; "lo que sí pienso es que el otorgamiento de concesiones dificulta el cumplimiento del acuerdo, es decir, pone inconvenientes a la búsqueda de un arreglo práctico, nada más basta ponerse a pensar en la base aeroespacial y que la población a establecerse allí queda muy cerca de la boca del río Orinoco".

Reiteró que el tratamiento de concesiones establece rigideces que hacen difícil el arreglo práctico y, en ese sentido, la actitud de Guyana no facilita el cumplimiento del acuerdo, pero tampoco lo viola.



CARLOS HERNANDEZ/ARCHIVO

Guyana es una nación pobre que percibe a Venezuela como un vecino hostil

Satélites detonadores

Fue en julio

▶ Cuando el presidente de la República, Hugo Chávez, denunció un proyecto guyanés para construir una base satelital en el Esequibo.

De inmediato

▶ El mandatario guyanés, Bharrat Jagdeo, respondió acusando a su vecino de "interferencia" y de intentar "ahuyentar a los inversionistas serios" de Guyana.

Agosto

▶ Tras los resultados electorales del 30 de julio, el mandatario Jagdeo felicitó a Chávez y dijo que este nuevo período es propicio "para que nuestros países profundicen sus relaciones".

El bumerán

▶ Se volvió contra la diplomacia venezolana, una vez que el Instituto de Estudios Fronterizos (IEF) denunció que la Cancillería tuvo información previa con respecto a la instalación de la base. Solicitó a la Fiscalía y la Procuraduría investigar.

Apagafuegos

▶ El director del IEF, Oswaldo Sujú Rafo, asomó la necesidad de la ocupación militar, por parte de Venezuela. Ante lo cual el canciller José Vicente Rangel respondió: "No vamos a declarar la guerra, no vamos a complacer a nadie".

Presentes

▶ Rangel y una comisión técnica viajaron a una zona cercana al borde del Esequibo, con el fin de reafirmar su soberanía y percatarse de las actividades que desarrolla la Armada de Venezuela en ese puesto naval fronterizo.

Agresividad

▶ Dispuesto al diálogo, el canciller guyanés, Clement Rohee catalogó –ante la prensa venezolana– de "desafortunado" el intento venezolano por impedir la instalación del centro satelital. Ante lo cual Chávez alertó "sobre lo que pudiera haber detrás" del cambio de estrategia del vecino oriental y deploró su agresividad.

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J.V. Rangel y Clement Rohee aclararon posiciones y abren vía del diálogo

Guyana reconoce necesidad de solucionar controversia

Dinamizarán el mecanismo de buenos oficios incorporándose a más reuniones con los facilitadores y Oliver Jackman

Los presidentes Hugo Chávez y Bharrat Jagdeo desarrollarán una agenda abierta en su entrevista en Brasilia



ALEJANDRO VAN SCHERMBEEK

"No hay dragones disfrazados" indicó el canciller guyanés al referirse a especulaciones de la prensa ante el reforzamiento de las operaciones militares en el vecino país. En su entrevista con el ministro José Vicente Rangel imperó la cordialidad. 1-2

Ratificado Isaías Rodríguez

Cambios tácticos en el gabinete ministerial

El jefe de Estado señaló que "los cambios son por necesidad táctica, por la visión de la nueva etapa"

Ministerio del Trabajo

Suena	Titular	Va para
•Blancanieve Portocarrero •Elías Jaua	Lino Martínez	Embajada de México

Ministerio Producción y Comercio

Suena	Titular	Va para
•Francisco Natera •Ramón Rosales	J. J. Montilla	Actividad privada

Ministerio de la Secretaría

Suena	Titular	Va para
• William Fariña • Alberto Esqueda T. • Miguel Quintero	Francisco Rangel	Vuelve a la FAN

Ministerio de Infraestructura

Suena	Titular	Va para
• Wilmer Castro • Víctor Cruz Weffer • Adolfo Miquilena	Alberto Esqueda Torres	?

Ministerio de Relaciones Exteriores

Aspira	Titular	Va para
•Blancanieve Portocarrero	José Vicente Rangel	Ministerio de la Secretaría

Vicecanciller

Suena		Va para
•José Vielma Mora	Jorge Valero	•Gobernador de la OPEP

Ministerio del Ambiente

Aspira	Titular	Va para
?	Jesús Pérez	?

Ministerio de Interior y Justicia

Suenan	Titular	Va para
• Orlando Fernández Medina • Luis Miquilena	Luis Alfonso Dávila	?

Ministerio de Salud

Suenan	Titular	Va para
• José Guerrero Gil	Gilberto Rodríguez	?

1-12

Con apoyo de la base

Fedecámaras reitera llamado a la emergencia económica

"Se tienen que tomar medidas para que se pueda ir adelante", dijo su presidente Vicente Brito en respuesta a los sectores que le hicieron oposición. **2-1**

Washington confía que Plan Colombia generará paz

Tanto el Departamento de Estado como la nueva embajadora norteamericana en Bogotá aseguraron que el programa antidrogas no provocará más violencia. **1-8**

Alfredo Peña

"La Constitución otorga carácter civil y autónomo a la policía"

El titular de la Alcaldía Mayor quiso dar por zanjada la polémica que en torno a la designación del director de la PM mantiene con el ministro de Interior y Justicia, Luis Alfonso Dávila, recurriendo al imperio de la ley, "que establece que el orden público es responsabilidad del alcalde metropolitano"

4-2

Paralizada Guarenas por damnificados de Vargas

Entre cinco y nueve de la mañana estuvo ayer interrumpido el tránsito en Guarenas por un grupo de 500 damnificados de Vargas, quienes se apostaron en el distribuidor La Guairita para protestar por las condiciones de vida que tienen en los refugios. **4-16**

Afirma Héctor Ciavaldini

Pdvsa iniciará negociaciones de la contratación colectiva

Apoyándose en los resultados del referendo realizado entre sus trabajadores, el presidente de la industria petrolera anunció la reanudación de las conversaciones inmediatamente, al margen de los pronunciamientos emitidos por los sindicatos tradicionales

2-1

Informó José M. Zerpa

70% de recursos jerárquicos sobre elecciones son inadmisibles

Se trata de escritos que no proceden o no están sustentados, dijo el directivo del CNE, quien prometió que para el fin de semana se dará respuesta en cuanto a la admisibilidad de la mayoría de los recursos. El martes vence el plazo. **1-12**

Galarraga no se retracta

Pese a los abucheos que recibió en Denver y a las críticas de algunos periodistas, el venezolano siente que actuó como correspondía al golpear al pitcher John Wasdin, de los Rockies, en respuesta al pelotazo intencional. **3-1**

Internacional

Fox propone a EEUU abrir la frontera

El presidente electo mexicano planteó en la Casa Blanca la necesidad de un cambio para eliminar la inmigración ilegal. **1-8**

Tesis de atentado centra investigación del Kursk

La presencia de dos daguestanies despertó dudas entre los expertos rusos. Los familiares de las 118 víctimas de la tragedia del submarino les rindieron homenaje. **1-8**

Economía

Cayó 16,4,% recaudación del Seniat

Las cifras de julio muestran que en 12 meses la tributación experimentó este descenso para cerrar en cerca de cuatro billones de bolívares. **2-4**

Gobierno busca crédito del BID

El ministro de Finanzas, José Rojas, indicó que esperan que el multinacional les financie con $200 millones el capital semilla para los nuevos fondos de pensiones. **2-4**

Deportes

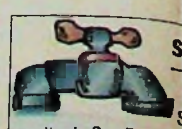
Venezuela finalista en Mundial de Pequeñas Ligas

El equipo Maracaibo derrotó a Tokio y obtuvo el derecho de disputar el título contra el vencedor de la final regional de Estados Unidos. **3-1**

Excluido director técnico de viaje a Sydney

Elavit Asmadt quedó fuera de la delegación que nos representará en los Juegos Olímpicos por diferencias con el COV. **3-4**

Caracas



Sábado 26

Norte

La Florida, Guaicaipuro Norte, Maripérez, Sarría, Av. Andrés Bello, Las Palmas, parte alta de San Bernardino, Av. Panteón, Av. Urdaneta, Candelaria Norte, Cotiza, Los Mecedores, Urb. Los Hijos de Dios, El Retiro, La Pastora, Lídice, Manicomio, El Refugio, Ruperto Lugo.

Centro

Silencio, El Guarataro, Monte Piedad.

Sur

San Agustín del Sur, Homos de Cal, Resd. Jardín Botánico, La Charneca, El Mamón, El Manguito, Marín, Televisora Nacional, La Ceiba, El Helicoide, Terrazas de Las Acacias.

Oeste

Los Frailes, Alta Vista, Carretera vieja de La Guaira, Blandín hasta la Vuelta de La Cabulla, Urb. 23 de Enero, Flores de Catia, parte baja de Los Magallanes de Catia y de Pérez Bonalde, La Cortada de Catia, plaza Catia y zonas aledañas.

EL UNIVERSAL

Opinión

Gerardo Fernández

El articulista describe el proceso para designar al TSJ y al Poder Ciudadano, enviándole un directo mensaje a la sociedad civil a fin de que asuma su importante rol. **1-4**

Maxim Ross

Si hay dinero inorgánico aunque no aparezca en ningún diccionario. Y no me queda duda del peligro que encierra. **2-2**

Luis Zambrano Zuquin

El mensaje de que el Gobierno puede financiarse con la fijación arbitraria de la tasa de cambio, obviamente, genera una gran incertidumbre. **2-2**



Diviértete con Tito, sus amigos y el tío de Juliana, un famoso payaso circquero, que les contará *La leyenda del león*. Todo esto y más en la edición de hoy de *Las aventuras de Tito*, que circula con su sexta y última pieza del concurso *Armatito*.

Cerca de 46 mil indígenas viven en el territorio en reclamación

El soberano en el Esequibo es amerindio

DUEÑOS DE SUS TIERRAS, pero limitados de poder explotar sus riquezas, las comunidades, tribus y etnias en la zona están siendo afectadas por la práctica de la minería indiscriminada, según reportes de la sociedad civil

Antonio Fernández Nays
El Universal

Caracas. - Sin temor de entrar en exageraciones, se puede afirmar con propiedad que en el territorio en reclamación la población predominante es la amerindia, la cual se distribuye a lo largo de las cinco regiones administrativas que lo integran.

Según un documento elaborado por la sociedad civil guyanesa, denominado Estrategia Nacional de Desarrollo, suerte de plan de la nación, las últimas mediciones indican que la población amerindia llega a 46.010 miembros, cerca de 6,4% del total de la población de Guyana.

En la region 1, adyacente al estado Delta Amacuro, se ubica 28,8% del total de comunidades ancestrales, y en la región 9, fronteriza con Brasil, se localiza 24,95%. Siguen las regiones 2, 7 y 8, que baña a su paso el río Esequibo, con 11,72%, 9,45% y 8,63%, respectivamente.

Los amerindios provienen de la línea de los arawacos, waraos y caribes. Hay en el Esequibo cerca de 15.500 descendientes de la primera etnia, quienes se llaman a sí mismos como "lokonas".

La mayoría de los amerindios subsisten de la agricultura, la caza y la industria maderera; el porcentaje restante se ha dedicado a la minería y manufactura. Consumen, al igual que en Venezuela, el casabe (cassava) como parte básica de su dieta, que complementan con carnes rojas y pescados. Son muchas las comunidades que no tienen acceso al agua potable debido a que la principal fuente, ríos y pozos, han incrementado sus niveles de contaminación por la actividad minera.

Según el documento de la sociedad civil, en comparación con otros grupos étnicos, una gran proporción de amerindios clasifica en el renglón de la pobreza, y en las regiones del Esequibo 8 y 9, viven en condiciones de absoluta pobreza.

Asunto terrenal

El Gobierno guyanés concedió a los amerindios, luego de una reforma legal en 1991, títulos de propiedad de las tierras que ocupaban. Recibieron tales avales 62 comunidades y 12 villas en el Alto Mazaruni, que junto con los distritos, son las formas de organización político-territorial bajo las cuales Georgetown los agrupa. Aproximadamente 7% del territorio nacional está bajo jurisdicción legal indígena.

El criterio que imperó para proceder a dotar de títulos de tierra a los amerindios apunta, precisamente, a que tales comunidades se han establecido en esas zonas desde tiempos ancestrales.

En efecto, el preámbulo del acta de la Comisión de Tierras Amerindias, indica con respecto a los territorios que por tradición y costumbre han ocupado, que estas etnias "de hecho gozan de libertad y permisos correspondientes a derechos naturales".

Sin embargo, los amerindios no poseen ningún derecho sobre los minerales que están bajo sus terrenos.

La actividad de la minería les ha traído consecuencias a sus vidas, ya que el "uso de sustancias nocivas, la contaminación de las fuentes de agua y erosión de sus tierras ha reducido la navegabilidad de los ríos y exterminado a las especies acuáticas de las cuales se nutren los amerindios", indica el informe citado.

La sociedad civil guyanesa ha exigido al Gobierno de ese país que las tierras "legítimamente ocupadas por las comunidades amerindias sean preservadas, con sus límites claramente demarcados, y elaborar los mapas en un esfuerzo de colaboración entre las agencias gubernamentales y los miembros de esas comunidades".

Además, exhorta a Georgetown a darle acceso a créditos, proveerlos de asistencia técnica para el desarrollo de sus proyectos, financiar éstos junto con la banca privada comercial. Pero los amerindios no están del todo desprovistos: cuentan con un Ministerio para Asuntos Indígenas y varias organizaciones no gubernamentales que les provee asistencia legal, humanitaria y canaliza sus peticiones ante los centros de poder.

El ministerio citado espera los poderes necesarios para ajustar, rehacer y garantizar esos títulos.

Sin puntos ni rayas

■ Demarcación

90% de las comunidades amerindias demarcan sus tierras por límites naturales

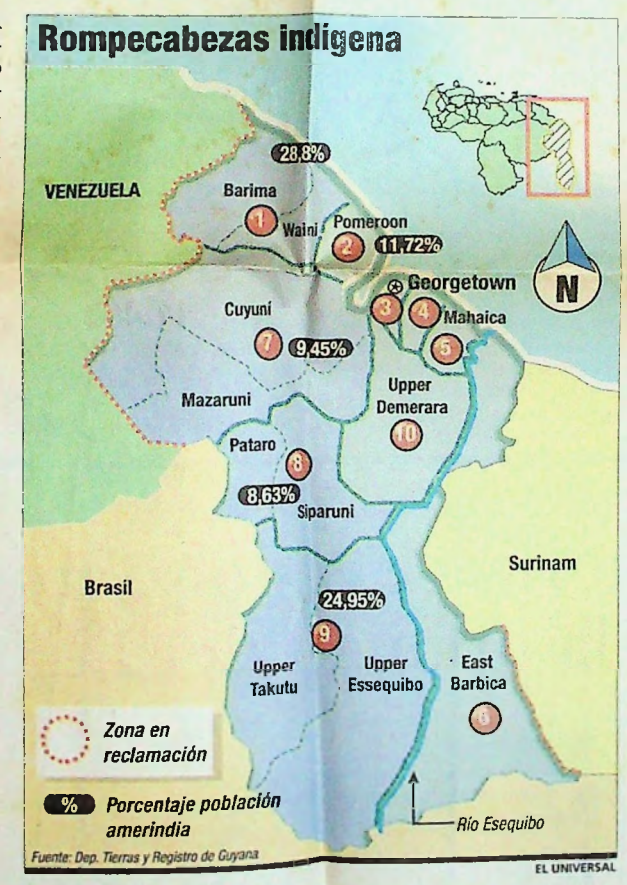
■ Costos

Se estima que sólo demarcar la región 2 puede costar entre 4 y 5 millones de dólares



ANTONIO FERNANDEZ NAYS

En las zonas más desarrolladas la población amerindia es minoría



El potencial aurífero es de 25.000 toneladas

Caracas. - La histórica reclamación que Venezuela hace del territorio Esequibo tiene variables que van mucho más allá de las meras discusiones diplomáticas y tal vez son tanto o más importantes que las respuestas emotivas, las acciones soberanas de lado y lado, y la misma pretensión de una base de cohetes. Se trata de la capacidad geoestratégica y geopolítica que representa el potencial de esa zona.

Un estudio de la Escuela de Ciencias de la Tierra de la Universidad de Oriente sobre Imataca, desarrollado por investigadores del posgrado en Recursos Naturales, aborda con detalle el potencial del Esequibo, al cual considera la prolongación biorregional de la sierra venezolana.

Según Guillermo Tinoco, uno de los autores del estudio, Imataca y el Esequibo "conforman una sola biorregión en cuanto a diversidad biológica y una georregión en cuanto a recursos minerales e hídricos". Además, es una etnorregión pues los dos sectores conforman una sola familia de varias etnias nativas (29.000 indígenas en Imataca y 18.000 en el Esequibo, aproximadamente).

Estudios geológicos y mineros estiman que hay 25.000 toneladas de oro en reservas del territorio en reclamación, y 12.000 en Imataca. Además se ha determinado un gran potencial de diamantes, ilmenita en las arenas negras de los ríos, biomasas, minerales metálicos y no metálicos, granitos de fabulosos colores, piedras de construcción, fauna biodiversa y miles de exóticas frutas.

Tinoco indica que los guyaneses han investigado profundamente la zona junto a científicos de Inglaterra, Canadá y Estados Unidos "y conocen el Esequibo mejor que nosotros Imataca".

La investigación de la UDO fue publicada en un libro intitulado *Imataca, tierra dorada siempre verde*, y contiene el producto de investigaciones científicas que tomaron a sus autores, José Herrero Noguerol y Guillermo Tinoco, 35 y 23 años respectivamente. Fue premiada por la CEPAL por el mejor trabajo de investigación minero-ambiental de América Latina del 2000. **AFN**



BBV Banco Provincial

ALERTA A

Corredores Públicos de Título Valores, Casas de Bolsa, Instituciones Financieras y a todo el público en general que le fueron sustraídos a la Compañía de Transporte TRANSVALCAR, la cantidad de 104 títulos denominados "Certificado Especial de Reintegro Tributario", emitidos a la orden de Petrolera Zuata Petrozuata C.A., por un total de Bs. 600 millones, cuya numeración detallamos a continuación:

Serie	Fecha de Emisión	Numeración	Valor Facial (Bs)	Cantidad	Monto (Bs)
D	06.07.2000	18585 al 18600	10.000.000	16	160.000.000
C	28.07.2000	8936 al 9023	5.000.000	88	440.000.000
TOTAL				104	600.000.000

Tal situación fue hecha del conocimiento del Ministerio de Hacienda, emisor de los mismos y del Banco Central de Venezuela a los fines pertinentes y para que en consecuencia, se abstenga de cualquier operación, en relación con los mismos, incluído su pago.

Ministro califica ilegal paralización de galenos

Eugenio Martínez
El Universal

Caracas.-El ministro de Salud y Desarrollo Social, Gilberto Rodríguez Ochoa, calificó el paro convocado por la Federación Médica Venezolana, FMV, como ilegal. A la par, explicó que éste se había cumplido sólo en los estados Carabobo, Cojedes, Lara, Apure y Zulia.

Rodríguez niega que 80% de los galenos rechazaran su propuesta mediante un referéndum. "Buena parte de la base médica del país comparte el acuerdo logrado con el DF (...) los resultados de la consulta fueron manipulados por la federación, que obliga a los médicos a tomar acciones que pueden perjudicarlos".

El Ministerio de Salud y Desarrollo Social ofreció a los dirigentes de la FMV cancelar a los médicos —incluyendo a los jubilados y a los contratados por las gobernaciones— un bono único de dos millones doscientos mil bolívares; aumentar 20% el salario básico según decreto presidencial y continuar discutiendo la contratación colectiva hasta lograr un nuevo aumento en enero del 2001.

Adicionalmente se aportará un millardo de bolívares al fondo habitacional y se aumentará 40% a los médicos que laboren en áreas rurales de difícil acceso. Para cancelar estas obligaciones el Ministerio de Salud requerirá un aporte de 40 millardos.

Según Rodríguez, estas condiciones se discuten actualmente con los médicos de los estados Nueva Esparta, Amazonas, Lara, Aragua y Bolívar.

Méndez Quijada señaló que la paralización de actividades se cumple en 80%

Gremio médico denuncia intento de agresión del MVR

AL TRIBUNAL disciplinario de la FMV fue pasada la directiva del Colegio Médico de Miranda por firmar con el Ministerio de Salud un documento írrito

Alicia La Rotta Morán
El Universal

Caracas.- El 80% de los establecimientos del Ministerio de Salud en el territorio nacional están cumpliendo la paralización de sus actividades como medida de presión para destrabar las discusiones del contrato colectivo, informó el presidente de la Federación Médica venezolana, Jesús Méndez Quijada.

El médico le salió al paso a las declaraciones del ministro de Salud, Gilberto Rodríguez Ochoa, quien señaló que el paro se cumplía en 20%. Méndez Quijada aseguró que en el interior se está cumpliendo la suspensión de los servicios no prioritarios. "Hay una confusión que favoreció el Colegio de Médicos del DF al firmar con el ministro de Salud en lugar de firmar con el gobernador: los médicos del Algodonal y Los Magallanes creen que están amparados por lo que se acordó, lo cual es falso".

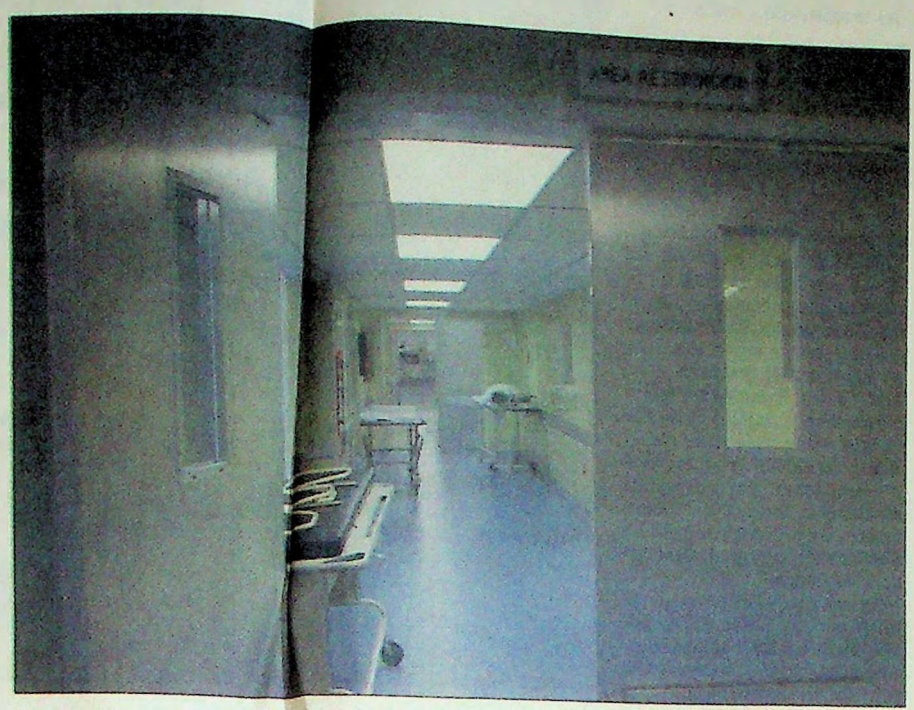
Además de la paralización de las actividades electivas, es decir las intervenciones que no son de emergencia, se elimina también la información epidemiológica que implica el registro de las enfermedades.

Méndez Quijada denunció una maniobra del Gobierno para tratar de desestabilizar las protestas, organizando brigadas de choque con militantes del MVR y el MAS que tenían planeado tomar de manera violenta la sede del Rosal de la FMV. "Esta mañana —relató— se presentó una comisión de la Policía Metropolitana y cuando le preguntaron de qué se trataba, los funcionarios le expresaron que venían con órdenes de estar pendientes ante cualquier problema que pudiera presentarse aquí. Yo hablé con ellos y me dieron el teléfono de un comisario de la PM al cual llamé y me informó que esta mañana en su sistema de radio detectaron la información del asalto a la FMV, así que esto no es una cosa de personas reunidas en la esquina, sino organizada por personas a través de radios".

Expresó su preocupación por la actitud que, a su juicio, pretende asumir el Ejecutivo. "Si la respuesta de un Gobierno frente a un conflicto laboral es acabarlo a sangre, estamos no sólo ante una tendencia autoritaria, sino en un estilo fascista de enfrentar los reclamos".

Indicó el dirigente gremial que entre las acciones que tomarán próximamente se cuenta una movilización al Ministerio de Salud, exigir la respuesta del Ipasme y el SSO y la incorporación de esos médicos al conflicto.

Sobre el documento que firmó el Colegio Médico de Miranda con el ministro de Sanidad, informó que este hecho es írrito por cuanto legalmente corresponde a la FMV ejercer la representación del gremio ante los organismos públicos nacionales. "Por eso lo que hayan firmado es írrito y al hacerlo en violación de la ley tienen que aclarar su situación en el tribunal disciplinario", adelantó Méndez Quijada.



ALEJANDRO VAN SCHERMBEEK

Estrictas emergencias se están atendiendo en las dependencias médicas del Ministerio de Salud

Introducen hábeas corpus por Bustillos

Caracas.- Hidalgo Valero, abogado defensor del coronel Silvino Bustillos, introdujo ante el Tribunal Segundo Militar, un recurso de hábeas corpus en el que solicita la inmediata liberación del oficial, quien permanece retenido en La Carlota.

Además requiere en el escrito que los abogados defensores tengan acceso permanente al sitio de reclusión y también que se suspenda el Consejo de Investigación pautado para el próximo sábado 22, como una medida que sirva a Bustillos para ejercer su defensa debidamente en este proceso.

El oficial permanece detenido desde el viernes pasado y hasta hoy, luego que emitiera una declaración en el Consejo Nacional Electoral donde cuestionó la gestión presidencial de Hugo Chávez.

Valero informó que para hoy a las diez de la mañana está prevista la decisión del hábeas corpus. Ayer, el abogado se reunió en la tarde con Silvino Bustillos, luego de recibir el respectivo permiso. RC

Mindefensa se reunió con capellanes

Rodolfo Cardona
El Universal

Caracas.- Más de cincuenta capellanes de la Fuerza Armada Nacional se reunieron por más de cuatro horas con el ministro de la Defensa, GD(Ej) Ismael Eliézer Hurtado Soucre, y el Alto Mando, en la sede del despacho castrense.

El motivo de la reunión no trascendió a los medios de comunicación, quienes por orden ministerial no tuvieron acceso al lugar de la reunión, ya que el encuentro fue catalogado de "privado".

Asimismo, el equipo reporteril de ***El Universal***, permaneció en la oficina de Relaciones Públicas del Ministerio de la Defensa a la espera del permiso, que nunca llegó ni siquiera para abordar a los asistentes a la salida del encuentro.

Días atrás, el ministro Hurtado Soucre ofreció una fuerte respuesta a monseñor Ignacio Velasco, arzobispo de Caracas, en las que criticó que el prelado generalizará sobre la situación interna de la Fuerza Armada Nacional.

Fapuv calificó como exitoso paro de profesores

Elvia Gómez
El Universal

Caracas.- El presidente de la Federación de Asociaciones de Profesores Universitarios de Venezuela (Fapuv), José Rafael Casal, aseguró que el llamado al paro de 24 horas fue acatado ayer por todos los agremiados en las 17 universidades y señaló que el éxito de la medida de protesta será evaluado a posteriori.

Indicó el vocero que esperan que el ministro de Educación, Héctor Navarro, les conceda una audiencia para discutir el tema de la violación de la autonomía universitaria, que estiman amenazada por el Ejecutivo. Casal ratificó la lucha "por una universidad autónoma y democrática". Asimismo, dijo Casal que "quedará en la conciencia de cada quien la defensa o no de la autonomía", en referencia a algunos profesores que no acataron el paro, como fue el caso de la UCV.

Apucv no lo acató

Antonio Sosa, presidente de la Asociación de Profesores de la UCV (Apucv), informó que ellos decidieron no sumarse al llamado a paro formulado por la Fapuv en razón de que no fueron consultados, al igual que la Asociación de Profesores de la Universidad de Carabobo, aseguró el vocero.

Dijo que la Apucv envió a la Fapuv una comunicación donde manifiesta su inconformidad con la decisión, al tiempo que solicitó copia certificada del acta del Consejo Superior de Fapuv donde se acordó el paro de profesores de 24 horas.

En cuanto al reclamo de la violación de la autonomía universitaria en las experimentales, Sosa dijo que tiene entendido que eso está siendo solventado por los respectivos gremios y autoridades.

Primero Justicia exige que el tema se extraiga de la diatriba electoral

Maisto hace votos por solución amistosa de controversia esequiba

Antonio Fernández Nays
El Universal

Caracas.- Confiando en que Venezuela y Guyana lograrán resolver la centenaria controversia por el Esequibo, el embajador de Estados Unidos en Caracas, John Maisto, evitó pronunciarse por la participación de su país en el contrato para la construcción de una base de lanzamiento de satélites en la zona en reclamación.

El pronunciamiento se produce a escasas 48 horas de que el Gobierno venezolano haya solicitado a Washington ampliar la información relativa a participación de "funcionarios de Estados Unidos" en la seguridad de las instalaciones de la empresa Beal Aerospace Technologies, que firmó un contrato con Georgetown para el emplazamiento de la base en el Esequibo.

Citado por la emisora Unión Radio, el diplomático estadounidense hizo votos por la resolución del reclamo territorial "en forma pacífica con arreglo y negociación", pero eludió comentar la solicitud de Venezuela a EEUU.

Tanto el presidente Chávez como el ministro Rangel han declarado varias veces que Venezuela se opondrá a la edificación de esas instalaciones en el territorio sometido a controversia. Para la cancillería venezolana la firma del acuerdo entre la mencionada empresa estadounidense y el Gobierno guyanés constituye "un acto inamistoso".

Público, pero con altura

Ante el exhorto de la organización Primero Justicia, de extraer este vital tema de la polémica electoral y ventilarlo a la luz pública, el ministro Rangel manifestó su total acuerdo, con tal de que se haga con seriedad, responsabilidad y conocimiento de causa, pues percibe "mucha frivolidad en eso".

"Hay algunos que han utilizado el tema (como ardid electoral): los que hablan de que vamos a invadir a Guyana lo han utilizado", advierte en clara alusión al candidato opositor Francisco Arias Cárdenas.

Primero Justicia rechazó también a quienes apelan "al nacionalismo para insertar este elemento en el discurso electoral", pues ello "en nada beneficia al proceso y debilita la posición de Venezuela frente a una reclamación que se ventila por los canales diplomáticos".

Consultado al respecto, el ministro Rangel dijo que la información sobre el proceso del Esequibo no debe suprimirse, sino más bien "jerarquizarse, darle relieve, asumirla en términos doctrinarios, técnicos y no banalizarlo", so pena de "perjudicar el país y la imagen de Venezuela".

FIM critica declaraciones de Chávez

Caracas.- El Frente Institucional Militar emitió un comunicado en el que denuncia "la arbitraria detención del coronel Silvino Bustillos", al tiempo que solicita "su inmediato sometimiento a un Consejo de Investigación con todas las garantías que establecen la Constitución, las leyes y reglamentos militares".

En el texto de la nota estiman que el oficial no ha sido sometido al Consejo de Investigación, "por temor a las declaraciones anunciadas por su abogado defensor (Hidalgo Valero) sobre supuestos casos de corrupción que puedan afectar gravemente el prestigio del Gobierno ante el cercano proceso electoral".

También, el FIM deplora las aseveraciones del presidente Hugo Chávez en donde ratifica la unidad de la Fuerza Armada. Critican "el triste papel" del general Manuel Rosendo, durante el desfile del 5 de julio pasado, así como las ofensas del ministro de la Defensa al prestigio y honor de la Iglesia. Alertan "hasta los programas humorísticos de manera permanente han comenzado a burlarse de la FAN". RC

Critican planes del Fondo Unico Social

Académicos cuestionan la política social

Elvia Gómez
El Universal

Caracas.- El enfoque estratégico de la política social que adelanta el Ejecutivo Nacional a través del Fondo Unico Social (FUS) falla en el aspecto referido a la atención de la pobreza, así como en centrar su plan en "la familia" cuando existen en Venezuela 25 categorizaciones de ésta.

Estas fueron algunas de las consideraciones expuestas ayer en un encuentro organizado por la Escuela de Sociología de la UCV y el FUS, que contó con la participación de Carolina Malavé y Carolina Redondo, quienes presentaron, por el Gobierno, el documento *La Revolución Social en la V República. La política Social en Venezuela*. El texto fue analizado por los profesores Cecilia Cariola (Cendes), Trino Márquez (Escuela de Sociología) y Víctor Córdova (Faces).

"Si existe 80% de pobreza, ese es el problema esencial, allí se anudan todos los demás problemas, como la violencia, la deserción escolar, la rotación laboral", precisó Márquez, quien dijo que el ataque a la pobreza debe ser "el alfa y el omega" de la acción oficial, lo que cree que no se está cumpliendo.

Añadió que argumentar que el enfoque es el de crear políticas de crecimiento funcionaría si tuviéramos condiciones económicas de prosperidad.

Trino Márquez aseveró que Venezuela es un país pobre si se atiende a los parámetros modernos de medición como son la escolaridad, el empleo y el desarrollo.

Cecilia Cariola destacó, entre otros aspectos, el elevado desempleo, lo que debe ser tenido en cuenta esencialmente al elaborar la política social.

Víctor Córdova no compartió lo dicho por Márquez en el sentido de que Venezuela es un país pobre, pues cree que somos más bien ricos, pero llamó la atención sobre el enfoque errado del FUS de centrar la estrategia en "la familia" cuando lo correcto debe ser el crear nuevos actores que permitan la construcción de un nuevo proyecto, pues estima que el entramado social está severamente dañado.



CHEO PACHECO

Trino Márquez aseveró que el ataque a la pobreza debe ser "el alfa y el omega"

La amenaza ecológica

FRONTERA

La construcción de la base de Beal Aeroespace implica un desastre ambiental para el nogar de las tortugas marinas más grandes del planeta y amenaza con acentuar el efecto invernadero

INDIANA MONTEZUÑIGA
TOBIAS MENDELOVICI
Especial TalCual



FOTOS: INDIANA MONTEZUÑIGA

La construcción de la plataforma aeroespacial en la zona en reclamación traería consigo la destrucción de importantes ecosistemas y la acentuación del efecto invernadero. Tales consecuencias fueron denunciadas por organizaciones ambientales de la región, sin que obtuvieran respuesta de parte del gobierno guyanés. Entre el 18 y el 23 de mayo se efectuó en Georgetown, Guyana, la Conferencia de Turismo Sostenible que todos los años organiza la CTO, Caribbean Tourism Organization. Paradójicamernte, mientras se desarrollaba dicho evento en el Hotel Pegasus de Gergetown, el premier guyanés, Sam Hinds, y el vicepresidente de la compañía estadounidense Beal Aerospace Technologies, firmaban un acuerdo por medio del cual Guyana le otorga un terreno de aproximadamente 100 kilómetros cuadrados.

El plan de la compañía estadounidense es instalar allí una plataforma para el lanzamiento de satélites comerciales. La Beal invertiría unos 100 millones de dólares durante la construcción, para lo cual sería necesario "drenar y limpiar" la zona propuesta.

Ecosistema en peligro

El área se halla entre el río Waini y el océano Atlántico en el noreste de Guyana, zona pantanosa en la cual se encuentran numerosos humedales. Este ecosistema contiene manglares que cumplen varias funciones ambientales importantes como la protección de costas, la provisión de hábitat para la fauna, además de ser excelentes fijadores de CO2 y servir como zona de reproducción para muchas especies marinas. El drenaje de esta zona conllevaría la muerte de manglares y otras especies vegetales, causando además la liberación de metano el cual es un poderoso gas invernadero.

Constituye un agravante de los daños mencionados, que los indígenas que viven en la zona no fueron consultados sobre tal negociación. Esto ocurrió aún cuando un aproximado de 76 familias indígenas serán desalojadas del lugar como consecuencia de la construcción, sin que medie el derecho a opinar en vista de que estas comunidades no poseen títulos de propiedad sobre la tierra. La región Waini habitada por los indios Warao y los legendarios Araucas ha sido designada como uno de los cien sitios más frágiles en el mundo, desde el punto de vista de erosión de culturas aborígenes.

Queda la esperanza en que aún no se ha dicho la última palabra sobre la negociación. A pesar de la firma oficial del acuerdo, éste no estará cerrado hasta que se otorguen los permisos ambientales exigidos por la Agencia de Protección Ambiental (EPA) de Norteamérica. Para tales fines, se contrató a una empresa de consultoría ambiental estadounidense -ICF Consultants- para que realice el estudio de impacto ambiental.

Zona de tortugas

La presentación de Anette Arjoon dentro de la Conferencia de Turismo Sostenible fue muy concurrida y su voz se quebró en varias ocasiones. La empresaria de ascendencia indígena, oriunda de Waini, es una conocida activista por la ecología en Guyana y a su vez gerente general de *Shell Beach Adventures*, uno de los más importantes operadores turísticos de ese país especializado en el área Waini.

Arjoon refirió en su intervención que, entre las desembocaduras de los ríos Pomeroon y Waini en el noreste de Guyana, se encuentra una de las costas menos intervenidas por el hombre en el mundo entero llamada Sheli Beach. Hasta hace poco en una distancia de aproximadamente 100 millas, la mano del hombre pasaba casi desapercibida en esta costa atlántica de aguas color café, que ofrece un mosaico de playas, manglares y planicies de lodo. Solo ocasionalmente se dejan ver la cabaña de alguien que decidió quedarse, unos cuantos campesinos dedicados al cultivo del coco, o indígenas Warao o Araucas.

Hacia Waini Point, el lado más noroeste de esta costa, hay un pequeño grupo de chozas que forman el único lugar de todo el Litoral que tiene aspecto de pueblo. Allí se halla el campamento que sirve de base a un grupo indígena conservasionista, dedicado a la protección de las tortugas marinas. A este grupo, compuesto por una familia Arauca, se han sumado algunos amigos que hasta hace apenas quince años fueron cazadores de tortugas.

Las tortugas marinas son una parte integral de los ecosistemas costeros guyaneses. Hay que considerar también que viajan largas distancias en su proceso migratorio hasta llegar a territorio de países vecinos como Venezuela y Trinidad.

Desde hace poco tiempo, este proyecto conservacionista es apoyado por el World Wildlife Fund. Entre las distintas actividades que se realizan en el marco de este proyecto se incluye el patruliaje marino y aéreo, que se realiza hacia lugares distantes en los que se monitorea el proceso de anidación; el marcado de tortugas: la reubicación de nidos hacia zonas menos expuestas; y la convocatoria y organización de sesiones educativas para estudiantes.

Dentro del contexto del reciente acuerdo para el contrucción de una base aeroespacial, podría considerarse un nuevo reto para los grupos ecologistas y demás organizaciones comprometidas en la conservación ambiental transformar la situación adversa en una oportunidad para enfocar la atención del público en las prioridades de conservación que deben ser atendidas inmediatamente. Por otra parte, para Beal Aeroespace será un reto desarrollar el proyecto planteado en ese sitio causando el mínimo impacto ambiental posible.

▼ La zona entre la desembocaduras de los ríos Pomeroon y Waini es una de las menos intervenidas por el hombre en el mundo entero. Allí, en Shel Beach, hay un mosaico de playas,



manglares y planicies de lodo, donde la mano del hombre pasa inadvertida y reluce el color café de las aguas

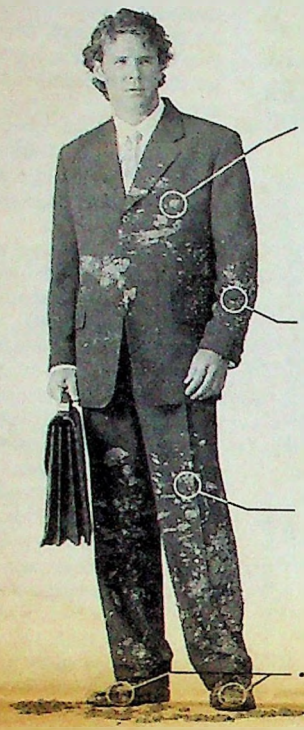
▼ Salida a la crisis

Hoy por hoy el área de Waini está sufriendo cambios en forma acelerada. Hombres y mujeres de otros lugares de Guyana han emigrado a la zona en busca de recursos. Esta ola migratoria, sumada a la falta de planificación para el desarrollo de este territorio y una alta tasa de desempleo, representan a su vez una verdadera amenaza para el medio ambiente. Quizás, haya llegado el momento de que el área ubicada entre el Waini y el Atlántico reciba de parte del gobierno guyanés, el reconocimiento oficial de parque nacional. De este modo podría abrirse la posibilidad de que este territorio sea administrado por la comunidad local, a fin de sea ésta la que decida cómo manejar los recursos naturales que allí abundan y de los que al fin y al cabo depende la sobreviviencia de estos grupos sociales.

En este sentido, se vislumbra como una salida sustentable el desarrollo del ecoturismo que constituye en sí misma una opcion novedosa para generar empleo y desenvolvimiento económico de la zona al tiempo en que coadyuvaría en la conservación de la biodiversidad local. Es indispensable que todas las actividades relacionadascon el territorio del Waini estén enmarcadas dentro de una forma de vida sustentable en la que la comunidad tenga la capacidad de tomar sus propias decisiones, de tener acceso a los recursos y poder usarlos para su subsistencia sin vedar las opciones de los ecosistemas para lograr su susbsistencia, ahora y en el futuro. Por medio de la adopción de un modo de vivir sostenible, el ecoturismo puede constituir una motivacion para que las comunidades actúen directamente en la protección de su ambiente y sus culturas, en beneficio de esta generacion y de las generaciones por venir.

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FRONTERA

Los cancilleres intentan suavizar el tema del Esequibo

VALENTINA URDANETA

La posible instalación de la base aeroespacial estadounidense en el Esequibo revolvió tanto el avispero entre Venezuela y Guyana, que los cancilleres de ambos países decidieron reunirse ayer durante todo el día para buscar una solución práctica a los conflictos en torno al territorio en reclamación.

En medio de la retórica diplomática y de un almuerzo donde el canciller venezolano, José Vicente Rangel, invitó a su homólogo a probar las arepas, analizaron los puntos convergentes entre ambos países en la búsqueda de solucionar los conflictos y amalgamar las relaciones afectadas en estos últimos días.

La reunión permitió desarrollar el diálogo en dos dimensiones. La primera, encaminada a solventar la controversia territorial; y la segunda, vinculada con los intercambios estratégicos entre los países vecinos. En este sentido, se escogió como primer punto de discusión lo relativo a la Comisión Binacional de Alto Nivel, en la que se incluyen proyectos como la lucha antidrogas, la educación y la cooperación ambiental.

El encuentro fue calificado como un éxito por el canciller venezolano, ya que aseguró que se dio el primer paso para solucionar las controversias sobre el tema de las concesiones y permitirá un próximo encuentro entre el presidente Hugo Chávez y su homólogo guyanés Bharrat Jagdeo.

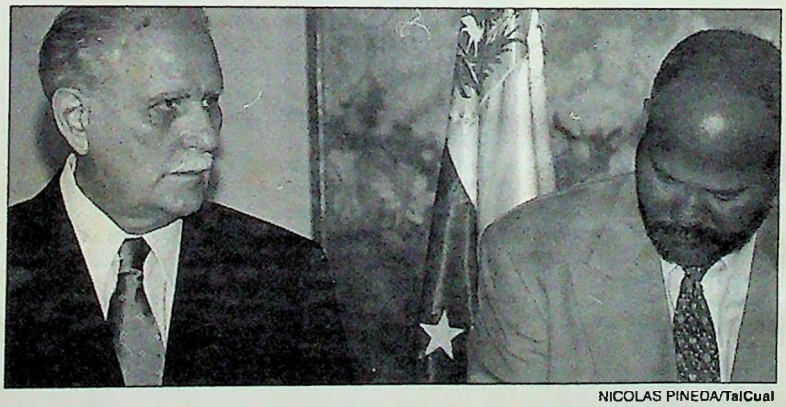
Rangel agregó que, a pesar de que el tema tiene ingredientes históricos y jurídicos, las declaraciones emitidas deben ser analizadas desde una percepción política para garantizar el diálogo entre ambas naciones. "Va a hablar el periodista y no el canciller. Los periodistas deben cumplir una función mediática en la información que realmente contribuya al entendimiento entre los dos países".

Con cara de pocos amigos, el representante del país vecino no quiso manifestar la posición guyanesa en torno al territorio en reclamación y se limitó a decir: "Hubo un periodista de *Tal Cual* al que le di una entrevista larga sobre la posición de mi gobierno respecto al punto. Yo no tengo ningún problema en volver a repetir lo que dije", y sin embargo, no lo repitió.

Rohee prefirió no especular en torno al tema del Acuerdo de Ginebra de 1966 por tratarse de un tema hipotético. "No creo que debamos hablar de cosas hipotéticas. Esta proposición no ha sido presentada a Guyana en formalmente, pero Guyana estará siempre abierta para escuchar proposiciones".

El canciller guyanés agregó que no quiere que se involucren sentimientos en torno al acuerdo de Ginebra porque es un asunto serio y delicado que "requiere una discusión profunda donde cada quien exponga sus posiciones". El canciller venezolano admitió que si bien la reclamación de nuestro país sobre el Esequibo es importante, no menos importante es mantener en buen estado las relaciones binacionales.

El canciller venezolano José Vicente Rangel hizo un llamado a los medios de comunicación para que a través de su "función mediática" analicen el tema fronterizo desde el punto de vista político y dejen a un lado los aspectos históricos y jurídicos del mismo.



NICOLAS PINEDA/TalCual

▼ PREOCUPACIÓN DESPLAZADA

Venezuela está preocupada frente a la visión norteamericana del Plan Colombia, donde se está agregando el implemento militar. El canciller José Vicente Rangel aseguró que quiere resolver el problema de los desplazados por el Río Catatumbo y acabar con la violencia del vecino país a través de la paz. Las discrepancias serán discutidas con su homólogo colombiano, Fernández de Soto, en la cumbre de Brasil que se efectuará el próximo miércoles 31. Habrá que esperar hasta ese momento, porque para Rangel "las preocupaciones no se explican, sólo existen".

Enérgica réplica de la Cancillería

Venezuela acusa a Guyana de deformar la verdad, de contradicción y falsedad

• El gobierno guyanés insiste en plantear en el ámbito multilateral un problema que tiene un instrumento para su tratamiento entre las partes

•"Declaramos formalmente que no estamos dispuestos a dejarnos presionar moralmente...".

•Se pretende utilizar la controversia para tratar de explicar la rebelión contra un gobierno reconocidamente tiránico

• El Ministerio de Relaciones Exteriores, en un memorándum inusitadamente enérgico dado a conocer ayer, respondió al documento que el gobierno guyanés entregó hace algunos días en las Naciones Unidas.

El memorándum venezolano, que en una apretada síntesis, da una vigorosa visión de la justeza y justicia de nuestra reclamación sobre el territorio de la Guayana Esequiba y deja muy en claro el atropello de que fue víctima nuestro país en 1899, constituye una respuesta dura, pero seria, a las maniobras del gobierno del señor Burnham.

Dos aspectos fundamentales se desarrollan en su texto: en primer lugar la "deformación de la verdad promovida por Guyana" y la "grave preocupación" que despierta el memorándum que el gobierno guyanés hizo llegar a manos del secretario general de la Organización de las Naciones Unidas.

Plantea la respuesta venezolana, igualmente, que "la circunstancia de que Guyana insista en plantear el asunto dentro de un ámbito multilateral puede revelar, más allá de un afán propagandístico de su parte, un propósito de apartarse del instrumento bilateral llamado, por nuestra común voluntad, a ser el medio para resolver la controversia".

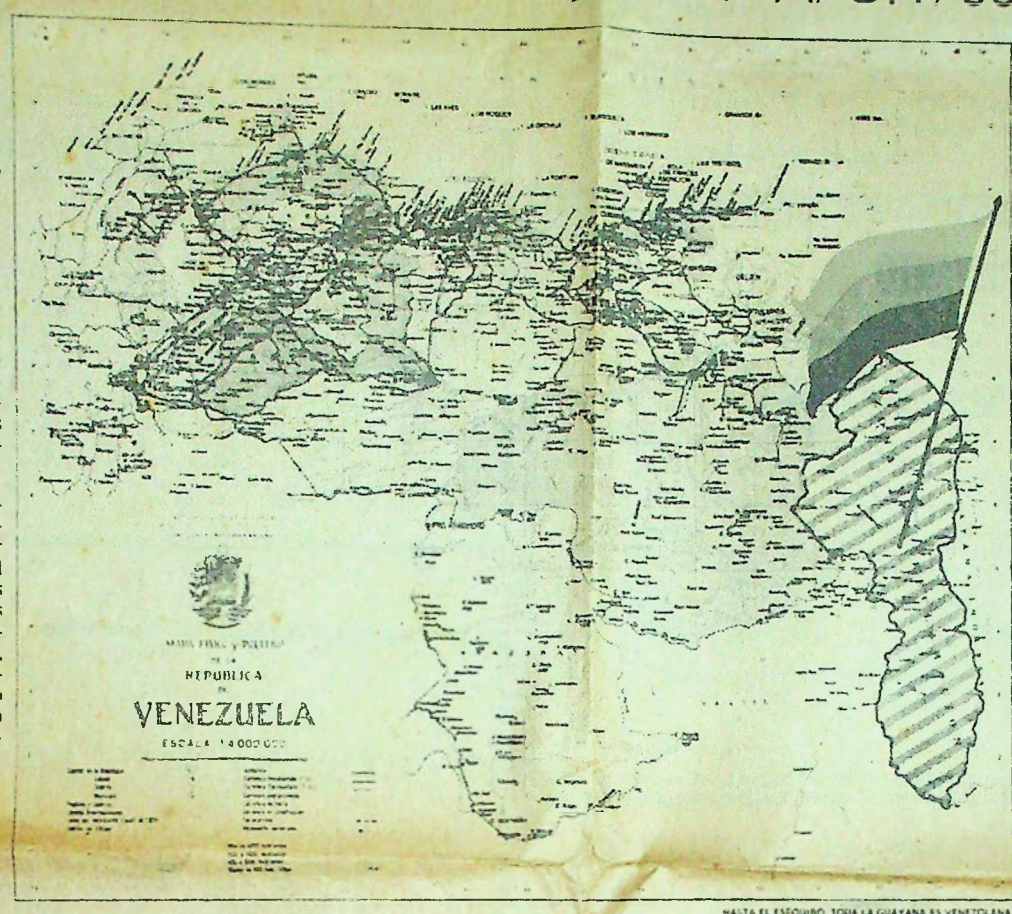
El siguiente es el texto completo del memorándum de la cancillería venezolana:

Memorándum al Secretario General de la ONU dirigido por la Cancillería Venezolana con el documento guyanés circulado en la ONU bajo el N° A/C.1/36.9.

• El gobierno venezolano ha recibido con sorpresa y viva preocupación el memorándum preparado por el gobierno guyanés, con la pretensión de relacionarlo con el tema 58 del programa, de la presente Asamblea General de las Naciones Unidas y que ha sido distribuido bajo el número A/C.1/36.9. Valiéndose de una insostenible maniobra propagandística cuya fantasiosa aspiración es presentar a Venezuela como un país que amenaza con agredir a otro, ese gobierno pretende ocultar lo que va siendo un propósito cada vez más claro, como es sustraerse al cumplimiento de sus obligaciones internacionales.

Venezuela deplora que, una vez más, el gobierno de Guyana persista en su empeño de plantear en el ámbito multilateral un problema que tiene un instrumento para su tratamiento entre las partes, libremente convenido por ambos países y el Reino Unido, como es el Acuerdo de Ginebra. Pero ese afán de distraer la atención, e incluso la maniobra propagandística, no moverían a nuestra grave inquietud de no ser porque se fundamentan en presentaciones falsas e interpretaciones interesadas y calumniosas, y porque, sobre todo, ponen una vez más de manifiesto el propósito guyanés de apartarse del cumplimiento de sus compromisos y deberes internacionales.

Ya con motivo de las imputaciones y de las impropias intervenciones de la representación guyanesa ante esta Organización, el gobierno venezolano se ha visto obligado a distribuir material informativo para ilustrar suficientemente sobre el despojo territorial del que fuimos víctimas por la acción de las potencias imperiales y coloniales. El Ministro de Relaciones Exteriores, doctor José Alberto Zambrano Velasco, se vio obligado a ejercer el derecho de réplica en la Asamblea General, el 24 de septiembre pasado, para responder la tendenciosa intervención del Primer Ministro de Guyana. Venezuela no desea incurrir en un estéril y repetitivo debate; pero el mismo documento guyanés obliga a un breve comentario que descubra su falso sustento y su peligrosa intención.



HASTA EL ESEQUIBO, TODA LA GUAYANA ES VENEZOLANA

I.— La deformación de la verdad promovida por Guyana.

1.- Venezuela es un Estado democrático que ha demostrado ampliamente ante sus nacionales y ante el mundo que respeta su Constitución y sus leyes, los derechos humanos y sus compromisos internacionales. Desde la Guerra de Independencia, hace más de siglo y medio, Venezuela no ha tenido participación en conflictos armados con los países hermanos del continente americano. Venezuela jamás ha tenido vocación belicista y no tiene efectivos militares en el exterior para servir a potencias imperialistas. De allí que resulte insólito e inadmisible que desde países que están muy lejos de observar ese respetuoso apego por el Derecho y la Justicia que ha demostrado Venezuela, se pretenda calificar nuestra reclamación como expresión de ambición de conquista territorial. Nuestro pueblo lo que reclama es una reparación frente al incalificable despojo del que fue víctima por el imperialismo colonial del siglo pasado; y esta ambición tiene que ser comprendida por todos los pueblos del mundo, en especial por aquellos que, como muchos de los representados en la ONU, han sido víctimas de atropellos análogos, en tiempos felizmente superados por la humanidad. Por ello declaramos formalmente que no estamos dispuestos a dejarnos presionar moralmente por una falsa presentación que se pueda pretender hacer de este asunto, intentando mostrarnos como un país fuerte en plan de atropellar o avasallar a otro débil. Esta maniobra desconoce nuestra historia y nuestra propia posición de país en vías de desarrollo, libre y democrático y busca consolidar una injusticia, frustrar un justo reclamo y sacar provecho, para Guyana, como heredera de un despojo colonial.

En las propias palabras del memorándum guyanés encontramos la contradicción y la falsedad:

Guyana oculta cuidadosamente que, en el momento de reconocer nuestra Independencia, Inglaterra se refirió a Venezuela como "este bello y rico país que se extiende por el Mar del Norte desde el río Esequibo o confines de la Provincia de Guyana". Por el contrario, el gobierno guyanés más bien se ufana de que, ante el aparente tribunal arbitral del siglo pasado, "los británicos fundamentaron su causa **en actos concretos de ocupación, posesión y desarrollo extensos**". ¿Qué significado tienen esos actos frente a aquella declaración, como no sea el desconocimiento por las vías de hecho y por la ley del más fuerte, de la legítima frontera oriental venezolana? ¿Qué otra interpretación cabe dar a la posición guyanesa que no sea la de ampararse en las leyes del imperialismo y en su atropellante razonamiento para ser heredera y aprovechadora de un despojo colonial?

Parece inconcebible que Guyana, un país al igual que Venezuela pertenece a la comunidad de naciones que ha padecido el colonialismo, presente como un hecho natural que, en un supuesto tribunal arbitral, **mientras Inglaterra designaba árbitros al Presidente de su Tribunal Supremo y a un Juez de apelaciones inglés, la representación de Venezuela residiera en el Presidente y un Juez de la Corte Suprema de Justicia de los Estados Unidos**. Venezuela espera que no sea ésta la concepción sobre la igualdad de los Estados que Guyana defiende frente a todos los países.

Lo más importante es que el memorándum guyanés califique al quinto integrante de ese aparente tribunal y presidente del mismo, como "un distinguido jurista ruso". Se trata de Federico de Martens, quien en su libro, "Rusia e Inglaterra en Asia Central", al defender la alianza entre esas potencias en el continente asiático sostuvo que "el porvenir del Asia y la suerte futura de sus posesiones obligan a Rusia e Inglaterra a no perder de vista el papel sublime que la Providencia Divina les ha impuesto para el bien de las **naciones semi-salvajes y bárbaras** de esta parte del mundo". Venezuela está segura de que el gobierno de Guyana oculta su admiración por ese "distinguido jurista" a la hora de tratar de hacer valer, con cualquier propósito, recto o no, su condición de país del Tercer Mundo.

Es paradójico que Guyana llegue hasta a afirmar que el país que encabezó la Independencia Latinoamericana se prevalga de doctrinas jurídicas heredadas de la colonia. La posición jurídica de Guyana es la que depende íntimamente de esas doctrinas. De Martens, "el distinguido jurista ruso" que organizó el fraude arbitral de 1899, sostenía enfáticamente que "el derecho internacional europeo no es aplicable a las relaciones de una potencia civilizada con una nación semi-salvaje". Este es el fundamento ético de la pretendida sentencia de 1899. El fundamento político es la búsqueda del entendimiento anglo-ruso. Lo que no existe es el fundamento jurídico, a menos que la fuerza y "la extensa ocupación" unilateral sean un argumento.

Más paradójico aún es que la supuesta doctrina jurídica heredada de la colonia que Venezuela estaría invocando, no es otra que la doctrina del "utipossidetis iuris", que es exactamente la misma que Guyana invoca para sustentar sus pretensiones territoriales al este del Esequibo.

Venezuela, al reconocer la independencia de Guyana, hizo expresa reserva de sus derechos hasta el Esequibo, pero como es evidente, se ha abstenido de practicar los "actos concretos de ocupación, posesión y desarrollo extensos", que al decir de Guyana constituyen los fundamentos jurídicos de la Gran Bretaña para internarse al oeste del Esequibo, no obstante que ésta no hizo tal reserva al momento del reconocimiento de Venezuela, sino por el contrario aceptó la extensión hasta el Esequibo de "este bello y rico país".

Parece, en conclusión, que las acusaciones del gobierno de Guyana tuvieran el propósito de ocultar lo que es innegable, y es que su posición se fundamenta en la ética y la práctica del imperialismo.

2.- Falsamente Guyana insiste en que Venezuela jamás impugnó el inexistente laudo de 1899 y que su argumentación depende de un memorándum póstumo de Severo Mallet-Prevost, de quien se atreve a insinuar que fue comprado con una condecoración.

Se oculta así que, nada menos que con ocasión de un arbitraje en 1903, ante la Corte de La Haya, los representantes venezolanos dejaron constancia de que aquella farsa jurídica había "dejado un sentimiento de amargura para el corazón de Venezuela". Es posible citar no menos de doce ocasiones en las que Venezuela, públicamente y por boca de voceros oficiales exigió a Gran Bretaña una reparación por la injusticia cometida en 1899.

Intencionalmente el gobierno guyanés omite toda referencia a una carta de Maallet-Prevost escrita veinte días después del llamado laudo de 1899, que coincide con su memorándum póstumo.

El memorándum de Mallet-Prevost descubre cómo se efectuó la farsa del juicio arbitral de París. La persuasión de que lo logrado en París fue una "componenda" (deal) y una "farsa" (farce) lo testimonian dos documentos británicos, cuando menos.

La represión interna puede lograr que al pueblo de Guyana se le mantenga ignorante de los hechos; pero los otros países pueden y deben conocer los fundamentos históricos y jurídicos que dan solidez a la posición venezolana.

La complicidad en el fraude del ruso, de Martens, superárbitro del Tribunal, nos la revela Mallet-Prevost, pero el alcance de la misma nos lo evidencia con mayor elocuencia la carta de uno de los jueces británicos, Charles Russel, escribiendo al Primer Ministro Británico Lord Salisbury tres días después del mismo laudo de París.

No se ha aludido sino a unas pocas razones por las que Venezuela demostró invalidez del laudo de 1899. Podrían aducirse otras, como la adulteración de mapas originales presentados al Tribunal Arbitral; o las notas oficiales por las que daban instrucciones para ser transmitidas a los árbitros ingleses alterando su función de jueces de derecho; o los mapas que prueban que la "línea del laudo" estaba ya sustancialmente arreglada en el **Colonial Office** tres meses antes de la sentencia. Estos hechos se recogen en el folleto documental que Venezuela ha hecho circular durante esta Asamblea.

3.- Pretende el memorándum del gobierno guyanés que Venezuela nunca alegó sus derechos o títulos en la presente reclamación y que no suministró pruebas en apoyo de sus tesis. Se oculta así la declaración del Ministro de Relaciones Exteriores de Venezuela del 9 de diciembre de 1965, donde se da cuenta de todos los aspectos jurídicos del asunto que no fueron refutados ni respondidos por el gobierno británico.

4.-Se pretende imputar a Venezuela incumplimientos del Acuerdo de Ginebra y utilizar la controversia para tratar de explicar la rebelión de sectores de la población contra un Gobierno reconocidamente tiránico, cuando es un hecho evidente que Venezuela se ha mantenido y se mantiene al margen de todo proceso político vinculado con el gobierno de Guyana; y es obvio que no ha buscado otros métodos que los jurídicos para obtener la reparación de la injusticia cometida contra ella.

Ha sido por el contrario, Guyana la que ha violado sistemáticamente el Acuerdo de Ginebra de 1966, al negarse a buscar "una solución satisfactoria para el arreglo práctico de la controversia" (art. I), de modo que ésta pueda "ser amistosamente resuelta en forma que resulte aceptable para ambas Partes" (Preámbulo). Guyana se ha negado persistentemente a negociar con Venezuela una solución del género de las descritas por dicho tratado.

5.- En desconocimiento abierto de la verdad se ha afirmado que Venezuela se opuso a la Independencia de Guyana. Así se ignora la declaración de la Cámara de Diputados en 1962, la cual proclamó "que Venezuela por vocación y principios ha sido Estado pionero de la total independencia de la Guayana Inglesa; así como de todas las posesiones coloniales que aún existen en América".

Se desconoce igualmente la declaración del Ministro Iribarren Borges, más de un año antes de la Independencia de Guyana, según la cual "si mi país mantiene su reclamación aun cuando se produzca un cambio de status en la actual colonia de Guayana Británica, no quiere decir en modo alguno que pongamos trabas a la independencia de esa colonia".

6.- Pretende presentarse a Venezuela como un país que tiene controversias territoriales pendientes con todos sus vecinos. Se oculta que en los últimos años Venezuela ha concluido tratados de delimitación marítima con las Antillas Neerlandesas, con los Estados Unidos y con la República Dominicana. Que ha firmado un acuerdo similar con Francia el cual está en proceso de aprobación y ratificación. Que adelanta cordiales y fructíferas negociaciones con Trinidad y Tobago para adecuar su frontera marítima al estado actual del derecho del mar. Que ha venido cumpliendo negociaciones sobre delimitación marítima con Colombia, las cuales, a pesar de las dificultades de la materia en el caso específico, han puesto en evidencia la satisfactoria disposición de Venezuela para negociar de buena fe. Y, sobre todo, que el único caso en que Venezuela no ha podido siquiera iniciar una negociación verdadera ha sido justamente con Guyana, como consecuencia del terco empeño del único gobierno que ha tenido ese país en sus quince años de Independencia, en negarse a cumplir con las obligaciones que le impone el Acuerdo de Ginebra.

Este conjunto de circunstancias mueve a grave preocupación al gobierno de Venezuela.

II El memorándum del gobierno de Guyana mueve a grave preocupación.

Es sabido que, como consecuencia del despojo territorial británico, Venezuela planteó con toda firmeza ante Inglaterra una reclamación destinada reparar la grave injusticia cometida contra nuestro país. Esos planteamientos condujeron, en 1966, a la firma del Acuerdo de Ginebra, del cual son parte Venezuela, Guyana y Gran Bretaña; y cuyo objeto, definido en el Preámbulo y en su artículo Primero, es encontrar por medios pacíficos una solución satisfactoria para el arreglo práctico de la controversia. El texto del Acuerdo de Ginebra ha sido puesto a disposición de las honorables delegaciones para contribuir a que se formen una idea más clara sobre la verdadera dimensión de las cuestiones planteadas. El Acuerdo de Ginebra constituye, así el estatuto jurídico de la reclamación territorial venezolana, y es producto de la voluntad libremente expresada por Venezuela y Guyana. Ambos países han encontrado un mecanismo para resolver una controversia que es fruto de los desmanes del colonialismo. La Comunidad Internacional, por su parte, ha reconocido la controvesia y el instrumento pactado para resolverla, desde el momento en que el Secretario General de la ONU aceptó la función que le confía el artículo IV de ese Tratado.

De este modo llegamos a un acuerdo formal, por el que las tres partes involucradas en él se comprometían a una búsqueda política de soluciones pacíficas para una controversia heredada del colonialismo. Y Venezuela lo hizo por el camino abierto de una negociación en la que siempre estuvieron presentes representantes de Guayana Británica. No quiso, el Gobierno de Venezuela que ellos estuvieran excluídos, a pesar de que así lo requerían algunos venezolanos; porque no deseaba incurrir en los mismos errores del laudo de 1899 y del tratado arbitral de 1897, que le precedió, cuando los juegos de las potencias arreglaron componendas políticas de sus propios intereses, en sacrificio de nuestro país.

Actualmente está por vencerse el término de aplicación de un Protocolo al Acuerdo de Ginebra, firmado en Puerto España en 1970, por el cual se suspendió la aplicación del Artículo 4° de aquel Tratado, que establece cómo ha de recurrirse a los medios de solución pacífica de las controversias recogidos por el artículo 33 de la Carta de las Naciones Unidas. Es natural que, como consecuencia de esta circunstancia, Venezuela se prepare para actuar con diligencia de modo que el Acuerdo de Ginebra se aplique de conformidad con su letra y con su espíritu, y que Venezuela y Guyana, en cumplimiento de sus compromisos jurídicos, puedan encontrar una solución satisfactoria para el arreglo práctico de la controversia. Por ello no cree el gobierno venezolano que tenga ningún sentido plantear en un contexto multilateral, una materia que ya tiene un estatuto jurídico aceptado por Venezuela y Guyana, el cual, si se aplica de buena fe y con el firme propósito de superar los problemas pendientes, servirá, sin duda, para que, con toda armonía, quede definitivamente resuelta esta controversia. Venezuela reitera que su disposición es la de cumplir con sus compromisos internacionales, tal como ha sido tradición y como es propio de su condición de Estado democrático, jurídicamente organizado.

Ahora bien, la circunstancia de que Guyana insista en plantear el asunto dentro de un ámbito multilateral puede revelar, más allá de un afán propagandístico de su parte, un propósito de apartarse del instrumento bilateral llamado, por nuestra común voluntad, a ser el medio para resolver la controversia.

El gobierno de Guyana ha planteado este asunto en la presente oportunidad, vinculándolo con el tema 58 del programa de la Asamblea, es decir con la declaración sobre el fortalecimiento de la seguridad internacional. Ahora bien, cabe preguntarse ¿cómo puede verse afectada la seguridad internacional si se cumple de buena fe un tratado, cuyo artículo IV remite expresamente a los medios de solución pacífica de las controversias previstos por el artículo 33 de la Carta de la ONU? Venezuela teme que la conducta inusitada de Guyana traduzca su decisión de evadir el cumplimiento de ese compromiso y eludir los medios de solución pacífica para la presente controversia territorial. Como tal hipótesis sí pondría en peligro la seguridad internacional, lo mismo que ocurriría con cualquier intervención de extraños en este asunto, el gobierno venezolano se permite instar con toda cordialidad al de Guyana a cumplir con lo dispuesto por el texto y el sentido del Acuerdo de Ginebra y a mantener este asunto circunscrito al ámbito de las partes.

Mueve igualmente a preocupación que, dentro de su maniobra publicitaria Guyana intente presentar a Venezuela como país conflictivo, hasta el punto de atreverse a afirmar que la región del Caribe ha enfrentado una constante amenaza a su paz y a su seguridad como resultado de la reclamación venezolana. Esta afirmación, enteramente falsa, no representa más que un vano intento de crear fricciones y tensión en una región de por sí convulsionada, con el único propósito de ganar posiciones políticas. Esta no es una forma seria y responsable de conducir las relaciones internacionales, por lo cual el Gobierno de Venezuela invita cordialmente al de Guyana a poner fin a esas insidias y a disponerse a encontrar conjuntamente una solución satisfactoria a la presente controversia.

El gobierno venezolano quiere reiterar una vez más que no desconoce que Guyana no es el Imperio Británico y que no es la autora directa de la injusticia que se cometió contra nosotros. Hemos afirmado y afirmamos que todas estas circunstancias debe estar presentes cuando, en cumplimiento del Acuerdo de Ginebra, nos propongamos buscar, por vías pacíficas, una solución satisfactoria para el arreglo práctico de la controversia.

Por ello, y porque reiteramos de nuevo nuestra disposición a encontrar dentro del marco del Acuerdo de Ginebra y por mediode un diálogo franco, que se quiere fraterno, una solución práctica para el problema existente, deploramos nuevamente que esta importante reunión vea distraída su atención por un problema que, diplomática y jurídicamente, se rige por un estatuto convencional. Por tanto, su consideración en esta Asamblea está fuera de orden.

Invitamos de nuevo a la República Cooperativa de Guyana a observar sus compromisos internacionales y disponerse a cumplir de buena fe las obligaciones convenidas en el Acuerdo de Ginebra, en la seguridad de que, si ambos países asumen con igual voluntad el camino para superar la controversia pendiente, esta materia quedará resuelta satisfactoriamente, y se dará ante el mundo un ejemplo de cómo pueden enfrentar y resolver los países en vías de desarrollo los más difíciles problemas.

Caracas, 20 de noviembre de 1981.

Amenazas y oportunidades de la democracia directa

Herbert Koeneke

Edificar democracias más participativas recomendó hace días el presidente Hugo Chávez a sus colegas en el marco de una reunión extraordinaria de la Presidencia del Consejo Presidencial Andino. En esa ocasión, Chávez recalcó que "las élites políticas, sociales y económicas no deben decidir el rumbo de las poblaciones".

Este énfasis en la participación y en la democracia directa no es reciente en el pensamiento político de Hugo Chávez y se encuentra como rasgo definitorio en la nueva Constitución Nacional. Allí, tanto en su preámbulo como en sus artículos 5 y 6, se resalta el carácter participativo y protagónico de la democracia venezolana, en contraste con el anterior texto constitucional, que enfatizaba su carácter representativo y alternativo (artículos 3 y 4).

Tampoco es nueva en la teoría política, dicho sea de paso, la distinción entre la democracia representativa o formal y la democracia participativa, popular o sustantiva. A la primera se le define como el gobierno del pueblo, en cuanto garantice la vigencia de procedimientos formales e igualitarios para elegir a los representantes populares (elecciones universales y secretas). A la segunda, por su parte, se le define como el gobierno para el pueblo, en cuanto prevalezcan en ella mecanismos que favorezcan ostensiblemente a la mayoría, aunque ello signifique desconocer los derechos de las minorías. La dictadura del proletariado del marxismo, así como las llamadas "democracias populares", de las que sobreviven Corea del Norte, Cuba y China, son parientes consanguíneos de esa democracia sustantiva.

La voluntad del soberano, expresada en una consulta abierta, no siempre ni necesariamente coincide con su interés

Esto no implica, desde luego, que el anhelo o la dimensión participativa de la democracia sea negativa y deba ser rechazada a priori. En el ámbito local, por ejemplo, esa forma de envolvimiento gubernamental del ciudadano tiende a producir resultados positivos. El problema se presenta al extremar posiciones, como cuando se plantea, por ejemplo, que el pueblo sea consultado sobre cualquier tema de especial trascendencia nacional, posibilidad abierta hoy gracias al artículo 71 de la Constitución de 1999. O como cuando se ordena a Pdvsa realizar una consulta nacional, a lo largo de varios meses, para definir el modelo económico de la Quinta República.

Para el ciudadano común, no sólo de Venezuela, sino de cualquier sociedad del mundo, las aparentes bondades de consultas como las mencionadas constituyen a menudo verdaderas trampas cazabobos. Por una parte, estudios de reputados científicos sociales revelan una y otra vez que, para el "hombre de la calle", muchos de los temas de especial trascendencia nacional resultan poco conocidos y difíciles de interpretar, por lo que pedirle a él que se pronuncie con efectos vinculantes sobre ellos constituye generalmente un sin sentido. Y por la otra, en el caso específicamente venezolano, la marcada orientación inmediatista y peticionista de las grandes mayorías abre las puertas a una exacerbación del populismo por la vía de los referendos consultivos nacionales.

Esto último conduce a una reflexión final. La voluntad del soberano, expresada en una consulta abierta, no siempre ni necesariamente coincide con su interés. Decisiones cortoplacistas gratificantes, como el control generalizado de precios por citar tan sólo una, generan frecuentemente consecuencias deploradas y deplorables en el mediano plazo. Lo cual significa, en una palabra, que el pueblo sí se equivoca, que el soberano no siempre tiene la razón.

La fuerza de la costumbre

Carolina Jaimes Branger

En Venezuela nos hemos acostumbrado a los malos gobiernos, a la inseguridad, a lo mediocre. Dicen los físicos que las fuerzas más poderosas de la naturaleza son las nucleares. Yo creo que la fuerza más poderosa de cualquier sociedad es la fuerza de la costumbre. La fuerza de la costumbre logra que nos adaptemos a los peores medios, muchas veces, sin ni siquiera quejarnos.

Cuando yo estudiaba mi postgrado en los Estados Unidos, tenía una amiga libanesa que se llamaba Nouha. Cada vez que hablaba, o le llegaban cartas de su familia que vivía en Beirut, nos alarmábamos con las noticias que de allá venían, como consecuencia de la guerra religiosa que se desarrollaba en aquellos momentos. Yo no entendía cómo era posible que esa familia no hubiera salido a tiempo del Líbano, a vivir en un lugar donde no corriera peligro. Ahora lo entiendo, pues me encuentro en una situación similar. Por un lado, está el apego y el amor la patria. Pero por otro lado está la fuerza de la costumbre. Si la guerra hubiera estallado de un día para otro, quizá la familia de Nouha se hubiera marchado. Pero como fue un conflicto que fue empeorando con el tiempo, se acostumbraron a vivir con él.

¿Qué creen ustedes que pensaría una persona fallecida en la época en que a Caracas la consideraban la sucursal del cielo, si ahora resucitara y viviera en Caracas una semana? ¡Se volvería a morir, y lo más probable es que fuera en un asalto!

Hace un par de semanas vi en *Triángulo*, el magnífico espacio que conduce por Televen el periodista Carlos Fernandes, un programa sobre la capacidad de asombro de los venezolanos. Allí concluyeron destacados panelistas que los venezolanos habíamos perdido la capacidad de asombro. Es verdad. La perdimos por completo. Nos hemos acostumbrado a que pase lo que pase, nada nos asombra, por malo que sea.

Los venezolanos nos hemos acostumbrado a los pésimos gobiernos, pues el que viene es siempre peor que el anterior. Y los aceptamos resignados, como si estuviéramos condenados a padecerlos.

Los venezolanos nos hemos acostumbrado a la inseguridad. Ya no nos asombra el hecho de que maten a varias decenas de personas un fin de semana en Caracas. Lo que hacemos es que cada vez nos encerramos más y tomamos más precauciones para no convertirnos en las próximas víctimas.

Los venezolanos nos hemos acostumbrado a la corrupción. No nos asombra para nada que se desaparezcan millardos de bolívares ante nuestros ojos, sin que se sepa ni cómo ni cuándo ni dónde ni por quién desaparecieron. Como tampoco nos sorprende que aparezcan millares de votos sin que se sepa de dónde salieron.

Los venezolanos nos hemos acostumbrado a que el más vivo es el que logra sus objetivos, no importa a quiénes y a qué se lleva por delante. Por lo general, quien obtiene un puesto, un contrato o una prebenda en una licitación no es el más calificado, sino quien es, más amigo, quien hizo más trampas u ofreció mayor comisión. Es rutinario en nuestro vivir. Los venezolanos nos hemos acostumbrado a la chabacanería y a la mala educación. Y las normas elementales de cortesía bien, gracias. Lo peor es que no nos importa, porque estamos acostumbrados. Los venezolanos nos hemos acostumbrado a la mediocridad. Nuestro sistema educativo es un desastre. Y aunque esto se ha dicho y se ha vuelto a decir, muchos de los cambios que se realizan lo ponen peor. Pasa un año, pasa otro, y no pasa nada. Y nada nos asombra. Amigos físicos, cuando estudien las fuerzas, consideren las de la costumbre. Y tendrán la explicación de por qué en Venezuela, hasta ahora, nos hemos acostumbrado a los malos gobiernos, a la corrupción, a la inseguridad, a lo mediocre.

La única fuerza capaz de aniquilar la fuerza de la costumbre es la fuerza de nuestra voluntad.

Por eso, con la fuerza de nuestra voluntad como venezolanos, nuestro principal deber es vencer, a toda costa, la fuerza de la costumbre.

El Esequibo: ¿qué hacer?

Sadio Garavini di Turno

Simplificando y resumiendo, quizá demasiado, un problema complejo, trataré, en aras del necesario debate nacional, de aportar algunas ideas sobre el "qué hacer", en relación con nuestra reclamación esequiba. Antes que nada, hay que hablarle claro al país, decir la verdad y eso empieza por reiterar que nuestra reclamación abarca alrededor del 70% del "actual" territorio guyanés, reconocido por la comunidad internacional. En el Acuerdo de Ginebra de 1966, el marco jurídico de la reclamación, se afirma que la controversia debe ser resuelta amistosamente y de forma aceptable para ambas partes y que *hay que buscar soluciones* satisfactorias para el arreglo práctico de la controversia, surgida como consecuencia de la contención venezolana de que el Laudo de 1899 es nulo e irrito.

Oficialmente, desde 1966, Venezuela y Guyana han mantenido dos interpretaciones mutuamente excluyentes del Acuerdo de Ginebra. Guyana sostiene que el objeto del acuerdo es, en primer lugar, establecer la validez de la contención venezolana de que el Laudo es nulo e írrito. Se trataría, en ese caso, de una disputa esencialmente jurídica. Venezuela, por su parte, afirma que no tiene sentido negociar bilateralmente la validez o la nulidad de un Laudo. La "razón jurídica" no es negociable, se tiene o no se tiene. Si el objetivo acordado entre las partes en 1966 era definir la validez o nulidad del Laudo, el Acuerdo de Ginebra era absolutamente innecesario, simplemente se debería haber ido a la Corte Internacional de La Haya. Hay algunos venezolanos que, en perfecta buena fe, consideran que deberíamos ir a La Haya y demostrar que el Laudo es nulo. A esos respetables compatriotas les recuerdo que esa ha sido siempre la alternativa preferida por Guyana. La posición venezolana, en cambio, más lógicamente, afirma que el Acuerdo de Ginebra pone de lado el Laudo y *que su objeto es un* arreglo sustantivo y práctico de la controversia. Si los dos países mantienen a ultranza sus interpretaciones del Acuerdo de Ginebra, es absolutamente inútil seguir el actual proceso de negociación, deberíamos ir a terceros (Corte de La Haya etcétera) para definir la recta interpretación del acuerdo de Ginebra. Ahora bien, en diferentes oportunidades, Guyana, con la esperanza de obtener algo económicamente ventajoso a cambio, ha aceptado, extraoficialmente, explorar hipótesis de solución sustantiva de la controversia. Sin embargo, cualquier imaginativa solución práctica que un gobierno guyanés pueda amistosa, pacífica y realistamente aceptar, involucrará una parte relativamente menor, en relación con la totalidad del territorio en reclamación. Y aquí llegamos al meollo de la cuestión: Si mañana Guyana aceptase oficialmente, o es obligada jurídicamente a aceptar, nuestra propia posición y nos ofrece "algo", la "pelota estaría totalmente en nuestra cancha" y el sistema político venezolano entraría en crisis porque los sectores dirigentes del país nunca han querido, o pedido, aclararle a nuestro pueblo que la recuperación pacífica de la totalidad del territorio esequibo es absolutamente irreal. Por razones de espacio y "por ahora", dejo el análisis de las supuestas vías no pacíficas para otra oportunidad.

...A este gobierno se le abre una extraordinaria "ventana" de oportunidad histórica, para concluir positivamente el proceso de la reclamación esequiba

Entonces, ¿qué hacer? El presidente Chávez inicia su "relegitimado" gobierno, con seis años por delante, con un innegable e importante respaldo popular, con una abrumadora mayoría parlamentaria y con una credibilidad relevante en los sectores más nacionalistas de la sociedad venezolana, incluyendo la Fuerza Armada. Por tanto, a este Gobierno se le abre una extraordinaria ventana de oportunidad histórica, para concluir positivamente el proceso de la reclamación esequiba. El presidente Chávez debería iniciar y, sobre todo, "liderizar", un gran debate nacional sobre el tema, invitando también a eminentes juristas, politólogos y estadistas internacionales. Este debate debería ser acompañado de una campaña de educación masiva, para explicarle a nuestro pueblo que, pacíficamente y dentro del Acuerdo de Ginebra, sólo es posible una recuperación parcial del Esequibo. Hay que lograr un claro acuerdo "marco", entre la mayoría de los sectores organizados relevantes en el tema de la reclamación. Al mismo tiempo, si Guyana persiste en su interpretación oficial del Acuerdo de Ginebra, hay que acordar entre las partes o solicitar al secretario general de la ONU, en el marco de las funciones que le concede el Acuerdo, un "recurso a terceros", para definir la recta interpretación del mismo Acuerdo. La definitiva solución práctica y sustantiva que eventualmente surgiría de la recta aplicación del Acuerdo de Ginebra, tendrá que ser ratificada en un referéndum nacional.

Lo fundamental y urgente es salir de la actual estancada situación, detrás de la cual se esconde una implícita mutua voluntad de dilatar indefinidamente el proceso o, en el mejor de los casos, las partes estarían "enviscadas" en dos equívocos monólogos, donde, como dice el gran Octavio Paz: "nunca oímos lo que dice el otro o, si lo oímos, creemos siempre que dice otra cosa".

El Commonwealth *y el territorio Esequibo*

Elías Daniels Hernández

En 1966, inmediatamente después de su independencia, Guyana se convirtió en miembro del Commonweaith (Mancomunidad Británica de Naciones).

Esta organización en la actualidad no tiene el poder, la influencia ni el significado que adquirió y conservó hasta el final de la guerra fría. La declinación del poder británico y el surgimiento de Canadá, Australia, Nueva Zelanda, Suráfrica y la India como potencias con capacidad para tomar decisiones independientes, le ha restado figuración. También ha influido en esta nueva situación, el ingreso de Gran Bretaña a la Unión Europea, relegando su actuación política al aspecto eminentemente declarativo, su actuación cultural al mantenimiento de la lengua inglesa e intercambios deportivos, y la actuación económica para canalizar ayuda desde los miembros más ricos hacia los más pobres.

Para el caso de la reclamación territorial resulta importante este foro, por cuanto 13 de sus 51 miembros son americanos (12 pertenecen a la región caribeña; el otro es Canadá). La Secretaría del Commonwealth ha tenido, desde 1965 cuando fue creada, tres secretarios, y uno de ellos fue el ex canciller guyanés Shridath Ramphal (1975-1990).

Este foro que se reúne cada dos años, durante la última reunión en Durban, Suráfrica (noviembre de 1999), encomendó al secretario general de la Mancomunidad designar un grupo ministerial especial para hacerle seguimiento al desarrollo de la controversia fronteriza entre Venezuela y Guyana, expidiendo el siguiente comunicado: "Los Jefes de Gobierno tomaron nota que las relaciones entre los dos países ha sido conducida, durante los últimos años, en una atmósfera de mutuo entendimiento y respeto, y a través del desarrollo de programas de cooperación funcional. También resaltaron el continuo compromiso por un arreglo pacífico a la controversia... Expresaron la esperanza por que ambos países resolverán sus diferencias en esta materia pacíficamente, y se complacieron por el proceso de buenos oficios del secretario general de las Naciones Unidas".

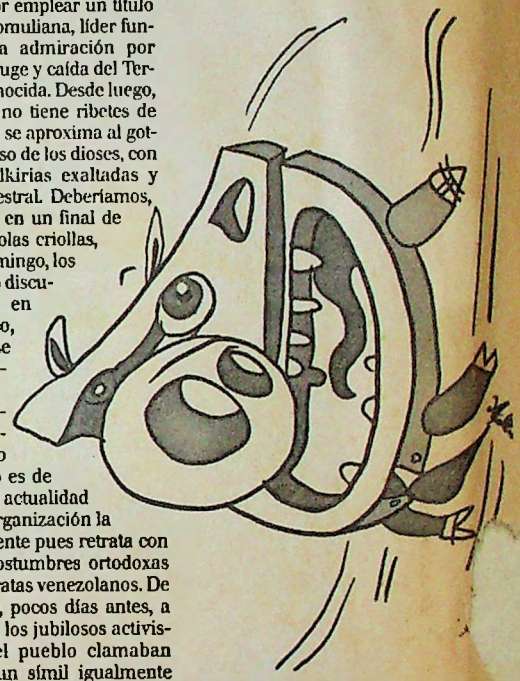
El grupo ministerial se constituyó en Londres (18 de agosto pasado), con Antigua y Barbuda, Bangladesh, Canadá, Guyana, Jamaica, Suráfrica y el Reino Unido; decidiendo que se reuniría nuevamente el 14 de septiembre pasado en la sede de la ONU en Nueva York. Las agencias internacionales recogieron las declaraciones del secretario general del Commonwealth en esa oportunidad: "... firme apoyo y solidaridad en el mantenimiento de la integridad territorial y soberanía de Guyana e instaron a un arreglo pacífico de sus litigios con Venezuela y Suriname... llamando a celebrar un diálogo al más alto nivel para alcanzar una solución mutuamente benéfica y definitiva a la disputa...", comentando adicionalmente, que si se da la razón a Venezuela, Guyana perdería una parte importante de su territorio.

Observamos un respaldo automático a un miembro, pero también se destaca la exhortación a buscar un arreglo pacífico del litigio que sea mutuamente benéfico y definitivo. Durante la reunión del Commonwealth en Melbourne, Australia (octubre de 1981), al denunciar Venezuela el Protocolo de Puerto España, Guyana, que ostentaba la Secretaría General con Shridath Ramphal, buscó respaldo activo de este foro ante su controversia con Venezuela, logrando que se aprobara el siguiente artículo: "Los jefes de gobierno expresaron su profunda preocupación por la amenaza a la integridad territorial de Guyana, por la resucitación de la reclamación venezolana a más de dos tercios del territorio de Guyana y los pasos dados por Venezuela en prosecución de esa reclamación. Notan que la frontera existente ha sido establecida por un laudo arbitral internacional en 1899 y aceptado por todos los concernientes como un arreglo final, ellos expresaron apoyo a Guyana e hicieron un llamado para un arreglo pacífico de la controversia, de acuerdo a los procedimientos establecidos y completo respaldo a la santidad de los tratados".

En esa oportunidad, nuestra Embajada en Australia protestó tal pronunciamiento, recordando que Gran Bretaña y Guyana estaban obligadas por el Acuerdo de Ginebra a la solución satisfactoria y pacífica de esa controversia. Cuando comparamos, los pronunciamientos de octubre 1981 y del septiembre 2000, se aprecia una evolución pragmática en la conducta histórica del foro que insta a una solución negociada de las partes. Este hecho nos compromete a continuar los esfuerzos reivindicativos de una manera sostenida y congruente, como corresponde a las políticas de Estado que procuran el interés nacional. No debemos perder de vista que la próxima reunión del Commonwealth está programada para marzo 2001, en Australia, y donde se tratará nuevamente la reclamación venezolana del Esequibo. Debemos continuar trabajando, a fin de evitar retrocesos y contramarchas que tanto daño nos han hecho.

Auge y caída *de Acción Democrática*

Augusto Hernández

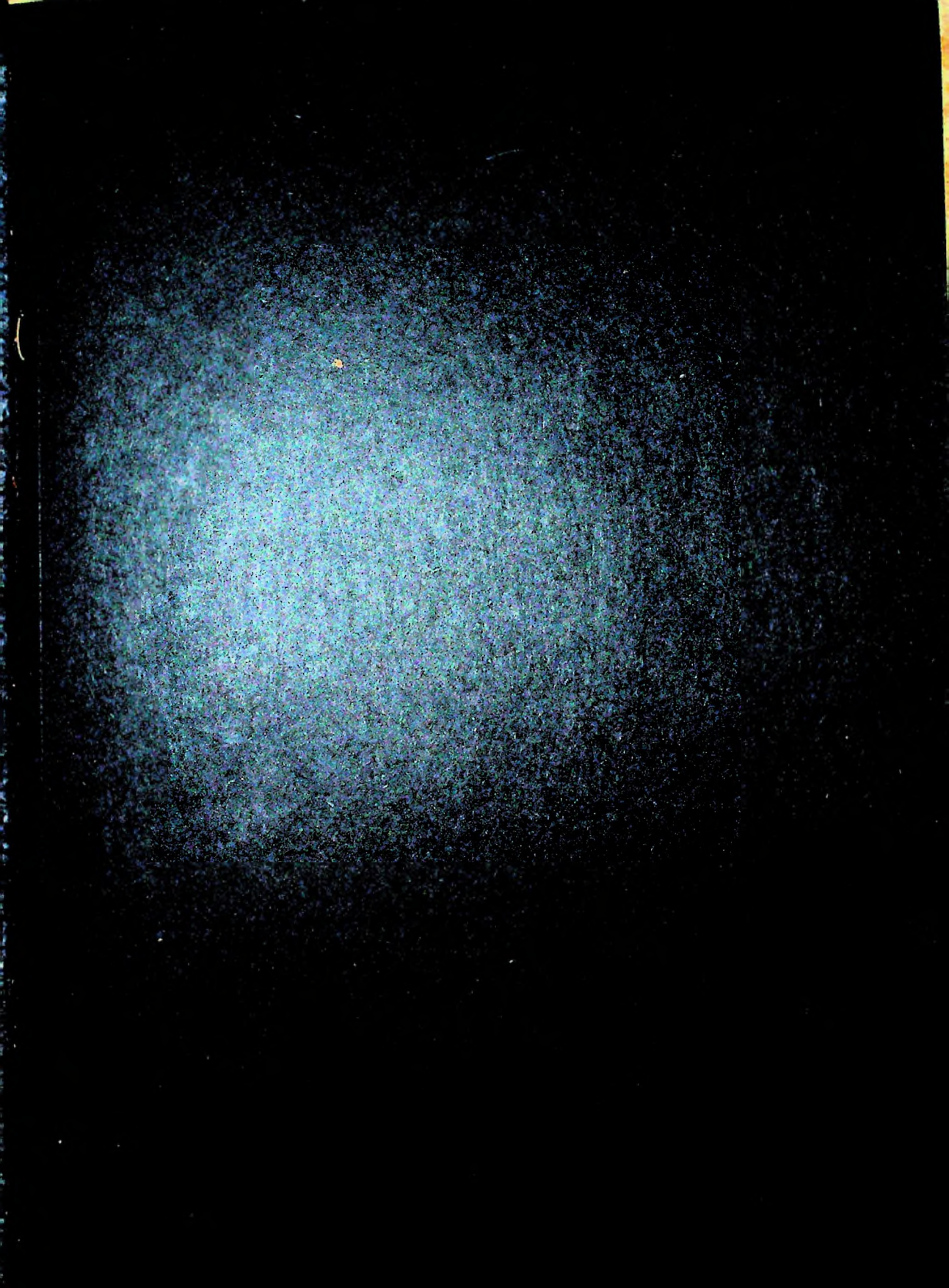


Comencemos por emplear un título de evocación romuliana, líder fundamental cuya admiración por William Shirer y su Auge y caída del Tercer Reich era bien conocida. Desde luego, el crepúsculo adeco no tiene ribetes de ópera wagneriana, ni se aproxima al gotterdammerung u ocaso de los dioses, con escenografía de walkirias exaltadas y pandemónium orquestral. Deberíamos, más bien, ubicarnos en un final de juerga en patio de bolas criollas, donde se robaron el mingo, los jugadores de dominó discuten enardecidos y, en medio del zaperoco, algunos borrachos se pelean por una botella vacía.

La simpática figura de los beodos disputándose un frasco sin cañandonga, no es de mi cosecha. En la actualidad los exégetas de la organización la emplean profusamente pues retrata con fiel exactitud las costumbres ortodoxas de los socialdemócratas venezolanos. De manera paradójica, pocos días antes, a raíz del 30 de julio, los jubilosos activistas del partido del pueblo clamaban alborozados, con un símil igualmente festivo, que AD no estaba muerta, sino andaba de parranda.

No deja de ser lamentable que, ante la mirada estupefacta de los jefes de Estado que asisten a la cumbre presidencial de la OPEP, se produzcan los estertores de la agonía adeca. Durante muchos años los miembros foráneos del cartel petrolero recibieron la versión de que Rómulo Betancourt era el padre de la democracia venezolana, Juan Pablo Pérez Alfonzo debía considerarse en justicia como Canache Mata, cuya ecuanimidad es recordada con afecto por su desempeño en el "barcelonazo"; Piñerúa Ordaz, Octavio Lepage y Armando Sánchez Bueno, o sea, dirigentes de pequeña estatura física, cuyas denuncias contra la corrupción fueron, por imperativo de las circunstancias, más bien diminutas.

Aparte de los "cisnes", existen diversas facciones que se endosan remoquetes como los "fósiles" de Timoteo, los "jurási-



THE VENEZUELA -- BRITISH GUIANA

BOUNDARY ARBITRATION -- 1899

WILLIAM R. JOYCE, JR., A.B., J.D.
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MEMBER OF THE BAR OF THE
STATE OF NEW YORK AND
THE DISTRICT OF COLUMBIA

domestic political reasons, President Grover Cleveland agreed to help Venezuela. The large German and Irish segments of the United States, the bulk of Democratic Party voters, were charging Democratic President Cleveland with being too soft on Great Britain and this could cause the Democrats to lose the Presidential elections of 1896.

The Essequibo River had been the boundary for over two hundred years, but as each diamond or gold discovery by British mining companies was made, Great Britain kept pushing the boundary line further west until Great Britain claimed some one-third of Venezuela's territory. The territory in dispute comprised nearly 55,000 square miles, roughly the size of the State of New York or England itself. The planting of the "Union Jack" by the British some 200 miles west of the Essequibo River in 1887 led to the severance of diplomatic relations between Venezuela and Great Britain. Venezuela then began a futile campaign to enlist support for its cause. It was unsuccessful with all the European powers--including the Holy See. But the domestic politics of the United States finally forced President Cleveland to move on behalf of Venezuela.

The efforts of the United States to help Venezuela finally were realized when on February 2, 1897, by a treaty with Venezuela, Great Britain agreed to arbitrate the dispute but refused to arbitrate the dispute if a

Venezuelan jurist had been named. Because Great Britain did not at the time have diplomatic relations with Venezuela, the United States not only negotiated the terms of this Arbitration Treaty of 1897 with Great Britain on behalf of Venezuela, but the Chief Justice of the United States, Melville Weston Fuller, and Associate Justice of the Supreme Court of the United States, David Josiah Brewer, were individually named in this treaty to represent Venezuela as arbitrators.

The Baron Farrer Herschell, formerly Lord Chancellor of Great Britain, and Sir Richard Henn Collins of the British Supreme Court of Judicature, were named in this same 1897 Treaty, having been nominated by Members of the Judicial Committee of Queen Victoria's Privy Council as the two British Arbitrators. The Baron Herschell died on March 1, 1899 in Washington. The Baron Herschell had on January 30, 1899 occupied a seat on the bench of the Supreme Court of the United States at the invitation of Chief Justice Fuller. (Journal of the Supreme Court of the U.S., October Term 1898 at p. 104). On March 1, 1899 Chief Justice Fuller noting that The Baron Herschell had sat on the bench of the Supreme Court, (an event which had happened only once before in the history of the Court) adjourned the Supreme Court saying:

> "In view of the cordial relations between Lord Herschell and the members of this court, his great

> distinction in our common profession and on the bench, and his unexpected death while absent from home in the discharge of high public duty, we feel called upon to take notice of this sad event, and as a mark of respect to his memory the court will adjourn until tomorrow at the usual hour." 173 U.S. (707).

It is assumed tha the reference to ". . . the cordial relations between Lord Herschell and the members of this Court . . ." refers to their being arbitrators on the British-Guiana-Venezuela arbitration.

Prior to the arbitration The Baron Herschell's place was taken by the Lord Chief Justice of Great Britain, The Baron Russell of Killowen. (This meant that the Lord Chief Justice had roughly three months to absorb the cases and counter-cases and briefs which had been exchanged since February 2, 1897.) These four arbitrators in turn elected, as President of the Tribunal, Professor Frederic Frommhold de Martens, Privy Councillor of the Imperial Russian Czar and Professor of Law at the University of St. Petersburg.

As for the lawyers, Great Britain was represented by four counsel: Sir Richard E. Webster, Attorney General of Great Britain (later Lord Alverstone, Lord Chief Justice of Great Britain); the former Attorney of Great Britain, Sir Robert T. Reid; Mr. G.R. Asquith; and Mr. S.A.T. Rowlatt. Venezuela was not only represented on the tribunal by the U.S. Supreme Court Justices, but four

lawyers from the United States - former President of the United States, General Benjamin Harrison, former U.S. Secretary of the Navy, Mr. Benjamin F. Tracy; author and former U.S. Assistant Secretary of the Navy, Mr. James Russell Soley, and Mr. Severo Mallet-Prevost, a New York lawyer - were the legal counsel for Venezuela. As one can see based on the personae dramatis involved, this matter was not considered lightly by either the United States or Great Britain.

The Arbitration hearings were held in Paris at the French Ministry of Foreign Affairs beginning June 15, 1899 and took 54 daily sessions lasting four hours each day. Two thousand six hundred and thirty documents were introduced into evidence as well as 100 bound volumes. The transcript of the hearings alone comprised 3,241 pages. The hearings ended on Wednesday, September 27, 1899 at 3:00 o'clock in the afternoon. Although the Arbitration Treaty contemplated that the decision should be made, if possible, within three months of the close of the argument, it was handed down five days later (including Saturday and Sunday). The Award, comprising almost two pages, was announced by Mr. d'Oyly Carte, the Clerk of the Arbitration Tribunal on Tuesday, October 3, 1899. By unanimous vote, Great Britain was awarded ninety percent or some 50,000 square miles of the disputed territory. Five thousand square miles was awarded to Venezuela.

II

In view of the history of the United States' bellicose attitude towards Great Britain's activities in Venezuela during the years 1895-1897, including the threat by President Cleveland to go to war with Great Britain over the British incursions into Venezuela and the taking of Venezuela territory and in view of Venezuela's establishment of prima facie case in support of its claim, the question remains why the two U.S. Supreme Court jurists voted against Venezuela. The answer to this question is to be found in both the history of the dispute as well as what happened after the award was announced.

The answer is to be found in the dramatic change in relationship between the United States and Great Britain as the result of William McKinley becoming President of the United States on March 4, 1897 and his appointment of John Hay as Ambassador to Great Britain and Hay's becoming Secretary of State some sixteen months later. From a President and Secretary of State who threatened to go to war with Great Britain over Great Britain's incursions into Venezuelan territory the United States went to an Anglophile President McKinley and a Secretary of State who wrote poetry referring to Great Britain as "Thou fair and mighty mother of our sires!" Research also indicates in

1898 Great Britain rendered valuable support to the United States in the Spanish-American War and the United States reciprocated by helping Great Britain during the Boer War.

But it was the urgency to build a canal across the Isthmus of Panama and the price to be paid to obtain Great Britain's approval to do so which caused the United States to no longer be Venezuela's champion but itself also a supplicant in front of Great Britain. Thus Venezuela's claims to recover its territory lost to British Guiana became a "bargaining chip" in a much bigger game.

But as will be seen documents normally expected to be available and declassified almost 90 years later either have been destroyed or not made available on grounds of national security by both Great Britain and the United States. However, reconstructing the calendar shows how Venezuela lost its territory by the two votes of the United States and hidden by a masterful cover-up by both the United States and Great Britain.

Research into this type of history, however, is limited by the laws and regulations regarding access to national archives of the various governments involved in order to obtain the facts. First, whatever documents of the Arbitration itself which remained in Paris were apparently destroyed by the French government some years ago. Le Dirrecion des Archives of the French Ministry of

Foreign Relations so advised the French Embassy in Washington in response to this writer's inquiry.

United States Archives:

As to the records and archives of the United States, the law and rules relating to the availability of Department of State and other foreign policy records (including presidential papers) after 30 years , although provided for by law, Title 44 U.S. Code, Chapter 21, §§ 2103-2105, still makes it difficult to ascertain if they even exist let alone whether they are available for public inspection. Both the U.S. National Archives and the U.S. government agency involved are authorized to retain sensitive material even after the expiration of 30 years. As the Office of the Historian, Bureau of Public Affairs of the U.S. Department of State put it in his Report in 1985:

> "There is no legislative requirement for the declassification of Department of State and other foreign policy records after a fixed period of time. E.O.12356, April 2,1982, which governs classification, declassification, and the safeguarding of national security information, states that information should be declassified or downgraded as soon as national security considerations permit. The archivist of the United States is charged with declassifying or downgrading material that has been accessioned into the National Archives and Records Administration (NARA) in accordance with systematic review guidelines provided by the originating agency." (Public Availability of Diplomatic Archives,1985)

The Chief of the Legislative and Diplomatic Branch of the Civil Archives Division of the U.S. National Archives stated in his letter of September 18, 1984 to the author:

> "The paper copies from the microfilm you have received contain 'all the diplomatic exchanges between Great Britain and the United States that are in four separate series of bound volumes of records of the Department of State for that time period in the National Archives. There were, no doubt, diplomatic exchanges for which no record was made, and other exchanges for which the record was not filed in those series of records.'"

Diplomatic Instructions (from the Department of State)
M77
To Great Britain, roll 92, 43 ft.
Oct. 8, 1898-Aug. 31, 1901

Diplomatic Despatches, Great Britain (to the Department of State)
M30
Roll 184, December 13, 1898-April 29, 1899, 66 ft.
Roll 185, May 1, 1899-Aug. 30, 1899, 52 ft.
Roll 186, Sept 1., 1899-Jan. 30, 1900, 40 ft.

Notes to the British Legation in Washington (from the Department of State)
M99
Roll 54, Nov. 15, 1899-Nov. 26, 1906, 44 ft.

Notes from the British Legation in Washington (to the Department of State)
M50
Roll 130, Aug. 1, 1898-Feb. 28, 1899, 59 ft.
Roll 131, March 1, 1899-Aug. 31, 1899, 49 ft.
Roll 132, Sept. 1, 1899-March 31, 1900, 62 ft.

Nothing of importance relating to the British Guiana-Venezuela Boundary Dispute can be found in the above microfilms which comprise '"all the diplomatic

exchanges between Great Britain and the United States...'" In fact, reference is made in these documents to other documents which cannot be found either in Washington or London. In preparation of this work I have read the paper copies of all of these microfilms. (The microfilms totalled some 150 meters in length.)

Or, for that matter does the official publication of the U.S. Department of State Foreign Relations of the United States. The last item recorded in the volume for the period 1867-1900 is for November 1896 which states: "'96, 254; Nov. 12, 1986. Heads of proposed treaty agreed upon by Secretary Olney and Ambassador Pauncefote."

Furthermore, the archivist in the Judicial, Fiscal and Social Branch of the Civil Division of the U.S. National Archives states in her letter of March 3, 1986 to the author:

> "At your request, we made available to you in our central research room those series from the records of the U.S. Supreme Court in our custody which in my opinion would be likely to contain information relating to the service of Associate Justice Brewer and Chief Justice Fuller on a special arbitration panel held in Paris from June to October 1899. I personally examined the Minutes of the Supreme Court but failed to find any entry for January 23, 1897."

Upon being shown copies of the letter of February 17, 1897 of the President of the United States of Venezuela requesting that the members of the Supreme Court of the United States designate one of the Associate

Justices of the Supreme Court of the United States to serve as Arbitrator on behalf of Venezuela, as well as the Chief Justice's letter of March 18, 1897 transmitting the Minutes of the meeting of January 23, 1897 of the Supreme Court of the United States, whereby Mr. Justice David J. Brewer was so designated, this same archivist of the U.S. National Archives by letter of March 26, 1986 states:

> "This is to verify that the records of the United States Supreme Court in our custody which might reasonably contain reference to service of the Chief Justice and an associate justice on a special arbitration tribunal held in Paris from June to October 1899 have been searched. You personally examined correspondence of the Clerk of the Court for the appropriate years and the scrapbooks of the Court from the office of the Clerk. In addition, I searched the correspondence of the marshal of the Court, the fiscal accounts from the marshal's Office, and the Minutes of the Court. I failed to find any reference to the arbitration panel or the service Justice Brewer or Chief Justice Fuller on any such tribunal."

Very little can be found in the private papers of those involved. The murkiness thickens when the personal papers of the U.S. Secretary of State, Mr. John Hay, are examined. First of all, John Hay's principal biographer, Mr. Tyler Dennett (a former Historical Adviser of the U.S. Department of State), notes in his biography of the former Secretary of State:

> "Although Mr. Hay destroyed a large mass of his letters, he preserved copies of many in letterpress copy books and in rough drafts. He also kept journals or diaries, intermittently, between 1861 and 1869, and again, from January 1, 1904 to the end of his life."(vii) John Hay, From Poetry to Politics, Tyler Dennett, Dodd Mead & Company, New York, 1933.

With the result that apparently nothing remains in the publicly available domain of Mr. Hay's personal papers of the period of 1897-1898 when he was Ambassador to Great Britain and 1898-1905 when he was U.S. Secretary of State. While one would think that such an important matter as the Venezuela-British Guiana Boundary Dispute, involving the highest jurists and the most prominent lawyers of both Great Britain and the United States, would find the U.S. National Archives replete with documentation, there is virtually none. To heighten the mystery, the correspondence of the U.S. Secretary of State John Hay with Mr. Henry White, the Chargé d'Affaires in the U.S. Embassy in London at the time, is found loaded with the handwritten instructions of Secretary Hay to Mr. Henry White, the recipient, as to the disposition of their correspondence. These letters never ended up in the U.S. National Archives as one would have expected of official communications between the Department of State and the U.S. Embassy in London. In fact, there is no way of knowing how many messages were sent like this between Washington and London. Instead, at least some of them are in the Henry White papers in the U.S. Library of Congress, where we find among many others noted on these "back-channel" communications between U.S. Secretary of State John Hay and his Chargé d'Affaires in London (not

included in the microfilms of the U.S. National Archives), the following in handwriting:

1. "This is an indiscreet letter: destroy it." Hay to White, September 18, 1898.

2. "Don't keep this an hour after you read it." Hay to White, October 2, 1898.

3. "Read and destroy as usual." Hay to White, December 21, 1898.

4. "Of course you do not preserve these indiscreet letters." Hay to White, May 29, 1899

5. "Better destroy this letter." Hay to White, August 11, 1899.

6. "Most confidential & not for preservation." Hay to White, September 24, 1899.

Secretary Hay's "back-channel" means of communication was continued in writing with the new U.S. Ambassador to Great Britain, Joseph H. Choate, who took over the United States Embassy in February, 1899. According to the Library of Congress records, Secretary Hay also asked the British Ambassador to the United States, Sir Julian, later Julian Lord Pauncefote, to destroy letters that Secretary Hay sent him. Moreover, in the papers of Mr. Justice Brewer in the Yale University's Sterling Library Manuscripts and Archives (where Mr. Justice Brewer's papers are held), there is in a letter of Mr. Justice Brewer written from Paris while sitting as a member of the Arbitration Tribunal to his daughter in the United States, dated August 6, 1899, the following statement:

". . . I hear from Mr. Hay once in a while. . . ."

No such letters from Secretary of State John Hay to Mr. Justice Brewer or copies thereon can be found in the U.S. National Archives, the Library of Congress nor at Yale University's Sterling Library.

Thus the conclusion is that the public records of the United States contain virtually nothing relating to the United States participation in the British Guiana-Venezuela Border Dispute; but also that the U.S. Secretary of State used a "back-channel" to communicate at least with the Chargé d'Affaires in the U.S. Embassy in London and the British Ambassador in Washington as well as Mr. Justice Brewer while sitting on the Arbitration Tribunal in Paris in the summer of 1899; and that these records have either been destroyed or retained by a U.S. government agency on the grounds that the material is still too sensitive to open to the public and that the national interests or security of the United States is still involved.

It is singularly ominous for the legal scholar or historian to attempt to even try to ascertain facts from the U.S. government when faced with Executive Order 12356 of April 2, 1982 issued by President Ronald Reagan in view of the fact that no relevant documents can be found. The text of the Presidential Executive Order is included as

follows:

"Sec. 1.3 Classification Categories:

(a) Information shall be considered for classification if it concerns:

(3) foreign government information
(4) intelligence activities (including special activities), or intelligence sources or methods
(5) foreign relations or foreign activities of the United States.

* *

"Sec. 3.4 Mandatory Review for Declassification:

(f) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the Mandatory review provisions of this Order:

(1) An agency shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under this Order.

* *

Part 6 General Provisions
Sec. 6.1 Definitions

(a) "Agency" has the meaning provided at 5 U.S.C. 552(e).
(b) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.
(c) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that it is so designated.
(d) "Foreign government information" means:

(1) information provided by a foreign government or governments, an international organization of governments, or any element

thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(2) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(e) "National security" means the national defense or foreign relations of the United States.

(f) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(g) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

British Archives:

The same publication of the Historian of the U.S. Department of State provides the following summary of the availability of British records:

"UNITED KINGDOM

"The Foreign and Commonwealth Office (FCO) maintains diplomatic records less that 30 years old. There is no provision for access by private scholars. After a 30-year period and a careful screening of each document in a file, the file is sent to the Public Records Office (PRO) if the material is non-sensitive. Files transferred to the PRO are made available for public inspection on January 2 of the 31st year after the date of the last paper in the file. Records remain restricted if they are exceptionally sensitive and disclosure would be contrary to the public interest, contain

> information provided in confidence or intelligence-related, or contain information that would cause distress or danger to living persons or their immediate descendants." (emphasis supplied)

I have reviewed and studied all relevant documents in the Public Record Office in Kew, Surrey, England as well as those in the Official Publications Library in the British Museum in London as well as having searched in those in the Royal Commission on Historic Manuscripts in London. I have also examined the papers of the late Third Marquess of Salisbury (Prime Minister and Foreign Secretary during the years 1868-1900) at Hatfield House in Hatfield, Herts, England and was shown certain documents which purportedly were all of the relevant documents. A researcher is not free to wander through the papers of Lord Salisbury. It is impossible to determine whether any papers exist or not. With one notable exception, namely one I found in the Public Record Office, and of which I will go into further detail later, there were no "negotiating papers" available bearing on the request of the United States to be relieved of its Clayton-Bulwer Treaty obligations in order to build what is now known as the Panama Canal.

Research into British archives is severely circumscribed by the Official Secrets Act of 1939, 2 & 3 Geo.6, ch.121 under which it could be charged that research such as mine was an indictable crime because it

would affect the national interests of Great Britain. In addition the Public Records Act of 1958, 6 & 7 Eliz.2, ch.51 as well as the regulations of the Public Record Office, April 1983 make free and unfettered research impossible. In fact, the Public Record Office will remove those files which are open to researchers when conditions demand it as happened in the Falklands incident in April-June 1982. It is not known whether these papers relating to the Falkland documents have yet been returned. The documents in the Public Record Office may also be marked in the card catalogue with the notation that they contain documents which are sealed for 50, 75 or 100 years and therefore unavailable. The minutes of British Cabinet meetings or letters from the Prime Minister Lord Salisbury to the Queen are kept at the Royal Archives at Windsor Castle. These Royal Archives are severely restricted.

III

A short history of U.S.-British relations helps to understand what transpired in 1897-1900. The animosity of the United States towards Great Britain which continued from the successful American rebellion against Great

Britain 1776-1787, was refueled by the British attacks on the United States which began the War of 1812. This animosity simmered in the intervening period and was again re-fueled by the British assistance to the Confederacy in its fight against the Union forces during the U.S. Civil War 1861-1865. After the Civil War the Congress of the United States demanded reparations from Great Britain for the damage caused by the British support of the South or the Confederacy. In fact there was a strong demand in the United States Senate that Great Britain cede all of Canada to the United States in payment for the damage caused by Great Britain. The matter was eventually settled in 1872 by a cash payment as reparations. Relations continued to be poor in the 1880's, in fact, the British Minister to Washington was declared persona non grata and expelled for interfering in the U.S. Presidential election of 1888.

The United States also had problems with Great Britain's activities in the Western Hemisphere all in apparent violation of the U.S. Monroe Doctrine. The first was the problem of the boundary between British Guiana and Venezuela. As told by the Cambridge History of Latin America, albeit from the British side, this development of the crisis is described:

> "The crisis between Britain and the United States erupted over the long-term boundary dispute between Venezuela and the colony of British Guiana. For years the Venezuelan authorities had tried to enlist

the support of the United States to force arbitration. In 1887 the British had declined the offer of American good offices. In 1894 the Venezuelans hired a former American diplomat, William L. Scruggs, as a lobbyist, and his pamphlet 'British Aggressions in Venezuela, or the Monroe Doctrine on Trial' circulated widely. Due in part to his efforts a resolution urging arbitration of the dispute was introduced in Congress and subsequently adopted with the unanimous approval of both houses.

The atmosphere of heightened concern over European influence and power in the hemisphere was further exacerbated in April 1895 when the British occupied Corinto, Nicaragua and took control of the customs house to force payment for damages to the property of British citizens. The force was withdrawn after a reparations agreement was made, but many Americans viewed the incident as more evidence of the ineffectiveness of the Monroe doctrine. Writing in the North American Review, Senator Henry Cabot Lodge of Massachusetts exemplified the crisis mentality when he linked the situation in Nicaragua, the Venezuelan boundary dispute and fears of European imperial expansion:

If Great Britain is to be permitted to occupy the ports of Nicaragua and, still worse, take the territory of Venezuela, there is nothing to prevent her taking the whole of Venezuela or any other South American state. If Great Britain can do this with impunity, France and Germany will do it also. (North Atlantic Review, 160 (June 1895), 658.)

In a note to the British government of 20 July 1895, Secretary of State Richard Olney gave expression to a rather exaggerated vision of a hemisphere allied with the United States by ties of 'geographical proximity...natural sympathy... similarity of government'. This alliance gave the protection of the Monroe Doctrine to all the nations of the hemisphere, the Secretary noted. To underline the 'right' of the United States to demand arbitration in the Venezuela boundary dispute Olney made his famous declaration. 'Today the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition.'

> In late November the British Foreign Secretary, Lord Salisbury, replied to Olney's vastly exaggerated definition of American power in a note that was almost undiplomatic as the one it answered. Salisbury corrected Olney's errors of history, gave him a lecture on international law and the Monroe Doctrine, and flatly rejected the arbitration demand. President Grover Cleveland was so infuriated that he went before Congress to request funds for a boundary investigation commission. A cheering Congress approved Cleveland's proposal that the United States unilaterally establish the boundary and enforce it regardless of British policy.
>
> War talk was heard in both countries, but the Boer crisis in South Africa, combined with the growing British perception of a German threat, prompted a decision to accept the American demand. With the good offices of the United States, Venezuela and Great Britain signed an arbitration treaty in February 1897." (Vol. IV, pp. 91-93)

It should be noted that at this time 1896-1897, Great Britain had an army of almost 670,000. The Royal Navy consisted of almost 90,000 men with 32 battleships and 10 under construction, 186 cruisers with 22 under construction, 23 port ships and 118 torpedo ships and an additional 37 under construction. Venezuela, on the other hand, at the same time had an army of less than 4000 and three steamers in its navy of very doubtful calibre and two sailing vessels. Pleas to other European powers by Venezuela for help fell on deaf ears -- including the Holy See.

A second problem also arose with Great Britain relating to the Isthmian Canal. In 1846 the United States and the Republic of Grand Colombia (now known as the

Republic of Colombia) entered into a treaty whereby the United States and its citizens were granted transit rights across the Isthmus. In 1850 the United States and Great Britain entered into the Clayton-Bulwer Treaty which prohibited the construction of any interoceanic canal under the exclusive control of either country. While the United States did not possess the capital or the technology to build this canal in 1850, it at least prevented Great Britain from doing so by virtue of this treaty. In 1867 the United States entered into a treaty with Nicaragua which would permit the United States to build a canal between the Atlantic and Pacific Oceans through Nicaragua.

The Gold Rush in 1848 to California clearly pointed out the need for a short water route to California. In addition the presence of Confederate naval raiders in the Pacific Ocean during the U.S. Civil War (1861-1865) made the fact that only 49 miles of land in the Isthmus separated the Atlantic Ocean and Pacific infuriating.

The normal development of the West Coast of the United States would have eventually brought about the building of an inter-ocean canal. However, the urgent military requirements of the United States in 1898 accelerated this need. In 1898 during the war with Spain, when the United States urgently needed its new battleship,

USS Oregon, which had been recently built and stationed in San Francisco, California to be put into service in Cuba, it took the Oregon 66 days to sail from California to Florida around Cape Horn to be used against the Spanish in Cuba. At the end of the Spanish-American War, the United States found itself a world power with the acquired assets of Puerto Rico and Cuba on the Atlantic side of the Isthmus and in the Pacific Ocean, the Philippines, Hawaii, Guam, and Samoa. But starting on March 19, 1898 and taking some 66 days to go some 14000 miles from San Francisco, California around Cape Horn arriving in Mayport, Florida on May 24, 1898 instead of being able to transit from the Pacific Ocean to the Atlantic Ocean in some 49 miles over the Isthmus infuriated the Congress of the United States. Against the wishes of the President of the United States and his Secretary of State, the Congress appropriated $10,000,000 for preliminary surveys for the start of an Isthmian Canal. Meanwhile the legal procedures set in motion by the Venezuelan-British Guiana Arbitration treaty of February 2, 1897 were slowly proceeding as the cases were prepared and evidence exchanged according to the pre-arranged timetable.

The "good offices" reference in the Cambridge History, (supra), is rather interesting in view of the fact that President Cleveland and Secretary of State Olney

were incensed at the Prime Minister's reply to Mr. Olney's note of July 20, 1895 to say nothing of the fact the Prime Minister delayed his reply until November 26, 1895. The response of President Cleveland was to ask the U.S. Congress for an appropriation and on January 1, 1896 he set up the American Venezuelan Boundary Commission to determine where the boundary line should be. This, added to Britain's problems in South Africa and with Germany "prompted a decision to accept the American demand"!

Most importantly, the Treaty of Arbitration of February 2, 1897 was signed a month prior to President Grover Cleveland and Secretary of State Richard Olney leaving office. William McKinley would become President on March 4, 1897 and was known as an "Anglophile." Therefore the procedure for the Venezuela-British Guiana dispute was set for arbitration before the new President took office.

On April 21, 1897 President McKinley named John Hay as Ambassador to Great Britain. This was at a time when Great Britain was very suspicious of the intentions of the other European powers. Great Britain was very concerned about its huge markets in China and Russia. Germany, France and Japan were anxious to have a share of this market which up until now was mostly a British one. In addition storm clouds were looming on the South African

horizon. The net result was that the United States was probably the only ally that Great Britain could have but this meant a reversal of over 100 years of antagonism.

At the same time, the United States was beginning to have problems with Spain and as events happened Great Britain provided assistance to the United States in its short-lived but successful war with Spain (February 15, 1898 to August 12, 1898). The United States in turn was to render valuable assistance to Great Britain in its own war against the Boers in South Africa (1899-1902) as well as sending the "Open Door" notes on September 6, 1899. This mutual assistance would have been impossible between Lord Salisbury and President Grover Cleveland and his Secretary of State Richard Olney, both of whom threatened Great Britain with war over Great Britain's invasion of Venezuela.

Instead, an Anglophile American President, William McKinley took office on March 4, 1897 and appointed a practicing Anglophile, John Hay, as Ambassador to Great Britain on April 21, 1897. He returned from London on August 15, 1898 to become U.S. Secretary of State which office he assumed on September 30, 1898. The irony is that from a Secretary of State--Richard Olney who threatened war against Great Britain two years earlier, we now had in the United States a Secretary of State who

wrote poetry about England! The following is an example of Secretary of State John Hay's poetry.

"Hail to thee, England! Happy is the day
wherefrom wide wandering I hither fare,
Touch thy wave-warded shore and breathe thine air,
And see, as now, thy hedges white with May.
Rich memories throng in every flowered-gemmed way;
Old names ring out as with a trumpet's blare;
While on, with quickened pulse, we journey where
London's vast thunder roars like seas at play.
To thee, the cradle of our race we come--
Not breaking fealty to a dearer home--
To warm our hearts by ancient altar-fires;
Thy children's children, from whatever skies
Greet the high welcome of thy deathless eyes,
Thou fair and mighty mother of our sires!"

There is another sample of Ambassador John Hay's affection for Great Britain as seen in the conclusion of his address "A Partnership in Beneficence" delivered shortly before his return to Washington at the Lord Mayor's dinner on April 21, 1898:

> "It might be trite and even tedious for me to refer again at this distance of time to the mighty pageant of last June, but I must ask leave to recall one incident of the naval review, which will long be remembered by those who saw it. On the evening of that memorable day, when all the ships lay enshrouded in darkness, the commander of the Brooklyn ran up the British and American colors, and then at a given signal, turned upon those two kindred flags the brilliant rays of her search lights. In that high illumination shined in clear radiance far above the obscurity that hid the engines of destruction and preparation for war, those friendly banners fluttered, proclaiming to the navies of the world their message of good will. The beauty of the scene lasted but a moment; it passed away with much of the splendor and magnificence that adorned the historic day; but may we not hope that the lesson and inspiration of that spectacle may last as long as those banners float over the seven seas, carrying always in their shadow freedom and civilization?"

As if to show its appreciation for this abrupt shift from the war-like tones of the Cleveland-Olney era, an almost immediate response from the British side came in a speech given in Birmingham, England on May 13, 1898 by the Colonial Secretary, Mr. Joseph Chamberlain:

> "I don't know what the future has in store for us; I don't know what arrangements may be possible with us; but this I do know and feel, that the closer, the more cordial, the fuller, and the more definite these arrangements are, with the consent of both parties, the better it will be for both and the world--and I go even so far as to say that, terrible as a war may be, even war itself would be cheaply purchased if in a great and noble cause, the Stars and Stripes and the Union Jack should wave together over all Anglo-Saxon Alliance.":

Mr. Chamberlain shortly thereafter elaborated on the theme in his Birmingham speech:

> "The United States of America, if you have regard to its potential resources, is already the greatest of civilized States, with its immense population, chiefly of Anglo-Saxons, upwards of 70,000,000 intelligent citizens, and if we are assured of the friendship of the Anglo-Saxon race, whether they abide under the Stars and Stripes or under the Union Jack, there is no other combination that can make us afraid."

IV

The climate changed in relations due to the newly-elected Republican administration. On May 30, 1898 Great Britain and the United States entered into a treaty

looking towards the settlement of various questions at issue between Great Britain and the United States, at that time mostly relating to Canada. A Joint High Commission was formed by this treaty to resolve these differences. The subjects to be considered were:

1. The Fur-Seal Fishery
2. Fisheries off the Atlantic and Pacific Coasts
3. The Alaska Boundary
4.& 5. Transit of Merchandise to and from either Country across intermediate Territory of the other
6. Alien Labor Laws
7. Mining Rights
8. Reciprocity
9. Naval Vessels on the Great Lakes
10. More Complete Definition and Marking of Frontiers
11. Conveyance of Persons in Custody of the Officers of one Country through the Territory of the other

This Joint High Commission met in Canada and in Washington and ended in failure on February 20, 1899 in Washington with no known agreement having been reached. The Baron Herschell was a British member of this Joint High Commission.

It was against this background that Great Britain tied down with the problems in South Africa and China as well as its concern about Germany's intentions and with its own military forces dispersed, feared that in addition to these headaches the United States was about to denounce the Clayton-Bulwer Treaty of 1850 and plunge ahead and build the Isthmian Canal without the consent of Great Britain as required by that treaty. The British fears

were not allayed by President McKinley's Annual Message to the Congress on December 5, 1898:

> "...All these circumstances suggest the urgency of some definite action by the Congress at this session if the labors of the past are to be utilized and the linking of the Atlantic and the Pacific oceans by a practical waterway are to be realized. That the construction of such a maritime highway is now more than ever indispensable to that intimate and ready intercommunication between our eastern and western seaboards demanded by the annexation of the Hawaiian Islands and the prospective expansion of our influence and commerce in the Pacific, and that our national policy now more imperatively than ever calls for its control by this Government, are propositions which I doubt not the Congress will duly appreciate and wisely act upon."
> (For.Rel.U.S.1898,pp.lxxi-lxxii)

However, this was not followed as feared by the British by a unilateral denouncement of the Clayton-Bulwer Treaty of 1859. Instead, on December 7, 1898, Secretary of State John Hay sent the following instructions to Mr. Henry White the Chargé d'Affaires at the U.S. Embassy in London:

> "No. 976] Department of State
> Washington, December 7,1898
>
> Sir: You are probably aware that the commission appointed some time ago, under the chairmanship of Admiral Walker, to examine into the subject of the Nicaragua canal is approaching the completion of its labors and will soon be ready to report. They have gone into the subject with more care, patience, and accuracy than any preceding body which has examined it, and is to be hoped that when the report is presented it will contain the elements for a final decision of the material problems involved. There is also a bill before the Senate, the result of great pains and research, which, if accepted by both branches of Congress, will open the way for the Government of the United States to take a more efficient part in the execution of this great

enterprise than has hitherto been practicable. At the same time there is a growing conviction throughout the country that some definite action of the Government of the United States has now become necessary if the labors of the past are to be made useful and the linking of the Atlantic and the Pacific Oceans by a practicable waterway is to be realized. The events of the past year have made it more than ever necessary that some means of communication between the Atlantic and the Pacific should be at once accomplished. Such means of communication seem at this moment indispensable both for our commercial and national interests. Thus far the results which have been reached, both by way of research and experiment, are not such as to have convinced the President that the canal can be built by any private corporation unassisted by the national encouragement or aid; nor is it evident as yet that the returns from the commercial use of such a waterway will for some time to come be adequate for its maintenance and for anything like sufficient interest on the vast amount of capital involved. The intervention of the Government seems, therefore, to be necessary if any practical result is to be achieved.

There has been, as you are aware, a great deal of discussion as to whether the provisions of the Clayton- Bulwer treaty actually stand in the way of any practical action by the Government of the United States in the construction and control of the canal. It is even held by many of our public men that the treaty is already obsolete and that it has been so treated and regarded by the action of both the British and American Governments. I do not wish at this moment to receive or entertain any controversy upon these points. The President thinks it is more judicious to approach the British Government in a frank and friendly spirit of mutual accommodation, and to ask whether it may not be possible to secure such modification of the provisions of the Clayton-Bulwer treaty as to admit such action by the Government of the United States as may render possible the accomplishment of a work which will be for the benefit of the entire civilized world. The President hopes he may take it for granted that the British Government not only have no wish to prevent the accomplishment of this great work, but that they feel a lively interest in it and appreciate the fact that the benefits of its successful achievement will be to the advantage not

only of England and America but of all commercial nations.

You will therefore take an early opportunity of conversing with Lord Salisbury upon this matter, of inviting his views in regard to the general situation, and of ascertaining whether he would prefer to let us know the inclinations of the British Government through you or empower Sir Julian Pauncefote to confer with me in regard to it, and, if possible, to come to an agreement which will be satisfactory and profitable to both countries.

I am,etc,

John Hay

Following President McKinley's message to the U.S. Congress that the United State wanted to build a canal, Secretary of State John Hay most emphatically assured the British Ambassador Sir Julian Pauncefote on December 8, 1898 in Washington that the United States would not ignore the Clayton-Bulwer Treaty. On December 10, 1898 the British Cabinet met to consider the impact of such a project on the British Empire and the Prime Minister authorized the consulting with "the board of trade and other departments concerned."

After meeting with the Prime Minister, Lord Salisbury (who was also his own Secretary of State for Foreign Affairs), Mr. White cabled Secretary of State Hay from the U.S. Embassy in London as follows:

AMERICAN EMBASSY,
London, December 21, 1898.

Prospects of agreement promising. Principal secretary of state for foreign affairs favorably impressed. Gratified by your dispatch which he pronounced admirable. He seems personally friendly, as I know Balfour is, to the construction of the canal, and admitted in strict confidence during our conversation that a work of such magnitude can only be undertaken by and under the auspices of a government; also that it is better such a canal should be under protection of a single power such as the United States than two or more. He willingly assented to negotiations being conducted through you and Pauncefote. Upon hearing that, I thought you would prefer it. Dispatch and private letter next Saturday bag.

WHITE.

The next day, Mr. White sent another cable to Secretary Hay concerning his conversation with the British Minister for Foreign Affairs:

AMERICAN EMBASSY,
London, December 22, 1898.

I had an interview to-day with British minister for foreign affairs on the subject of your dispatch No. 976, which I read to him. He reciprocates very heartily the sentiments it contains; will confer with the board of trade and other departments concerned, and will instruct the British ambassador at Washington to confer with you with a view to ascertaining the wishes and proposals of our Government and to meet them if possible. He said nothing indicative of opposition, much less hostility, on the part of Her Majesty's Government to the construction of the canal, and I do not believe if it is to be open to all nations on equal terms that there will be any serious difficulty in effecting an agreement satisfactory to both nations.

WHITE.

Mr. White supplemented his cable with a written report of the same day:

No. 613] AMERICAN EMBASSY,
London, December 22, 1898.

SIR: Referring to your instruction numbered 976, of the 7th instant, relative to the proposed Nicaragua Canal and the Clayton-Bulwer treaty, I have the honor to inform you that I had an interview yesterday with the Marquis of Salisbury on the subject.

I read your instruction to his lordship, but did not leave a copy with him. He was evidently gratified at the frank and friendly spirit of mutual accommodation in which you had instructed me to approach Her Majesty's Government, and requested me to inform you that he reciprocated your sentiments very heartily.

Upon my asking him for an expression of his views in the matter, Lord Salisbury said that before complying with my request he would like to know the wishes and proposals of my Government, and exactly what modifications we should like brought about in the Clayton-Bulwer treaty. He added that in any case it would be necessary for him, before expressing an opinion on the subject in behalf of Her Majesty's Government, to consult the board of trade and other departments concerned.

I suggested that the best and most expeditious way to ascertain the views of my Government would be for him to authorize Her Majesty's ambassador at Washington to confer with you in reference thereto, an opinion in which he concurred, and said that he would communicate immediately by telegraph with Sir Julian Pauncefote, which, later in the day, he informed me he had done.

A brief informal conversation followed, during which Lord Salisbury said nothing to lead me to suppose that he is unfavorably disposed—much less hostile—to the construction of the canal under our auspices, provided it is to be open to the ships of all countries on equal terms.

I am inclined to think that the construction of the Nicaragua Canal will be viewed with favor by the people of this country, and consequently that we are not likely to encounter any serious difficulty on the part of the British Government in respect to such modifications as may be necessary, to enable us to make it, in the Clayton-Bulwer treaty; the more so, as, since the construction of the Suez Canal, that of Nicaragua will no longer have the same importance for the British Empire which it had when the treaty in question was negotiated.

In this connection I inclose an article which appeared in the London Spectator of the 10th instant, and which embodies the opinion, I think, of a very considerable majority of those who have given the matter their attention in this country.

I inclose also the translation of a cablegram which I sent you in cipher yesterday after my interview with the Marquis of Salisbury.

I have, etc.,

HENRY WHITE.

Matters proceeded apparently rather quietly until Wednesday, December 21, 1898 when the Prime Minister authorized discussions with the United States followed the next day by Francis Villiers, the Permanent Under Secretary of State for Foreign Affairs' request for a memorandum from Major General Sir John C. Ardagh, the Director of Military Intelligence on the request of the United States. Nevertheless on Thursday, December 23, 1898, the Prime Minister told the British Ambassador in Washington, Sir Julian Pauncefote not to hurry negotiations.

Nothing apparently happened during the Christmas 1898 holidays. On Tuesday, January 3, 1899 the Director of Military Intelligence forwarded to the Under-Secretary of State for Foreign Affairs his memorandum dated December 9, 1898, "Memorandum respecting the Clayton-Bulwer Treaty" (F.O. 55, 392), Printed for the use of the Cabinet, January 10, 1899.

This memorandum was to become the British answer to Secretary Hay's request. Furthermore the calendar, if diplomatic despatches or notes do not, proves that it was agreed to by the United States.

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Printed for the use of the Cabinet. January 10, 1899.

CONFIDENTIAL.

No. 1.

Intelligence Division to Foreign Office.—(Received January 4.)

THE Director of Military Intelligence presents his compliments to the Under-Secretary of State for Foreign Affairs, and, in compliance with the request contained in Mr. Villiers' letter of the 22nd ultimo, begs to forward herewith a short Memorandum in which is briefly set forth, in general terms, the effect on the naval and military position of the Empire by the construction of a ship canal across the Isthmus of Darien, together with some suggestions as to the compensation which, in the Director's opinion, might reasonably be demanded by Great Britain for any concessions made to America in connection with the Clayton-Bulwer Treaty. A few remarks have been added on the financial aspect of the enterprise which may not be without interest.

Sir Thomas Sanderson will not fail to notice that the matter is one which largely affects the navy, and Sir John Ardagh would therefore venture to submit, for the consideration of Lord Salisbury, that it might be advisable to approach the Admiralty with a view to obtaining the opinion of their Lordships on the whole question.

The inclosures contained in Mr. Villiers' letter are returned herewith.

Intelligence Division, 18, Queen Anne's Gate,
London, January 3, 1899.

Inclosure in No. 1.

Memorandum respecting the Clayton-Bulwer Treaty.

THE acquisition by the United States, of Cuba, Porto Rico, Hawaii, and the Philippines—their intention to raise their regular army to the number of 100,000—and to make a very large addition to their navy—are alone sufficient to modify very materially the strategical position both naval and military, of Great Britain, in the Atlantic and Pacific, as well as in the Dominion of Canada, in the event of war with the United States.

The long land frontier of the Dominion will henceforth be exposed at the outbreak of such a war to an attack from regular forces drawn from a body four times as numerous as that hitherto maintained.

The Imperial fortresses and coaling stations of Halifax, Bermuda, St. Lucia, Jamaica, and Esquimalt; the Atlantic and Pacific ports of the Dominion; the West Indian Islands, the Australasian Colonies, Borneo, Singapore, Hong Kong and Wei-Hai-Wei, will all be subjected to an increased risk proportioned to the development of the naval forces which may be employed to attack them; and this latter risk will be affected in a high degree by the construction of a ship canal at Panamá or Nicaragua, and by the nature of the control exercised over it.

The Clayton-Bulwer Convention of the 19th April, 1850, engages Great Britain and the United States not to occupy, fortify, colonize, or exercise dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; to promote the construction of a canal, and the establishment of a free port at each end, and to protect the canal when completed; to invite other States to enter into similar stipulations; and to extend the same to all interoceanic communications, whether by canal or railway, across the isthmus.

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From a commercial point of view, these conditions are excellent; but they have practically acted as an insuperable bar to the construction of a canal, for the following reasons:—

1. It is extremely doubtful that a canal for purely commercial purposes would be a remunerative investment.

2. The American people are fully aware of the great strategical advantage which a ship canal under their exclusive control would confer upon their navy; and have recently had this brought home to them conspicuously by the necessity of their warships having to circumnavigate South America in order to pass from the Pacific to the Atlantic and *vice versâ*; and they perceive what an intolerable restriction on their freedom of movement might arise from the control of the canal being shared with this country, or with an international body, or with the Isthmian States.

3. Great Britain considers that the construction of a canal across the isthmus would impair her maritime supremacy, increase the responsibilities of her navy, and conduce to the development of rivals to her mercantile marine.

For many years there has been a growing desire in the United States for the abrogation of the Clayton-Bulwer Convention, but it was felt that the terms were so reasonable and so unequivocal from an international point of view, that if such a claim were submitted to arbitration the verdict would certainly be given for Great Britain. This conviction had, probably, no slight influence in the rejection of the Arbitration Convention, and it may, not unreasonably, be inferred that the Clayton-Bulwer Convention was the rock upon which it foundered.

Both the President and the Senate have revived the canal scheme within the last few days from the stand-point of the United States' control, and in view of the results of the war with Spain it is quite natural that Americans should regard the construction of this link between the Atlantic and the Pacific, as more important and more urgent than before.

Commercial interests, which were formerly the chief factor in the discussion, have now been superseded by the obvious requirements of the new position acquired in the Pacific, and these may be expected to have a preponderating influence in favour of a guarantee by the United States' Government, of the interest on the requisite capital, whether there be a prospect of the enterprise being a paying concern or not.

The maximum liability would probably not exceed 1,000,000*l.* per annum for thirty years, and the advantage to be derived would be cheaply purchased at this price, even on the supposition that the tariff for transit was fixed on so low a scale as to be unremunerative.

In peace a canal with moderate dues would attract a large custom, and confer a great and continuous benefit upon our merchant ships, and it would ordinarily be a material convenience to our ships of war.

But if we were engaged in hostilities with the United States, the advantage would certainly at the outset lie with them, so long as they held the canal.

This is a question for the Admiralty; but even a superficial consideration of it would seem to indicate that the mere existence of such a canal under American control would impose upon us the necessity of maintaining stronger squadrons than we have hitherto regarded as sufficient in these waters.

The practical question now before us is the *quid pro quo* which would be adequate to induce us to consent to the abrogation of the Clayton-Bulwer Convention or its modification in terms which would be acceptable to both parties.

The *sine quâ non* of the United States is exclusive control, to the exclusion of joint or international control. Assuming this concession there still remain many clauses and conditions in the Convention which are susceptible of retention.

Some of the joint declarations might become unipartite, some may admit of modification, and some may be inadmissible.

We, on our part, should expect a sound Arbitration Treaty, adhesion to the open-door policy, a benevolent settlement of outstanding questions in Canada and elsewhere, special consideration for the West India Islands, facilities on the Alaska coast, a readjustment of boundary in the San Juan Straits, and other matters of mutual interest—to receive a treatment calculated to cement the ties and promote the intercourse which should bind us together, and which it is now desirable more than ever to maintain on a secure basis.

Upon some such conditions the commercial advantages which we shall enjoy during a peace of prolonged duration from the use of the canal may more than

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counterbalance the distant risk to which exclusive American control will undoubtedly expose us in war with the United States.

It is a matter of secondary importance whether the Panamá or the Nicaragua route be selected.

Thirty millions have already been spent on the Panamá Canal, and a like sum is required to complete it. The estimates for the Nicaragua Canal range from twelve to thirty millions. Taking the larger figure, the interest on capital at 3 per cent would amount to 900,000*l.*, administration and maintenance might require 600,000*l.*, making a total annual charge of 1,500,000*l.*

The estimates of tonnage which would pass through vary from 300,000 to 7,000,000 tons annually, while that which actually passes the Suez Canal is 12,000,000 tons, paying a tariff of about 5*s.* per ton.

At that rate, 6,000,000 tons would be required to make an isthmian canal remunerative, or, if the transit tonnage amounted to 1,500,000, a tariff of 1*l.* per ton (which would probably be found prohibitive) would be required to earn the same amount.

It may be surmised that at first the canal would not even pay working expenses, and that there would be no interest earned upon capital for a great many years.

But even if this unfavourable forecast should prove correct, and the capital interest should fall entirely upon a United States' guarantee, it may be contended—and it would probably be accepted by patriotic Americans—that the money would be well spent, and that there would be a prospect of eventually recovering it.

The Suez Canal has cost 21,000,000*l.*, and now pays 20 per cent. on the nominal value of its shares. If the traffic through the American isthmus should ever attain the same magnitude (12,000,000 tons), the receipts at the same rate of tariff would amount to 3,000,000*l.*, which would probably allow of dividends of 8 per cent. upon capital.

National pride and sentiment are strongly engaged in this project, and it may be anticipated that the United States will not be deterred from undertaking it by financial considerations.

(Signed) J. C. ARDAGH, *Major-General,*
Director of Military Intelligence.

December 9, 1898.

The Index to the Minutes of the British Cabinet meetings states:

> "Until the formation of the Cabinet Secretariat in December 1916, no minutes were kept of proceedings at Cabinet meetings. The only record of Cabinet decisions was contained in the letters written by Prime Ministers to the Sovereign after each meeting. These letters which vary from brief statements of subjects discussed to more detailed accounts of arguments made and decisions reached, are preserved in the Royal Archives at Windsor Castle. Drafts and copies of some are found in other collections, such as the Gladstone Papers (in the British Museum), the Salisbury Papers (at Christchurch, Oxford), and the Asquith Papers (in the Bodleian), and the Roseberry Papers (in the National Library of Scotland).
>
> "Her Majesty the Queen graciously gave her permission for photo-copies of almost 1700 of these letters written between 1868 and 1916 to be made, and for these copies to be made available in the Public Record Office. The following list indicates briefly the subjects mentioned in each report. Most letters appear to have been written on the same day as the Cabinet meeting; but when a letter refers to a meeting on a previous day the list shows the date in square brackets . . ." CAB 38-560 (CAB 41)

It should be noted that as a result of Her Majesty's permission roughly 35 letters a year were made available to the public.

While the British Cabinet discussed General Ardagh's memorandum at a meeting on January 10, 1899 apparently no minutes or letters were written. On January 12, 1899 the British Ambassador warned the Prime Minister that Secretary of State Hay asked for a reply at the earliest date and, if possible, by telegram. Again the British Ambassador advised Lord Salisbury on January 20, 1899 that

in the United States ". . . canal viewed as national duty." Meantime, Lord Salisbury ordered consultations with Canada on the subject even though Great Britain was responsible for the foreign affairs of Canada under the British North America Act.

At a meeting on January 26, 1899 with the U.S. Chargé d'Affaires Mr. Henry White, Lord Salisbury, the Prime Minister told him that he would submit this American request to the next Cabinet meeting which would take place on Wednesday February 1, 1899 and there for the first time the Americans learned that there would have to be a 'quid pro quo'. On February 1, the Cabinet did meet and discussed the Nicaraguan Canal. As the minutes written on Thursday, February 2, 1899 report:

"Feb. 2, 1899

> "Lord Salisbury with his humble duty to Your Majesty respectfully submits that a Cabinet was held yesterday afternoon . . . with respect to request of the United States that we would so far modify the Clayton Bulwer Treaty as to enable them to make the Nicaraguan Canal, it was felt by the Cabinet that the request could not be entirely refused, but that we might reasonably require that before making so great a concession to the United States we thought greater progress should be effected in settling some of the questions over which Lord Herschell is negotiating."

On February 13, 1899 another Cabinet meeting was held which the Prime Minister reported to Her Majesty, the Queen, as follows:

"DECYPHER

"6.30 p.m. Feb. 13

"Humble duty from Lord Salisbury to the Queen. The Cabinet today was entirely occupied with two subjects.

"First, the examination of despatches which, it is proposed, should be sent to Your Majesty's Ambassador at St. Petersburg, drafts of which will be submitted to Your Majesty.

"Secondly a discussion on the telegram from Lord Herschell received yesterday in which he asks what is to be done, as the American commissioners will neither accept arbitration on the subject of the Alaskan boundary nor propose any satisfactory solution. Under the circumstances he thinks the only thing to be done is to break off negotiations and the Cabinet concurred in this view. Some time was also devoted to the discussion of naval estimates." CAB 41/25/3 Feb. 13, 1899

On February 14, 1899 another British Cabinet meeting was held and Lord Salisbury reported the next day to Her Majesty, the Queen, as follows:

"20 Arlington Street, S.W.
"Feb. 15, 1899

"Lord Salisbury with his humble duty to Your Majesty submits that a Cabinet was held yesterday. The first subject considered was Lord Herschell's telegram enquiring whether if the Americans continued to refuse either to concede our demands about the frontier at Alaska or to refer to arbitration it would be most desirable to break off the negotiations. The Cabinet were unanimously of opinion that if Lord Herschell advised by his four Canadian colleagues was of opinion that that course was expedient he was authorized to take it. . . ."

In the meantime the legal procedures involving the Venezuela-British Guiana Boundary Arbitration were continuing but no mention of this is to be found at this time in British Public Record Office or the British Cabinet proceedings or in the U.S. National Archives in

connection with the American request to modify the Clayton-Bulwer Treaty of 1850.

However, a letter dated April 28, 1899 from the U.S. Secretary of State John Hay to the new U.S. Ambassador in London, Mr. Joseph H. Choate, is quoted in full in Tyler Dennett's book John Hay. Mr. Dennett also states in his opinion that it is a "complete statement of the situation."

> The anxiety in which Hay was working appears in a long letter to Choate, April 28. It is also a complete statement of the situation:
>
> I would like to add a word or two, in this private and confidential manner, to the instruction I sent you a few days ago in regard to the present aspect of our negotiations with Canada.
>
> By a memorandum of the 4th of February, 1899, I find that the British Ambassador called upon me that day, and, after discussing several pending matters, talked of the state of the negotiations in the Canadian Commission. He deplored the possibility of a failure of the negotiations, and seemed to think that the most dangerous point of all was the matter of the Alaska Boundary, and he suggested that it might be possible to leave that single point to arbitration, on the lines of the arbitration treaty agreed upon between him and Mr. Olney, by a tribunal of jurists, the decision of which would not bind either party unless agreed upon by a large majority. He thought all the other matters might be arranged by the mutual concessions which were then—and still are—in sight. If this were done, the British Government, he said, would have no hesitation in agreeing to the modification of the Clayton-Bulwer Treaty, and to the sweeping away of all the objectionable features of the Treaty of 1818, which would clear the entire slate of all subjects of discussion.
>
> The draft of the treaty I sent you is founded on the General Arbitration Convention of 1897, agreed upon between Mr. Olney and Sir Julian Pauncefote, but it is even more favorable to Great Britain than was that document, which provided for a Court or Board of three judges from each nation on all boundary questions, and that the decision should not be final unless five arbitrators should unite in a decision. See Article VI (Foreign Relations of the United States. 1896. page 239). The draft I sent you, you will see, provided that a vote of two-thirds of the full Board should be sufficient.
>
> The matter of the Alaska boundary is becoming a matter of great anxiety to us. Soon after the close of negotiations between our Commissioners and those of Great Britain, Sir Julian and I took up the subject of a *modus vivendi* on the Alaskan frontier pending the full settlement of the question, and substantially agreed upon a provisional boundary, beyond which neither party should assume jurisdiction, and without prejudice to the claims of either party in the final settlement of the boundary. He transmitted a copy of my note, which accepted the propositions of his note, written last July, to Canada and to England. Lord Minto called a meeting of his council, which immediately rejected our proposition, on the ground that it gave us more territory than we had a right to claim. Knowledge of this decision of the Council was communicated to me confidentially by Sir Julian. He could not communicate it officially

because the matter had been referred by Canada to England and had not yet reached him from the Foreign Office. Of course, we were greatly disappointed by this unexpected rebuff. Our disappointment was increased by the dispatches from the Governor of Alaska, who insists that the Canadian Mounted Police are encroaching upon our territory everywhere along the boundary and that the miners who have taken up claims in the disputed territory are in great anxiety lest they should be ousted from their holdings by the operations of the British Columbia alien acts.

I saw Sir Julian again, and, making another slight concession as to the boundary line, I asked if he could not induce the Dominion Government to effect a suspension of the British Columbian acts as to the miners working in the disputed territory until the matter of the boundary could be settled between the two governments. He sent to Canada and to London what appeared to me a very reasonable and satisfactory telegram on the subject, but to this we have had no reply.

You will infer from this that the whole matter is in a most unsatisfactory state, which has a tendency to become worse every hour. I do not believe that we are asking anything unreasonable, and I am sure that if the matter depended on direct negotiations between the United States and England, it would be very speedily and satisfactorily settled, but we are driven to the conclusion that the Canadians do not wish any settlement, that they preferred the present risky and unsettled state of things to any decision which would leave them open to attack from the Opposition, as having shown a lack of spirit and a lack of regard for Canadian interests, in their negotiations with the Americans. I do not see that any thing is to be gained by calling the Conference together again. I should fear that the same scenes would reproduce themselves, and the same fruitless result would follow. Especially—and this I say to you in the utmost confidence—especially should we deprecate the filling of Lord Herschell's place on the Commission by another lawyer, who would come with the intention of making the most of his case as an advocate, instead of with the purpose of settling the matter in a spirit of mutual fairness and moderation. Unless the two Governments can come to a sort of agreement beforehand, it would be simply a waste of time to call the Conference together again.

You are by this time probably aware of the great difficulties that surround the arrangement of any controversy in which Canada is concerned. The Dominion politicians care little for English interests. Their minds are completely occupied with their own party and factional disputes, and Sir Wilfrid Laurier is far more afraid of Sir Charles Tupper than he is of Lord Salisbury and President McKinley combined; while the habit of referring everything from the Foreign Office to the Colonial, followed by a consultation of the Canadian authorities by the Minister of the Colonies, produces interminable friction and delay. I hope it may be possible for you in your conversations with Lord Salisbury to cause him to feel the desirability of finding, if possible, some arrangement of these troubles, which, though intrinsically insignificant, are likely at any moment to embitter the relations of our two countries, solely in the interest of the warring factions in Canada

With this letter of April 28, 1899 of U.S. Secretary of State John Hay to the U.S. Ambassador to Great Britain Joseph H. Choate the record grows cold concerning the negotiations for the U.S. sought-for modifications of the Clayton-Bulwer Treaty of 1850. Repeated requests for "the negotiating papers" of the Hay-Pauncefote Treaty signed on February 5, 1900 bring forth denials from both British and American archives official as to their existence. By Executive Order 12356 issued by President Reagan a U.S. government official has to deny their existence if the national security of the United States is involved. Great Britain protects its state secrets with the Official Secrets Act, supra. On April 28, 1899 the Chief Justice of the United States Melville W. Fuller and Associate Justice of the Supreme Court David W. Brewer were winding up their cases on the Supreme Court of the United States prior to their departure for Paris to assume their roles as members of the Venezuela-British Guiana Arbitration Tribunal. The proceedings were scheduled to begin on June 1, 1899 but did not actually begin until June 15, 1899. No reasons for their delay can be found even in the printed record of the proceedings of the Tribunal.

Certain facts do indicate what happened after the Saturday February 4, 1899 meeting between the British Ambassador, Sir Julian Pauncefote and the U.S. Secretary

of State John Hay. It is apparent that the 'quid pro quo' was given by Lord Salisbury to the U.S. Chargé d'Affaires Mr. Henry White on January 26, 1899. This was the British answer to Secretary Hay's request of the Prime Minister to modify the Clayton-Bulwer Treaty of 1850 as relayed by his instruction on December 2, 1898 to Mr. White. At the Saturday, February 4, 1899 meeting (four days after Mr. Salisbury presented the proposed Hay-Pauncefote Treaty to the British Cabinet) Mr. Hay deplored the fact that all might fail because of the Alaska-Canadian border dispute. As Secretary of State Hay wrote the U.S. Ambassador in London quoting the statements made by the British Ambassador, Mr. Hay said:

> ". . . He thought all the other matters might be arranged by mutual concessions which were then--and still are--in sight. If this were done, the British Government, he said, would have no hesitation in agreeing to the modification of the Clayton-Bulwer Treaty . . ."

Again it must be remembered that while this jockeying for position over the canal was going on between Great Britain and the United States, procedural steps of the Venezuela-British Guiana Boundary Arbitration were still going on--and so important to Great Britain that it designated its Lord Chief Justice and another Justice to sit as judges and allowed its Attorney General to be absent from his usual duties to be Great Britain's chief lawyer in the Arbitration and for the United States to

have its Chief Justice and another Justice of the Supreme Court of the United States also to sit. So it is obvious that Great Britain regarded the Venezuela-British Guiana arbitration to be of paramount importance to her. When the maneuverings for release from the Clayton-Bulwer Treaty by the United States are read together with the action by Great Britain to contain Russia in China by an "Open Door" policy and to align the Alaska-Canada border, one can see the temptation of using the Venezuela-British Guiana Arbitration case as a "bargaining chip."

Since the archives of both the United States and Great Britain offer few clues as to why these two members of the Supreme Court of the United States also began sitting on the Venezuela-British Guiana Arbitration beginning on June 15, 1899 (with the notable exception of Justice Brewer attending the inaugural meeting of the Tribunal in Paris on January 25, 1899) voted on October 3, 1899 against their client state and gave 95% of the disputed territory involved to Great Britain a reconstruction of the period involved by using the calendar the solution is found.

"Quid Pro Quo"

> ". . . together with some suggestions as to the compensation which . . . might reasonably be demanded by Great Britain for any concessions made to America in connection with the Clayton-Bulwer Treaty.
>
> * * *

> The practical question before us is the quid pro quo which would be adequate to induce us to consent to the abrogation of the Clayton-Bulwer Convention or its modification in terms which would be acceptable to both parties."
>
> Director of Military Intelligence Major General Sir John C. Ardagh, Memorandum to the Prime Minister, Lord Salisbury, December 9, 1898

In analyzing the memorandum of December 9, 1898 of the Director of Military Intelligence Major General Sir John C. Ardagh one can see that he felt that as a "quid pro quo" for modifying the Clayton-Bulwer Treaty of 1850 that Great Britain should demand the following:

1. General Arbitration Treaty:

Sir Julian Pauncefote, the British Ambassador signed a General Arbitration Treaty with President Grover Cleveland's Secretary of State, Mr. Richard Olney on January 11, 1897. This Treaty was rejected by the U.S. Senate on May 1897. It was thought by the British Government that many of the disputes with the United States could be handled by an Anglo-American arbitration treaty. There were numerous occasions to arbitrate disputes following the U.S. Civil War such as Canadian-U.S. trade, fishing rights off of Newfoundland, seal-hunting in the Bering Sea (which ended in arbitration which result was deeply resented by the Americans). It was thought that all such disputes could be submitted to a six man tribunal--three British and three Americans. However, the poor climate of relations between the two

countries added to by the smoldering dispute over the Venezuela-British Guiana Border caused the U.S. Senate to reject such an Anglo-American Arbitration Treaty. This was General Ardagh's first demand: i.e., to remedy this. In other words all disputes between the United States and Great Britain would be handled in a bilateral arbitration treaty.

On July 29, 1899, the United States signed the Hague Arbitration Treaty which was subsequently approved by the U.S. Senate and entered into force on September 4, 1900. The United States thereby agreed to Demand No. One of General Ardagh's 'quid pro quo.'

2. ". . . adhesion to the open-door policy . . .":

Perhaps the simplest explanation of the "open door" policy is set forth in Professor Charles S. Campbell Jr's book Anglo-American Understanding 1898-1903:

> "Unfortunately, however, disquieting developments were taking place in the 1890's. Spheres of influence and leased territories were beginning to proliferate upon China's prostrate bulk; and it seemed all too likely that they would prove to be precursors of outright partition. Indeed, talk of partition was heard on all sides, and the belief was widespread that the great powers, having finished parcelling up Africa, would now turn to China, the last big area still unappropriated. Already their fleets and armed forces were frequenting the Chinese littoral. Not all these countries shared the British-American affection for the open door. Russia in particular, with her ally France not far behind, viewed it with the distaste natural to a country whose exporters needed protection. Even Germany, despite her efficient industries, seemed at times to share this point of view. In 1895 after the Sino-Japanese war she, Russia, and France collectively intervened to force Japan to disgorge a major part of her conquests—a move which aroused suspicions of a standing German-Russian-French agreement for common action in the Far East. Such an agreement would bode ill for Britain.

Far greater cause for concern came at the end of 1897. In November the precarious equipoise in the orient received a rude jolt when German troops debarked at Kiaochow in Shantung province, and a Russian fleet dropped anchor at Port Arthur.[26] At once a first-class crisis was precipitated. The long expected partition of China was surely at hand; even war seemed likely. Great Britain faced a terrible choice. Should she stand firm against Russia and Germany, and run a grave risk of conflict; or do nothing, and permit a serious weakening of the open door policy? One thing seemed certain: Britain would fight rather than be ousted from the oriental markets. Arthur Balfour gave solemn warning of the government's determination to uphold equal trading rights in China, "which is all they claim—but which they do claim."[27] And the Chancellor of the Exchequer, Sir Michael Hicks Beach, went further: "We do not regard China as a place for conquest or acquisition by any . . . power. We look upon it as the most hopeful place of the future for the commerce of our country and the commerce of the world at large, and the Government were absolutely determined, at whatever cost, even—and he wished to speak plainly—if necessary, at the cost of war that that door should not be shut."[28]

Confronted by these perils, Britain looked hopefully across the Atlantic. The American chargé d'affaires at London, Henry White, found that "the opinion is general in this country, that Her Majesty's Government . . . will have the sympathy and support of the people of the United States and not improbably of our Government also."[29] And the London *Times* was "glad to note that this country enjoys the powerful support of the Government of the United States, as well as of the public opinion of that portion of the American people which is not carried away by blind jingo denunciations."[30] Such observations were well taken. The news from the Far East did alarm Americans, although they felt its impact far less than the British, who for a moment stood face to face with war. The United States traditionally had held Russia in high regard, but the old friendship had been shaken in recent years and it was to be shaken much more as Russian expansion in the Far East directed itself squarely at Manchuria, the one part of China where American exports predominated. Germany had been in America's bad books for some years; mainly because of her tactless diplomacy almost her every move served only to confirm the prevailing American conception of the Fatherland as an overbearing and dangerous bully. The United States would have to support Great Britain against Germany and Russia, the *New York Herald* declared flatly, because the continental powers could be expected to set up discriminatory trading areas.[31] Hailing Britain as the "champion of civilization," the *New York Times* affirmed: "Our interests in the East are the same as hers."[32] And a senator of much prestige, Senator Frye of Maine, declared publicly: "This country is vitally interested in the situation in China. . . . Our interest in the matter cannot be exaggerated. The injury to us resulting from a partition of the Empire would be almost incalculable."[33]

President McKinley had rejected requests to intervene in China several times. As Mr. Tyler Dennett, Secretary of State John Hay's biographer, points out, the first was a suggestion in a note from the British Embassy on March 8, 1898 which the British Ambassador, Sir Julian Pauncefote was requested to deliver personally to the President. This was quickly rejected. A second suggestion came in a letter written from London to President McKinley in June 1898 from his then Ambassador to Great Britain, Mr. John Hay. On July 14, 1898, the President's rejection came in a letter from his then Secretary of State William R. Day. A third proposal was made in December 1898 and also came to no avail. Admiral Lord Beresford, Lord Salisbury's agent and member of Parliament also tried to persuade the U.S. government for the fourth request. This also failed.

Despite four earlier refusals on September 6, 1899, Secretary of State John Hay sent "open door" notes to Great Britain, France, Russia, Germany, Italy and Japan. Demand No. 2 of General Ardagh's 'quid pro quo' was met.

(2)

3. ". . . benevolent settlement of outstanding questions in Canada and elsewhere. . .":

The Joint High Commission, as noted above, ended without any actions being taken. However it terminated on February 20, 1898 some two weeks after Secretary of State

Hay received the British terms for the modification of the Clayton-Bulwer Treaty. Since General Ardagh included Canada in this request for benevolent settlement--it would appear that all the various questions at issue in the Prime Minister's memorandum of July 19, 1898 to the British and Canadian Commissioners (with the exception of the Alaska-Canada boundary) could have been agreed to by Secretary of State John Hay as he indicated that "all were in sight" in his letters of April 28, 1899 to U.S. Ambassador Choate in London.

Quoting the British Ambassador, Secretary of State Hay did say:

> "He [the British Ambassador] thought all the other matters might be arranged by the mutual concessions which were then--and still are--in sight. If this were done, the British Government, he said, would have no hesitation in agreeing to the modification of the Clayton-Bulwer Treaty . . ."

As to the matter of the Alaska-Canada Boundary although Canadian foreign affairs were handled by Great Britain by virtue of the British North America Act of 1867, nevertheless the Prime Minister kept the Canadians involved even though they did not have any power to act. Nevertheless, a modus operandi was gradually worked out until a permanent agreement to settle the matter could be worked out. The one thing that Secretary of State Hay could not do was give up, particularly to Great Britain any U.S. territory in any negotiations. The wrath of the

German and Irish communities in the United States would cause great domestic political trouble for President McKinley's administration.

The one ". . . outstanding question . . . elsewhere" of course, was the Venezuela-British Guiana Boundary Dispute where the United States represented Venezuela. Since no territory of the United States was involved, the result would have no domestic political impact. There the two U.S. jurists representing Venezuela together with the U.S. lawyers acting as Venezuela's counsel voted October 3, 1899 to award 95% of the territory to Great Britain unanimously. Since the foreign affairs of the United States are in the sole province of the President of the United States as provided for in the Constitution of the United States, usually acting through his Secretary of State, there was nothing to prevent the President from instructing the two American jurists on how to vote since this was a matter of foreign affairs.

While there were undoubtedly other issues decided on that February 4, 1899 meeting between the British Ambassador and the U.S. Secretary of State such as Samoa, the San Juan Straits, etc. they pale in comparison with the above three items since they represent such drastic changes in the direction of U.S. foreign affairs all for gaining permission from Great Britain so as to build the Isthmian Canal.

The Joint High Commission ended on February 20, 1899. Nevertheless, Secretary of State Hay and the British Ambassador Sir Julian Pauncefote continued to negotiate a "modus vivendi" on the Alaska-Canada Boundary dispute. Secretary of State John Hay announced it on March 22, 1899. But the Canadians, having been brought into the negotiations, would have no part in accepting even a "modus vivendi" demanding instead a permanent resolution of the dispute.

By an unsigned memorandum dated May 18, 1899 Sir Julian Pauncefote was described as taking "something like an understanding," the meaning of which was not clarified, with him to London en route to the Hague Conferences (where he was to lead the British delegation). The Hague Conference also began on May 18, 1899. On the following day, May 19, 1899, the Canadian Government strongly objected to the proposed "modus vivendi." Therefore, the negotiations were deadlocked--no Alaska-Canada settlement--no Canal treaty.

The Joint High Commission ended on February 20, 1899. Nevertheless, Secretary Hay and Sir Julian Pauncefote continued to negotiate a "modus vivendi" on the only issue considered in depth by that Commission, namely the Alaska-Canadian Boundary dispute and Hay announced this temporary solution on March 22, 1899.

The Hague Peace Conference began on May 18, 1899 and on June 15, 1899 the Court of Arbitration on the Venezuela-British Guiana Boundary dispute began in Paris. The Arbitration proceedings were to be interrupted several times because its President, Professor de Martens was also very much involved in the Hague Peace Conference with the result that he found himself shuttling back and forth between Paris and the Hague. The Hague Conference ended on July 29, 1899. Meanwhile, Hay continued having a problem with the U.S. Congress which was determined to authorize the construction of the canal without British approval. Secretary of State Hay took the position that the Clayton-Bulwer Treaty of 1850 should be modified by the two parties to it and not unilaterally disregarded by the Congress of the United States. Hay desperately sought to prevent the Congress, which was determined to appropriate funds to build the canal, from ignoring the Clayton-Bulwer Treaty.

On Saturday, July 29, 1899 the Hague Peace Conference ended and on that same day the U.S. Ambassador to Germany, Andrew White, signed the General Arbitration Agreement there.

Writing to Senator Davis, the Chairman of the U.S. Senate Foreign Relations Committee on Friday, August 4, 1899, Secretary of State Hay complaining about the

Congress demands for a unilateral abrogation of the Treaty and building the canal reveals:

> "We have twelve questions--mostly Canadian to settle with England . . . The Clayton-Bulwer Arrangement goes by the board."

There is no explanation as to what the "Clayton-Bulwer Arrangement" was although it must be assumed that it was a confirmation of the acceptance of Lord Salisbury's "quid pro quo" of February 4, 1899.

On Thursday, August 10, 1899 Secretary Hay wrote to Ambassador Choate in London that he was going to give up part of his summer holiday and take the train to Westport, New York to see President McKinley:

> "to bore him a few hours about Alaska, Samoa and China and Nicaragua and other outlying nurseries of woe and worry."

Nothing can be found in the Presidential papers of President McKinley or in the papers of Secretary of State which expands on this statement. "Alaska" is obviously a reference to the Alaska-Canada boundary. Samoa would refer to the agreement between Great Britain, Germany and the United States settling that dispute. China refers to the "Open Door" request of Great Britain and Nicaragua would be the requirements for permission to build the Isthmian Canal. It would seem that the Secretary of State was informing his President of the British demands and requesting his imprimatur.

However, there is no explanation of the nature of the "woe and worry" or where. But on Wednesday, August 16, 1899 the Arbitration Tribunal in Paris adjourned until Friday, August 25, 1899. At the same time Sir Richard Webster, the Chief Counsel and Britain's Attorney General returned to England. It was on this trip which Mr. Mallet-Prevost, one of the American lawyers present at the arbitration hearings, refers to when he charges that the British Attorney General Sir Richard Webster took Professor de Martens with him to London.

On Friday, August 18,1899 Hay worried that the Congress would interfere with his diplomatic negotiations writes to Ambassador Choate of "an arrangement with England . . . [and] . . . from England a proposition which was worth the year's work."

At the request of the British Government Secretary Hay sends the "Open Door Notes" on September 5, 1899 to Great Britain, France, Germany, Russia, Italy and Japan. During the years 1897-9 President McKinley refused to help Great Britain protect its markets in China four separate times, but now had suddenly changed his position on September 6, 1899. On Sunday, September 24, 1899, Hay writes to Henry White ". . . indispensable feature of our foreign policy should be a friendly understanding with England."

On Wednesday, September 27, 1899 at 3:00 p.m. the British-Guiana-Venezuela Arbitration Tribunal ended its hearings. The Award is announced on Tuesday, October 3, 1899 by Mr. D'Oyly Carte, the Clerk of the Tribunal in an unanimous decision consisting of one and one-half pages after fifty-four days of hearings.

The Boer War started on Thursday, October 12, 1899.

On October 20, 1899 Great Britain and the United States formally agree to the "modus vivendi" on the Alaska-Canada Boundary.

On Tuesday, November 14, 1899 Great Britain and Germany agree to a settlement of the Samoa question subject to the approval of the United States.

On Thursday, November 30, 1899 Great Britain accepts the terms of the "Open Door Notes."

On Saturday, December 2, 1899 the United States, Great Britain and Germany sign the Samoa Treaty. In giving up territory Great Britain accepted the U.S. possession of Tutuila as a guarantee of British interests in the islands.

On Thursday, December 7, 1899 Congressman Hepburn reintroduces his Nicaraguan Canal Bill in the U.S. Congress to provide funds for its construction.

Saturday, December 9, 1899 through Friday, December 15, 1899 is the formal "Black Week" in the Boer War for

Great Britain wherein British military forces suffers severe defeats in South Africa.

On Saturday, December 16, 1899 France accepts the terms of the "Open Door Notes."

On Sunday, December 30, 1899 Russia accepts the terms of the "Open Door Notes"--the whole purpose of the British "Open Door" policy has been fulfilled with the Russian acceptance. A major requirement of General Ardagh's memorandum.

On Friday, January 26, 1900, Larcom writes to Governor General Minto of Canada ". . . not signing the Canal Treaty would affront the United States Government."

On Thursday, February 1, 1900 after the Prime Minister the Marquess of Salisbury, tells Canada to drop its opposition, Canada yields on the Alaska Boundary, Governor General Minto cables Chamberlain.

On Saturday, February 3, 1900 the British cabinet approves the Hay-Pauncefote Treaty, superseding the Clayton-Bulwer Treaty which was signed by Secretary Hay and Ambassador Pauncefote in Washington on Monday, February 5, 1900.

Thus it would appear that with the Russian Government agreeing to the terms of the "Open Door" notes all the demands of General Ardagh's "quid pro quo" had been met, at least to the satisfaction of the Prime Minister.

Very little was heard outside of Venezuela about the result of the Venezuelan-British Guiana decision after October 3, 1899 until some 50 years later one of the lawyers for Venezuela, Mr. Severo Mallet-Prevost, in a post-humous memorandum published in the American Journal of International Law in July 1949 that the Venezuela-British Guiana Boundary Decision was the result of a "deal." Mr. Mallet-Prevost left this memorandum with his law partner, Judge Otto Schoenrich and to be made public after the death of Mr. Mallet-Prevost. The following memorandum was published in Vol. 43, No.3, The American Journal of International Law, July 1949:

"Memorandum Left with Judge Schoenrich
Not to be Made Public Except at His
Discretion after My Death

Justice Brewer and I sailed for Europe in January of 1899 in order to attend the first meeting of the Arbitral Tribunal which was to meet in Paris for the purpose of deciding the boundary between Venezuela and Great Britain. The terms of the Protocol which had been signed between Great Britain and Venezuela required that the Tribunal should meet at that time. However, as it was found inconvenient for all of those who should be connected with the arbitration to meet on that date it was decided to hold merely a preliminary meeting, so as to comply with the terms of the Protocol, and to then adjourn to a more convenient date.

Before going to Paris Justice Brewer and I stopped in London. While there Mr. Henry White, Charge d'Affaires for the United States, gave us a small dinner to which Lord Chief Justice Russell was invited. I sat next to Lord Russell and, in the course of our conversation, ventured to express the opinion that international arbitrations should base their decisions exclusively on legal grounds. Lord Russell immediately responded saying: "I entirely disagree with you. I think that international arbitrations should be conducted on broader lines and that they should take into consideration questions of international policy." From that moment I knew that we could not count upon Lord Russell to decide the boundary question on the basis of strict rights.

When we assembled in Paris the following June I met Lord Collins for the first time. During the speeches by Sir Richard Webster, the Attorney General, and by myself (the two of which consumed 26 days) it was quite obvious that Lord Collins was sincerely interested in getting at the full facts of the case and in ascertaining the law applicable to those facts. He, of course, gave no indication as to how he might vote on the subject but his whole attitude and the numerous questions which he asked were critical of the British contentions and gave the impression that he was leaning towards the side of Venezuela.

After Sir Richard Webster and I had concluded our speeches the Tribunal adjourned for a short two weeks holiday. The two British arbitrators returned to England and took Mr. Martens with them.

When we resumed our sittings at the end of the recess the change in Lord Collins was noticeable. He asked very few questions and his whole attitude was entirely different from what it had been. It looked to us (by which I mean to the counsel for Venezuela) as though something must have happened in London to bring about the change.

When all the speeches had been concluded in the month of August or early September the court adjourned so as to allow the arbitrators to confer and render their decision. Several days passed while we anxiously waited but one afternoon I received a message from Justice Brewer saying that he and Chief Justice Fuller would like to speak with me and asking me to meet them at once at their hotel. I immediately went there.

When I was shown into the apartment where the two American arbitrators were waiting for me Justice Brewer arose and said quite excitedly: "Mallet-Prevost, it is useless any longer to keep up this farce pretending that we are judges and that you are counsel. The Chief and I have decided to disclose to you confidentially just what has passed. Martens has been to see us. He informs us that Russell and Collins are ready to decide in favor of the Schomburgk Line which starting from Point Barima on the coast would give Great Britain the control of the main mouth of the Orinoco; that if we insist on starting the line on the coast at the Moruca River he will side with the British and approve the Schomburgk Line as the true boundary." "However," he added that, "he, Martens, is anxious to have a unanimous decision; and if we will agree to accept the line which he proposes he will secure the acquiescence of Lord Russell and Lord Collins and so make the decision unanimous." What Martens then proposed was that the line on the coast should start at some distance southeast of Point Barima so as to give Venezuela control of the Orinoco mouth; and that the line should connect with the Schomburgk Line at some distance in the interior leaving to Venezuela the control of the Orinoco mouth and some 5,000 square miles of territory around that mouth.

"That is what Martens has proposed. The Chief and I are of the opinion that the boundary on the coast should start at the Moruca River. The question for us to decide is as to whether we shall agree to Martens' proposal or whether we shall file dissenting opinions. Under these circumstances the Chief and I have decided that we must consult you, and I now state to you that we are prepared to follow whichever of the two courses you wish us to do." From what Justice Brewer had just said, and from the change we had all noticed in Lord Collins, I became convinced and still believe that during Martens' visit to England a deal had been concluded between Russia and Great Britain to decide the case along the lines suggested by Martens and that pressure to that end had in some way been exerted on Collins to follow that course. I naturally felt that the responsibility which I was asked to shoulder was greater than I could alone bear. I so stated to the two arbitrators and I asked for permission to consult General Harrison. This they gave and I immediately went to General Harrison's apartment to confer on the subject with him.

After disclosing to General Harrison what had just passed he rose in indignation and pacing the floor described the action of Great Britain and Russia in terms which it is needless for me to repeat. His first reaction was to ask Fuller and Brewer to file dissenting opinions, but, after cooling down and considering the matter from a practical standpoint, he said: "Mallet-Prevost, if it should ever be known that we had it in our power to save for Venezuela the mouth of the Orinoco and failed to do so we should never be forgiven. What Martens proposes is iniquitous but I see nothing for Fuller and Brewer to do but to agree."

I concurred with General Harrison and so advised Chief Justice Fuller and Justice Brewer. The decision which was accordingly rendered was unanimous but while it gave to Venezuela the most important strategic point at issue it was unjust to Venezuela and deprived her of very extensive and important territory to which, in my opinion, Great Britain had not the shadow of a right.

The above has been dictated by me on February 8, 1944.

This posthumous memorandum published in 1949 was the very first notice that the Government of Venezuela had of this action of the members of the Arbitration Tribunal had agreed to a compromise rather than a decision to say nothing of the fact the American judges had been forced into agreeing to the compromise. A search of the archives of the United States and Great Britain, as well as the National Archives of Venezuela, shows up nothing that indicates the two American jurists consulted their client, the Venezuelan Government, or that anything was said publicly or privately to their client state by either of the two U.S. jurists appointed under the treaty to represent Venezuela before this Arbitration Tribunal. In other words, as the Tribunal broke up on October 3, 1899, the Venezuelan Government learned of the decision by cable and there were apparently no subsequent or other communications to the Venezuelan Government let alone consultations by either of the two U.S. judges or the four American lawyers representing Venezuela. They apparently agreed with de Martens' demand without consulting with their client.

It is interesting to note Mr. Mallet-Prevost's immediate reaction:

> "I naturally felt the responsibility which I was asked to shoulder was greater than I could alone bear. I so stated to the two arbitrators and I asked permission to consult General Harrison. This

> they gave and I immediately went to General Harrison's apartment to converse on the subject with him."

While it may be understandable that a junior counsel felt that it was a tremendous responsibility for him alone, it was strange that the two U.S. Supreme Court jurists sent for him rather than the chief counsel, former President Harrison. Moreover, it also appears rather strange that Mallet-Prevost felt that he had to obtain the permission of the two American judges "to consult General Harrison," his co-counsel. Former President Harrison's immediate reaction upon being apprised by Mallet-Prevost of what had transpired was for the two American judges to file dissenting opinion but then decided after mulling it over, from a practical standpoint that the two American judges should agree with the de Martens proposal lest Venezuela should lose the mouth of the Orinoco and the adjoining 5,000 square miles.

It would seem that there was another avenue available to these two American jurists and four American lawyers other than filing dissenting opinions if they were serious in protecting their client. They could have refused to participate any further in the arbitration and have withdrawn from the case. Here the two American jurists could have insisted that there be a determination according to the provisions of the treaty of arbitration.

The four American lawyers also went along with this approach and failed to make any complaints or protests about such procedure. It should be noted that the proceedings had been going on since June and as far as the American jurists were concerned the Supreme Court of the United States resumed its October 1899 term on October 10, 1899 and if they stayed in Paris for the normal course of time to reach a decision, the Supreme Court would have been without their services for some time. As it turned out the Supreme Court of the United States resumed on Tuesday, October 10, 1899. Chief Justice Fuller arrived at the Court on Monday, October 23, 1899 and Mr. Justice Brewer on Wednesday, October 25, 1899. It is fairly obvious that if the two American jurists and four American lawyers had refused to be a party to such a "deal" and had withdrawn from the case it could be argued that the title to the disputed territory could never have passed to Great Britain as they all had feared. There would be a question remaining as to the validity of the title.

In 1967 the Ministry of Exterior Relations of Venezuela issued a paper "Report on the Boundary Question with British Guiana Submitted to the National Government by the Venezuelan Experts." In this report there is a photostat of two pages of the diary kept by Mr. R. J. Block, who was private secretary to the Lord Chief Justice

of England, Lord Russell of Killowen. On the page for Monday, October 2, 1899 (the day before the Award was announced) was written:

"Venezuela -- Martens' deal gives us victory."

On the following page for Tuesday, October 3, 1899 (the day the Award was announced) was written:

"Venezuelan Arbitration -- The Award given this day."

As Frederic W. Holls, friend and lawyer of Theodore Roosevelt and sometime adviser to Mr. Hay stated on November 3, 1899 in a letter to Professor de Martens ". . . you need have no fear of an application for a second hearing."

It would seem, in view of the above, that there had been a "deal" but it would also appear that the two U.S. jurists had to be directly involved. It would seem that the principal <u>personae dramatis</u> were the Marquis of Salisbury, the U.S. Secretary of State John Hay and Professor de Martens.

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> ". . . What Martens proposes is iniquitous but I see nothing for Fuller and Brewer to do but to agree." Mr. Mallet-Prevost went on to say that he agreed with President Harrison . . ." and so advised Chief Justice Fuller and Justice Brewer . . . even though it gave Great Britain territory . . . to which, in my opinion, Great Britain had not the shadow of a right."

This post-humous memorandum of Mr. Mallet-Prevost was the only written confirmation made by one intimately involved in the Arbitration that a "deal" had been made. But Mr. Mallet-Prevost thought that a "deal had been

concluded between Russia and Great Britain to decide the case along the lines suggested by Martens . . ."

The publication of the Mallet-Prevost memorandum brought forth a quick response from the British which came in 1950 in the form of an article published in the American Journal of International Law: The Venezuela-British Guiana Boundary Arbitration of 1899 by Clifton J. Child, who described himself modestly as "formerly Commonwealth Fund Fellow, University of Wisconsin," Vol. 44, p. 682 (1950). Actually, Mr. Child was the last Librarian of the British Foreign Office (prior to becoming part of the new Foreign and Commonwealth Office) when he wrote this article. He had been Head of the American Section of the Foreign Research Department 1946-1958 and, in fact, was decorated by His Majesty King George VI in 1949 with the Order of the British Empire for his services in that position.

In this same volume of the American Journal of International Law (Vol. 44 at p. 720), Mr. William Cullen Dennis, quondam Assistant Solicitor of the U.S. Department of State, confirmed that he had had a conversation with Mr. Mallet-Prevost in 1910 in the Department of State and further confirmed that Mr. Mallet-Prevost related to him the same facts in that conversation which later appeared in Mr. Mallet-Prevost's posthumous memorandum.

In his 1950 article, Mr. Child handles what he characterizes in Mr. Mallet-Prevost's "cardinal allegation that a 'deal' was concluded between Great Britain and Russia in 1899 . . ." by stating:

> "It is not surprising, perhaps to find that, in the fifteen bound volumes of the British Foreign Office papers relating to the arbitration and in the almost equally voluminous dispatches and telegrams which passed between London and St. Petersburg during this period there is not one single document which by the widest stretch of the imagination could be considered to indicate a 'deal' between Great Britain and Russia of the sort suspected by Mr. Mallet-Prevost."

Mr. Child continues his rejection of Mr. Mallet-Prevost's charge that there had been a deal between Great Britain and Russia:

> "Had Mr. Mallet-Prevost reflected for a moment upon the state of relations between Great Britain and Russia in 1899 he must inevitably have realized how difficult, if not impossible, from a political point of view, a 'deal' between the two countries would have been. One agreement--the Exchange of Notes of April 28, 1899, defining spheres of influence for the construction of railways in China--had admittedly been reached earlier in the year, but this had done so little to relieve the tension between the two countries in the Far East that this was still at its height when Mr. John Hay, the United States Secretary of State, stepped in to proclaim his 'Open Door' policy. Such, indeed, were the relations between Great Britain and Russian in the summer of 1899 that the First Secretary at the German Embassy in St. Petersburg, von Tschirschky, was constrained to report:
>
> 'I do not believe that there is scope within the framework of Russian policy--or, as far as I can imagine, within that of English policy--[for the two countries] to reach agreement and bind themselves in writing on general political questions of this nature. Moreover, it seems to me that the basis for such an agreement between

> these States is lacking because, in view of the inability of Russia in practice to oppose British claims to the Persian Gulf, Russia's undertaking to give up her own pretensions to the Persian Gulf would have little value for England.'
>
> Nor did the attitude adopted by the Russians in the Transvall crisis bring any improvement in the situation. Indeed, so violent were the pro-Boer outbursts in the Russian press that the British Chargé d'Affaires at St. Petersburg, Mr. Charles Hardings, was moved, on October 18, 1899, to write a long and impassioned dispatch to Lord Salisbury, drawing the British Foreign Secretary's attention to the 'bitterness and hostility' which was being displayed towards Great Britain, and pointing out that, in view of the control normally exercised over the Russian editors, these were undoubtedly receiving official blessing and support.
>
> If, therefore, there is no real evidence of a 'deal'--and, indeed, no conceivable basis for one--between Great Britain and Russian on the Venezuelan Boundary question, how in fact are the peculiar circumstances which Mr. Mallet-Prevost seeks to attribute to the award to be explained?"

In 1962 the Venezuelan government requested the United Nations to include in its agenda for that session of the General Assembly "Question of boundaries between Venezuela and the territory of British Guiana" in order to ". . . prevent a territory under colonial domination from entering upon independent life with the legacy of a problem originated by the colonial Power. . . ."

On November 12, 1962 at the United Nations the Minister of External Relations of Venezuela, Dr. Marcos Falcon-Briceno stated the Venezuelan case for rejecting the Award of October 3, 1899 relying on the charge made by Mr. Mallet-Prevost. On November 13, 1962, the Deputy

Representative of the United Kingdom, Mr. Colin Tradescant Crowe (later Sir Colin, having been made a Knight Commander of Michael and George in 1963) delivered the British defense of the Award which was rooted in turn on Mr. Child's article:

> "In his paper, Mr. Mallet-Prevost gave details of certain happenings which he considered of great significance and in which he was personally involved some forty-five years before, at the time when the Tribunal was about to deliver its award. The inconsistencies and indeed, in certain respects, inaccuracies in his memorandum have been clearly and ably pointed out in an article by another lawyer, Mr. Clifton J. Childs, which was also published in The American Journal of International Law and which appeared during the year following the publication of Mr. Mallet-Prevost's own paper. I do not intend to comment in detail on what we consider to be the inaccuracies of Mr. Mallet-Prevost's memorandum. My purpose is to question whether in fact he successfully adduced any real evidence for his main contention, which was that the arbitral award was made as a result of a political deal between Great Britain and Russia.
> 23. For if it is on this point that the demand for reopening the case rests [sic] I have already referred to the areas of documentation on the subject. Mr. Clifton Child had the industry to examine the papers of my Foreign Office--fifteen bound volumes in all--which are now lodged in our Public Record Office and which are therefore available for study, as well as dispatches and telegrams which passed between London and St. Petersburg during the relevant period. He also studied the verbatim records of the Tribunal. His conclusion was this. He found in the Foreign Office papers, and I quote his words:
>
> > '. . . not one single document which by the widest stretch of the imagination could be considered to indicate a "deal" between Great Britain and Russia of the sort suspected by Mr. Mallet-Prevost.'
>
> 24. On historical grounds, too, it is unlikely that such a deal could have been made. At that time, in 1899, my Government's relations with Russia were in

> fact strained, and it is interesting to note that nobody has, as far as I know, ever been able to suggest what the Russian Government obtained from the United Kingdom in return for the so-called 'deal'."

Based on my research, I can agree that Mr. Child in his article and Mr. Crowe speaking on behalf of Great Britain at the United Nations were apparently both correct. Whether there was a "deal" between Russia and Great Britain at this time is impossible to tell from British archives to say nothing of the futility of research in any Russian archives. History does not indicate that in the period 1898-1900 that there was any crisis between these two powers. There had been earlier disputes which had been resolved by 1899. However, the purpose of this study is limited to dealings between the United States and Great Britain.

It would appear that when Mr. Mallet-Prevost in his post-humous memorandum and the private secretary of the Lord Chief Justice of Great Britain were using the term "deal" they were referring to the appearance of Professor de Martens at the end of the proceedings in Paris and "blackmailing" the American jurists with "either-or" "--either you vote with us and the two British jurists or we don't have a unanimous decision." Unanimous or not it meant that Venezuela had lost the arbitration. The American jurists could have dissented or abstained on the

grounds of coercion and it would have been either a 3-2 or 3-0 decision. These two American jurists should have dissented or abstained if they believed in their position. Certainly a hope for "unanimity" is no basis for voting either for or against anything. But if they had been instructed that in the national interests of the United States, the American jurists had to vote with the British jurists, then they had no choice but to declare in favor of Great Britain. Again it should be noted that the two American jurists shifted the burden of proof on the American lawyers representing Venezuela by saying ". . . we are prepared to follow whichever of the two courses you wish us to do" (emphasis supplied). The result was a unanimous United States consensus from both Venezuela's arbitrators and lawyers.

Furthermore it is most interesting to read Mr. Justice Brewer's opening remarks to Mr. Mallet-Prevost:

> ". . . it is useless any longer to keep up this farce pretending that we are judges and that you are counsel."

It would appear from the facts that this "farce" may have begun on June 15, 1899 when the arbitration began rather than on September 27, 1899 when it ended.

Actually the "deal" here was how the earlier agreement, the quid pro quo, of February 4, 1899 between the British Prime Minister and the U.S. Secretary of State

was implemented. The United States wanted desperately to build a canal and Great Britain gave the United States its price for it--or rather a "shopping list." It should be borne in mind that since there was no possibility of Secretary of State Hay giving any United States territory to Great Britain, there was no domestic political cost to the United States in arranging for Great Britain to be given 50,000 square miles of Venezuelan territory by the casting of two votes on an arbitration tribunal in favor of Great Britain.

The Hay-Pauncefote Treaty signed on February 5, 1900 had a rough passage through the United States Senate which added amendments on December 20, 1900 which proved unsatisfactory to Great Britain who in turn rejected the amended treaty on February 22, 1901. A second treaty was signed on November 18, 1901 and approved by the United States Senate on December 16, 1901.

Finally the Canadians and the United States were able to have the Alaska-Canada Boundary dispute submitted to arbitration. Although under the British North America Act of 1867 Great Britain was solely responsible for the foreign affairs of Canada, Lord Salisbury continued to hold up Canada as having veto power. Ironically and much to the consternation of the British, Secretary of State Hay refused the British suggestion of the same type of

arbitration tribunal as the United States insisted upon for the Venezuelan-British Guiana Arbitration--namely each side appointing two arbitrators and the four electing a fifth as president of the tribunal. Secretary Hay fearful of Senate wrath held out for a three and three composition of the panel. Instead of three Americans and three Canadians, the panel was finally composed of three Americans, two Canadians and a British member.

The often expressed Canadian fears of arbitration were well justified because when the final decision was made by this Alaska-Canadian Boundary Commission sitting in London in 1903, Canada lost almost everything. That Arbitration Tribunal composed of three Americans, two Canadians and one from Great Britain--voted 4 to 2 in favor of the United States with the British member siding with the Americans. The British member who voted in favor of the United States who voted in favor of the United States was Lord Alverstone, Chief Justice of Great Britain--whom we had known as Sir Richard E. Webster, the Attorney General of Great Britain, and the Chief Counsel for Great Britain in the Venezuela-British Guiana Arbitration in Paris in June-October 1899. Also he was the same person who took the President of that Arbitration, Professor de Martens, with him to London on August 16, 1899. This was just about the time that

Secretary of State Hay was going to see President McKinley at his summer retreat in Westport in the western part of New York State ". . . to bore him a few hours about Alaska, Samoa and China and Nicaragua and other outlying nurseries of woe and worry" (supra, p. 54).

It would also appear that the United States had reached an understanding with Great Britain among other things to vote to give Great Britain most of the territory claimed by Venezuela to Great Britain in return for an arbitration agreement concerning the Alaska-Canadian Boundary containing a "built-in" guarantee that the United States would keep its Alaskan territory from Canada. This would be guaranteed by the presence on the Alaska-Canada Arbitration Tribunal of the Attorney General Sir Richard E. Webster, later Lord Alverstone who could be trusted in return to vote for the United States in this Arbitration--almost as if in payment for the two United States votes on October 3, 1899 in favor of Great Britain.

It is submitted that no other explanation can justify the actions of two members of the Supreme Court of the United States and those of the four distinguished members of the American Bar faced with the record in the case before it in not supporting the Venezuela position. What transpired in Paris in 1899 was affected by the foreign relations of the United States, which under the

Constitution of the United States, is in the sole province of the President of the United States (usually acting through the Secretary of State). Whereas in 1895-1897, Venezuela was relying on the United States to protect her against the expanding imperialism of Great Britain by having two United States jurists represent Venezuela on the Arbitration Tribunal, the United States itself, was at the same time a supplicant for a great favor from Great Britain. Nor is it difficult to imagine that the Marquess of Salisbury had not forgotten the indignity of Great Britain being forced several years earlier by President Cleveland and Secretary of State Olney to arbitrate with Venezuela on the question of the British Guiana-Venezuela border. The United States thus found itself exposed to demands from Great Britain in order for the United States to build a canal. What had been a burning issue in the Cleveland-Olney era of 1895-1896 now became in 1899 a "bargaining chip" in the interplay between Marquess of Salisbury and the U.S. Secretary of State John Hay in the United States' attempt to build the Isthmian canal.

Both the American jurists and the American lawyers representing Venezuela agreed to the "deal" without consulting with their client, the Venezuelan Government and making no public protest or the filing of dissenting opinions on their part. Interestingly enough, no mention

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of this is made in the official reports of the Supreme Court of the United States nor in its miscellaneous orders or in any of the archives of the Court nor in the National Archives of the United States. It was as one of the Arbitration jurists, Mr. Justice Brewer said ". . . it is useless any longer to keep up this farce pretending that we are judges and that you are counsel" A better choice of words would have been "charade." It would appear that the American jurists and perhaps the lawyers had no choice but to bow to U. S. Secretary of State John Hay's "Partnership in Beneficence" or rather the foreign relations with Great Britain. In any event, even this interpretation subjects them to criticism for what would be in normal circumstances, namely judicial and professional mis-conduct.

In view of the fact that the archives of Great Britain and the United States contain virtually nothing relating to this matter, what actually happened, however, can be seen by the calendar. The result then becomes clear. The "quid pro quo" suggested to the Prime Minister by the Director of British Military Intelligence was met by the United States. Secretary of State Hay got his canal. Among other things the Prime Minister, Lord Salisbury got 50,000 square miles of Venezuela territory

In October 1900 Sir Richard Webster was made Lord

Chief Justice of Great Britain upon the death of The Baron Russell of Killowen. He became Lord Alverstone and was later to be seen as a member of the Arbitration Tribunal in the Alaska-Canada Boundary Arbitration where he cast the deciding vote (4-2) for the United States and Canada lost its claim to Alaskan territory.

Professor Frederic Frommhold de Martens, having received years before honorary degrees from the University of Edinburgh and Cambridge University received the honorary degree of Doctor of Civil Law from the University of Oxford on October 9, 1902. The degree was conferred personally by its Chancellor, the Prime Minister of Great Britain, the Third Marquess of Salisbury.

Quod erat demonstandum

The answer to the question asked on page 1, "Why did the two American jurists vote against their client state, Venezuela?" is as follows:

Venezuela lost by an Arbitration in 1899 the ownership of some 50,000 square miles of its territory to Great Britain. After years of persuasion Venezuela convinced the United States to act on behalf of Venezuela and the United States on February 2, 1897 forced Great

Britain to arbitrate the question of ownership of the disputed territory. In 1898, however, the United States decided it had to build the Isthmian Canal. However, because of the Clayton-Bulwer Treaty which the United States entered into in 1850 with Great Britain neither country would build a canal across the Isthmus without the consent of the other. In December 1898 the United States, realizing the need for a quick transit between the Atlantic and Pacific Oceans during the Spanish-American War (rather than the 66 day trip around Cape Horn) asked Great Britain what it would take to induce Great Britain to relieve the United States of the restrictions of that 1850 Treaty in order to build such a canal. Great Britain responded in early 1899 with a number of demands including "--benevolent settlement of outstanding questions in Canada and elsewhere." The "elsewhere" in 1899 obviously had to include the Venezuela-British Guiana Boundary Dispute which President Grover Cleveland in 1897 forced Great Britain to arbitrate. This arbitration procedure started on February 2, 1897 and the hearings actually began on June 15, 1899. After 54 days of hearings and consideration given to some 2,630 documents in evidence and testimony on 3,241 pages of transcript, the Arbitration Tribunal issued its page and one-half decision three days after the close of the hearings. Since no

territory of the United States was involved, it was simple for the United States to give away Venezuelan territory to Great Britain by having the two U.S. arbitrators vote for Great Britain rather than Venezuela in order to build what is now known as the Panama Canal as well as keeping Canada from taking any Alaskan territory from the Unites States.

Under the Anglo-American system of common law, especially in the rules of procedure and evidence, one party charging a second party with a wrong, but claiming that the proof of such wrong is completely in the hands of the second party, shifts the burden of proof to the second party to disprove the charges made. Here we have such a case. By the calendar and a limited number of documents Venezuela can show how it lost 50,000 square miles of its territory but that documentary proof of this has either been destroyed or removed from public access by the governments of the United States and Great Britain since 1899. It is now up to the United States and Great Britain to prove that they did not conspire to award this territory to Great Britain as part of the quid pro quo to permit the United States to build the canal across the Isthmus of Panama.

Washington, D.C.
October 12, 1987

SUPPORTING DOCUMENTATION

1. Treaty of Arbitration of February 2, 1897 and the Award of october 3, 1899.

2. United States laws and regulations relating to access to U.S. Archives.

3. Correspondence relating to both the nomination of the Chief Justice of the United States, Melville W. Fuller, by the President of the United States of Venezuela as an Arbitrator and the nomination of David J. Brewer, Associate Justice of the Supreme Court of the United States by the members of the Supreme Court of the United States also as an Arbitrator on the Tribunal of Arbitration to determine the boundary line between the Colony of British Guiana and the United States of Venezuela.

4. Laws and regulations of the United Kingdom as well as correspondence relating to access to British archives.

5. Correspondence with the International Court at the Hague.

6. The various questions existing between Her Majesty's Government and the United States as stated by the British Prime Minister, The Marquess of Salisbury on July 19, 1899.

7. Selected examples of "back-channel" or non-public communications between the U.S. Secretary of State John Hay and the U.S. Embassy in London and the British Ambassador in Washington.

8. Letter of August 6, 1899 written from Paris by Mr. Justice Brewer to his daughters while the Arbitration was being held, wherein he states, ". . . I hear from Mr. Hay once in a while . . ." Letter found in Yale University's Sterling Library, Manuscripts and Archives. (Brewer and Karrick Collections)

9. Letter of November 3, 1899 written from New York, N.Y. by Frederick W. Holls, lawyer for Theodore Roosevelt and unofficial adviser to the U.S. Secretary of State John Hay, to Professor Fedor [sic] de Martens wherein he states that the Arbitration Award of October 3, 1899 ". . . has been very favorably received in this country and you need have no fear of an application for a second

hearing." It must be noted that Mr. Holls was secretary of the U.S. Delegation to Hague Peace Conference which was held in Paris simultaneously with the Venezuela-British Guiana Arbitrators and between which Professor de Martens divided his time. Subsequent correspondence indicates that Mr. Holls was constantly beseeching Professor de Martens for appointments to various arbitration tribunals. Their correspondence is found in New York City's Columbia University's Butler Library, Frederick W. Holls Collection.

10. Two pages from diary of Mr. R.J. Block, Secretary to the British Lord Chief Justice Russell for October 2 and 3, 1899 indicating that there had been a ". . . deal . . ." by the President of the Arbitration Tribunal giving Great Britain a victory.

THE TREATY OF ARBITRATION BETWEEN VENEZUELA AND GREAT BRITAIN,

SIGNED AT WASHINGTON AND DATED THE SECOND DAY OF FEBRUARY, 1897.

The United States of Venezuela, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous to provide for an amicable settlement of the question which has arisen between their respective governments concerning the boundary between the United States of Venezuela and the Colony of British Guiana, have resolved to submit to arbitration the question involved, and to the end of concluding a Treaty for that purpose have appointed as their respective Plenipotentiaries:

The President of the United States of Venezuela, Señor José Andrade, Envoy Extraordinary and Minister Plenipotentiary of Venezuela to the United States of America;

And Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable Sir Julian Pauncefote, a Member of Her Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Honorable Order of the Bath and of the Most Distinguished Order of St. Michael and St. George, and Her Majesty's Ambassador Extraordinary and Plenipotentiary to the United States;

Who, having communicated to each other their respective full powers which were found to be in due and proper form, have agreed to and concluded the following articles:

ARTICLE I.

An arbitral Tribunal shall be immediately appointed to determine the boundary line between the United States of Venezuela and the Colony of British Guiana.

ARTICLE II.

The Tribunal shall consist of five Jurists; two on the part of Venezuela nominated, one by the President of the United States of Venezuela, namely, the Honorable Melville Weston Fuller, Chief Justice of the United States of America, and one nominated by the Justices of the Supreme Court of the United States of America, namely, the Honorable David Josiah Brewer, a Justice of the Supreme Court of the United States of America; two on the part of Great Britain nominated by the members of the Judicial Committee of Her Majesty's Privy Council, namely, the Right Honorable Baron Herschell, Knight Grand Cross of the Most Honorable Order of the Bath; and the Honorable Sir Richard Henn Collins, Knight, one of the Justices of Her Britannic Majesty's Supreme Court of Judicature; and of a fifth Jurist to be selected by the four persons so nominated, or in the event of their failure to agree within three months from the date of the exchange of ratifications of the present Treaty, to be selected by His Majesty the King of Sweden and Norway. The Jurist so selected shall be President of the Tribunal.

In case of the death, absence or incapacity to serve of any of the four Arbitrators above named, or in the event of any such Arbitrator omitting or declining or ceasing to act as such, another Jurist of repute shall be forthwith substituted in his place. If such vacancy shall occur among those nominated on the part of Venezuela the substitute shall be appointed by the Justices of the Supreme Court of the United States, acting by a majority, and if among those nominated on the part of Great Britain he shall be appointed by the members for the time being of the Juditcal Commitee of Her Majesty's Privy Council, acting by a majority. If such vacancy shall occur in the case of the fifth Arbitrator, a substitute shall be selected in the manner herein provided for with regard to the original appointment.

ARTICLE III.

The Tribunal shall investigate and ascertain the extent of the territories belonging to or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana — and shall determine the boundary line between the United States of Venezuela and the Colony of British Guiana.

ARTICLE IV.

In deciding the matters submitted, the Arbitrators shall ascertain all facts which they deem necessary to a decision of the controversy, and shall be governed by the following rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to be applicable to the case.

Rules:

(*a*) Adverse holding or prescription during a period of fifty years shall make a good title. The Arbitrators may deem exclusive political control of a district as well as actual settlement thereof sufficient to constitute adverse holding or to make title by prescription.

(*b*) The Arbitrators may recognize and give effect to rights and claims resting on any other ground whatever valid according to international law and on any principles of international law which the Arbitrators may deem to be applicable to the case and which are not in contravention of the foregoing rule.

(*c*) In determining the boundary line, if territory of one party be found by the Tribunal to have been at the date of this Treaty in the occupation of the subjects or citizens of

the other party, such effect shall be given to such occupation as reason, justice, the principles of international law and the equities of the case shall, in the opinion of the Tribunal, require.

Article V.

The Arbitrators shall meet at Paris, within sixty days after the delivery of the printed arguments mentioned in Article VIII, and shall proceed impartially and carefully to examine and decide the questions that have been or shall be laid before them as herein provided on the part of the Governments of the United States of Venezuela and Her Britannic Majesty respectively.

Provided always that the Arbitrators may, if they shall think fit, hold their meetings or any of them at any other place which they may determine.

All questions considered by the Tribunal, including the final decision, shall be determined by a majority of all the Arbitrators.

Each of the High Contracting Parties shall name one person as its agent to attend the Tribunal and to represent it generally in all matters connected with the Tribunal.

Article VI.

The printed case of each of the two parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other party as soon as may be after the appointment of the members of the Tribunal, but within a period not exceeding eight months from the date of the exchange of the ratifications of this Treaty.

Article VII.

Within four months after the delivery on both sides of the printed case, either party may in like manner deliver in duplicate to each of the said Arbitrators, and to the Agent of the other party, a counter case, and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence so presented by the other party.

If in the case submitted to the Arbitrators either party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof, and either party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence giving in each instance notice thereof within thirty days after delivery of the case; and the original or copy so requested shall be delivered as soon as may be and within a period not exceeding forty days after receipt of notice.

Article VIII.

It shall be the duty of the Agent of each party, within three months after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other party a printed argument showing the points and referring to the evidence upon which his Government relies, and either party may also support the same before the Arbitrators by oral argument of counsel; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by counsel, upon it; but in such

case the other party shall be entitled to reply either orally or in writing, as the case may be.

ARTICLE IX.

The Arbitrators may, for any cause deemed by them sufficient, enlarge either of the periods fixed by Articles VI, VII, and VIII by the allowance of thirty days additional.

ARTICLE X.

The decision of the tribunal, shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The decision shall be in duplicate, one copy whereof shall be delivered to the Agent of the United States of Venezuela for his Government, and the other copy shall be delivered to the Agent of Great Britain for his Government.

ARTICLE XI.

The Arbitrators shall keep an accurate record of their proceedings and may appoint and employ the necessary officers to assist them.

ARTICLE XII.

Each Government shall pay its own Agent and provide for the proper remuneration of the counsel employed by it and of the Arbitrators appointed by it or in its behalf, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE XIII.

The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators.

ARTICLE XIV.

The present Treaty shall be duly ratified by the President of the United States of Venezuela by and with the approval of the Congress thereof and by Her Britannic Majesty; and the ratifications shall be exchanged in Washington or in London within six months from the date hereof.

In faith whereof, we, the respective Plenipotentiaries, have signed this treaty and have hereunto affixed our seals.

Done in duplicate at Washington, the second day of February, one thousand eight hundred and ninety-seven.

JOSÉ ANDRADE [SEAL.]
JULIAN PAUNCEFOTE [SEAL.]

FIFTY-SIXTH DAY'S PROCEEDINGS 3RD OCTOBER 1899

The President. — Gentlemen, I have the honour to announce that the Award in the Boundary Claim between Great Britain and the United States of Venezuela has been executed in duplicate according to the Treaty of Arbitration of Washington of 1897. This Award has been arrived at with the unanimity of all the Members of the Tribunal, and according to our Rules I ask now the Assistant Secretary of the Tribunal to read a first the English text of the Award and then the French text will be read by Mr Martin, the first Secretary of our Tribunal.

Mr d'Oyly Carte. — The Award, after setting out the Treaty of Arbitration in full, and after reciting the preliminary proceedings, determines the boundary line between the territory of Her Britannic Majesty and that of the United States of Venezuela to be as follows :

> " Starting from the Coast at Point Playa the line of Boundary shall run in a straight line to the River Barima at its junction with the River Mururuma and thence along the mid stream of the latter river to its source and from that point to the junction of the River Haiowa with the Amakuru and thence along the mid stream of the Amakuru to its source in the Imataka Ridge and thence in a South Westerly direction along the highest ridge of the spur of the Imataka Mountains to the highest point of the main range of such Imataka Mountains opposite to the source of the Barima and thence along the summit of the main ridge in a South Easterly direction of the Imataka Mountains to the source of the Acarabisi and thence along the mid-stream of the Acarabisi to the Cuyuni and thence along the Northern bank of the River Cuyuni Westward to its junction with the Wenamu and thence following the mid-stream of the Wenamu to its westernmost source and thence in a direct line to the summit of Mount Roraima and from Mount Roraima to the source of the Cotinga and along the midstream of that river to its junction with the Takutu and thence along the mid-stream of the Takutu to its source, thence in a straight line to the western most point of the Akarai Mountains and thence along the ridge of the Akarai Mountains to the source of the Corentin called the Cutari River. *Provided always* that the line of deli-

mitation fixed by this Award shall be subject and without prejudice to any question now existing or which may arise to be determined between the government of Her Britannic Majesty and the Republic of Brazil or between the latter Republic and the United States of Venezuela.

In fixing the above delimitation the Arbitrators consider and decide that in times of peace the Rivers Amakuru and Barima shall be open to navigation by the merchant ships of all nations subject to all just regulations and to the payment of light or other like dues *Provided that* the dues charged by the Republic of Venezuela and Government of the Colony of British Guiana in respect of the passage of vessels along the portions of such rivers respectively owned by them shall be charged as the same rates upon the vessels of Venezuela and Great Britain such rates being no higher than those charged to any other nation *Provided also that* no customs duties shall be chargeable either by the Republic of Venezuela or by the Colony of British Guiana in respect of goods carried on board ships, vessels or boats passing along the said rivers, but customs duties shall only be chargeable in respect of goods landed in the territory of Venezuela or Great Britain respectively.

Executed and published in duplicate by us in Paris this 3rd day of October A. D. 1899."

F. DE MARTENS.
RUSSELL OF KILLOWEN.
R. HENN COLLINS.
MELVILL WESTON FULLER.
DAVID J. BREWER.

Mr Martin read the Award in French.

The President. — The English copies will be handed to the Agent of Her Britannic Majesty's Government, and the others to Agent of the United States of Venezuela.

Gentlemen, after more than three months of hard work we come to the end of our labours. Amongst the different duties of a President of a Tribunal or International Conference the most sweet and pleasant is to thank and to express thanks to all who have helped the Tribunal to come to the end of its work. So we, the members of this Tribunal, must feel deeply thankful to the Agents of both contending Powers who have been always very kind in assisting our work during all this time. Our special thanks we owe to the Counsel of both Powers, who in their most eloquent speeches with great wisdom and ability have put before the Tribunal all the arguments, all the facts, all the documents, which are more than 2650 in number, and thanks to that oral argument the Tribunal has been able to have a clear view of whole case put before them.

At the same time it is our duty to thank also the Secretaries who

PUBLIC AVAILABILITY OF DIPLOMATIC ARCHIVES

Office of the Historian
Bureau of Public Affairs
U.S. Department of State

1985

INTRODUCTION

Over the past 30 years the Office of the Historian has from time to time surveyed the public availability of diplomatic archives throughout the world and published its findings for the use of scholars and academic institutions. The most recent previous edition of this publication was "Public Availability of Diplomatic Archives," October 1976.

This 1985 updated version is based primarily on information received from American diplomatic posts abroad in 1984. Data on the archival practices of certain countries could not be obtained due to unsettled conditions or the absence of relations with the United States. Since official documentary publications are often invaluable guides to unpublished material, information is included on major ongoing national series that are based largely on previously-classified historical diplomatic documentation.

In view of the fact that archival practices, regulations, and conditions of availability may change on short notice, individuals seeking access to diplomatic archives should write the appropriate government for current information in advance of a research trip. Important published works on archival sources include Daniel H. Thomas and Lynn M. Case, The New Guide to the Diplomatic Archives of Western Europe (Phildelphia: University of Pennsylvania Press, 1975), Patricia Kennedy Grimsted, Archives and Manuscript Repositories in the USSR: Moscow and Leningrad (Princeton, N.J.: Princeton University Press, 1972); and United Nations Educational, Scientific and Cultural Organization, Guide to the Archives of International Organizations, vol. I, The United Nations' System (Paris: UNESCO, 1984). Archivum, published by the International Council on Archives (UNESCO) presents information on access to diplomatic archives. No. 28, 1982, contains texts of many national archival and declassification regulations then in force. Additional information on the diplomatic archives of various nations may be obtained from articles appearing from time to time in The American Archivist and the Newsletter of the Society for Historians of American Foreign Relations. A list of guides to archives and manuscript collections appears in Richard Dean Burns, Guide to American Foreign Relations Since 1700 (Santa Barbara, Calif: ABC Clio, 1983), pp. 30-32.

This publication was prepared by Neal H. Petersen and reviewed by William Z. Slany.

THE UNITED STATES

There is no legislative requirement for the declassification of Department of State and other foreign policy records after a fixed period of time. E.O. 12356, April 2, 1982, which governs classification, declassification, and the safeguarding of national security information, states that information should be declassified or downgraded as soon as national security considerations permit. The archivist of the United States is charged with declassifying or downgrading material that has been accessioned into the National Archives and Records Administration (NARA) in accordance with systematic review guidelines provided by the originating agency. In the case of Department of State records, files through 1954 have been transferred to NARA. Material through 1949 has undergone declassification review and is open for research. Records for 1950-1954 are being reviewed and opened incrementally, with many files now available and the entire collection scheduled to have been processed by early 1986. In effect, the United States is opening its files after 28 to 32 years.

In addition, U.S. foreign policy records for any period may be requested under the Freedom of Information Act and mandatory review procedures. Agencies including the Department of State are required to respond to legitimate requests for the release of documents or categories of documents that might properly be declassified. Under the FOIA, thousands of pages of U.S. foreign policy-related documents are released each year.

The official documentary history of U.S. foreign affairs is published in the series Foreign Relations of the United States, compiled and edited in the Office of the Historian, Department of State. The series, based on previously-classified documentation of the Department of State and other agencies, has been released through 1951 with 6-8 volumes appearing for each year. Nine of 16 triennial volumes for 1952-1954 have also been published. Volumes for 1955-1957 are now in preparation. In effect, the United States is releasing its official diplomatic documentary record after approximately 30 years have elapsed.

Volumes for 1952-1954 that have been published include Vol. I, Political and Economic Affairs (1985); Vol. II, National Security Affairs (1984); Vol. III, United Nations (1979); Vol. IV, American Republics (1984); Vol. V, European Security (1983); Africa, South Asia (1983); Vol. XII, Southeast Asia and the Pacific, part 1 (1984); Vol. XIII, Indochina (1982); Vol. XV, Korea (1984); and Vol. XVI, the Geneva Conference (1981).

Title 3 --
The President
National Security Information

Executive Order 12356 of April 2, 1982

47 FR 14874

April 6, 1982

TEXT:
TABLE OF CONTENTS

Preamble
Part 1. Original Classification: Page
1.1 Classification Levels 00
1.2 Classification Authority 00
1.3 Classification Categories 00
1.4 Duration of Classification 00
1.5 Identification and Markings 00
1.6 Limitations on Classification 00
Part 2. Derivative Classification:
2.1 Use of Derivative Classification 00
2.2 Classification Guides 00
Part 3. Declassification and Downgrading:
3.1 Declassification Authority 00
3.2 Transferred Information 00
3.3 Systematic Review for Declassification 00
3.4 Mandatory Review for Declassification 00
Part 4. Safeguarding:
4.1 General Restrictions on Access 00
4.2 Special Access Programs 00
4.3 Access by Historical Researchers and Former Presidential Appointees 00
Part 5. Implementation and Review:
5.1 Policy Direction 00
5.2 Information Security Oversight Office 00
5.3 General Responsibilities 00
5.4 Sanctions 00
Part 6. General Provisions:
6.1 Definitions 00
6.2 General 00

This Order prescribes a uniform system for classifying, declassifying, and safeguarding national security information. It recognizes that it is essential that the public be informed concerning the activities of its Government, but that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. Information may not be classified under this Order unless its disclosure reasonably could be expected to cause damage to the national security.

NOW, by the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Part 1
Original Classification

Section 1.1 Classification Levels.
(a) National security information (hereinafter "classified information") shall be classified at one of the following three levels:
(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.
(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.
(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.
(b) Except as otherwise provided by statute, no other terms shall be used to identify classified information.
(c) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority, who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make this determination within thirty (30) days.
Sec. 1.2 Classification Authority.
(a) Top Secret. The authority to classify information originally as Top Secret may be exercised only by:
(1) the President;
(2) agency heads and officials designated by the President in the Federal Register; and
(3) officials delegated this authority pursuant to Section 1.2(d).
(b) Secret. The authority to classify information originally as Secret may be exercised only by:
(1) agency heads and officials designated by the President in the Federal Register;
(2) officials with original Top Secret classification authority; and
(3) officials delegated such authority pursuant to Section 1.2(d).
(c) Confidential. The authority to classify information originally as Confidential may be exercised only by:
(1) agency heads and officials designated by the President in the Federal Register;
(2) officials with original Top Secret or Secret classification authority; and
(3) officials delegated such authority pursuant to Section 1.2(d).
(d) Delegation of Original Classification Authority.
(1) Delegations of original classification authority shall be limited to the minimum required to administer this Order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.
(2) Original Top Secret classification authority may be delegated only by the President; an agency head or official designated pursuant to Section 1.2(a)(2); and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original Top Secret classification authority by the agency head.
(3) Original Secret classification authority may be delegated only by the President; an agency head or official designated pursuant to Sections 1.2(a)(2) and 1.2(b)(1); an official with original Top Secret classification authority; and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original Secret classification authority by the agency head.

(4) Original Confidential classification authority may be delegated only by the President; an agency head or official designated pursuant to Sections 1.2(a)(2), 1.2(b)(1) and 1.2(c)(1); an official with original Top Secret classification authority; and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original classification authority by the agency head.

(5) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this Order. It shall identify the official delegated the authority by name or position title. Delegated classification authority includes the authority to classify information at the level granted and lower levels of classification.

(e) Exceptional Cases. When an employee, contractor, licensee, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this Order and its implementing directives. The information shall be transmitted promptly as provided under this Order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within thirty (30) days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

Sec. 1.3 Classification Categories.

(a) Information shall be considered for classification if it concerns:

(1) military plans, weapons, or operations;

(2) the vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

(3) foreign government information;

(4) intelligence activities (including special activities), or intelligence sources or methods;

(5) foreign relations or foreign activities of the United States;

(6) scientific, technological, or economic matters relating to the national security;

(7) United States Government programs for safeguarding nuclear materials or facilities;

(8) cryptology;

(9) a confidential source; or

(10) other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President. Any determination made under this subsection shall be reported promptly to the Director of the Information Security Oversight Office.

(b) Information that is determined to concern one or more of the categories in Section 1.3(a) shall be classified when an original classification authority also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(c) Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.

(d) Information classified in accordance with Section 1.3 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

Sec. 1.4 Duration of Classification.

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Automatic declassification determinations under predecessor orders shall remain valid unless the classification is extended by an authorized official of the originating agency. These extensions may be by individual documents or categories of information. The agency shall be responsible for notifying holders of the information of such extensions.

(c) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of this Order.

Sec. 1.5 Identification and Markings.

(a) At the time of original classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:

(1) one of the three classification levels defined in Section 1.1;

(2) the identity of the original classification authority if other than the person whose name appears as the approving or signing official;

(3) the agency and office of origin; and

(4) the date or event for declassification, or the notation "Originating Agency's Determination Required."

(b) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. Agency heads may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(c) Marking designations implementing the provisions of this Order, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office.

(d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(e) Information assigned a level of classification under predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials specified in Section 3.1(b).

Sec. 1.6 Limitations on Classification.

(a) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) The President or an agency head or official designated under Sections 1.2(a)(2), 1.2(b)(1), or 1.2(c)(1) may reclassify information previously declassified and disclosed if it is determined in writing that (1) the information requires protection in the interest of national security; and (2) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office.

(d) Information may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of this Order (Section 3.4) if such classification meets the requirements of this Order and is accomplished personally and on a document-by-document basis by the agency head, the deputy agency head, the senior agency official designated under Section 5.3(a)(1), or an official with original Top Secret classification authority.

Part 2

Derivative Classification

Sec. 2.1 Use of Derivative Classification.

(a) Derivative classification is (1) the determination that information is in substance the same as information currently classified, and (2) the application of the same classification markings. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) observe and respect original classification decisions; and

(2) carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

Sec. 2.2 Classification Guides.

(a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information.

(b) Each guide shall be approved personally and in writing by an official who:

(1) has program or supervisory responsibility over the information or is the senior agency official designated under Section 5.3(a)(1); and

(2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agency heads may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

Part 3

Declassification and Downgrading

Sec. 3.1 Declassification Authority.

(a) Information shall be declassified or downgraded as soon as national security considerations permit. Agencies shall coordinate their review of classified information with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by Section 1.3 despite the passage of time will continue to be protected in accordance with this Order.

(b) Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; the originator's successor; a supervisory official of either; or officials delegated such authority in writing by the agency head or the senior

agency official designated pursuant to Section 5.3(a)(1).
(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this Order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the National Security Council. The information shall remain classified, pending a prompt decision on the appeal.
(d) The provisions of this Section shall also apply to agencies that, under the terms of this Order, do not have original classification authority, but that had such authority under predecessor orders.
Sec. 3.2 Transferred Information.
(a) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this Order.
(b) In the case of classified information that is not officially transferred as described in Section 3.2(a), but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of this Order. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.
(c) Classified information accessioned into the National Archives of the United States shall be declassified or downgraded by the Archivist of the United States in accordance with this Order, the directives of the Information Security Oversight Office, and agency guidelines.
Sec. 3.3 Systematic Review for Declassification.
(a) The Archivist of the United States shall, in accordance with procedures and timeframes prescribed in the Information Security Oversight Office's directives implementing this Order, systematically review for declassification or downgrading (1) classified records accessioned into the National Archives of the United States, and (2) classified presidential papers or records under the Archivist's control. Such information shall be reviewed by the Archivist for declassification or downgrading in accordance with systematic review guidelines that shall be provided by the head of the agency that originated the information, or in the case of foreign government information, by the Director of the Information Security Oversight Office in consultation with interested agency heads.
(b) Agency heads may conduct internal systematic review programs for classified information originated by their agencies contained in records determined by the Archivist to be permanently valuable but that have not been accessioned into the National Archives of the United States.
(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.
Sec. 3.4. Mandatory Review for Declassification.
(a) Except as provided in Section 3.4(b), all information classified under this Order or predecessor orders shall be subject to a review for declassification by the originating agency, if:
(1) the request is made by a United States citizen or permanent resident alien, a federal agency, or a State or local government; and

(2) the request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort.

(b) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of Section 3.4(a). The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services or the Archivist pursuant to sections 2107, 2107 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective presidential papers or records. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information no longer requiring protection under this Order. They shall release this information unless withholding is otherwise authorized under applicable law.

(d) Agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They shall also provide a means for administratively appealing a denial of a mandatory review request.

(e) The Secretary of Defense shall develop special procedures for the review of cryptologic information, and the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods, after consultation with affected agencies. The Archivist shall develop special procedures for the review of information accessioned into the National Archives of the United States.

(f) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this Order:

(1) An agency shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under this Order.

(2) When an agency receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases in which the originating agency determines in writing that a response under Section 3.4(f)(1) is required, the referring agency shall respond to the requester in accordance with that Section.

Part 4

Safeguarding

Sec. 4.1 General Restrictions on Access.

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has been made by agency heads or designated officials and provided that such access is essential to the accomplishment of lawful and authorized Government purposes.

(b) Controls shall be established by each agency to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed only under conditions that will provide adequate protection and prevent access

by unauthorized persons.
(c) Classified information shall not be disseminated outside the executive branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the executive branch.
(d) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this Section, the Department of Defense shall be considered one agency.
Sec. 4.2 Special Access Programs.

(a) Agency heads designated pursuant to Section 1.2(a) may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or predecessor orders. Such programs may be created or continued only at the written direction of these agency heads. For special access programs pertaining to intelligence activities (including special activities but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function will be exercised by the Director of Central Intelligence.
(b) Each agency head shall establish and maintain a system of accounting for special access programs. The Director of the Information Security Oversight Office, consistent with the provisions of Section 5.2(b)(4), shall have non-delegable access to all such accountings.
Sec. 4.3 Access by Historical Researchers and Former Presidential Appointees.
(a) The requirement in Section 4.1(a) that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes may be waived as provided in Section 4.3(b) for persons who:
(1) are engaged in historical research projects, or
(2) previously have occupied policy-making positions to which they were appointed by the President.
(b) Waivers under Section 4.3(a) may be granted only if the originating agency:
(1) determines in writing that access is consistent with the interest of national security;
(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this Order; and
(3) limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.
Part 5
Implementation and Review
Sec. 5.1 Policy Direction.
(a) The National Security Council shall provide overall policy direction for the information security program.
(b) The Administrator of General Services shall be responsible for implementing and monitoring the program established pursuant to this Order. The Administrator shall delegate the implementation and monitorship functions of this program to the Director of the Information Security Oversight Office.
Sec. 5.2 Information Security Oversight Office.
(a) The Information Security Oversight Office shall have a full-time Director appointed by the Administrator of General Services subject to approval by the President. The Director shall have the authority to appoint a staff for the Office.

(b) The Director shall:
(1) develop, in consultation with the agencies, and promulgate, subject to the approval of the National Security Council, directives for the implementation of this Order, which shall be binding on the agencies;
(2) oversee agency actions to ensure compliance with this Order and implementing directives;
(3) review all agency implementing regulations and agency guidelines for systematic declassification review. The Director shall require any regulation or guideline to be changed if it is not consistent with this Order or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The agency regulation or guideline shall remain in effect pending a prompt decision on the appeal;
(4) have the authority to conduct on-site reviews of the information security program of each agency that generates or handles classified information and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill the Director's responsibilities. If these reports, inspections, or access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior official designated under Section 5.3(a)(1) may deny access. The Director may appeal denials to the National Security Council. The denial of access shall remain in effect pending a prompt decision on the appeal;
(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend presidential approval;
(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the information security program;
(7) have the authority to prescribe, after consultation with affected agencies, standard forms that will promote the implementation of the information security program;
(8) report at least annually to the President through the National Security Council on the implementation of this Order; and
(9) have the authority to convene and chair interagency meetings to discuss matters pertaining to the information security program.

Sec. 5.3 General Responsibilities.

Agencies that originate or handle classified information shall:
(a) designate a senior agency official to direct and administer its information security program, which shall include an active oversight and security education program to ensure effective implementation of this Order;
(b) promulgate implementing regulations. Any unclassified regulations that establish agency information security policy shall be published in the Federal Register to the extent that these regulations affect members of the public;
(c) establish procedures to prevent unnecessary access to classified information, including procedures that (i) require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures, and (ii) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs; and
(d) develop special contingency plans for the protection of classified information used in or near hostile or potentially hostile areas.

Sec. 5.4 Sanctions.

(a) If the Director of the Information Security Oversight Office finds that a violation of this Order or its implementing directives may have occurred, the Director shall make a report to the head of the agency or to the senior official designated under Section 5.3(a)(1) so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, and grantees shall be subject to appropriate sanctions if they:
(1) knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under this Order or predecessor orders;
(2) knowingly and willfully classify or continue the classification of information in violation of this Order or any implementing directive; or
(3) knowingly and willfully violate any other provision of this Order or implementing directive.
(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.
(d) Each agency head or the senior official designated under Section 5.3(a)(1) shall ensure that appropriate and prompt corrective action is taken whenever a violation under Section 5.4(b) occurs. Either shall ensure that the Director of the Information Security Oversight Office is promptly notified whenever a violation under Section 5.4(b) (1) or (2) occurs.

Part 6

General Provisions

Sec. 6.1 Definitions.

(a) "Agency" has the meaning provided at 5 U.S.C. 552(e).
(b) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.
(c) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.
(d) "Foreign government information" means:
(1) information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or
(2) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.
(e) "National security" means the national defense or foreign relations of the United States.
(f) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(g) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

Sec. 6.2 General.

(a) Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this Order with respect to any question arising in the course of its administration.

(c) Nothing in this Order limits the protection afforded any information by other provisions of law.

(d) Executive Order No. 12065 of June 28, 1978, as amended, is revoked as of the effective date of this Order.

(e) This Order shall become effective on August 1, 1982.

/S/Ronald Reagan

THE WHITE HOUSE

April 2, 1982.

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REPRODUCED AT THE NATIONAL ARCHIVES

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'96, 371; Dec. 26, 1896. J. D. Rodriguez. Letter explaining the difficulties and requesting the appointment of an engineer arbitrator by the President of the United States.
'96, 373; Jan. 16, 1897. Richard Olney.
'97, 111; Feb. 6, 1897. J. B. Calvo. Request for the appointment by the President of an engineer umpire.
'97, 330; Feb. 6, 1897. J. D. Rodriguez. Request on behalf of Nicaragua.
'97, 112; Feb. 19, 1897. Richard Olney. E. P. Alexander appointed.
'97, 112; Feb. 20, 1897. J. B. Calvo.
'97, 113; Oct. 29, 1897. J. B. Calvo. Text of E. P. Alexander's award.
'97, 419; May 15, 1897. Lewis Baker. Meeting and names of members of the boundary commission.
'97, 420; Oct. 12, 1897. Lewis Baker. Award of E. P. Alexander gives satisfaction in Nicaragua.
'97, 420; Nov. 3, 1897. John Sherman. Inquiry whether award is accepted by Nicaragua.
'97, 421; Nov. 29, 1897. Lewis Baker. Letter of the President of Nicaragua in acceptance of the award.
— Denmark and Germany.
'74, 439; Jan. 9, 1874. George Bancroft. Status of negotiations concerning the Jutland.
— *See Ecuador: Boundary dispute with Colombia and Peru.*
— Great Britain and Liberia; arbitration by a United States naval officer.
'71, 487; May 24, 1871. Sir Edward Thornton.
'78, 265; June 15, 1878. John Welsh. Commander Bradford, United States Navy, appointed arbitrator.
'79, 717; May 12, 1879. J. H. Smyth. Adjournment of the commission without a decision.
'80, 491; Oct. 2, 1879. Sir Edward Thornton. Thanks and apologies to Commodore Shufeldt.
— Great Britain and Venezuela.
'88, 698; Feb. 17, 1888. T. F. Bayard. Claim of the Guiana legislature over the gold-mining district of Caratal; desire of the United States that the long-pending and uncertain question be amicably settled by arbitration or otherwise; map of the respective claims; note from Venezuelan legation.
'88, 702; Feb. 21, 1888. T. F. Bayard. Correspondence with Venezuelan legation.
'90, 337; May 1, 1890. J. G. Blaine. Arbitration suggested.
'90, 337; May 5, 1890. R. T. Lincoln.
'90, 339; May 6, 1890. J. G. Blaine.
'90, 339; May 19, 1890. J. G. Blaine.
'90, 340; May 28, 1890. R. T. Lincoln. Offer of Great Britain to abandon part of her claim.
'90, 776; Dec. 21, 1889. W. L. Scruggs. Occupation of Barima by the Guiana colonial authorities.
'90, 778; Apr. 25, 1890. W. L. Scruggs. Successive encroachments by Great Britain; status of the question.
'90, 779; May 2, 1890. J. G. Blaine. Instructions sent to London.
'90, 779; May 3, 1890. W. L. Scruggs. Sketch map of the territory in dispute.
'90, 780; May 19, 1890. J. G. Blaine.
'90, 780; May 21, 1890. J. G. Blaine.
'90, 780; June 7, 1890. W. L. Scruggs. Report of Venezuelan commissioner on the occupation of Barima by Great Britain.
'90, 781; June 21, 1890. J. G. Blaine.

BOUNDARY DISPUTES between (continued).
— Great Britain and Venezuela (continued).
'90, 782; Feb. 17, 1890. N. Bolet Peraza. The good offices of the United States appealed to to procure arbitration.
'90, 784; Apr. 24, 1890. N. Bolet Peraza.
'90, 784; May 2, 1890. J. G. Blaine. Instructions sent to London.
'90, 785; May 5, 1890. N. Bolet Peraza.
'90, 786; May 19, 1890. J. G. Blaine.
'90, 786; May 20, 1890. N. Bolet Peraza. Successive claims of Great Britain shown by means of a map.
'90, 788; July 9, 1890. A. A. Adee. Venezuelan Envoy Pulido presented at the foreign office by the United States minister.
'94, 250; July 13, 1894. W. Q. Gresham. Review of the dispute; tender of good offices to promote arbitration. Instruction to the United States embassy at London.
'94, 252; Dec. 1, 1894. W. Q. Gresham. Same subject.
'94, 803; Oct. 26, 1893. David Lobo. Review of the question and negotiations since 1841.
'94, 805; Nov. 15, 1893. F. C. Partridge. Reliance of Venezuela on the friendly offices of the United States; articles published in the Venezuelan newspapers.
'94, 809; Nov. 24, 1893. P. E. Rojas. Gratification expressed at the implied recognition of Venezuela's claim in a publication of the Agriculture Department.
'94, 809; Jan. 21, 1894. W. Q. Gresham. The publication can not be taken as expressing the views of the Government of the United States concerning the merits of the controversy.
'94, 810; Mar. 31, 1894. José Andrade. Exhaustive argument in a memorandum presenting a review of the phases of the controversy and a defense of the rights of Venezuela; aid of the United States in securing a peaceable and honorable settlement bespoken.
'94, 840; Dec. 8, 1894. W. Q. Gresham. The foregoing memorandum transmitted to the United States embassy at London with appropriate instructions.
'94, 841; Dec. 19, 1894. José Andrade. Protest against the contemplated building by the Guiana Government of a road between the Upper Barima and the Cuyuni.
'94, 843; Dec. 21, 1894. S. Hazelton. Appreciation of the passage in the President's message, relative to the boundary dispute, expressed by the Venezuelan minister for foreign affairs.
'94, 844; Dec. 31, 1894. José Andrade. Same subject.
'94, 844; Jan. 15, 1895. S. Hazelton. Note from minister for foreign affairs relative to the contemplated British road from the Upper Barima.
— — Message of President Cleveland of December 17, 1895.
'95, 75; Dec. 20, 1895. S. de Mendonça. Congratulatory resolution of the Brazilian Senate.
'95, 204; Feb. 13, 1896. J. B. Calvo. Gratification of the Government of Costa Rica.
'95, 542; Dec. 17, 1895. Message of President Cleveland to Congress.
'95, 545–562; July 20, 1895. Richard Olney. Instructions to Ambassador Bayard; review of the controversy; attitude of the United States; application of the Monroe doctrine; unrestricted arbitration of the dispute demanded.
'95, 562; July 24, 1895. A. A. Adee. Increase of area claimed for British Guiana.
'95, 563; Nov. 26, 1895. Lord Salisbury. Reply to Mr. Olney's instruction of July 20, 1895, in regard to the Monroe doctrine.
'95, 567; Nov. 26, 1895. Lord Salisbury. Review of the controversy since the early days of the British occupation of Dutch Guiana. Arbitration concerning territories already settled by British subjects can not be entertained.
'95, 576; Jan. 18, 1896. Richard Olney. Invitation of the United States Investigation Commission to both parties to furnish it with documentary proof.
'95, 576; Feb. 9, 1896. T. F. Bayard. Invitation accepted by Great Britain.
See Commissions of investigation. '95.
'95, 1480; Mar. 29, 1895. P. E. Rojas. Resolution of thanks of the Venezuelan Congress.
'95, 1481; Apr. 15, 1895. W. Q. Gresham. Acknowlelgment of the foregoing.
'95, 1482; Apr. 17, 1895. Lucio Pulido. Resumption of diplomatic relations with Great Britain inexpedient unless the British Government recedes from its position touching arbitration.
'95, 1483; Apr. 18, 1895. Lucio Pulido. Incident of the arrest of British officials on disputed territory on the Cuyuni River.

REPRODUCED AT THE NATIONAL ARCHIVES

BOUNDARY DISPUTES between (continued)
— Great Britain and Venezuela (continued).
'95, 1484; Apr. 22, 1895. J. Andrade. Same subject.
'95, 1485; Apr. 26, 1895. E. F. Uhl.
'95, 1485; May 25, 1895. E. F. Uhl. Resumption of diplomatic relations with Great Britain urged upon Venezuela.
'95, 1486; July 10, 1895. Lucio Pulido. Disposition of British Government concerning unrestricted arbitration should first be ascertained by the United States Government.
'95, 1487; Oct. 21, 1895. J. Andrade. Attention directed to further trespassing by Guiana authorities.
'95, 1488; Nov. 5, 1895. M. F. Palacio. Explanations touching the Cuyuni River incident (1483, supra).
'95, 1489; Jan. 18, 1896. Richard Olney. Commission of investigation appointed by the President is prepared to receive communications from both parties.
'95, 1489; Feb. 1, 1896. J. Andrade.
'95, 1490; Feb. 5, 1896. P. E. Rojas. Thanks for the good offices of the United States in the controversy.
'96, 240; Feb. 27, 1896. T. F. Bayard. Invitation to British Government to present in Washington a clear definition of the "settlements."
'96, 241; Mar. 3, 1896. Lord Salisbury. Immediate entry upon negotiations agreed to.
'96, 242; May 8, 1896. Richard Olney. Request of the investigating commission for references to documents in support of statements in the British Blue Book.
'96, 243; May 16, 1896. T. F. Bayard. Note to Lord Salisbury.
'96, 244; May 30, 1896. Lord Salisbury. Request of the commission will be complied with; memorandum of the British attorney-general.
'96, 247; June 2, 1896. T. F. Bayard.
'96, 247; June 3, 1896. Sir Julian Pauncefote. Proposal of British Government of preliminary investigation by a joint commission appointed by the United States and Great Britain and ultimate arbitration from which territory actually settled by either party to the controversy prior to 1887 shall be excluded.
'96, 249; June 12, 1896. Richard Olney. Objections to the British proposals.
'96, 252; July 3, 1896. Lord Salisbury. Question of settled territories was merely to be reserved.
'96, 253; July 13, 1896. Richard Olney. Inquiry whether Great Britain will agree to arbitration of all territory except such as may have been acquired by sixty years' occupation.
'96, 254; Nov. 12, 1896. Heads of the proposed treaty agreed upon by Secretary Olney and Ambassador Pauncefote.
— Guatemala and Mexico.
'74, 755; Aug. 15, 1874. J. W. Foster. Arrival of Guatemalan plenipotentiary.
'75, 133; Oct. 5, 1874. George Williamson.
'75, 164; Apr. 19, 1875. George Williamson. Arrival of Mexican minister; report of Guatemalan minister on condition of negotiations.
'81, 598; June 15, 1881. A. Ubico. Intervention of the United States solicited.
'81, 599; June 16, 1881. J. G. Blaine. The policy of the United States to maintain harmony among American Republics, not to decide disputes.
'81, 766; June 16, 1881. J. G. Blaine. Instructions to United States legation in Mexico.
'81, 600; June 19, 1881. A. Ubico. Offer to lay Guatemala's case before the United States.
'81, 768; June 21, 1881. J. G. Blaine. Instructions to United States legation in Mexico deprecating the possible outbreak of war.
'81, 770; June 21, 1881. J. G. Blaine. Possibility of Guatemala ceding disputed territory to a European power.
'81, 770; June 23, 1881. J. G. Blaine. Telegram.
'81, 603; July 20, 1881. L. Montufar. Thanks of the President of Guatemala.
'81, 603; Oct. 19, 1881. A. Ubico. Transmits the foregoing letter.
'81, 603, 604; Oct. 31, 1881. J. G. Blaine. Acknowledgment of the same.
'81, 604; Nov. 2, 1881. L. Montufar. History of the dispute.
'81, 609; Nov. 7, 1881. L. Montufar. Refutation of the report of the Mexican minister for foreign affairs; the question left to the decision of the United States.
'81, 613; Nov. 21, 1881. L. Montufar. Appeal to the United States to avert the horrors of war.

WILLIAM R. JOYCE, JR.
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20006

December 21, 1983

Director
Freedom of Information Staff
Bureau of Public Affairs
Department of State
Washington, D. C. 20520

Dear Sir:

Pursuant to the provisions of the Freedom of Information Act, 5U.S.C.552, as amended, and any and all applicable rules or regulations relating thereto, I wish to inspect and also be able to have copies made of certain of the records relating to the negotiations during 1898-1899-1900 between Great Britain and the United States whereby the United States sought to modify or terminate the Clayton-Bulwer Treaty of 1850 in order to build the Isthmian Canal in Nicaragua. I am specifically interested in any records in these negotiations which relate to or have any bearing on the Arbitration of the British Guiana-Venezuela boundary dispute held from June 15, 1899 to October 3, 1899 in Paris between Great Britain and Venezuela. This material I would use in connection with a law review article I am writing.

This request includes all correspondence, minutes of meetings and memoranda exchanged between President William McKinley (including members of the staff of the Executive Office of the President) and Secretary of State John Hay (including members of his staff, especially Mr. Alvey A. Adee, Second Assistant Secretary of State) and Mr. W. W. Rockhill (William Rockhill), Director of the Bureau of American Republics. This request would also encompass any and all private files, post records (including London, Paris, Berlin, St. Petersburg and The Hague/ Amsterdam), office files and miscellaneous archives.

In addition, I include any and all correspondence, including cable traffic, official notes, personal letters and memoranda concerning this matter which may have been received from the Third Marquess of Salisbury, the then Prime Minister of Great Britain and his own Foreign Secretary, members of his Cabinet (including the Colonial Secretary, Joseph Chamberlain, and Arthur James Balfour, First Lord of the Treasury) and his staff, as well as any from the British Ambassador to the United States, Sir Julian (as of July 31, 1899, Lord) Pauncefote and members of the staff of his Embassy here in Washington, especially Mr. Reginald Tower, Second Secretary of the Embassy.

Also included are all types of correspondence, archives or "miscellaneous archives" and memoranda relative to or bearing upon the above exchange between the Department of State and the British Prime Ministry or Foreign Office and the Embassy of the United States in London, including those with Mr. Henry White, the Chargé d'Affaires, and, subsequent to his nomination on January 11, 1899, with the Ambassador of the United States, Mr. Joseph H. Choate.

This request also includes any and all correspondence and memoranda exchanged between President McKinley (and members of his staff) and Secretary of State Hay (and members of his staff) with the Chief Justice of the United States, Melville Weston Fuller, and Associate Justice of the Supreme Court of the United States, David Josiah Brewer, and members of their staff, if any, both of whom were serving in 1899 as members of the Arbitration Tribunal in Paris holding hearings on the Venezuelan-British Guiana Boundary Dispute.

While I have not found any such records in the National Archives, the Library of Congress or in the Archives of the Supreme Court of the United States, nor in Foreign Relations of the United States, 1899, I am of the opinion, however, from certain indications that these records may possibly have been "forgotten" and are still in the Department of State some 84 years later.

Very truly yours,

DEPARTMENT OF STATE

Washington, D.C. 20520

FEB 2 1984

Case Number 8400425

Dear Sir/Madam:

The Department of State has received your request for information concerning the Clayton-Bulwer Treaty of 1850.

Unfortunately, we are unable to comply with your request for the reasons stated in the paragraphs marked below.

[ ] Your request fails to "reasonably describe" records maintained by the Department of State. As noted in our rules for gaining access to information, a reasonable description of a record is one which enables a professional employee of the Department who is familiar with the subject area of the request to locate the record with a reasonable amount of effort. Such a description, if possible, should include date, format, subject matter, country concerned, office or mission originating or receiving the record, and the name of any person to whom the record is known to relate.

[ ] Your request is too voluminous. It is the Department's policy to divide voluminous requests into segments and process them in a piece-meal fashion. The more voluminous a request, the longer it will take to complete. Please rank each segment of your request so that we may process it in your order of preference. In order to be fair to other FOIA requesters, the Department will devote one eight-hour day per month of search time in order to search for documents responsive to your request.

[ ] A prelimary review of your request indicates that processing it may result in charges in excess of $50.00. Before we begin to process your request, please send a deposit of $50.00. Your check or money order should be made payable to the U.S. Treasury. Please note that your deposit and your willingness to pay the remainder of the fees incurred do not necessarily mean that the entire contents of the Department's records will be released to you, inasmuch as we are guided by provisions of the Freedom of Information and Privacy Acts in disclosing information from our records. If you wish to confer with knowledgeable Departmental personnel in order to reformulate your request in a manner which will reduce the fees and still meet your needs, please let me know.

[ ] Only existing documents are subject to the Freedom of Information Act. The act does not provide for the creation of documents, compilation of data, preparation of lists, analyses of events, etc. The information you have requested is not a "record" as defined by the Freedom of Information Act and is therefore not accessible under the FOIA.

[ ] The Department's records are not retrievable in the manner in which you have requested them. In general, Department of State documents are indexed by terms derived from the contents of the document, including subject concepts, names of individuals, and names of organizations. The majority of the Department's record systems, whether manual or automated, operate with a controlled vocabulary or subject heading used by indexers and researchers. The Department does not maintain a system that evaluates information or that compiles statistics. Your request should specify a particular event, policy, or circumstance in which you are interested, rather than the effect a certain attitude or event had on another event.

[ ] We cannot meet the deadline specified in your request. Please let me know if you still wish to gain access to the records.

[✱] The material you seek pre-dates 1950. Generally, Department of State documents which fall within this time period are in the custody of the National Archives. Please contact the Archives to request access to documents responsive to your request. You may write to the Diplomatic Branch, National Archives and Records Service, Washington, D.C. 20408.

[ ] The material requested appears to have been originated by another agency. Please contact the Freedom of Information Staff of that agency. _____

_____

[ ] The Freedom of Information Act requires agencies to establish fees to recover the cost of document search and reproduction. I have enclosed a copy of our fee schedule for your information. The Department may waive its fees only if you can provide evidence that a waiver of fees would be in the public interest. Before we begin to search for documents responsive to your request, please let me know if you are willing to pay the fees incurred. If you wish to limit the costs of search and reproduction to a maximum amount, please let me know.

[ ] _____

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Please send the above information to the Information and Privacy Staff; Room 1239; Department of State; 2201 C Street, N.W.; Washington, D.C. 20520. Please refer to the above case number in your correspondence.

Sincerely,

Peter M. Sheils
Chief, Operations Staff
Information Access Branch

Enclosure:

Fee Schedule.

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(6) If records requested under this Subpart are stored elsewhere than the headquarters of the Department of State at 2201 C Street, NW, Washington, D.C., the special costs of returning such records to the headquarters shall be included in the search costs. These costs will be computed at the actual cost of transportation of either a person or the requested record between the place where the record is stored and Department headquarters when, for time or other reasons, it is not feasible to rely on Government mail service or diplomatic pouch.

(7) When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or size or type thereof, the Information and Privacy Coordinator is authorized to establish an appropriate fee, pursuant to the criteria established in Office of Management and Budget Circular No. A-25, entitled "User Charges."

(b) Fees must be paid in full prior to release of requested documents.

(c) Where it is anticipated that the fees chargeable under this Subpart will amount to more than $50 and the requester has not indicated in advance her/his willingness to pay fees as high as anticipated, the requester shall be promptly notified of the amount of the anticipated fees or such portion thereof as can readily be estimated. In appropriate cases, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable Departmental personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice or request shall suspend the running of the period for response by the Department until a reply is received from the requester.

(d) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Department determines that a record which has been requested, but which is exempt from disclosure under this Subpart, is to be withheld.

(e) Waiver or reduction of any fee provided for in this Subpart may be made upon a determination by the Chief of the Information Access Branch. The Department may waive or reduce fees in the following instances:

(1) When the search and copying fees total less than $25.

(2) When the records are requested by a State or local government, an intergovernmental agency, a foreign government, a public international organization, or an agency thereof, and the records are for purposes that are in the public interest and will promo. the objectives of the act and of the Department.

(3) When it is determined, upon petition submitted by the requester, that waiver or reduction of the fee is in the public interest because furnishing the information in the records requested can be considered as primarily benefiting the general public. Any such petition shall specify the intended purpose to which the requested records will be put, and any other relevant factors in order to show how the information can be expected to benefit a large section of society, and not primarily, one special interest group, however prominent. A fee waiver will not be granted if the requester is to benefit financially, directly or indirectly, from the disclosure of the record.

(4) When it is determined, based upon a petition therefor, that the requester is indigent, that the request for records has a strong public interest justification, and that agency resources permit a waiver of fee. A person is deemed to be indigent if she/he does not have income or resources sufficient to pay the fees involved.

(5) When the release of records is necessary to the requester to obtain financial benefits to which she/he is entitled by law.

(6) When the record is requested for compelling circumstances affecting the health or safety of an individual.

(7) When the requested records are ordered to be produced in a court of competent jurisdiction.

The Department will not generally waive the cost for reproduction of those documents which the requester wishes to retain, except as provided under paragraph (1) of this section.

The Department will not waive fees for requesters (persons or organizations) from whom unpaid fees remain due to the Department for another information access request.

(f)(1) The Department's decision to refuse to waive or reduce fees as requested under paragraph (e) of this section may be appealed to the Information and Privacy Coordinator, Room 1239, Department of State, 2201 C Street, NW., Washington, D.C. 20520. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Information and Privacy Coordinator who may consult with other officials of the Department, as appropriate. The requester will be notified within thirty working days from the date on which the Department received the appeal.

WILLIAM R. JOYCE, JR.
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20006

September 11, 1984

Milton O. Gustafson, Ph.D.
Chief, Legislative and Diplomatic Branch
U.S. National Archives
Washington, DC

Dear Dr. Gustafson:

As you know, I have been engaged in research into the legal ramifications of the history of the Clayton-Bulwer Treaty of 1850 between Great Britain and the United States whereby both countries agreed that they would not build a ship canal between the Atlantic and Pacific Oceans without the consent of the other. In connection thereof, I have ordered and received from your office enlargements of over 460 feet or over 141 meters of microfilms of over 6,000 documents from the Archives of the U.S. Department of State for the years 1898, 1899, 1900, which I am advised contains all the diplomatic exchanges between Great Britain for this period. Specifically, I am in receipt of the following:

Diplomatic Instructions (from the Department of State) M77 to U.S. Embassy-Great Britain. Roll 92: October 8, 1898-August 31, 1901 (43 feet)

Diplomatic Despatches (from U.S. Embassy-Great Britain) M30 to Department of State
Roll 184: Dec. 13, 1898-April 29, 1899 (66 feet)
Roll 185: May 1, 1899-Aug. 30, 1899 (52 feet)
Roll 186: Sept. 1, 1899-January 30, 1900 (40 feet)

Notes to the British Legation in Washington
M99 From the Department of State
Roll 53: August 10, 1897-November 14, 1899 (45 feet)
Roll 54: Nov. 15, 1899-Nov. 26, 1906 (44 feet)

Notes from the British Legation in Washington
M50 To the Department of State
Roll 130: August 1, 1898-February 28, 1899 (59 feet)
Roll 131: March 1, 1899-August 31, 1899 (49 feet)
Roll 132: Sept. 1, 1899-March 31, 1900 (62 feet)

I mention the above because a rather large gap exists in the documentation of the library of the relations between the two countries for this period. For example, on December 7, 1898 U.S. Secretary of State John Hay asked the Charge d'Affaires at the U.S. Embassy in London, Mr. Henry White, to discuss the possibility of modifying the provisions of the Clayton-Bulwer Treaty of 1850 with

the British Prime Minister, the Marquess of Salisbury, in order to permit the United States to build a ship canal in the Isthmus. Secretary Hay also asked Mr. White to inquire of Lord Salisbury whether "...he would prefer to let us know the inclinations of the British Government through you or empower Sir Julian Pauncefote (the British Ambassador in Washington) to confer with me in regard to it..."

Mr. White cabled Secretary Hay on December 21, 1898 that Lord Salisbury seemed inclined to accede to Secretary Hay's request to build a canal and Mr. White added that Lord Salisbury "...willingly assented to negotiations being conducted through you and Pauncefote." Mr. White supplemented his cable with a written report (No. 613, dated December 22, 1898 to Secretary Hay), which stated in part:

> "I suggested that the best and most expeditious way to ascertain the views of my Government would be for him to authorize Her Majesty's Ambassador at Washington to confer with you in reference thereto, an opinion in which he concurred, and said that he would communicate immediately by telegraph with Sir Julian Pauncefote, which, later in the day, he informed me he had done."

However, a careful study of both the Notes to the British Legation in Washington from the Department of State (M99, Rolls 53 and 54), and the Notes from the British Legation in Washington to the Department of State (M50, Rolls 130, 131 and 132) show nothing of any negotiations between Secretary Hay and the British Ambassador on this subject nor do any of the instructions and despatches between Washington and London show anything. Neither of these two subjects are discussed in the above microfilms.

I conclude therefore that the records of such negotiations which may apparently also involve the American participation in the Hague Peace Conference and the "Open Door Notes" were such important features of U.S. foreign affairs in 1899 that they must be found somewhere but they are not to be found in these microfilms. I note that the microfilms contain an introductory legend which states in part: "The communications are registered in a correspondence register of the Department of State (reproduced in File Microcopy 17, Roll 17)". Does this mean there are separate files or microcopies other than that contained in M50, Roll 54?

Furthermore, the legend goes on to state:

"The volume microcopied on this roll is part of a body of records in the National Archives designated as Record Group 59, General Records of the Department of State."

This leads me to inquire what are the "General Records" of the Department of State and are there other records, which are or could be designated "special records" or otherwise described, which are not contained in the above-mentioned microfilms? There is such a gap in the diplomatic history of the United States in 1899 as I mentioned above that I am forced to inquire further. I am assured by the Office of the Historian of the Department of State that they have no files for this period and any files they might have had were transferred to the National Archives. I am also advised that no such files exist in the Office of the Legal Archives, including its vault. Furthermore, I cannot find the negotiating papers which led up to the signing of the Hay-Paucefote Treaty of February 5, 1900 which was the culmination of a year's negotiating efforts in 1899. Nothing of these papers which had to have been involved can be found in the indices of the National Archives or in these microfilms.

If, as I am advised, these microfilms listed above contain all of the exchanges of diplomatic relations between Great Britain and the United States it is ipso facto incomplete because certain very important subjects such as those I mentioned above are not contained in them. As you know, the subject of our Arbitration Treaty with Great Britain was rejected by the U.S. Senate in 1897, but the United States apparently agreed in 1899 to participation in the Hague Peace Conference and did in fact sign the Hague Peace Treaty on July 29, 1899. This resolved an outstanding problem with Great Britain, but there is no mention of this in these microfilms. It is confounding the obvious to say that one of the greatest efforts, namely, the building of a ship canal between the Atlantic and Pacific Oceans, particularly when prevented by treaty for some 50 years, should have left some footprints in the U.S. National Archives of the diplomatic efforts to get out from under the restrictions of that treaty.

In recapitulation, I am searching for apparently missing information, documentation and records during the period 1898-1900, which specifically bears on the bargain or quid pro quo struck between the British and United States governments for the revision or modification of the 1850 Clayton-Bulwer Treaty, which enabled the United States to build the Panama Canal.

In addition to the published volumes of the U.S. Foreign Relations and British and Foreign Note Papers dealing with the period 1898-1900, perhaps the missing materials, documentation and records, both official and private, in the form of "non-diplomatic" correspondence, e.g., official or informal memoranda for the files, inter/intra office memoranda, research studies on the subject, classified or unclassified position papers of both governments, personal working papers and negotiating notes and records of the Secretary of State, British Foreign Minister or their principal deputies. More particularly, there might be sensitive or classified information still not made public.

I would like to be assured that my searches to date have been diligent and have covered all known and unknown sources on the subject and have not been able to discover any relevant information. Of course, I would appreciate your assistance in directing me to sources that I might have overlooked.

Sincerely yours,

William R. Joyce, Jr.

WRJ/js

General Services Administration
National Archives and Records Service
Washington, DC 20408

September 18, 1984

Mr. William R. Joyce, Jr.
1701 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Mr. Joyce:

Your letter of September 11, 1984, asked a number of questions about documentation relating to British-American relations, 1898-1900, and specifically the agreement to modify the Clayton-Bulwer Treaty of 1850.

The paper copies from the microfilm that you have received contain "all the diplomatic exchanges between Great Britain" and the United States that are in four separate series of bound volumes of records of the Department of State for that time period in the National Archives. There were, no doubt, diplomatic exchanges for which no record was made, and other exchanges for which the record was not filed in those four series of records.

Records of federal agencies in the National Archives are divided into record groups. Record Group 59 is for General Records of the Department of State, and those records are described in PI 157, which is, unfortunately out of print. RG 59 has two major parts, central file records and non central file records. The central file records are divided by time periods, pre-1906, 1906-10, and 1910-49. The pre-1906 records are divided into Diplomatic Correspondence, Consular Correspondence, and Miscellaneous Correspondence. The Diplomatic Correspondence includes Diplomatic Instructions, Diplomatic Despatches, Notes to Foreign Legations, and Notes from Foreign Legations, and this is the material you have examined. It is unlikely that any missing records of negotiations would be in the Consular or Miscellaneous Correspondence, or in records of some other time period. There is substantial quantity of non-central file records, records of various offices or functions or special series, but my staff and I are familiar with those records, have used PI 157, and we have determined that the missing records of negotiations are not among those records.

Record Group 84 is for Foreign Service Post records of the Department of State, and it includes the records originally filed at the London Embassy, and the Embassy also filed the originals of its instructions and copies of its despatches. You are welcome to examine this material, but is is unlikely that any record of negotiations between John Hay and Sir Julian Pauncefote would have been sent to London and wound up in Embassy files.

The finding aids created by the State Department for its Diplomatic, Consular, and Miscellaneous Correspondence for the period 1870-1906 were register volumes that listed and briefly identified each letter by subject. For the Diplomatic and Consular Correspondence, the entries in the register volumes are arranged exactly like the records. These register volumes have been microfilmed on M17, Registers of Correspondence.

None of the records of the State Department in the National Archives for this time period are considered sensitive or classified, and they all have been open for research since 1942.

Many of the subjects of interest to you have been discussed by Kenton J. Clymer in John Hay: The Gentleman as Diplomat (Ann Arbor: University of Michigan Press, 1975). His footnotes indicate that these subjects are discussed in the personal letters of the men involved, and that it is necessary to examine those letters--especially since you have not been able to find much official documentation in State Department records.

There are John Hay papers in the Manuscript Division of the Library of Congress, the John Hay Library at Brown University, the Butler Library at Columbia University, and the Houghton Library at Harvard University. At the Library of Congress, you should also consult the personal papers of Henry White, Joseph H. Choate, John W. Foster, Edwin Milton Hood, John Bassett Moore, John T. Morgan, Tyler Dennett, Whitelaw Reid, and Henry Watterson.

Clymer's book does not indicate that he used archives or manuscripts in Great Britain. It seems likely, however, that Pauncefote sent reports about his negotiations to the Foreign Office, and those records should be in the Public Records Office. In addition, the personal papers of Pauncefote, Lord Salisbury, others, and the recipients of their letters, may prove fruitful for your research.

Please let me know if I can be of any further assistance.

Sincerely,

Milton O. Gustafson

MILTON O. GUSTAFSON
Chief, Legislative and
Diplomatic Branch
Civil Archives Division

THE NEW YORK TIMES, SATURDAY, OCTOBER 10, 1987

State Dept. Opens Diplomatic Archives

To the Editor:

In recounting his adventure in "red-tape land" (Op-Ed, Sept. 14), Sheldon Himelfarb referred to "dog years" of delay by the State Department in releasing his Freedom of Information Act documents. I believe your readers and the department deserve a more accurate, if less entertaining, account.

Mr. Himelfarb requested (1) information on United States-Czechoslovakia negotiations for the settlement of claims of United States citizens for nationalized property losses, and (2) Czech claims for restitution of gold recovered by Allied Forces in Germany from 1946 to 1982.

This was one of the largest Freedom of Information Act cases ever handled by the department. We had to locate some 10,000 documents. They were then screened, first for relevancy, then for continuing sensitivity. Since the negotiations were public knowledge and the subject of debate in press and Congress, secrecy was less a hindrance than sheer volume.

Mr. Himelfarb gives the impression that it took years for the department to release to him some 60 documents and withhold 352 others. He fails to mention that of over 3,500 documents found to be responsive to his request, fully 90 percent or 3,169, consisting of over 5,000 pages, were released to him in their entirety. The only cost to Mr. Himelfarb was postage and reproduction; the expense of retrieving, screening and reviewing material was borne entirely by the taxpayer.

The examples Mr. Himelfarb cites of material released after appeal were first judged to be inseparable from their sensitive context in the text. We were able with great effort the second time around to extricate and release it.

We are chagrined, to put it politely, at his insinuation that the department was responsive only grudgingly and when pressure was applied. Release of material to him was entirely in keeping with the huge size of his request and our limited resources to service his and the thousands of other Freedom of Information Act requests we receive.

Moreover, as he is well aware, to be as accommodating as possible, the department released material to him in installments, as it was screened and cleared, setting aside until last the comparatively few documents containing information judged exempt from release under the act.

The Department of State has always tried to discharge its responsibilities under the Freedom of Information Act conscientiously. In addition to the thousands of formerly classified documents released annually, the department releases additional thousands in the annual "Foreign Relations of the United States" series, begun in 1861. Surely, no other government in the world has opened its diplomatic archives as promptly or completely.

JOHN R. BURKE
Deputy Assistant Secretary of State
Classification-Declassification Center
Washington, Sept. 22, 1987

February 10, 1986

Mrs. Cynthia Fox
Archivist
Civil Archives Division
Room 5W
National Archives
Washington, D.C. 20408

Dear Mrs. Fox:

On Thursday, January 30, 1986, I examined at the National Archives Volume 4 of the "Scrap Book" of the Supreme Court of the United States which contain newspaper articles about the Supreme Court which were published in the years 1893-1897. I also examined Volume 5 which contained only the yeArs 1901-1907. Not only was there no explanation for the omission of anything for the years 1898-1900 but I found no mention of the participation of Chief Justice Fuller and Associate Justice Brewer as members of the Arbitrational Tribunal held in Paris, France, from June to October, 1899 to determine the boundary between the Colony of British Guiana and the United States of Venezuela.

I have not found any reference to their participation in the Official Reports of the Supreme Court nor in the Miscellaneous Orders of the Supreme Court for the years 1897-1899. Furthermore, I would appreciate your confirming the fact that in the Minutes of the Supreme Court for January 23, 1897 there is no copy or reference to a Minute or Resolution of the Supreme Court acting in response to a request of the Government of the United States of Venezuela to have the Justices of the Supreme Court of the United States nominate one of their members to serve as a member of the Arbitration Tribunal to determine the boundary between the Colony of British Guiana and the United States of Venezuela. According to a copy of the Minute I obtained from the National Archives of Venezuela last month, it indicates that Mr. Justice David Brewer was so nominated. Furthermore, I also examined "U. S. Supreme Court, Office of the Clerk, Correspondence 1791-1908" (Box No. 40, 1893-98; Box No. 41 1899-1900) and found no mention of this Arbitration or any reference of the participation therein of Chief Justice Fuller or Associate Justice Brewer.

ISam also advised the National Archives has all of the records and files of the Supreme Court up to approximately 1950 and am advised that no files for the period 1896-1900 remain in the Supreme Court itself.

With my appreciation for your assistance, I am,

Sincerely yours,

William R. Joyce, Jr.

National Archives

Washington, DC 20408

Date : March 3, 1986

Reply to
Attn of : NNFJ86J-380-CGF

Subject : Records of the U.S. Supreme Court

To : William R. Joyce, Jr.
Vance and Joyce
1701 Pennsylvania Avenue, NW
Washington, DC 20006

At your request, we made available to you in our central research room those series from the records of the U.S. Supreme Court in our custody which in my opinion would be likely to contain information relating to the service of Associate Justice Brewer and Chief Justice Fuller on a special arbitration panel held in Paris from June to October 1899. I personally examined the Minutes of the Supreme Court but failed to find any entry for January 23, 1897.

The records of the U.S. Supreme Court in the custody of the National Archives are described in the enclosed preliminary inventory, however, the Court has retained some of its records. Information about records in the custody of the Court should be obtained from the Court.

Sincerely,

Cynthia G. Fox

CYNTHIA G. FOX
Judicial, Fiscal, and Social Branch
Civil Archives Division

Enclosure

National Archives

Washington, DC 20408

Date : March 26, 1986

Reply to
Attn of : NNFJ86J-380-CGF

Subject : Records of the United States Supreme Court

To : William R. Joyce, Jr.
Vance and Joyce
1701 Pennsylvania Avenue, NW
Washington, DC 20006

This is to verify that the records of the United States Supreme Court in our custody which might reasonably contain reference to the service of the Chief Justice and an associate justice on a special arbitration tribunal held in Paris from June to October 1899 have been searched. You personally examined the correspondence of the Clerk of the Court for the appropriate years and the Scrapbooks of the Court from the Office of the Clerk. In addition, I searched the correspondence of the Marshal of the Court, the fiscal accounts from the Marshal's Office, and the Minutes of the Court. I failed to find any reference to the arbitration panel or the service of Justice Brewer or Chief Justice Fuller on any such tribunal.

Sincerely,

Cynthia G. Fox

CYNTHIA G. FOX
Judicial, Fiscal, and Social Branch
Civil Archives Division

LEGACIÓN
DE LOS ESTADOS UNIDOS DE VENEZUELA.

Washington, D. C.: 3 de febrero de 1897.

Señor Ministro:

Hónrome de trasmitir á usted inserta la comunicación en que el Honorable Chief Justice de los Estados Unidos acepta el nombramiento de árbitro por Venezuela hecho en su persona por el Señor Presidente de la República. Hela aquí:

"Washington, D. C.: February 3, 1897.

"Sir = I beg to acknowledge the receipt of your note of yesterday, informing me that the President of the United States of Venezuela had nominated me

Al Señor
Don P. Ezequiel Rojas,
Ministro de Relaciones Exteriores.
Caracas.

Número 37.

"me to be arbitrator under the treaty
"between Venezuela and Great Britain,
"an honor, which, as thus tendered,
"I do not feel at liberty to decline. I may
"convey to President Crespo my apprecia-
"tion of this evidence of consideration".

"As you are aware, the Justices
"of the Supreme Court, acting on your
"request, have nominated Mr. Justice
"Brewer as a member of the Tribunal".

"I remain, Mr. Minister, with
"sentiments of high regard, your obedient-
"servant = Melville W. Fuller."

"Señor José Andrade, E. E. and
"M. P. Venezuela".

Si usted me lo permitiera, yo
indicaría la conveniencia de que el
Presidente. Señor General Crespo diri-
giese ahora una nota al Honorable
Chief Justice, dándole las gracias
por haber condescendido en prestar,

á

á solicitud de Venezuela, el peso de su saber y experiencia judicial que tan ilustre han hecho ya su alta posición, para formar con otros el respetable tribunal llamado á decidir una cuestión de justicia entre naciones soberanas: pidiéndole que signifique al Juez Brewer la satisfacción con que Venezuela ha sabido que él también se contará en el número de los miembros de dicho tribunal y compartirá sus labores; y rogándole que trasmita á los demás Honorables Jueces de la Corte Suprema de los Estados Unidos la expresión de la gratitud de Venezuela por haber cooperado bondadosamente á constituir un juzgado cuyos vocales no habrían podido elegirse en ninguna parte con más acierto que entre los ya acostumbrados á resolver cuestiones nacionales entre grandes

falta cont.

have this day, in Compliance with said request, nominated the Honorable David Josiah Brewer, one of their number, as a member of the tribunal aforesaid.

As witness their hands at the City of Washington this 23d day of January, A.D. 1897.

Melville Weston Fuller
Chief Justice of the United States

Stephen J. Field
John Marshall Harlan
Horace Gray
Henry Billings Brown.
George Shiras Jr.
Edward Douglass White
R. W. Peckham
Associate Justices.

grandes Estados. Algo por ese estilo.

Soy de usted muy atento servidor.

José Andrade.

60

Supreme Court of the United States.
Chief Justice's Chambers.

Washington.
March 18. 1897.

Excellency:-

The Justices of the Supreme Court of the United States acceded with pleasure to the request of Venezuela in the matter of designating one of the members of the Arbitral Tribunal, and are gratified by the courteous and appreciative response to their action, signified in your Excellency's note of February 17th. I embrace this opportunity to transmit the formal certificate of the appointment, and, with assurances of high regard, remain,

Your Excellency's obedient servant,
Melville W. Fuller

The Honorable Señor D. Ezequiel Rojas,
Minister of Foreign Affairs, &c, &c.

Whereas the Justices of the Supreme Court of the United States have been requested by the United States of Venezuela to nominate a member of the arbitral Tribunal to determine the boundary line between the Colony of British Guiana and the United States of Venezuela in accordance with a treaty of Arbitration substantially agreed upon between the United States of Venezuela and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland:

Now, therefore, it is by these Presents certified that the Justices of the Supreme Court of the United States

Traduccion

Por cuanto los Jueces de la Suprema Corte de los Estados Unidos se les ha pedido por los Estados Unidos de Venezuela que nombren un miembro del Tribunal Arbitral que ha de determinar la linea fronteriza entre la Colonia de la Guayana Británica y los Estados Unidos de Venezuela conforme á un Tratado de Arbitraje en que sustancialmente han convenido los Estados Unidos de Venezuela y Su Majestad la Reina del Reino Unido de la Gran Bretaña é Irlanda:

Por tanto, por las presentes se certifica ahora que los Jueces de la Suprema Corte de los Estados Unidos han nombrado hoy, definiendo á tal peticion, al ~~Señor~~ Honorable David Josiah Brewer, uno de sus colegas, como miembro del susodicho Tribunal

En testimonio de lo cual pongo aquí sus firmas, en la ciudad de Washington, á los 23 días de enero del año del Señor de 1897

Melville Weston Fuller,
Primer Juez de los Estados Unidos

Edward Douglass White

Stephen J. Field
John Marshall Harlan
Horace Gray
Henry Billings Brown
George Shiras Jr.

R. W. Peckham,
Conjueces

PUBLIC AVAILABILITY OF DIPLOMATIC ARCHIVES

Office of the Historian
Bureau of Public Affairs
U.S. Department of State

1985

INTRODUCTION

Over the past 30 years the Office of the Historian has from time to time surveyed the public availability of diplomatic archives throughout the world and published its findings for the use of scholars and academic institutions. The most recent previous edition of this publication was "Public Availability of Diplomatic Archives," October 1976.

This 1985 updated version is based primarily on information received from American diplomatic posts abroad in 1984. Data on the archival practices of certain countries could not be obtained due to unsettled conditions or the absence of relations with the United States. Since official documentary publications are often invaluable guides to unpublished material, information is included on major ongoing national series that are based largely on previously-classified historical diplomatic documentation.

In view of the fact that archival practices, regulations, and conditions of availability may change on short notice, individuals seeking access to diplomatic archives should write the appropriate government for current information in advance of a research trip. Important published works on archival sources include Daniel H. Thomas and Lynn M. Case, The New Guide to the Diplomatic Archives of Western Europe (Phildelphia: University of Pennsylvania Press, 1975), Patricia Kennedy Grimsted, Archives and Manuscript Repositories in the USSR: Moscow and Leningrad (Princeton, N.J.: Princeton University Press, 1972); and United Nations Educational, Scientific and Cultural Organization, Guide to the Archives of International Organizations, vol. I, The United Nations' System (Paris: UNESCO, 1984). Archivum, published by the International Council on Archives (UNESCO) presents information on access to diplomatic archives. No. 28, 1982, contains texts of many national archival and declassification regulations then in force. Additional information on the diplomatic archives of various nations may be obtained from articles appearing from time to time in The American Archivist and the Newsletter of the Society for Historians of American Foreign Relations. A list of guides to archives and manuscript collections appears in Richard Dean Burns, Guide to American Foreign Relations Since 1700 (Santa Barbara, Calif: ABC Clio, 1983), pp. 30-32.

This publication was prepared by Neal H. Petersen and reviewed by William Z. Slany.

UNITED KINGDOM

The Foreign and Commonwealth Office (FCO) maintains diplomatic records less than 30 years old. There is no provision for access by private scholars. After a 30-year period and a careful screening of each document in a file, the file is sent to the Public Records Office (PRO) if the material is non-sensitive. Files transferred to the PRO are made available for public inspection on January 2 of the 31st year after the date of the last paper in the file. Records remain restricted if they are exceptionally sensitive and disclosure would be contrary to the public interest, contain information provided in confidence or intelligence-related, or contain information that would cause distress or danger to living persons or their immediate descendents.

In 1984, Series I, Volume I, of Documents on British Policy Overseas, "The Conference at Potsdam July-August 1945," (London, Her Majesty's Stationery Office), inaugurating the official systematic publication of Britain's postwar diplomatic record. Two series are in preparation simultaneously, covering the periods 1945-1950 and 1950-1955. The preface to Series I, Vol. I indicates that Documents on British Policy Overseas will in general follow the terms of reference of Documents on British Foreign Policy, 1919-1939 (London: H.M.S.O., 1947-).

Why political embarrassments are not always security risks

Taking the secrets out of the past

An astute secret agent in London last week would have noticed a significant increase in the number of large cardboard boxes being carried in Government vans from a certain futuristic building in Kew to the Foreign and Commonwealth Office in Whitehall. Could it have anything to do with the Falkland Islands? Surprisingly, yes. The boxes contained historical documents, some of them more than 150 years old, demonstrating Britain's legal right of sovereignty over the islands.

Perhaps force will be averted. Perhaps the dispute will be settled in an international forum through debate. In that case, history will be part of the debate and, this time, the diplomats will be ready for it. They do not want to be caught napping again and they are spending Easter studying the old papers, ready for the historical battle. Meanwhile the archivists of the Public Record Office can take pride in the bizarre fact that they are marching with the men of the Royal Navy in the national effort to restore the integrity of British soil.

Britain and the United States are generally helpful in allowing access to their papers. "It's all here in the files and anyone from Brezhnev down can come along and see it," an archivist in Washington told me. Such a policy in our country contributes to our tourist trade and image as a democratic country, showing that we are not afraid to reveal the truth, even if embarrassing, because concealment can be more embarrassing still. It was Lord Acton who said that "to keep one's archives barred against historians is tantamount to leaving one's history to one's enemies".

A debate in the House of Lords in April 1977, however convinced the Government that all was not quite as it should be. Too many documents were being unnecessarily closed. A committee was set up under Sir Duncan Wilson and a few days ago the Government produced a White Paper indicating the chance of a more liberal policy. The 44 Wilson recommendations accepted by the Government — 28 are either not accepted or noted or to be considered further — include important changes in how sensitive documents will be selected for long closure or retention in the department of origin beyond the normal 30-year period. These changes could, if the Lord Chancellor so decides, lead to the first-ever revelation of MI5 and MI6 papers.

The dispute over these papers arises from the decision taken by Lord Chancellor Gardiner in 1967 to give "blanket approval" for all intelligence-related papers to be closed, even those that merely mention the names of persons or organizations at the end in a distribution list. The result was catastrophic. Not only were MI5 and MI6 records closed in their entirety, right back to 1909 and 1911 respectively, when the two groups were formed, but so too was any paper that even mentioned the existence of a British intelligence body in peacetime.

A word or two in a distribution list closed a document and the presence of one such document closed an entire file. The edict cut a swathe through the record of Britain's post-war actions in Germany, Palestine and India.

It is also, some historians believe, illegal. The law requires a department to obtain the Lord Chancellor's permission before retaining any document. This has not been happening. Anything judged by the department itself to be intelligence-related, a broad enough term, can be retained on the basis of the Gardiner edict. Though the distribution-list anomaly was changed in 1979, documents recently released from retention show that the widest possible interpretation is used to determine an intelligence-related document. Many were closed unnecessarily and the suspicion naturally arises that the device is used to cover up embarrassments and blunders.

Successive Lord Chancellors have been confused by all this. Lord Gardiner says that he cannot remember signing the order. Lord Elwyn-Jones wrote in 1976 that, when it came to decisions on closure, "I am responsible, both to Parliament and in law, for holding the balance." But he could not hold the balance, since departments were relying on the 1967 edict to retain documents without even showing them to him.

He believed, he said, that the then records system "may already be close to the limits of practicable liberality". This view, presumably, is not shared by his successor, who has approved the 44 liberalizing changes.

So the Gardiner edict will now be superseded. But Lord Hailsham has not yet decided how to bring it about. Intelligence papers, it is now agreed, will be closed in 10 year batches and such closures will be reviewed from time to time, at least every 20 years. But what should be close? The whole lot, even those compiled before the the First World War?

This would be consistent with the Wilson suggestion that 75 years was the appropriate period of retention, on which basis MI5 papers could start becoming available in 1985, MI6 papers in 1987 — but it would not be a great improvement. The new "blanket" would be much the same as the old one.

Lord Hailsham's dilemma is that he has no staff and no proper criteria on which to base his decisions. A department has only to claim "sensitivity", an even broader term than "intelligence-related", and permission to retain is in practice granted.

Historians accept that some documents, even old documents, must still be kept under lock and key. Revelation of MI5 reports provided by Irishmen who spied for Britain in 1920 would place their lives in danger, even after more than 60 years, and would discourage possible IRA informers today. No one would work secretly for Britain in Communist countries or the Third World, nor for that matter in the western world, unless aura of remaining unidentified for a century.

Premature revelation of such deadly facts in the US has not helped CIA recruitment. The prospect of revelation is also, it is said, discouraging officials from discussing sensitive matters on paper. The telephone, in the long term, is more secure and leads to less recrimination.

Openness can nevertheless benefit the national interest and curb the cruder twists of the bureaucratic mind. Armine Drew would not have complained in 1944 about "wailing Jews" taking up too much Foreign Office time, if he had known that his nasty words would soon become public, nor would John Galsworthy have written about anti-Stalinist Russians that "they seem to us to deserve no sympathy".

The opening of files on our wartime intelligence successes has led to books which have enhanced our prestige, while our failures — Philby, Burgess, Maclean, Blunt and maybe others — are compounded by the suspicion that documents explaining the full truth are being kept closed not to protect national security, but to cover up mistakes or betrayals.

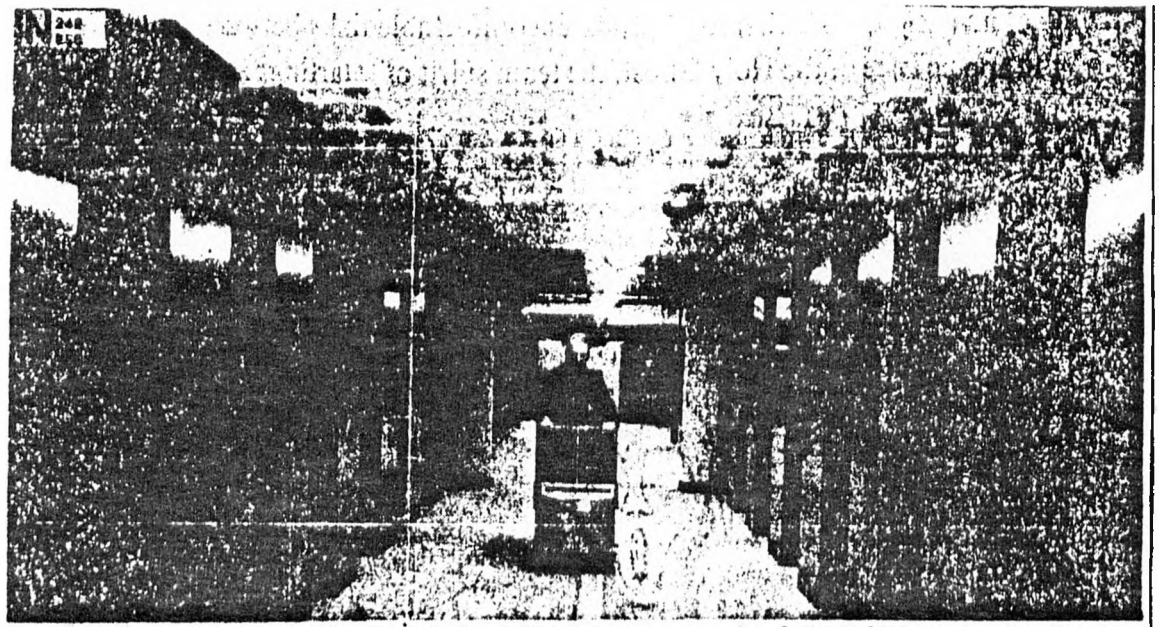
So the movement for freer access to state papers, frequently described in these columns, now approaches its moment of decision. However little he relishes the task imposed on him by statute, which he sees as a political one and barely consistent with his role as head of the judiciary, Lord Hailsham now has to make up his mind how he will supersede the Gardiner edict, how far to spread the blanket of his approval for closure.

He has a duty to protect the security of intelligence operations and personnel. That is common ground. But what about the merely embarrassing? If he does no more than confirm present policy, it will be hard indeed to accept the assurance given me by one Government minister five years ago that "the Lord Chancellor's blanket covers a finite area".

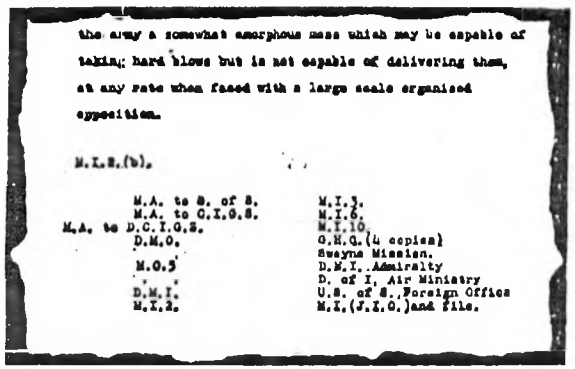
Nicholas Bethell

Lord Bethell is an author and Member of the European Parliament.

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The Public Record Office at Kew: too many papers are kept from scrutiny



the army a somewhat amorphous mass which may be capable of

taking hard blows but is not capable of delivering them,

at any rate when faced with a large scale organised

opposition.

M.I.5.(b).

	M.A. to S. of S.	M.I.3.
	M.A. to C.I.G.S.	M.I.6.
M.A. to	D.C.I.G.S.	M.I.10
	D.M.O.	G.H.Q.(4 copies)
		Swayne Mission.
	M.O.5	D.N.I., Admiralty
	"	D. of I., Air Ministry
	D.M.I.	U.S. of S., Foreign Office
	M.I.2.	M.I.(J.I.C.)and file.



Any official document, such as this, mentioning a part of the security services is automatically selected for "long closure". Will Lord Hailsham change the practice?

September 16, 1982

The Most Honorable the
Marquess of Salisbury
Hatfield House
Hatfield
Herts.
England

My Lord Marquess,

I am writing an extensive article which will be published in one of our law journals here relating to the boundary dispute between British Guiana and Venezuela. In order to present a complete picture of the facts, I am writing to ask if it is possible to inspect the archives of the late Marquess of Salisbury for the year 1899, particularly those containing correspondence between himself, as Prime Minister and Foreign Secretary, with the U. S. Secretary of State, John Hay, the U. S. Ambassador to London, Joseph H. Choate, as well as to the British Ambassador to Washington, Sir Julian (later Lord) Pauncefote. The documents in the Public Records Office in Kew Gardens, as well as those in the National Archives in Washington, have all been examined - leaving only those at Hatfield House to be studied.

I would hope that permission would be granted in order to permit a complete picture of this question.

Sincerely yours,



R. H. HARCOURT WILLIAMS, M.A.
Librarian & Archivist
to the Marquess of Salisbury



HATFIELD HOUSE,
HATFIELD, HERTS,
Tel. Hatfield 67872

30 September 1982

Mr.William R.Joyce, Jr.,
Law Offices,
1701 Pennsylvania Avenue, N.W.,
Washington, D.C.20006,
U.S.A.

Dear Mr.Joyce,

Papers of 3rd Marquess of Salisbury

Lord Salisbury has referred to me your inquiry of 16 September concerning the Venezuela boundary dispute.

It would be all right for you to see the papers of the 3rd Marquess and in particular the correspondence with Sir Julian Pauncefote. There are hardly any letters from John Hay or J.H.Choate.

In due course please suggest two alternative dates for your visit. I should also be glad if you would complete the inclosed form and return it to me.

Yours sincerely,

R.H.Harcourt Williams.

April 24, 1985

Departmental Record Officer
Foreign and Commonwealth Office
3 Sanctuary Buildings
Great Smith Street
London SW1P 3D2
London

Dear Sir:

I am engaged in research on the legal aspects of the negotiations between Great Britain and the United States in 1898-1900 whereby the United States sought a modification of the Clayton-Bulwer Treaty of 1850 in order that it might build the Isthmian Canal. I hope that such research may be published in a legal journal or possibly a book on the subject.

My research indicated that there is a little material available in the U.S. National Archives here in Washington, or in London in the Public Reoord Office, the Official Publications Library in the British Museum, or in the National Register of Archives of the Royal Commission on Historical Manuscripts.

Therefore, I am writing to inquire if negotiating papers or other documents leading up to the Hay-Pauncefote Treaty, signed February 5, 1900, are still kept in the Foreign and Commonwealth Office and whether they may be studied there, or, if not, may be transferred to the Public Record Office at some foreseeable date in the future.

Yours Faithfully,

William R. Joyce, Jr.

Foreign and Commonwealth Office
London SW1A 2AH

Telephone 01-

William R Joyce Jr
1701 Pennsylvania Avenue NW
WASHINGTON
DC 20006
U S A

Your reference

Our reference LRR 335/2

Date 16 May 1985

Dear Mr Joyce

HAY-PAUNCEFOTE TREATY 1900

Thank you for your letter of 24 April 1985. I can confirm that the Foreign and Commonwealth Office do not hold any papers concerning the above Treaty. With few exceptions records considered worthy of preservation under the Public Records Acts are transferred to the Public Record Office (PRO) when they are 30 years old. I am enclosing a leaflet on the PRO services which are available to you.

I regret that our records give no indication of the exact location of any of the papers concerning the negotiations leading up to the signing of the Treaty. But the Treaty itself is in FO Class No 93/8, Pieces 91 and 92, and you may wish to continue your research from this point.

I am sending a copy of your letter to the PRO who may be able to assist you directly with your enquiries.

Yours faithfully

John Gardner

J E Gardner
Library & Records
Department

cc: PRO, Kew

PUBLIC
RECORD
OFFICE

KEW, RICHMOND
SURREY
TW9 4DU

TELEPHONE 01-876-3444
ext

Your reference

Our reference
Q 4962

Date
30 May 1985

William R Joyce, Jr
1701 Pennsylvania Avenue NW
WASHINGTON
DC 20006
USA

Dear Mr Joyce

Your letter concerning material on the negotiations prior to the Hay-Pauncefote Treaty of 1900, has been passed by the Foreign and Commonwealth Office to the Public Record Office, where Foreign Office records of that date are now held.

There is a considerable volume of material on the planning and negotiations for the construction of the Panama Canal, including the discussions preceding the Hay-Pauncefote Treaty, in the class Foreign Office General Correspondence, Colombia and New Granada (FO 55). There are numerous volumes of correspondence and papers on the subject of the Canal from the 1890s and early 1900s: I think that the material in which you are particularly interested will be in those covering 1897-8 (FO 55/386), 1899 (FO 55/392) and 1900 (FO 55/398-399).

This material is available for public inspection in this Office. I am enclosing some information about the Office, together with an application form for a Reader's Ticket, in case you do not hold a currently valid ticket. Please complete the form and bring it, together with your passport, when you first visit the Office. A reader's ticket will then be issued immediately.

The Public Record Office is unable to undertake extensive searches on behalf of members of the public. If you are unable to visit the Office yourself or to arrange for someone else to do so on your behalf, you may wish to put the matter in the hands of a professional record agent. Details of two agents are enclosed.

Yours sincerely

Meryl R. Foster

(Dr) Meryl R Foster
Assistant Keeper
Search Department

Enc.

MRF/pjp

CHAPTER 75.

An Act to amend the Official Secrets Act, 1911. A.D. 1920.

[23rd December 1920.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents. 1 & 2 Geo. 5. c. 28.

1. If any person for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, within the meaning of the Official Secrets Act, 1911 (hereinafter referred to as "the principal Act"), or for any other purpose prejudicial to the safety or interests of the State within the meaning of the said Act—

(*a*) uses or wears, without lawful authority, any naval, military, air-force, police, or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(*b*) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(*c*) forges, alters, or tampers with any passport or any naval, military, air-force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or

(*d*) personates, or falsely represents himself to be a person holding, or in the employment of a person holding office under His Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word,

CHAPTER 121.

An Act to amend section six of the Official Secrets Act, 1920. [23rd November 1939.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Amendment of 10 & 11 Geo. 5. c. 75, s. 6.

1. For section six of the Official Secrets Act, 1920, there shall be substituted the following section :—

"6.—(1) Where a chief officer of police is satisfied that there is reasonable ground for suspecting that an offence under section one of the principal Act has been committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may apply to a Secretary of State for permission to exercise the powers conferred by this subsection and, if such permission is granted, he may authorise a superintendent of police, or any police officer not below the rank of inspector, to require the person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the superintendent or other officer; and if a person required in pursuance of such an authorisation to give information, or to attend

as aforesaid, fails to comply with any such requirement or knowingly gives false information, he shall be guilty of a misdemeanour.

(2) Where a chief officer of police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may exercise the powers conferred by the last foregoing subsection without applying for or being granted the permission of a Secretary of State, but if he does so shall forthwith report the circumstances to the Secretary of State.

(3) References in this section to a chief officer of police shall be construed as including references to any other officer of police expressly authorised by a chief officer of police to act on his behalf for the purposes of this section when by reason of illness, absence, or other cause he is unable to do so."

Short title, construction, citation, and application to Northern Ireland.

2.—(1) This Act may be cited as the Official Secrets Act, 1939, and this Act and the Official Secrets Acts, 1911 and 1920, shall be construed as one, and may be cited together as the Official Secrets Acts, 1911 to 1939.

(2) It is hereby declared that this Act extends to Northern Ireland; and, in the application thereof to Northern Ireland, this Act shall have effect subject to the following modifications, that is to say, for references to a chief officer of police there shall be substituted references to a district inspector, for references to a Secretary of State there shall be substituted references to the Minister of Home Affairs, and for the reference to the rank of inspector there shall be substituted a reference to the rank of head constable.

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CHAPTER 75.

An Act to amend the Official Secrets Act, 1911. A.D. 1920

[23rd December 1920.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents. 1 & 2 Geo. 5. c. 28.

1. If any person for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, within the meaning of the Official Secrets Act, 1911 (hereinafter referred to as "the principal Act"), or for any other purpose prejudicial to the safety or interests of the State within the meaning of the said Act—

(*a*) uses or wears, without lawful authority, any naval, military, air-force, police, or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(*b*) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(*c*) forges, alters, or tampers with any passport or any naval, military, air-force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or

(*d*) personates, or falsely represents himself to be a person holding, or in the employment of a person holding office under His Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word,

whether for himself or any other person, knowingly makes any false statement; or

(*c*) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by any Government Department, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp;

he shall be guilty of a misdemeanour.

(2) If any person—

(*a*) retains for any purpose prejudicial to the safety or interests of the State any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government Department or any person authorised by such department with regard to the return or disposal thereof; or

(*b*) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable; or

(*c*) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid;

he shall be guilty of a misdemeanour.

(3) In the case of any prosecution under this section involving the proof of a purpose prejudicial to the safety or interests of the State, subsection (2) of section one of the principal Act shall apply in like manner as it applies to prosecutions under that section.

Communications with foreign agents to be evidence of commission of certain offences.

2.—(1) In any proceedings against a person for an offence under section one of the principal Act, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without the United Kingdom, shall be evidence that he has, for a purpose prejudicial to the safety or

interests of the State, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision—

(*a*) A person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if—

(i) He has, either within or without the United Kingdom, visited the address of a foreign agent or consorted or associated with a foreign agent; or

(ii) Either, within or without the United Kingdom, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person:

(*b*) The expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without the United Kingdom, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without the United Kingdom, committed, or attempted to commit, such an act in the interests of a foreign power:

(*c*) Any address, whether within or without the United Kingdom, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

Interfering with officers of the police or members of His Majesty's forces.

3. No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, the chief officer or a superintendent or other officer of police, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of a misdemeanour.

Power to require the production of telegrams.

4.—(1) Where it appears to a Secretary of State that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of the United Kingdom, to produce to him, or to

A.D. 1920.

any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the United Kingdom by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

(3) In this section the expression "telegram" shall have the same meaning as in the Telegraph Act, 1869, and the expression "wireless telegraphy" shall have the same meaning as in the Wireless Telegraphy Act, 1904.

32 & 33 Vict. c. 73.
4 Edw. 7. c. 24.

Registration and regulation of persons carrying on the business of receiving postal packets.

5.—(1) Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended shall as soon as may be send to the chief officer of police for the district, for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the chief officer of police shall keep a register of the names and addresses of such persons, and shall, if required by any person who sends such a notice, furnish him on payment of a fee of one shilling with a certificate of registration, and every person so registered shall from time to time furnish to the chief officer of police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.

(2) Every person who carries on such a business as aforesaid shall cause to be entered in a book kept for the purpose the following particulars—

(*a*) the name and address of every person for whom any postal packet is received, or who has requested that postal packets received may be delivered or forwarded to him;

(*b*) any instructions that may have been received as to the delivery or forwarding of postal packets;

(*c*) in the case of every postal packet received, the place from which the postal packet comes, and the date of posting (as shown by the post mark) and the date of receipt, and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet,

(*d*) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered;

(*e*) in the case of every postal packet forwarded, the name and address to which and the date on which it is forwarded;

and shall not deliver a letter to any person until that person has signed a receipt for the same in such book as aforesaid, nor, if that person is not the person to whom the postal packet is addressed, unless there is left with him instructions signed by the last-mentioned person as to the delivery thereof, and shall not forward any postal packet to another address unless there is left with him written instructions to that effect signed by the addressee.

(3) The books so kept and all postal packets received by a person carrying on any such business, and any instruction as to the delivery or forwarding of postal packets received by any such person, shall be kept at all reasonable times open to inspection by any police constable.

(4) If any person contravenes or fails to comply with any of the provisions of this section, or furnishes any false information or makes any false entry, he shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding ten pounds, or to both such imprisonment and fine.

(5) Nothing in this section shall apply to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in such newspaper or periodical.

(6) Nothing in this section shall be construed as rendering legal anything which would be in contravention of the exclusive privilege of the Postmaster General under the Post Office Acts, 1908 to 1920, or the Telegraph Acts, 1863 to 1920.

Duty of giving information as to commission of offences.

6. It shall be the duty of every person to give on demand to a chief officer of police, or to a superintendent or other officer of police not below the rank of inspector appointed by a chief officer for the purpose, or to any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence under the principal Act or this Act, and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information, and, if any person fails to give any such information or to attend as aforesaid, he shall be guilty of a misdemeanour.

Attempts, incitements, &c.

7. Any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or

A.D. 1920.

abets and does any act preparatory to the commission of an offence under the principal Act or this Act, shall be guilty of a felony or a misdemeanour or a summary offence according as the offence in question is a felony, a misdemeanour or a summary offence, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Provisions as to trial and punishment of offences.

8.—(1) Any person who is guilty of a felony under the principal Act or this Act shall be liable to penal servitude for a term of not less than three years and not exceeding fourteen years.

(2) Any person who is guilty of a misdemeanour under the principal Act or this Act shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or, on conviction under the Summary Jurisdiction Acts, to imprisonment, with or without hard labour, for a term not exceeding three months or to a fine not exceeding fifty pounds, or both such imprisonment and fine:

Provided that no misdemeanour under the principal Act or this Act shall be dealt with summarily except with the consent of the Attorney General.

(3) For the purposes of the trial of a person for an offence under the principal Act or this Act, the offence shall be deemed to have been committed either at the place in which the same actually was committed, or at any place in the United Kingdom in which the offender may be found.

(4) In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person for an offence under the principal Act or this Act or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under the principal Act or this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(5) Where the person guilty of an offence under the principal Act or this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Amendments of principal Act in relation to munitions of war.

9. The principal Act shall have effect as though—

(1) After paragraph (*a*) of subsection (1) of section two the following paragraph were inserted:

"(*aa*) Uses the information in his possession for the benefit of any foreign power or in any

other manner prejudicial to the safety or interests of the State;"

and after the said subsection (1) the following subsection were inserted:

"(1A) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, that person shall be guilty of a misdemeanour;" and

(2) In section twelve, after the definition of "sketch," the following definition were inserted:

"The expression 'munitions of war' includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine, intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use."

Minor amendments of principal Act.

10. The amendments specified in the second column of the First Schedule to this Act (which relate to minor details) shall be made in the provisions of the principal Act specified in the first column of that schedule.

Short title, construction, and repeal.

11.—(1) This Act may be cited as the Official Secrets Act, 1920, and shall be construed as one with the principal Act, and the principal Act and this Act may be cited together as the Official Secrets Acts, 1911 and 1920.

Provided that—

(*a*) this Act shall not apply to any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia (which for this purpose shall be deemed to include Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, Newfoundland, and India; and

(*b*) nothing in the principal Act shall be construed as preventing an offence under this Act which is to be tried summarily being tried in Scotland by the sheriff.

(2) The provisions of the principal Act mentioned in the Second Schedule to this Act are hereby repealed.

(3) For the purposes of this Act, the expression "chief officer of police,"—

(*a*) with respect to any place in England other than the city of London, has the meaning assigned to it by the Police Act, 1890;

53 & 54 Vict. c. 45.

(*b*) with respect to the city of London, means the Commissioner of the City Police;

A.D. 1920.

53 & 54 Vict c. 67.

(*c*) with respect to Scotland, has the meaning assigned to it by the Police (Scotland) Act, 1890; and

(*d*) with respect to Ireland, means, in the police district of Dublin metropolis, either of the Commissioners of Police for that district, and elsewhere the district inspector of the Royal Irish Constabulary.

SCHEDULES.

Section 10.

FIRST SCHEDULE.

MINOR AMENDMENTS OF PRINCIPAL ACT.

Enactment.	Nature of Amendment.
s. 1 (1) (*a*) -	After the word "approaches" there shall be inserted the words "inspects, passes over."
s. 1 (1) (*c*) -	After the word "obtains" there shall be inserted the words "collects, records, or publishes," and after the words "any other person" there shall be inserted the words "any secret official code word, or pass word, or."
s. 1 (2) -	After the words "in such a place" there shall be inserted the words "or any secret official code word or pass word."
	After the word "obtained," in both places where it occurs, there shall be inserted the words "collected, recorded, published."
s. 2 (1) -	After the words "possession or control" there shall be inserted the words "any secret official code word, or pass word, or."
	After the words "which he has obtained" there shall be inserted the words "or to which he has had access."
	After the words "communicates the" there shall be inserted the words "code word, pass word."
	After the words "his duty to retain it" there shall be inserted the words "or fails to comply with all directions "issued by lawful authority with regard to the return or "disposal thereof."
	After paragraph (*b*) there shall be inserted the following paragraph:— "or (*c*) Fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information."
s. 2 (2) -	Before the word "sketch" where that word first occurs, there shall be inserted the words "secret official code word, or pass word, or."
	Before the word "sketch" in other places where it occurs, there shall be inserted the words "code word, pass word."
s. 3 - -	For paragraph (*a*) the following paragraph shall be substituted:— "Any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, mine-field, camp, ship, or aircraft belonging to or occupied by

Enactment.	Nature of Amendment.
	or on behalf of His Majesty, or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of His Majesty and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war." In paragraphs (*b*) and (*d*) for the words "ship, arms, or other materials or instruments of use in time of war," in both places where they occur, there shall be substituted the words "munitions of war," and for the word "plans," in both places where it occurs, there shall be substituted the words "sketches, models, plans." In paragraph (*b*) after the word "repaired" there shall be inserted the word "gotten." In paragraph (*c*) after the words "any place belonging to" there shall be inserted the words "or used for the purposes of." In paragraphs (*c*) and (*d*) for the words "by a Secretary of State" in both places where those words occur, there shall be substituted the words "by order of a Secretary of State."
s. 7 - -	For the words "wilfully refuses" there shall be substituted the words "wilfully omits or refuses."
s. 12 - -	After the words "like or superior rank" there shall be inserted the words "and any person upon whom the "powers of a superintendent of police are for the purpose "of this Act conferred by a Secretary of State."

SECOND SCHEDULE.

Section 11.

PROVISIONS OF PRINCIPAL ACT REPEALED.

In subsection (1) of section one the words "and shall be liable "to penal servitude for any term not less than three years and not "exceeding seven years."

Subsection (3) of section two.

Section four.

In section seven the words "and liable to imprisonment with or "without hard labour for a term not exceeding one year, or to a fine, "or to both imprisonment and a fine."

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ARRANGEMENT OF SECTIONS.

A.D. 1911.

Section

1. Penalties for spying.
2. Wrongful communication, &c. of information.
3. Definition of prohibited place.
4. Attempts to commit offence, or incitement to commit offence, under Act.
5. Person charged with felony under Act may be convicted of misdemeanour under Act.
6. Power to arrest.
7. Penalty for harbouring spies.
8. Restriction on prosecution.
9. Search warrants.
10. Extent of Act and place of trial of offence.
11. Saving for laws of British possessions.
12. Interpretation.
13. Short title and repeal.



CHAPTER 28.

An Act to re-enact the Official Secrets Act, 1889, with Amendments. [22nd August 1911.] A.D. 1911.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Penalties for spying.

1.—(1) If any person for any purpose prejudicial to the safety or interests of the State—

(*a*) approaches or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act; or

(*b*) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or

(*c*) obtains or communicates to any other person any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy;

he shall be guilty of felony, and shall be liable to penal servitude for any term not less than three years and not exceeding seven years.

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Act, or anything in such a place, is made, obtained, or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved.

A.D. 1911.

Wrongful communication, &c. of information.

2.—(1) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty or which he has obtained owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of his Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,—

(*a*) communicates the sketch, plan, model, article, note, document, or information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it, or

(*b*) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it :

that person shall be guilty of a misdemeanour.

(2) If any person receives any sketch, plan, model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the sketch, plan, model, article, note, document, or information was contrary to his desire.

(3) A person guilty of a misdemeanour under this section shall be liable to imprisonment with or without hard labour for a term not exceeding two years, or to a fine, or to both imprisonment and a fine.

Definition of prohibited place.

3. For the purposes of this Act, the expression " prohibited place " means—

(*a*) any work of defence, arsenal, factory, dockyard, camp, ship, telegraph or signal station, or office belonging to His Majesty, and any other place belonging to His Majesty used for the purpose of building, repairing, making, or storing any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto ; and

(*b*) any place not belonging to His Majesty where any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty ; and

(*c*) any place belonging to His Majesty which is for the time being declared by a Secretary of State to be a

prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and

(*d*) any railway, road, way, or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared by a Secretary of State to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

Attempts to commit offence, or incitement to commit offence, under Act.

4. Any person who attempts to commit any offence under this Act, or incites, or counsels, or attempts to procure another person to commit an offence under this Act, shall be guilty of felony or of a misdemeanour according as the offence in question is felony or misdemeanour, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Person charged with felony under Act may be convicted of misdemeanour under Act.

5. Any person charged with an offence which is a felony under this Act may, if the circumstances warrant such a finding, be found guilty of an offence which is a misdemeanour under this Act.

Power to arrest.

6. Any person who is found committing an offence under this Act, whether that offence is a felony or not, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained in the same manner as a person who is found committing a felony.

Penalty for harbouring spies.

7. If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully refuses to disclose to a superintendent of police any information which it is in his power to give in relation to any such person he shall be guilty of a misdemeanour and liable to imprisonment with or without hard labour for a term not exceeding one year, or to a fine, or to both imprisonment and a fine.

A.D. 1911.

Restriction on prosecution.

8. A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

Search warrants.

9.—(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature or anything which is evidence of an offence under this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a superintendent of police that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section.

Extent of Act and place of trial of offence.

10.—(1) This Act shall apply to all acts which are offences under this Act when committed in any part of His Majesty's dominions, or when committed by British officers or subjects elsewhere.

(2) An offence under this Act, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was committed, or in the High Court in England or the Central Criminal Court, and the Criminal Jurisdiction Act, 1802, shall apply in like manner as if the offence were mentioned in that Act, and the Central Criminal Court as well as the High Court possessed the jurisdiction given by that Act to the Court of King's Bench.

42 Geo. 3. c. 85.

(3) An offence under this Act shall not be tried by any court of general or quarter sessions, nor by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law.

50 & 51 Vict. c. 20.

(4) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act.

Saving for laws of British possessions.

11. If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act:

Provided that the suspension of this Act, or of any part thereof, in any British possession shall not extend to the holder of an office under His Majesty who is not appointed to that office by the Government of that possession.

Interpretation.

12. In this Act, unless the context otherwise requires,—

Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom or of any British possessions, whether the place is or is not actually vested in His Majesty;

The expression "Attorney-General" means the Attorney or Solicitor-General for England; and as respects Scotland, means the Lord Advocate; and as respects Ireland, means the Attorney or Solicitor-General for Ireland; and, if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney-General, or exercises the like functions as the Attorney-General in England;

Expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

The expression "document" includes part of a document;

The expression "model" includes design, pattern, and specimen;

The expression "sketch" includes any photograph or other mode of representing any place or thing;

The expression "superintendent of police" includes any police officer of a like or superior rank;

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A.D. 1911.

The expression "office under His Majesty" includes any office or employment in or under any department of the Government of the United Kingdom, or of any British possession;

The expression "offence under this Act" includes any act, omission, or other thing which is punishable under this Act.

Short title and repeal.

13.—(1) This Act may be cited as the Official Secrets Act, 1911.

52 & 53 Vict. c. 52.

(2) The Official Secrets Act, 1889, is hereby repealed.

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Public Records Act, 1958

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ARRANGEMENT OF SECTIONS

Section

1. General responsibility of the Lord Chancellor for public records.
2. The Public Record Office.
3. Selection and preservation of public records.
4. Place of deposit of public records.
5. Access to public records.
6. Destruction of public records in Public Record Office or other place of deposit.
7. Records for which Master of the Rolls remains responsible.
8. Court records.
9. Legal validity of public records and authenticated copies.
10. Interpretation.
11. Public Record Office Acts to cease to have effect.
12. Northern Ireland.
13. Short title, repeals and commencement.

SCHEDULES:

First Schedule—Definition of public records.

Second Schedule—Enactments prohibiting disclosure of information obtained from the public.

Third Schedule—Consequential amendments.

Fourth Schedule—Repeals.

CHAPTER 51

An Act to make new provision with respect to public records and the Public Record Office, and for connected purposes. [23rd July, 1958]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

General responsibility of the Lord Chancellor for public records.

1.—(1) The direction of the Public Record Office shall be transferred from the Master of the Rolls to the Lord Chancellor, and the Lord Chancellor shall be generally responsible for the execution of this Act and shall supervise the care and preservation of public records.

(2) There shall be an Advisory Council on Public Records to advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of the facilities provided by the Public Record Office.

The Master of the Rolls shall be chairman of the said Council and the remaining members of the Council shall be appointed by the Lord Chancellor on such terms as he may specify.

(3) The Lord Chancellor shall in every year lay before both Houses of Parliament a report on the work of the Public Record Office, which shall include any report made to him by the Advisory Council on Public Records.

The Public Record Office.

2.—(1) The Lord Chancellor may appoint a Keeper of Public Records to take charge under his direction of the Public Record Office and of the records therein and may, with the concurrence of the Treasury as to numbers and conditions of service, appoint such other persons to serve in the Public Record Office as he may think fit.

(2) The Keeper of Public Records and other persons appointed under this Act shall receive such salaries and remuneration as the Treasury may from time to time direct.

(3) It shall be the duty of the Keeper of Public Records to take all practicable steps for the preservation of records under his charge.

(4) The Keeper of Public Records shall have power to do all such things as appear to him necessary or expedient for maintaining the utility of the Public Record Office and may in particular—

(*a*) compile and make available indexes and guides to, and calendars and texts of, the records in the Public Record Office ;

(*b*) prepare publications concerning the activities of and facilities provided by the Public Record Office ;

(*c*) regulate the conditions under which members of the public may inspect public and other records or use the other facilities of the Public Record Office ;

(*d*) provide for the making and authentication of copies of and extracts from records required as evidence in legal proceedings or for other purposes ;

(*e*) accept responsibility for the safe keeping of records other than public records ;

(*f*) make arrangements for the separate housing of films and other records which have to be kept under special conditions ;

(*g*) lend records, in a case where the Lord Chancellor gives his approval, for display at commemorative exhibitions or for other special purposes ;

(*h*) acquire records and accept gifts and loans.

(5) The Lord Chancellor may by regulations made with the concurrence of the Treasury and contained in a statutory instrument prescribe the fees which may be charged for the inspection of records under the charge of the Keeper of Public Records, for authenticated copies or extracts from such records and for other services afforded by officers of the Public Record Office and authorise the remission of the fees in prescribed cases.

(6) Fees received under the last foregoing subsection shall be paid into the Exchequer.

Selection and preservation of public records.

3.—(1) It shall be the duty of every person responsible for public records of any description which are not in the Public Record Office or a place of deposit appointed by the Lord Chancellor under this Act to make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping.

(2) Every person shall perform his duties under this section under the guidance of the Keeper of Public Records and the said

Keeper shall be responsible for co-ordinating and supervising all action taken under this section.

(3) All public records created before the year sixteen hundred and sixty shall be included among those selected for permanent preservation.

(4) Public records selected for permanent preservation under this section shall be transferred not later than thirty years after their creation either to the Public Record Office or to such other place of deposit appointed by the Lord Chancellor under this Act as the Lord Chancellor may direct:

Provided that any records may be retained after the said period if, in the opinion of the person who is responsible for them, they are required for administrative purposes or ought to be retained for any other special reason and, where that person is not the Lord Chancellor, the Lord Chancellor has been informed of the facts and given his approval.

(5) The Lord Chancellor may, if it appears to him in the interests of the proper administration of the Public Record Office, direct that the transfer of any class of records under this section shall be suspended until arrangements for their reception have been completed.

(6) Public records which, following the arrangements made in pursuance of this section, have been rejected as not required for permanent preservation shall be destroyed or, subject, in the case of records for which some person other than the Lord Chancellor is responsible, to the approval of the Lord Chancellor, disposed of in any other way.

(7) Any question as to the person whose duty it is to make arrangements under this section with respect to any class of public records shall be referred to the Lord Chancellor for his decision.

(8) The provisions of this section shall not make it unlawful for the person responsible for any public record to transmit it to the Keeper of the Records of Scotland or to the Public Record Office of Northern Ireland.

Place of deposit of public records.

4.—(1) If it appears to the Lord Chancellor that a place outside the Public Record Office affords suitable facilities for the safe-keeping and preservation of records and their inspection by the public he may, with the agreement of the authority who will be responsible for records deposited in that place, appoint it as a place of deposit as respects any class of public records selected for permanent preservation under this Act.

(2) In choosing a place of deposit under this section for public records of—

(*a*) courts of quarter sessions or magistrates' courts, or

(*b*) courts of coroners of counties or boroughs,

the Lord Chancellor shall have regard to any arrangements made by the person for the time being responsible for the records

with respect to the place where those records are to be kept and, where he does not follow any such arrangements, shall, so far as practicable, proceed on the principle that the records of any such court ought to be kept in the area of the administrative county or county borough comprising the area for which the court acts or where it sits, except in a case where the authorities or persons appearing to the Lord Chancellor to be mainly concerned consent to the choice of a place of deposit elsewhere.

(3) The Lord Chancellor may at any time direct that public records shall be transferred from the Public Record Office to a place of deposit appointed under this section or from such a place of deposit to the Public Record Office or another place of deposit.

(4) Before appointing a place of deposit under this section as respects public records of a class for which the Lord Chancellor is not himself responsible, he shall consult with the Minister or other person, if any, who appears to him to be primarily concerned and, where the records are records of a court of quarter sessions the records of which are, apart from the provisions of this Act, subject to the directions of a custos rotulorum, the Lord Chancellor shall consult him.

(5) Public records in the Public Record Office shall be in the custody of the Keeper of Public Records and public records in a place of deposit appointed under this Act shall be in the custody of such officer as the Lord Chancellor may appoint.

(6) Public records in the Public Record Office or other place of deposit appointed by the Lord Chancellor under this Act shall be temporarily returned at the request of the person by whom or department or office from which they were transferred.

Access to public records.

5.—(1) Public records in the Public Record Office, other than those to which members of the public had access before their transfer to the Public Record Office, shall not be available for public inspection until they have been in existence for fifty years or such other period, either longer or shorter, as the Lord Chancellor may, with the approval, or at the request, of the Minister or other person, if any, who appears to him to be primarily concerned, for the time being prescribe as respects any particular class of public records.

Amended to 30 years by Public Records Act 1967

(2) Without prejudice to the generality of the foregoing subsection, if it appears to the person responsible for any public records which have been selected by him under section three of this Act for permanent preservation that they contain information which was obtained from members of the public under such conditions that the opening of those records to the public after the period determined under the foregoing subsection would or might constitute a breach of good faith on the part of the Government or on the part of the persons who obtained the information, he

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shall inform the Lord Chancellor accordingly and those records shall not be available in the Public Record Office for public inspection even after the expiration of the said period except in such circumstances and subject to such conditions, if any, as the Lord Chancellor and that person may approve, or, if the Lord Chancellor and that person think fit, after the expiration of such further period as they may approve.

(3) Subject to the foregoing provisions of this section, subject to the enactments set out in the Second Schedule to this Act (which prohibit the disclosure of certain information obtained from the public except for certain limited purposes) and subject to any other Act or instrument whether passed or made before or after this Act which contains a similar prohibition, it shall be the duty of the Keeper of Public Records to arrange that reasonable facilities are available to the public for inspecting and obtaining copies of public records in the Public Record Office.

(4) Subsection (1) of this section shall not make it unlawful for the Keeper of Public Records to permit a person to inspect any records if he has obtained special authority in that behalf given by an officer of a government department or other body, being an officer accepted by the Lord Chancellor as qualified to give such an authority.

(5) The Lord Chancellor shall as respects all public records in places of deposit appointed by him under this Act outside the Public Record Office require arrangements to be made for their inspection by the public comparable to those made for public records in the Public Record Office, and subject to restrictions corresponding with those contained in the foregoing provisions of this section.

Destruction of public records in Public Record Office or other place of deposit.

6. If as respects any public records in the Public Record Office or any place of deposit appointed under this Act it appears to the Keeper of Public Records that they are duplicated by other public records which have been selected for permanent preservation or that there is some other special reason why they should not be permanently preserved, he may, with the approval of the Lord Chancellor and of the Minister or other person, if any, who appears to the Lord Chancellor to be primarily concerned with public records of the class in question, authorise the destruction of those records or, with that approval, their disposal in any other way.

Records for which Master of the Rolls remains responsible.

7.—(1) Subject to the provisions of this section, the Master of the Rolls shall continue to be responsible for, and to have custody of, the records of the Chancery of England, including those created after the commencement of this Act, and shall have power to determine where the said records or any of them are for the time being to be deposited.

(2) Section three and subsection (6) of section four of this Act shall not apply to any of the said records but if and so long as any of them are deposited in the Public Record Office those records shall be in the custody of the Keeper of Public Records and subject to the directions of the Lord Chancellor as in the case of any other records in the Public Record Office.

(3) Subject to the foregoing provisions of this section, the Master of the Rolls shall not have charge and superintendence over, or custody of, any public records and any public records which at the commencement of this Act were in the custody of the Master of the Rolls (other than records of the Chancery of England) shall thereafter be in the custody of the Keeper of Public Records or such other officer as the Lord Chancellor may from time to time appoint.

Court records.

8.—(1) The Lord Chancellor shall be responsible for the public records of every court of record or magistrates' court which are not in the Public Record Office or a place of deposit appointed by him under this Act and shall have power to determine in the case of any such records the officer in whose custody they are for the time being to be:

Provided that in the application of this subsection to public records of the Chancery Court of the County Palatine of Lancaster references to the Chancellor of the Duchy of Lancaster shall be substituted for references to the Lord Chancellor.

(2) The power of the President of the Probate Division of the High Court under section one hundred and seventy of the Supreme Court of Judicature (Consolidation) Act, 1925, to direct where the wills and other documents mentioned in that section are to be deposited and preserved (exercisable with the consent of the Lord Chancellor) shall be transferred to the Lord Chancellor.

(3) Where it appears to the President of the Probate Division that the copies of calendars of grants prepared under section one hundred and fifty-six of the Supreme Court of Judicature (Consolidation) Act, 1925, which are kept in a particular district probate registry, or such of those calendars as were issued before a particular date, are not being used by members of the public to any appreciable extent and that, having regard to the facilities for consulting copies of the calendars kept elsewhere, it is reasonable to withdraw the public right of inspection of those copies of calendars in that particular probate registry, he may direct that subsection (3) of the said section one hundred and fifty-six shall cease to apply to those copies and, if he thinks fit, that they shall be transferred to and kept for public inspection in such other place as he may direct.

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In this subsection the reference to a district probate registry includes a reference to the office of the commissary clerk of Edinburgh and the probate registry in Belfast.

(4) Where any private documents have remained in the custody of a court in England or Wales for more than fifty years without being claimed, the Keeper of Public Records may, with the approval of the Master of the Rolls, require the documents to be transferred to the Public Record Office and thereupon the documents shall become public records for the purposes of this Act.

(5) Section three of this Act shall not apply to such of the records of ecclesiastical courts described in paragraph (*n*) of sub-paragraph (1) of paragraph 4 of the First Schedule to this Act as are not held in any office of the Supreme Court or in the Public Record Office, but, if the Lord Chancellor after consulting the President of the Probate Division so directs as respects any of those records, those records shall be transferred to such place of deposit as may be appointed by the Lord Chancellor and shall thereafter be in the custody of such officer as may be so appointed.

(6) The public records which at the commencement of this Act are in the custody of the University of Oxford and which are included in the index a copy of which was transmitted to the principal probate registrar under section two of the Oxford University Act, 1860, shall not be required to be transferred under the last foregoing subsection but the Lord Chancellor shall make arrangements with the University of Oxford as to the conditions under which those records may be inspected by the public.

Legal validity of public records and authenticated copies.

9.—(1) The legal validity of any record shall not be affected by its removal under the provisions of this Act, or of the Public Record Office Acts, 1838 to 1898, or by any provisions in those Acts with respect to its legal custody.

(2) A copy of or extract from a public record in the Public Record Office purporting to be examined and certified as true and authentic by the proper officer and to be sealed or stamped with the seal of the Public Record Office shall be admissible as evidence in any proceedings without any further or other proof thereof if the original record would have been admissible as evidence in those proceedings.

In this subsection the reference to the proper officer is a reference to the Keeper of Public Records or any other officer of the Public Record Office authorised in that behalf by the Keeper of Public Records, and, in the case of copies and extracts made before the commencement of this Act, the deputy keeper of the records or any assistant record keeper appointed under the Public Record Office Act, 1838.

Interpretation.

10.—(1) In this Act "public records" has the meaning assigned to it by the First Schedule to this Act and "records" includes not only written records but records conveying information by any other means whatsoever.

(2) Where records created at different dates are for administrative purposes kept together in one file or other assembly all the records in that file or other assembly shall be treated for the purposes of this Act as having been created when the latest of those records was created.

Public Record Office Acts to cease to have effect.

11. The Public Record Office Acts, 1838 to 1898, shall cease to have effect and the enactments mentioned in the Third Schedule to this Act shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this section.

Northern Ireland.

12.—(1) It shall be lawful for any government department or other body or person having the custody of any public records relating exclusively or mainly to Northern Ireland to transmit those records to the Public Record Office of Northern Ireland.

(2) No limitation or restriction imposed by virtue of any enactment on the powers of the Parliament of Northern Ireland shall preclude that Parliament from passing legislation, in relation to courts or tribunals whose jurisdiction extends only to Northern Ireland, for purposes similar to the purposes of subsection (4) of section eight of this Act.

Short title, repeals and commencement.

13.—(1) This Act may be cited as the Public Records Act, 1958.

(2) The enactments specified in the Fourth Schedule to this Act shall be repealed to the extent specified in the third column of that Schedule.

(3) This Act shall come into force on the first day of January, nineteen hundred and fifty-nine.

SCHEDULES

FIRST SCHEDULE

Section 10.

DEFINITION OF PUBLIC RECORDS

1. The provisions of this Schedule shall have effect for determining what are public records for the purposes of this Act.

Departmental records

2.—(1) Subject to the provisions of this paragraph, administrative and departmental records belonging to Her Majesty, whether in the United Kingdom or elsewhere, in right of Her Majesty's Government in the United Kingdom and, in particular,—

(*a*) records of, or held in, any department of Her Majesty's Government in the United Kingdom, or

(*b*) records of any office, commission or other body or establishment whatsoever under Her Majesty's Government in the United Kingdom,

shall be public records.

(2) Sub-paragraph (1) of this paragraph shall not apply—

(*a*) to records of any government department or body which is wholly or mainly concerned with Scottish affairs, or which carries on its activities wholly or mainly in Scotland, or

(*b*) to registers, or certified copies of entries in registers, being registers or certified copies kept or deposited in the General Register Office under or in pursuance of any enactment, whether past or future, which provides for the registration of births, deaths, marriages or adoptions, or

(*c*) except so far as provided by paragraph 4 of this Schedule, to records of the Duchy of Lancaster, or

(*d*) to records of the office of the Public Trustee relating to individual trusts.

3.—(1) Without prejudice to the generality of sub-paragraph (1) of the last foregoing paragraph, the administrative and departmental records of bodies and establishments set out in the Table at the end of this paragraph shall be public records, whether or not they are records belonging to Her Majesty.

(2) The provisions of this paragraph shall not be taken as applying to records in any museum or gallery mentioned in the said Table which form part of its permanent collections (that is to say records which the museum or gallery has acquired otherwise than by transfer from or arrangements with a government department).

1ST SCH. —*cont.*

TABLE

PART I

BODIES AND ESTABLISHMENTS UNDER GOVERNMENT DEPARTMENTS

Responsible Government Department	
Ministry of Agriculture, Fisheries and Food.	Agricultural Wages Board.
	Agricultural Wages Committees.
	Organisation known as the " National Farm Survey ".
	Official seed testing station for England and Wales.
Air Ministry	Meteorological Office.
Ministry of Education	Victoria and Albert Museum.
	Science Museum.
Ministry of Health ...	National Health Service Authorities other than local health authorities.
	National health service hospitals except— records of endowments passing to Boards of Governors under section seven of the National Health Service Act, 1946. records relating to funds held by Hospital Boards and Committees under sections fifty-nine and sixty of the said Act, and records of private patients admitted under section five of the said Act.
	Welsh Board of Health.
Home Office	Office of Commissioner of Police of the Metropolis.
	Office of Receiver for the Metropolitan Police District.
Ministry of Labour and National Service.	National Dock Labour Board.
	National Institute of Houseworkers Limited.
	Wages Boards and Wages Councils.
Ministry of Pensions and National Insurance.	National Insurance Advisory Committee.
	Industrial Injuries Advisory Council.
	National Insurance and Industrial Injuries Joint Authorities.
	Workmen's Compensation Supplementation Board.
	Pneumoconiosis and Byssinosis Benefit Board.
Ministry of Transport and Civil Aviation.	Air Transport Advisory Council.
	Air Registration Board.

PART II

OTHER ESTABLISHMENTS AND ORGANISATIONS

Anglo-Egyptian Resettlement Board.
British Museum (including the Natural History Museum).
Catering Wages Commission.
Coal Industry Social Welfare Organisation.

1ST SCH. —*cont.*

Crown Agents for Overseas Governments and Administrations except when acting for governments or authorities outside Her Majesty's dominions.

Development Commission.
Imperial War Museum.
Irish Sailors' and Soldiers' Land Trust.
London Museum.
Monopolies Commission.
National Coal Board.
National Gallery.
National Maritime Museum.
National Parks Commission.
National Portrait Gallery.
National Savings Committee.
Office of Registrar of Restrictive Trading Agreements.
Remploy Limited.
Royal Greenwich Observatory.
Tate Gallery.
Trustee Savings Banks Inspection Committee.
United Kingdom Atomic Energy Authority.
University Grants Committee.
Wallace Collection.
War Works Commission.

Any body established for the purpose of determining the boundaries of constituencies of the Parliament of the United Kingdom, or of local authorities in England or Wales.

Records of courts and tribunals

4.—(1) Subject to the provisions of this paragraph, records of the following descriptions shall be public records for the purposes of this Act:—

(*a*) records of, or held in any department of, the Supreme Court (including any court held under a commission of assize);

(*b*) records of county courts and of any other superior or inferior court of record established since the passing of the County Courts Act, 1846;

(*c*) records of the Chancery Court of the County Palatine of Lancaster and of the Chancery Court of the County Palatine of Durham;

(*d*) records of courts of quarter sessions;

(*e*) records of magistrates' courts;

(*f*) records of coroners' courts;

(*g*) records of courts-martial held whether within or outside the United Kingdom by any of Her Majesty's forces raised in the United Kingdom;

(*h*) records of naval courts held whether within or outside the United Kingdom under the enactments relating to merchant shipping;

(*i*) records of any court exercising jurisdiction held by Her Majesty within a country outside Her dominions;

(*j*) records of any tribunal (by whatever name called)—

(i) which has jurisdiction connected with any functions of a department of Her Majesty's Government in the United Kingdom; or

1ST SCH. —*cont.*

(ii) which has jurisdiction in proceedings to which such a Government department is a party or to hear appeals from decisions of such a Government department;

(*k*) records of the Lands Tribunal or of any Rent Tribunal or Local Valuation Court;

(*l*) records of the Industrial Court, of the Industrial Disputes Tribunal, and of the National Arbitration Tribunal (which was replaced by the Industrial Disputes Tribunal);

(*m*) records of umpires and deputy-umpires appointed under the National Service Act, 1948, or the Reinstatement in Civil Employment Act, 1944;

(*n*) records of ecclesiastical courts when exercising the testamentary and matrimonial jurisdiction removed from them by the Court of Probate Act, 1857, and the Matrimonial Causes Act, 1857, respectively;

(*o*) records of such other courts or tribunals (by whatever name called) as the Lord Chancellor may by order contained in a statutory instrument specify.

(2) This paragraph shall not apply to any court or tribunal whose jurisdiction extends only to Scotland or Northern Ireland.

(3) In this paragraph "records" includes records of any proceedings in the court or tribunal in question and includes rolls, writs, books, decrees, bills, warrants and accounts of, or in the custody of, the court or tribunal in question.

Records of the Chancery of England

5. The records of the Chancery of England shall be public records for the purposes of this Act.

Records in Public Record Office

6. Without prejudice to the foregoing provisions of this Schedule, public records for the purposes of this Act shall include—

(*a*) all records within the meaning of the Public Record Office Act, 1838, or to which that Act was applied, which at the commencement of this Act are in the custody of the Master of the Rolls in pursuance of that Act, and

(*b*) all records (within the meaning of the said Act or to which that Act was applied) which at the commencement of this Act are in the Public Record Office and, in pursuance of the said Act, under the charge and superintendence of the Master of the Rolls, and

(*c*) all records forming part of the same series as any series of documents falling under sub-paragraph (*a*) or sub-paragraph (*b*) of this paragraph.

Power to add further categories of records and to determine cases of doubt

7.—(1) Without prejudice to the Lord Chancellor's power of making orders under paragraph 4 of this Schedule, Her Majesty may by Order in Council direct that any description of records not falling within the foregoing provisions of this Schedule shall be treated as

public records for the purposes of this Act but no recommendation shall be made to Her Majesty in Council to make an Order under this sub-paragraph unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament. 1ST SCH. —*cont.*

(2) A question whether any records or description of records are public records for the purposes of this Act shall be referred to and determined by the Lord Chancellor and the Lord Chancellor shall include his decisions on such questions in his annual report to Parliament and shall from time to time compile and publish lists of the departments, bodies, establishments, courts and tribunals comprised in paragraphs 2, 3 and 4 of this Schedule and lists describing more particularly the categories of records which are, or are not, public records as defined in this Schedule.

Interpretation

8. It is hereby declared that any description of government department, court, tribunal or other body or establishment in this Schedule by reference to which a class of public records is framed extends to a government department, court, tribunal or other body or establishment, as the case may be, which has ceased to exist, whether before or after the passing of this Act.

SECOND SCHEDULE

Section 5.

ENACTMENTS PROHIBITING DISCLOSURE OF INFORMATION OBTAINED FROM THE PUBLIC

The Land Registration Act, 1925 (15 & 16 Geo. 5. c. 21)	Section 112
The Import Duties Act, 1932 (22 & 23 Geo. 5. c. 58)	Section 10
The Ministry of Supply Act, 1939 (2 & 3 Geo. 6. c. 38)	Section 17
The War Damage Act, 1943 (6 & 7 Geo. 6. c. 21)	Section 118
The Coal Industry Nationalisation Act, 1946 (9 & 10 Geo. 6. c. 59)	Section 56
The Statistics of Trade Act, 1947 (10 & 11 Geo. 6. c. 39)	Section 9
The Cotton (Centralised Buying) Act, 1947 (10 & 11 Geo. 6. c. 26)	Section 23
The Industrial Organisation and Development Act, 1947 (10 & 11 Geo. 6. c. 40)	Section 5
The Agriculture Act, 1947 (10 & 11 Geo. 6. c. 48)	Section 80
The Cotton Spinning (Re-Equipment Subsidy) Act, 1948 (11 & 12 Geo. 6. c. 31)	Section 4
The Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948 (11 & 12 Geo. 6. c. 66)	Section 17

2ND SCH. —*cont.*

The Legal Aid and Advice Act, 1949 (12 & 13 Geo. 6. c. 51)	... ...	Section 14
The Legal Aid and Solicitors (Scotland) Act, 1949 (12 & 13 Geo. 6. c. 63)	...	Section 15
The Restrictive Trade Practices Act, 1956 (4 & 5 Eliz. 2. c. 68)	... ...	Section 33
The Cinematograph Films Act, 1957 (5 & 6 Eliz. 2. c. 21)	... ...	Section 5
The Defence (General) Regulations, 1939	... ...	Regulation 84

Section 11.

THIRD SCHEDULE

CONSEQUENTIAL AMENDMENTS

The Forgery Act, 1913 (3 & 4 *Geo.* 5. *c.* 27)

In paragraph (*d*) of subsection (2) of section three the reference to a certified copy of a record purporting to be signed by an assistant keeper of the Public Records in England shall include a reference to a certified copy of a record purporting to be signed by the Keeper of Public Records or any officer of the Public Record Office authorised in that behalf by the Keeper of Public Records.

The Public Records (*Scotland*) *Act*, 1937 (1 *Edw.* 8 & 1 *Geo.* 6. *c.* 43)

In subsection (1) of section five the proviso (which requires the consent of the Master of the Rolls to the transmission of certain public records to the Keeper of the Records of Scotland) shall cease to have effect.

The Copyright Act, 1956 (4 & 5 *Eliz.* 2. *c.* 74)

As respects any reproduction made after the commencement of this Act, the reference in paragraph (*a*) of subsection (1) of section forty-two to records of the description there mentioned shall be taken as a reference to public records which are open to public inspection in pursuance of the provisions of this Act.

FOURTH SCHEDULE

Section 13.

REPEALS

Session and Chapter	Short Title	Extent of Repeal
1 & 2 Vict. c. 94.	The Public Record Office Act, 1838.	The whole Act.
5 Vict. c. 5.	The Court of Chancery Act, 1841.	Section seventeen.
40 & 41 Vict. c. 55.	The Public Record Office Act, 1877.	The whole Act.
57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	In section two hundred and fifty-six, subsection (2).
61 & 62 Vict. c. 12.	The Public Record Office Act, 1898.	The whole Act.
15 & 16 Geo. 5. c. 49.	The Supreme Court of Judicature (Consolidation) Act, 1925.	In section nineteen, paragraph (6). Sections one hundred and seventy-three and one hundred and ninety-nine.
1 Edw. 8 & 1 Geo. 6. c. 43.	The Public Records (Scotland) Act, 1937.	In section five, in subsection (1), the proviso. Section six.
9 & 10 Geo. 6. c. 59.	The Coal Industry Nationalisation Act, 1946.	Section fifty-one.
1 & 2 Eliz. 2. c. 47.	The Emergency Laws (Miscellaneous Provisions) Act, 1953.	In section thirteen, the words "and 9". In the First Schedule, paragraph 9.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Public Record Office Act, 1838	1 & 2 Vict. c. 94.
Court of Chancery Act, 1841	5 Vict. c. 5.
County Courts Act, 1846	9 & 10 Vict. c. 95.
Court of Probate Act, 1857	20 & 21 Vict. c. 77.
Matrimonial Causes Act, 1857	20 & 21 Vict. c. 85.
Oxford University Act, 1860	23 & 24 Vict. c. 91.
Public Record Office Act, 1877	40 & 41 Vict. c. 55.
Merchant Shipping Act, 1894	57 & 58 Vict. c. 60.
Public Record Office Act, 1898	61 & 62 Vict. c. 12.
Forgery Act, 1913	3 & 4 Geo. 5. c. 27.
Land Registration Act, 1925	15 & 16 Geo. 5. c. 21.
Supreme Court of Judicature (Consolidation) Act, 1925	15 & 16 Geo. 5. c. 49.
Import Duties Act, 1932	22 & 23 Geo. 5. c. 8.
Public Records (Scotland) Act, 1937	1 Edw. 8 & 1 Geo. 6. c. 43.
Ministry of Supply Act, 1939	2 & 3 Geo. 6. c. 38.
War Damage Act, 1943	6 & 7 Geo. 6. c. 21.
Reinstatement in Civil Employment Act, 1944 ...	7 & 8 Geo. 6. c. 15.
Coal Industry Nationalisation Act, 1946	9 & 10 Geo. 6. c. 59.
National Health Service Act, 1946	9 & 10 Geo. 6. c. 81.
Cotton (Centralised Buying) Act, 1947	10 & 11 Geo. 6. c. 26.
Statistics of Trade Act, 1947	10 & 11 Geo. 6. c. 39.
Industrial Organisation and Development Act, 1947	10 & 11 Geo. 6. c. 40.
Agriculture Act, 1947	10 & 11 Geo. 6. c. 48.
Cotton Spinning (Re-Equipment Subsidy) Act, 1948	11 & 12 Geo. 6. c. 31.
National Service Act, 1948	11 & 12 Geo. 6. c. 64.
Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948	11 & 12 Geo. 6. c. 66.
Legal Aid and Advice Act, 1949	12 & 13 Geo. 6. c. 51.
Legal Aid and Solicitors (Scotland) Act, 1949 ...	12 & 13 Geo. 6. c. 63.
Emergency Laws (Miscellaneous Provisions) Act, 1953	1 & 2 Eliz. 2. c. 47.
Restrictive Trade Practices Act, 1956	4 & 5 Eliz. 2. c. 68.
Copyright Act, 1956	4 & 5 Eliz. 2. c. 74.
Cinematograph Films Act, 1957	5 & 6 Eliz. 2. c. 21.

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PUBLIC
RECORD
OFFICE

Access to Public Records

1. Public records selected for permanent preservation are normally opened to public inspection in the Public Record Office in the January after they become 30 years old. The date of opening is calculated by adding 31 to the calendar year in which the most recent record in a file or other assembly was created. However, there are a number of variations from this normal practice. Documents may be retained in departments; may be opened before 30 years have elapsed; may be closed for longer periods; or may be held in places of deposit outside the Public Record Office. Each of these courses of action requires the approval of the Lord Chancellor. In addition, some government records may by law be transmitted to the Scottish Record Office, or to the Public Record Office of Northern Ireland, as appropriate; and others are subject to statutory prohibitions on public access ('statute-barred' records). These notes are intended to give guidance on the effect of these variations.

2. Departments and other bodies which have transferred records to the Public Record Office (or to an appointed place of deposit) have the right to recall them temporarily for administrative or other use, such as the compilation of official histories. It does not, therefore, follow that a record which is open to public inspection will always be immediately accessible; but arrangements can often be made to obtain it for the reader.

RECORDS RETAINED IN DEPARTMENTS

3. Subject to the approval of the Lord Chancellor, records more than 30 years old may be retained in departments under section 3(4) of the Public Records Act 1958. This is because the records contain highly sensitive information relating to national security or to the safety of individuals which cannot be released to the Public Record Office; or because they are required for the day-to-day conduct of public business; or for other special reasons, such as the review en bloc of the records of a defunct body. The approval given by the Lord Chancellor takes one of two forms. It may refer to records of a clearly defined subject or subjects wherever they occur within government (the so-called 'blanket' approvals); or it may refer to classes of records or individual pieces held by particular departments.

4. 'Blanket' approvals: Three are at present in force:

For records created before November 1967 concerned with intelligence and security matters; the approval was given in 1967 and is to be reviewed in 1992.

For records created between 1946 and 1955 concerned with civil and home defence planning; the approval was given in 1979 and is to be reviewed in 1992.

For records created between 1946 and 1955 concerned with the work of Cabinet Committees, Official Committees and Sub-Committees dealing with atomic energy and overseas defence planning; the approval was given in 1979 and is currently being reviewed.

In future such approvals will relate to records created within a period not exceeding 10 years; and they will be subject to review not more than 20 years after the date of the approval.

5. Other records retained on security grounds: Departments and other bodies have permission to retain records with a high security content which must be protected even after the lapse of 30 years. The approval of the Lord Chancellor is conditional upon arrangements being made for a periodic review of these records to ensure declassification and transfer to the PRO at the earliest possible date. Approvals of this nature have predominantly been given for records in the central departments, in particular the Cabinet Office; in the Ministry of Defence; and in the United Kingdom Atomic Energy Authority.

6. Records retained on administrative or other special grounds: The departments and other bodies listed in Appendix A have permission to retain on administrative or other special grounds the records specified for the periods there stated. Since 1982 the Lord Chancellor, in considering applications for approval for administrative retention, has expected to be informed of the arrangements, if any, being made by departments for members of the public to have access to the records, and has given his approval subject to review after a specified period (normally 5 years).

7. EXTENDED CLOSURE

With the approval of the Lord Chancellor, certain records transferred to the Public Record Office may be withheld from public inspection after 30 years have elapsed under section 5(1) of the Public Records Act 1958, as amended by the Public Records Act 1967. Before the Lord Chancellor gives his approval, he requires departments to satisfy him that the grounds for such extended closure conform to certain criteria. These are:

exceptionally sensitive papers, the disclosure of which would be contrary to the public interest whether on security or other grounds (including the need to safeguard the Revenue);

documents containing information supplied in confidence, the disclosure of which would or might constitute a breach of good faith;

documents containing information about individuals, the disclosure of which would cause distress to or endanger living persons or their immediate descendants.

The Lord Chancellor signifies his approval to variations of the normal closure period by signing an Instrument to which a schedule of the records concerned is annexed. Copies of the Instruments and schedules are available for public inspection in the reading rooms of the Public Record Office.

8. RECORDS SUBJECT TO 'UNDERTAKINGS'

Readers may obtain access to certain public records otherwise unavailable for general public inspection, if they are prepared to give an undertaking that they will observe specified restrictions upon the use that may be made of the records concerned. Such arrangements apply to the records listed in Appendix B. Forms of undertaking are available in the Reference Room at Kew and in the Round Room in Chancery Lane.

9. ACCESS TO RETAINED OR CLOSED RECORDS

The class lists in the reading rooms of the Public Record Office indicate which records falling within classes otherwise transferred there have been retained by departments, or are subject to extended closure. Where whole classes have been retained or are subject to extended closure, this is noted in the class description in the Current Guide. Access to any retained or closed records, otherwise than under the 'undertakings' procedures described in paragraph 8 above, is at the discretion of the department or other body concerned. Readers seeking to obtain access should apply to the appropriate Departmental Record Officer, stating their topics of inquiry and, where possible, clearly identifying the records which they wish to consult. Access will not normally be given to any record retained under the 'blanket' approvals, or to other papers that remain classified.

The addresses of Departmental Record Officers may be obtained in the Reference Room at Kew and in the Round Room in Chancery Lane.

10. EARLY OPENING

Early opening by Lord Chancellor's Instrument is used in two ways: to release simultaneously records relating to events spanning a number of years, e.g. the opening in 1972 of records of the later years of

the Second World War; and to open on transfer to the Public Record Office records which departments or other bodies subject to the Public Records Acts can make available for public inspection before they are 30 years old, e.g. international treaties already in the public domain, evidence submitted to temporary Royal Commissions and similar bodies. Records to which members of the public had access before their transfer to the Public Record Office remain open on transfer there, irrespective of their date.

11. RECORDS HELD IN 'PLACES OF DEPOSIT'

Many public records are held outside the Public Record Office in places of deposit appointed by the Lord Chancellor, the majority in local authority record offices. The principal deposited classes are:

records of courts of quarter session

records of magistrates' courts

records of coroners' courts

records of pre-1858 probate jurisdictions other than the Prerogative Court of Canterbury

records of National Health Service hospitals

pre-vesting date records of colliery undertakings

records of Territorial and Auxiliary Forces Associations

outport shipping registers of HM Customs and Excise

minutes of Board of Inland Revenue Area Assessment Committees

records of local Advisory Committees on Justices of the Peace

In addition certain departments and national museums, galleries and similar institutions have been appointed as places of deposit for all of their own records, or for certain categories of public records relating to their special fields of interest.

Certain records held in 'places of deposit' are closed beyond 30 years by Lord Chancellor's Instrument.

The addresses of 'places of deposit' can be obtained from the Reference Room at Kew, and from the Round Room in Chancery Lane; some detailed lists of records held are also available. Additional information on most 'places of deposit' will be found in Record Repositories in Great Britain (HMSO, 7th edition 1982, ISBN 0 11 440160 8).

12. RECORDS TRANSMITTED TO THE SCOTTISH RECORD OFFICE

Records selected for permanent preservation in any department or other body which is wholly or mainly concerned with Scottish affairs are transmitted to:

The Scottish Record Office
HM General Register House
EDINBURGH
EH1 3YY

13. RECORDS TRANSMITTED TO THE PUBLIC RECORD OFFICE OF NORTHERN IRELAND

Public records selected for permanent preservation which relate exclusively or mainly to Northern Ireland may be transmitted to:

The Public Record Office of Northern Ireland
66 Balmoral Avenue
BELFAST
BT9 6NY

14. 'STATUTE-BARRED' RECORDS

Certain Acts of Parliament prohibit absolutely the release of information collected under their provisions: records containing such information are described as 'statute-barred'. The Acts and the departments or other bodies most affected by them are:

Corn Production Act 1917 and subsequent legislation, the most recent statute being the Agricultural Statistics Act 1979	Ministry of Agriculture Fisheries and Food
Land Registration Act 1925	HM Land Registry
Statistics of Trade Act 1947	Ministry of Agriculture, Fisheries and Food, Departments of Employment, Environment, Industry, Trade and Transport

Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 and subsequent legislation, the most recent statute being the Competition Act 1980	Monopolies and Mergers Commission

Consultations are currently being undertaken on possible amendments to the Statistics of Trade Act 1947 to remove the statutory bar to public access.

15. Readers are invited to seek further guidance from the officers in the reading rooms of the Public Record Office on any problem concerning access to public records.

April 1983

APPENDIX A: RECORDS RETAINED BY DEPARTMENTS ON ADMINISTRATIVE OR OTHER SPECIAL GROUNDS (see para. 6)

Records to which departments are prepared to give access are marked *

Ministry of Agriculture, Fisheries and Food

*Land drainage and water supply maps and plans (items from MAF 77) 1863 to 1977
Approved 1978, 1980, 1982: to be reviewed 1984, 1985 1987
See also: Welsh Office

Office of Arts and Libraries

*Files (series AA) relating to pictures formerly in the collection of the Property Services Agency
1875 to 1978
Approved 1979: to be reviewed 1989

Charity Commissioners

*Case files relating to charities in the north of England and in Wales
c.1853 to date
Approved 1973: to be reviewed 1983

Crown Estate Commissioners

*Welsh plans (LRRO 1/3005-3727)
1703-1926
Approved 1982: to be reviewed 1987

Ministry of Defence

Chemical Defence Establishment: technical records (series RS)
1937 to 1950
Approved 1981: to be reviewed 1991

Department of the Environment

*Records of the Armouries in the Tower of London
1925 to date
Approved 1982: to be reviewed 1987

Foreign and Commonwealth Office

Allied Commission Austria
c. 1945 to 1955
Approved 1980: to be reviewed 1985

Control Commission for Germany
c. 1945 to 1955
Approved 1980: to be reviewed 1985

Foreign Compensation Commission: registers, record and minute books (items from FO 1004)
Approved 1980: to be reviewed 1985

Forestry Commission

*Plans and other records of the Forest of Dean
1833 to 1949
Approved 1978: to be reviewed 1983

Department of Health and Social Security

Medicines Division: licence application files
1957 to date
Approved 1981: to be reviewed 1991

Records of the British Pharmacopoeia Commission
1930 to date
Approved 1981: to be reviewed 1991

Records of prisoners of war in Japanese prison camps
1942 to 1945
Approved 1980: to be reviewed 1990

Department of Industry (National Chemical Laboratory)

Reports relating to phosphated steel (items from AY)
1946
Approved 1976: currently under review

Office of the Judge Advocate General of the Forces

Rulings (WO 210)
1916 to date
Approved 1982: to be reviewed 1987

Law Officers' Department

*Law Officers' Opinions (LO 3)
1903 to 1971
Approved 1982: to be reviewed 1987

Lord Chancellor's Department

*Supreme Court Pay Office: direction books and journals, ledger index and documents relating to unclaimed balances
1726 to date
Approved 1982: to be reviewed 1987

National Coal Board

*Coal Commission: coal holdings registers and associated files (COAL 19)
1939 to 1942
Approved 1979: to be reviewed 1984

*Coal survey records
1920 to date
Approved 1968: currently under review

*Records in the Mining Record Offices
c. 1870 to date
Approved 1970: currently under review

National Portrait Gallery

*All records of the Gallery
c. 1850 to date
Approved 1978: to be reviewed 1983

Parliamentary Counsel

*All the records of Counsel
1832 to date
Approved 1980: to be reviewed 1985

Royal Commission on Ancient and Historical Monuments (Wales)

*Record files and related maps, plans, photographs and indices of monuments
c. 1908 to date
Approved 1978: to be reviewed 1983

Royal Commission on Historical Monuments (England)

*Record cards of monuments
c. 1910 to date
Approved 1982: to be reviewed 1987

Wallace Collection

*Trustees minute books, files relating to exhibits, archives of the history of the collection
1897 to date
Approved 1978: to be reviewed 1983

Welsh Office

*Land drainage and water supply maps and plans relating to Wales (items from MAF 77)
1927 to 1947
Approved 1979: to be reviewed 1984
See also: Ministry of Agriculture, Fisheries and Food

APPENDIX B: RECORDS OPEN SUBJECT TO UNDERTAKINGS (see para.8)

Admiralty and Secretariat Papers and Cases: Supplementary Series (ADM 178): there are two undertakings, one for records concerned with the Invergordon Mutiny 1931, the other for certain other items.

Agricultural Returns: Parish Summaries (MAF 68): all records after 1918.

Railway Staff Records (RAIL 23, 65, 92, 97, 113, 119, 214, 226, 227, 236, 241, 264, 312, 328, 343, 344, 384, 397, 404-406, 410, 411, 414, 415, 417, 426, 437, 463, 487, 491, 505, 509, 521, 527, 529, 532, 533, 554, 574, 581, 583, 611, 623, 626, 627, 633, 640, 651, 667, 674, 684, 756, 770, 772, 1096, 1130, 1156): certain items.

War of 1939-1945: War Diaries (WO 165-179, 218): the majority of items.

Haig Diaries (WO 256): copies deposited in the Public Record Office of the originals held in the National Library of Scotland.

CAB 38-50 · 84039
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PHOTOGRAPHIC COPIES OF CABINET LETTERS IN THE ROYAL ARCHIVES

CAB 41

Until the formation of the Cabinet Secretariat in December 1916, no minutes were kept of proceedings at Cabinet meetings. The only record of Cabinet decisions was contained in the letters written by Prime Ministers to the Sovereign after each meeting. These letters, which vary from brief statements of subjects discussed to more detailed accounts of arguements made and decisions reached, are preserved in the Royal Archives at Windsor Castle. Drafts and copies of some are found in other collections, such as the Gladstone Papers (in the British Museum), the Salisbury Papers (at Christchurch, Oxford), and the Asquith Papers (in the Bodleian), and the Roseberry Papers (in the National Library of Scotland).

Her Majesty the Queen graciously gave her permission for photo-copies of almost 1700 of these letters written between 1868 and 1916 to be made, and for these copies to be made available in the Public Record Office. The following list indicates briefly the subjects mentioned in each report. Most letters appear to have been written on the same day as the Cabinet meeting; but when a letter refers to a meeting on a previous day the list shows the date of the meeting in square brackets.

Publication in facsimile or otherwise of any of these letters must be accompanied by a statement that photographic copies in the Public Record Office of original letters preserved in the Royal Archives were made available by the gracious permission of Her Majesty the Queen.

Copies of the circulated memoranda which formed the basis of discussion of many of the matters reported in these letters will be found in CAB 37.

CAB 38-50 · 84059
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CAB.41

1898

24/31	Mar.11	Russia. 3 pp.
24/32	Mar.18	Northern China and Port Arthur; French demands on China; Maintenance of the status quo in China. 6 pp.
24/33	Mar.22	Indian currency; Port Arthur; Wai-hai-wai. 4 pp.
24/34	Mar.26	Port Arthur; Wai-hai-wai. 4 pp.
24/35	Mar.30	Budget; Russian demands on China. 6 pp.
24/36	May 4	West Africa; Relief from rates to the clergy; Wei-hai-Wai. 3 pp.
24/37	May 10	Forces in unhealthy parts of Africa; Reinstatement of officers involved in the Jameson Raid. 4 pp.
24/38	May 17	Reinstatement of officers taking part in the Jameson Raid; Persian loan; West Africa. 3 pp.
24/39	June 10	Parliamentary business; Pensions for teachers; North Sea fisheries; Powers of county council to pay for applications for Bills; Russian armaments. 3 pp.
24/40	June 21	Germany; Secondary education; Vaccination; Portuguese loan. 4 pp.
24/41	June 21	Portuguese loan; Sugar Conference; Financial relations between England and Ireland. 4 pp.
24/42	July 25	India and N.W. Frontier; Egypt and the Soudan. 3 pp.
24/43	Oct.27	Anarchists; Fashoda; Guarantee of the Balearic and Canary Islands in exchange for stipulations concerning Gibraltar. 4 pp.
24/44	Nov.10	Payment to the Sirdar; Egypt and the Soudan; Vote for armaments for Channel fortresses. 4 pp.
24/45	Nov.21	Fashoda; Gibraltar; Catholic University for Ireland; Commission for native soldiers in the Indian Army. 4 pp.
24/46	Nov.22	Prorogation; Fashoda; Russia and China. 3 pp.
24/47	Dec.5	The command in Egypt; Government of London Bill; Water Bill. 4 pp.

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CAB.41

1899

25/1	Jan.21	Queen's speech; French proposals for the Nile Valley; French occupation of a coaling station in the dominion of the Sultan of Muscat; Ordnance Dept. 3 pp.
25/2	Feb.2 [Feb.1]	France and Egypt; Nicaraguan canal. 3 pp.
25/3	Feb.13	Russia; Alaska; Navy estimates. 8 pp.
25/4	Feb.15 [Feb.14]	Alaska; Germany. 4 pp.
25/5	Feb.22 [Feb.21]	Cottage Homes Bill; Safeguarding British interests in China. 3 pp.
25/6	Feb.22	France and Muscat; Parliamentary business; Old Age pensions; Electric light and power. 4 pp.
25/7	Mar.13	Navy expenditure and taxation; Pacific cable from British Columbia to New Zealand. 3 pp.
25/8	Mar.21	Budget. 1 p.
25/9	Apr.25	Hong Kong; Samoa; Pensions for British officers in Egyptian Service wounded in the Soudan. 3 pp.
25/10	May 9	China; Occupation of Kowloon; Grievances of British subjects in the Transvaal; Pacific cable. 4 pp.
25/11	May 16	Transvaal; Pacific cable; Arbitration with U.S.A. (Pyramid Harbour). 3 pp.
25/12	June 13	Parliamentary business; Transvaal. 3 pp.
25/13	June 20	Transvaal. 3 pp.
25/14	June 27	Transvaal; Ireland. 4 pp.
25/15	July 4	Transvaal. 2 pp.
25/16	July 11	Transvaal. 3 pp.
25/17	Aug.1	Troops sent to Natal; Adjournment of the Houses of Parliament instead of prorogation; Old-age pensions; Sugar bounties. 4 pp.
25/18	Sept.8	Defence of Natal; Increase in military strength there; Orange Free State neutrality. 7 pp.
25/19	Sept.23	Transvaal. 4 pp.

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CAB 41

1899

25/20	Sept.29	Transvaal; Orange Free State; Summoning of Reserves. 4 pp.
25/21	Sept.30 [Sept.29]	Transvaal; Conditions to ensure liberties of the Outlanders; Orange Free State; Summoning of Reserves. 4 pp.
25/22	Oct.13	Cost of the war; Home defence. 6 pp.
25/23	Oct.17	Home defence; Finance. 4 pp.
25/24	Oct.19	Cost of the war; Financial proposals; Adjournment or prorogation. 8 pp.
25/25	Oct.23	Financial proposals. 3 pp.
25/26	Dec.8	Old age pensions; South Africa after the war; Redistribution of Seats Bill. 4 pp.

1900

25/27	Jan.26	Queen's speech; U.S.A.; Nicaraguan canal. 6 pp.
25/28	Feb.2	Nicaraguan canal; Alaska; Punishment of rebels in South Africa. 4 pp.
25/29	Feb.4	China; New African Order; Unrest in Cape Colony. 4 pp.
25/30	Feb.9	The Command in South Africa; Sir Redvers Buller; Russia and Afghanistan; Indian Prince for Army Staff in South Africa; Home defence. 4 pp.
25/31	Feb.10	Invasion of Zululand by the Boers; Home defence; Cost of the war. 4 pp.
25/32	Feb.16 [Feb.15]	Bounty for veterans; Employment of coloured troops against Boers; Russia and Afghanistan. 3 pp.
25/33	Feb.23	Militia and Volunteers; Taxation; Reinforcements for South Africa; Correspondence of Dr. Clark, a Member of Parliament, with President Kruger. 3 pp.
25/34	Mar.1	Budget; Artillery for Home defence. 4 pp.
25/35	Mar.17 [Mar.16]	South African War; Eastern Telegraph Company; Parliamentary business. 3 pp.

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to further consideration until we had had time to consult Canada.

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Speech, which will be copied out and forwarded this evening.

Two American questions were dealt with. One was the omission of the residence of Mr. Maybrick's [illegible] of

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A 76

(2)

Jan 26. 1900

Lord Salisbury with his humble duty respectfully submits that a Cabinet was held today - the greater part of the sitting was occupied in the completion of your

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imprisonment – about
three years – which
the Emperor of Japan
has passed on us
more than once – and
which Mr. Choate urged
in very earnest language
as the Home Secretary was
absent – no formal resolution
could be carried. ab.
But the tendency of

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the Cabinet was to consider that it was a fresh case when the wishes of the Americans might be considered without any injury to justice.

The other point was the Canal through the isthmus at Nicaragua, and the desire of the Americans

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that we should accept
a convention which
they had proposed
to supersede the Clayton-
-Bulwer Treaty. It
appeared that Canada
had a deep interest
in this question: and it
was resolved to defer

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CAB 41/25/2

1899. FEB 2.

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41/A 75 Feb. 2. 1899

Lord Salisbury with his humble duty to Your Majesty respectfully submits that a Cabinet was held yesterday afternoon. Its principal business was the preparation of Your Majesty's Speech which has been submitted to Your Majesty today. The next most important work was the consideration of the line which ~~was~~ is to separate the Anglo Egyptian territory from that of France as proposed by Monsieur

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Cranborne and the counter
suggestion telegraphed by
Lord Cromer. It was found
that the latter plan was at variance
with existing treaties and therefore
could not be proposed in its entirety.
But the Cabinet were of opinion
that Monsieur Cambon's line
might very properly be moved
more to the west so as to include
Darfur in the territory of Egypt
to which it has belonged since
the times of Mehemet Ali,
with respect to the request of

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p 3-22 incl.

the United States that we would be for modify the Clayton Bulwer treaty as to enable them to make the Nicaragua canal, it was felt by the Cabinet that the request could not be entirely refused, but that we might reasonably require that before making so great a concession to the United States we should have greater progress should be effected in settling some of the questions over which Lord Herschell is negotiating."

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CAB 41/25/3.
1899, FEB 13

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Decypher.

6.30 p.m Feb. 13.

from Lord Salisbury

to The Queen

Humble duty.

The Cabinet

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today was entirely occupied with two subjects.

First, the examination of despatches which,

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it is proposed,
shall be sent
to Your Majesty's
ambassador at
St Petersburg,
drafts of which

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(159) Y=013

will be submitted
to Your Majesty.
Secondly a
discussion on the
telegram from
Lord Merschell

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Q.13

(159)

received yesterday
in which he
asks what is
to be done, as
the american
commissioners

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Q.13

will neither accept
arbitration on the
subject of the
Alaska boundary
nor propose any
satisfactory

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solution. Under these circumstances he thinks the only thing to be done is to break off negotiations

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and the Cabinet concurred in this view. Some time was also devoted to the discussion of naval estimates

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A 75

51

20, Arlington Street.
S.W.
Feb. 15. 1899

Lord Salisbury with his
humble duty to Your
Majesty respectfully
submits that a Cabinet
was held yesterday.
The first subject considered
was Lord Herschell's
telegram enquiring
whether if the Americans

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continued to refuse either to concede our demands about the frontier at Alaska or to proffer them to arbitration it would not be desirable to break off the negotiations. The Cabinet were unanimous of opinion that if Lord Herschell advised by his

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four Canadian colleagues was of opinion that that course was expedient he was authorised to take it.

Two drafts having reference to the Peace Congress were considered: and it was resolved that subject to Your Majesty's approval they should be sent.

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It was also proposed that the Japanese Government should be invited to consider the question of postponing certain specified naval expenditure on each side until next year. But after long discussion it was thought better to take no steps of the kind till after the naval estimates had been produced

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CAB 41/25/28

1900, FEB 2

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Feb. 2. 1904

And I abiding with his humble duty respectfully submits that a Cabinet Council was held to day. The most important subject of discussion was the new Convention with respect to the Nicaragua Canal which the American Government are anxious Your Majesty's Government should sign. It relaxes in some degree the Clayton-Bulwer Treaty: but without infringing in any way the essential interests of Great Britain. Canada, however, has hitherto resisted this concession on the

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part of Your Majesty's Government,"
hoping to force the United States to submit
to an arbitration on the question of the
Alaska boundary - With this view
Canada, even since January in
last year, has urged us not to
consent to the proposed Convention
about the Nicaragua Canal. Lord
Pauncefote, however, now urges very
strongly that this resistance should
be abandoned, on the ground that
the American feeling is rising formidably
and may be disposed to insist that
the Clayton Bulwer Treaty should
be thrown over altogether. We

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have pressed these views on Canada and with their consent we were prepared to accept the American Free Convention.

The Home Secretary and the Lord Chancellor resisted very earnestly the remission of Mr. Maybrick's sentence & therefore it was not further pressed. But from a Foreign Office point of view the result is much to be regretted.

The question was raised whether an an answer should be returned to Mr. Hay's message, which Lord Salisbury has received from the two Presidents

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of the South African Republic,
threatening that if any of the rebels
of Cape Colony were punished,
reprisals would be made on the Boer
Prisoners whom the Boers hold in
their hands. I was instructed to
reply that if any British prisoners are
treated in a manner at variance with
the usages of nations, the two Presidents
would be held personally responsible.

BUREAU INTERNATIONAL
DE LA
COUR PERMANENTE D'ARBITRAGE
PALAIS DE LA PAIX
LA HAYE

S.P. 19.273/1

The Hague, 1st October, 1986

Dear Sir,

Your letter of July 28, 1986 addressed to the International Court of Justice, was passed on to me by this Court.

The Library of the Peace Palace does indeed possess a number of works by Frederick de Martens, but - with the exception of one translation into German - they are all in Russian.

The Library of the Permanent Court of Arbitration has the complete records of the arbitration between Great Britain and Venezuela held in Paris in 1899; these are heavy, hardbound books which can only be consulted here in The Hague.

In addition to these records the Permanent Court disposes of the Report and Accompanying Papers of the Commission appointed by the President of the United States "to investigate and report upon the true divisional line between the Republic of Venezuela and British Guyana"

Volume I Historical
Volume II Extracts from Archives
Volume III Geographical

These were published in Washington in 1897/1898 and might also be available in the Library of Congress.

Yours faithfully,

J. VAREKAMP
Secretary-General of the
Permanent Court of Arbitration

Mr. William R. Joyce, Jr.
1701, Pennsylvania Avenue, N.W.
WASHINGTON, D.C. 20008
U.S.A.

Foreign Office,

My Lord and Gentlemen, *July* 19, 1898.

THE Queen having been graciously pleased to appoint you to be Her Majesty's High Commissioners for the purpose of discussing with Commissioners to be appointed by the Government of the United States various questions at issue between Great Britain and that country, in respect to the relations of the latter with the Dominion of Canada, and of treating for an Agreement as to the mode of their amicable settlement, I transmit to you herewith the necessary full powers for the purpose.

The principal subjects to be discussed will be found enumerated in the accompanying copy of a Protocol, which was signed at Washington on the 30th May last by Sir Julian Pauncefote, Her Majesty's Ambassador to the United States, and the Honourable Sir Louis Davies, Minister of Marine and Fisheries of Canada, on behalf of Great Britain; and by the Honourable John Kasson and the Honourable J. W. Foster, on behalf of the United States.

The Protocol further provides that any other unsettled difference, in addition to those specifically mentioned, may be considered and dealt with by mutual agreement of the Commissioners representing the two countries.

Her Majesty's Government desire to leave you full discretion as to the manner in which the various questions should be discussed and dealt with, and it is therefore unnecessary that I should furnish you with specific instructions in regard to them; but I have the honour to convey to you the following observations for your general guidance:—

1.—*The Fur-Seal Fishery.*

By a Treaty concluded at Washington on the 29th February, 1892,* it was agreed that the questions which had arisen between the Governments of the two countries concerning the jurisdictional rights of the United States in the waters of Behring Sea, the preservation of the fur-seals, and the rights of the subjects and citizens of either country as regards the taking of fur-seals in those waters, should be referred to a Tribunal of Arbitration, to be composed of seven Arbitrators, two to be named by each of the Contracting Parties, and the remaining three by the President of the French Republic, the King of Italy, and the King of Sweden and Norway respectively.

It was further agreed by Article VII of the Treaty that "if the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations, outside the jurisdictional limits of the respective Governments, are necessary, and over what waters such Regulations should extend."

The Tribunal met at Paris, under the Presidency of the French Arbitrator, Baron de Courcel, and delivered its Award on the 15th August, 1893. ("United States No. 16: 1893.")

The decision of the Tribunal was to the effect that the United States did not possess any exclusive jurisdiction in Behring Sea nor any right of protection or property in the fur-seals frequenting the islands of the United States in that sea when such seals are found outside the ordinary 3-mile limit.

The Tribunal accordingly agreed upon certain Regulations as necessary for the proper protection of the fishery, of which the most important were the following:—

1. That no seals should be taken at any time and in any manner within a zone of 60 miles round the Pribyloff Islands, inclusive of the territorial waters.

* "Treaty Series No. 8 (1892)."

of a small tonnage fee, all the concessions referred to above with regard to the purchase of ice, bait, the transhipping cargoes, and shipping of crews.

The Treaty was approved by the Canadian Parliament, and ratified by the Queen, but was rejected by the United States' Senate.

The *modus vivendi*, however, notwithstanding the rejection of the Treaty by the American Senate, has been practically continued by the Canadian Parliament up to the present time.

Her Majesty's Government are of opinion that the Treaty of 1888 affords a general basis on which the question might now again be dealt with, though some of the provisions of that Treaty will require reconsideration.

The matter of the fisheries, so far as the inland waters of the two countries are concerned, relates to a long-standing question between the Canadians and the United States.

In the Great Lakes, and in all the contiguous waters, the laws which are universally admitted to be necessary for the protection of fish life, viz., the establishment of a close season and the prohibition of certain means of taking fish, have been rigidly enforced on the Canadian side, whereas on Lake Erie and Lake Huron, and most of the other contiguous waters, no such Regulations are enforced on American fishermen, who are able to fish throughout the year, and to make use of any appliances. The absence of Regulations on one side and their enforcement on the other have operated unfairly to Canadian fishermen, while at the same time the absence of such Regulations threatened the entire extinction of some of the more valuable fisheries.

A few years ago a Joint International Commission, consisting of Professor Rathbun and Commander Wakeham, was appointed to consider and report upon the subject, and to recommend such joint Regulations and restrictions as might properly be mutually adopted by the United States and by Canada for the control of these contiguous inland fisheries. This Commission commenced its inquiries in the spring of 189 , and presented its final Report on the 31st December, 1896.

The recommendations and suggestions of this Commission the Government of Canada are willing to accept as providing a fair and reasonable solution of the difficulties, on condition that the United States' Government are able to provide for the enforcement of the proposed restrictions, and to overcome the difficulty hitherto experienced in dealing with the matter owing to the claim of the State Governments to the exclusive control of the fisheries within their respective jurisdictions.

It is desirable that these important subjects should be regulated by One Treaty, and that provision should be made for the adoption and enforcement in these contiguous waters of similar fishery laws and Regulations on both sides.

3.—*The Alaska Boundary.*

The Treaty with Russia of 1825 dealt with the boundary in two sections:—

1. The part south of Mount Elias, separating south-east Alaska from Canada.

2. The northern portion, which follows the 141st meridian from Mount Elias to the Arctic Ocean.

The northern section presents comparatively little difficulty, the difference between the surveys made by either side varying only from 600 to 6 feet. It was agreed by a Convention of the 31st January, 1897, that certain points should be fixed midway between the two surveys, and that joint surveys should be carried out as occasion might require, to connect these points, until the entire line should, in time, be laid down.

With regard to the southern portion, however, a wide divergence exists between the views of the two Governments. From Portland Channel to Glacier Bay there is no such continuous range of mountains running parallel to the coast, as the terms of the Treaty of 1825 appear to contemplate. That Treaty, again, provides that the line should be parallel to the sinuosities of the coast, and that it should never exceed the distance of ten leagues from the Pacific Ocean. Considering the number and size of the projections and indentations along the coast, it would be difficult to trace the boundary according to the Treaty.

The Convention with the United States' Government of 1892 provided for the appointment of a Joint Commission to ascertain the facts and data necessary for the permanent delimitation of the boundary-line, and the High Contracting Parties agreed to proceed to consider and establish the line as soon as practicable after the

Report of the Commission should have been received. The period fixed for the completion of the surveys and the presentation of the final Reports was extended by a supplementary Convention in 1894, and the Commissioners submitted a Joint Report with Maps on the 31st December, 1895. This Report contained no recommendations for the determination of an equitable settlement, and no further discussions have taken place as contemplated in the Convention of 1892.

Proposals for a reference of the question to an Arbitration Commission of legal experts were recently made by Her Majesty's Government, but were not definitely accepted by the United States' Government, though the United States' Secretary of State authorized Her Majesty's Ambassador in April last to state that the question of arbitration was under the consideration of the two Governments.

About the same time difficulties were apprehended in consequence of the action of an United States' officer at Dyea, who requested the Canadian officials to cease exercising jurisdiction at the summits of the passes at the head of the Lynn Canal and at Lake Lindeman, and it was suggested that, pending the discussion of the question, the watershed at the summits of the passes should be adopted as a provisional line, and to this the United States' Government have agreed.

This arrangement was, in fact, a temporary recognition of the *status quo*, and was only suggested with a view of avoiding the risk of conflict, which the rash action of an over-zealous officer on either side might have provoked. But, as the line thus adopted is more than 100 miles from the ocean, Her Majesty's Government cannot reasonably be expected to continue to accord it provisional recognition for an indefinite period, and, pending a definite settlement of the question, a provisional line more in accordance with the Treaty stipulations should be adopted, which will allow the occupation by Canada of one at least of the ports on this inlet.

There are two special reasons for an early delimitation of this part of the boundary. In the first place, owing to the discovery of the Klondyke gold-fields, there has already been a large influx of miners and others into the territory to which access lies mainly through the strip. The necessity of establishing a Customs frontier on the inlets on the coast is therefore obvious. In addition to this consideration, there is the fact that the whole of the strip of Alaska bordering on the Pacific is believed to be auriferous. Prospectors are already at work in many places, and Companies have for some years been mining at Juneau and other places near the entrance to the Lynn Canal and on the adjacent islands. If gold should be found in large quantities at points in disputed territory serious difficulties may ensue, and Her Majesty's Government therefore consider that steps should be taken as early as possible for arriving at an agreement as to the intention of the Parties to the Treaty of 1825 as to how the boundary-line along the strip from Portland Canal to Mount St. Elias should be drawn.

Her Majesty's Government are content to leave it to the discretion and judgment of the Commissioners to devise some machinery for this purpose, but, for the reasons above stated, they think it desirable that, if possible, the Joint Commission should in any case agree upon some provisional arrangement for fixing a temporary line on the various inlets and rivers traversing the strip, and also at any other point at which disputes may arise pending a final settlement of the question, and a complete delimitation of the frontier.

They have only to remark that the boundary-line must, in the first instance, be sought in the mountains which border the coast, and that the important condition that the line is nowhere to exceed 10 marine leagues from the ocean governs it throughout.

4 and 5.—*Transit of Merchandize to and from either Country across intermediate Territory of the other.*

These Articles refer to what is known in Canada and the United States as trans-portation in bond.

The contiguity of territory between the United States and the Dominion of Canada, and the fact that in some instances their possessions overlap, led many years ago to an Agreement, whereby the goods of one country can be shipped across the territory of the other without being subject to its Customs laws.

This system has proved of great advantage to the subjects and citizens of both nations, and it appears advisable to establish it on a permanent basis by Treaty, and to make it as broad and as effective as possible consistently with the necessary protection of the revenue.

6.—*Alien Labour Laws.*

This subject is one which has of late years assumed in Canada serious proportions. It arises from the fact, that some years ago the Congress of the United States adopted laws which prohibited the importation into the United States of labourers under contract.

It is generally admitted that the restrictions imposed by these laws were intended to apply only to the introduction of certain classes of European labourers working at low rates under contract. Unfortunately, however, they were applied in the great cities along the border in the State of New York, and also in other adjacent States, to Canadian subjects of Her Majesty seeking work in the territory of the United States.

In self-defence the Canadian Parliament found it necessary to enact, in the Session of 1897, similar legislation intended to apply to American citizens proceeding to Canada with the object of seeking work in the Dominion.

The Canadian Parliament came to this determination with much regret, and Her Majesty's Government would welcome an Agreement on this matter providing for the complete suspension of such laws in both countries as regards persons domiciled in either.

7.—*Mining Rights.*

This Article, which refers to the mining rights of citizens or subjects of either country within the territory of the other, calls for no special comment. In the view of Her Majesty's Government, the subjects or citizens of either country should enjoy in the territory of the other the same rights and privileges as are accorded to its own subjects or citizens; and they would be glad to see an Agreement concluded to that effect.

8.—*Reciprocity.*

It has always been the opinion of the party now in power in Canada that the geographical position of the United States and Canada makes a large measure of free trade between them most desirable. The fact, however, that each country has a high Customs Tariff, which is practically protective, renders mutual concessions somewhat difficult. Moreover, the fact should not be overlooked that Canada, while fully appreciating the advantage of the American markets, has in recent years, by the judicious subsidizing of freight steam-ships and the introduction of the cold storage system, succeeded in finding a profitable market for a large portion of her surplus natural products in Great Britain; that this market is capable of indefinite expansion, and that in consequence the desirability of obtaining access to the markets of the United States has been appreciably diminished.

Notwithstanding this fact, it is considered that negotiations for the free interchange of a wide list of natural products, and for a mutual reduction of duties on a carefully-selected list of manufactured products, is still desirable and feasible, though it would, of course, be impossible for Canada to grant to the United States Tariff concessions without extending them also to such countries as are entitled by Treaty to most-favoured-nation treatment in Canada, and it is essential also that the Dominion should maintain unimpaired its right to grant preferential treatment to the mother country and other parts of the Empire of which it is a member.

9.—*Naval Vessels on the Great Lakes.*

On this subject, Her Majesty's Government are strongly of opinion that any modification of the restrictions placed upon the two countries with regard to naval armament on the lakes ought to be very carefully guarded, and they are not satisfied that any sufficient reason exists at the present time for any deviation from the restrictions imposed by the Agreement of 1817. The exercise by the United States of a Treaty right, if granted, to place a number of armed vessels on the lakes, might force Canada to incur very large and otherwise unnecessary expenditure in arming a similar number of vessels for the protection of her own shores and cities.

10.—*More complete Definition and Marking of Frontiers.*

This Article calls for no special remarks on the part of Her Majesty's Government. It is obviously in the interest of both countries that their frontiers should be defined in such a manner as to obviate any possibility of doubt or of disputes arising, and it is not anticipated that any difficulty will be experienced in making arrangements for the complete marking of the boundary where it is now insufficiently defined.

11.—*Conveyance of Persons in Custody of the Officers of one Country through the Territory of the other.*

In this case also, Her Majesty's Government have no special comments to make; but, in view of the manner in which the territories of the United States and of the Dominion are connected, and, as mentioned above, in some instances overlap, it is desirable in the interests of both that some arrangement should be made for this purpose.

The subject should be approached from the point of view of facilitating the punishment of offenders, and at the same time affording due protection to the subjects or citizens of either country.

A copy of this despatch will be communicated to the United States' Government in fulfilment of the engagement that each Government should communicate to the other a Memorandum dealing with the subjects mentioned in the Protocol.

The American Commissioners will, therefore, be in possession of the views entertained by Her Majesty's Government and the Government of Canada with regard to the treatment of the various matters which will engage your attention. It will no doubt be understood that the Commissioners will not be precluded from making any suggestions they may think proper, or from considering such other questions as after mutual agreement they may deem it useful and suitable to discuss.

Her Majesty's Government are firmly convinced that the Commissioners on either side will be animated with an earnest desire to arrive at an honourable and satisfactory solution, and that the result of your deliberations will exercise an enduring influence of a beneficent character on the relations of the two countries.

I am, &c.

(Signed) SALISBURY.

2. That there should be a close season, extending each year from the 1st May to the 31st July, both inclusive, during which no seals should be killed in that part of the Pacific Ocean, inclusive of Behring Sea, which is situated to the north of the 35th parallel of north latitude, and eastward of the 180th degree of longitude from Greenwich, till it strikes the water boundary described in Article I of the Treaty of 1867 between the United States and Russia, and following that line up to Behring Straits.

3. That only sailing-vessels should be permitted to carry on seal fishery operations.

4. That the use of nets, fire-arms, and explosives should be forbidden, though this restriction was not to apply to shot-guns when the fishing takes place outside of Behring Sea during the season when it may be lawfully carried on.

Minor Regulations referred to the special licences to be provided for each vessel, as well as a distinguishing flag, entries by the Master in the official logbook of the date and place of each fur-seal fishing operation, the number and sex of the seals captured, &c.

The Regulations were to remain in force until they had been, in whole or in part, abolished or modified by common agreement between the two Governments, but they were to be submitted every five years to fresh examination, so as to enable both Parties to consider whether, in the light of past experience, any occasion existed for their modification.

The Regulations came into force in 1894, and the fishery has since been conducted strictly in accordance with them.

Strong efforts have, however, been made in the United States ever since their adoption to reopen the whole question, on the ground that they had entirely failed in their object, namely, the preservation of the fur-seal species, and that unless a speedy change was brought about, extermination of the herd must follow.

Various proposals have from time to time been put forward, such as the appointment of a Joint Commission who would visit the islands and report as to the effects of pelagic sealing upon the herd, and that during its deliberations the respective Governments should agree upon a *modus vivendi* in accordance with which sealing would be absolutely prohibited pending the report of such Commission.

To these proposals Her Majesty's Government have found themselves unable to agree. They have contended that no sufficient evidence had been adduced to show that the Regulations have failed in their effect, or that there existed such urgent danger of total extinction of the seals as to call for a departure from the Arbitral Award, by which the two nations had solemnly bound themselves to abide.

The correspondence which has passed between the two Governments on the subject during the years 1895-97 will be found in the Parliamentary Paper, "United States No. 1 (1897)," to which your attention is invited.

Her Majesty's Government, however, fully shared the desire so strongly and so often expressed by the Government of the United States, that all necessary and practicable measures should be taken for the proper preservation of the seals; and in 1896, after communication with the United States' Government, they arranged for the conduct of an independent inquiry on the Pribyloff Islands into the state of the herd by an Agent sent from this country, with a view to investigate more completely the question of the necessity of further restrictions in future years.

The Agent selected was Professor D'Arcy Thompson, of University College, Dundee, who visited the islands during the season of 1896, and again in 1897. His Reports, which have been laid before Parliament, "United States No. 3 (1897)," and No. 1 (1898), are inclosed. Mr. J. Macoun was also present in the islands during both seasons on behalf of the Canadian Government.

Similar Missions were sent to the islands by the United States' Government under Dr. David Starr Jordan, President of the Leland Stanford University. Copies of Dr. Jordan's Reports are likewise annexed.

In the opinion of Her Majesty's Government these Reports do not bear out the alarming statements which have been made as to the great decrease of recent years in the herd, and the imminence of its extinction, though they indicate clearly, and more especially those for 1897, the necessity for watchfulness and prudence in regard to the future.

It is the earnest desire of Her Majesty's Government that some solution of the question may be found which, while adequately providing for the interests of Canada, will insure the preservation and increase of the herd.

The solution that would present the greatest advantages to both parties would probably be that, in consideration of some equivalent commercial concession by the

United States under some one or other of the other subjects in dispute, Great Britain should agree to forego for a time the exercise of her right of pelagic sealing; the owners of vessels now engaged in it being compensated by the United States' Government, to which, or its lessees, would accrue the entire benefit of the suppression for the time of pelagic sealing.

2.—*Fisheries off the Atlantic and Pacific Coasts, &c.*

The fishery rights of the United States in British North America are regulated by Article I of the Convention between Great Britain and the United States of the 20th October, 1818, which is as follows:—

"Article I. Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to, and through, the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce, for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included in the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

It will be seen that United States' vessels are enabled to enter the bays or harbours of the British possessions in North America, where they have no Treaty right of fishery, for the purpose of shelter, and of repairing damages, of purchasing wood or water, and for no other purpose whatever.

American fishermen are thus precluded from purchasing bait, ice, and supplies, from transhipping their fish or shipping crews, or otherwise making use of Canadian harbours as a base for their fishing operations; all of which are of great importance for the successful prosecution of their industry.

Numerous seizures of United States' fishing-vessels by the Canadian authorities have occurred in past years both for fishing in British waters and for frequenting Canadian ports for objects not permitted by the Convention.

Strong protests have in many cases been made by the Government of the United States, who contend that the words "and for no other purpose whatever" must be read according to their spirit, and not according to the letter; and, moreover, hold that the denial of ordinary commercial facilities is an unfriendly act.

Attempts have been made from time to time to arrive at a settlement of the question by negotiation, which have not, however, so far led to any result.

On the 15th February, 1888, a Treaty was signed at Washington by Plenipotentiaries appointed by the two Governments,* which provided for the removal of the restrictions imposed upon American fishermen by the Convention of 1818 in consideration of certain commercial concessions to be made to Canada by the United States.

A Protocol was signed at the same time for establishing a *modus vivendi* by which the occurrence of disputes might be avoided pending the ratification of the Treaty. By the terms of the *modus vivendi* the United States' fishermen obtained, by payment

* "United States No. 1 (1888)."

This is an indiscreet letter: destroy it.



Sep. 18. 1898

R.M.S. "TEUTONIC."

My dear White

I have daughter of two or three things to worry you with which had escaped me in those last hurried days.

In one of the Cabinets of the Library at Caledon House – the one nearest the window – is a copy of my "Lincoln" in ten volumes. If you have none, please accept it with my love. If you have one already, keep it for me at the Embassy until I tell you to whom to send it.

After you have paid all outstanding accounts, or at least asked all the checks I left with

Oliver James Burden thinks Reid is the man. He described him to me with great eloquence & said that he did more than any other man to nominate and elect McKinley. I suppose he got this interesting, if true, information from headquarters. Strange it never occurred to him that I was in position to know something about the facts, and about Reid also.

We have had a foggy & disagreeable voyage thus far. It is Sunday night & we are 80 miles short of our scheduled time. We shall not probably get in before Wednesday night, too late for quarantine.

All of us send our love and grateful remembrances.

Yours faithfully J.H.

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personally, in the abstract nor is he to you. But neither you nor I would weigh a feather's weight with him, as against any selfish advantage. He would cut my throat or yours for a favorable notice in a newspaper. He beat you with Meyer simply to show his "pull" and to get Mr. out of the way of Cassie Gardner. He beat the Draft to curry favor with the Dem and a few Irish politicians who flatter him.

With all his pretences of reform he is the most insatiable office beggar in the Senate. He has a man for every vacancy that occurs in the service.

The newspapers printed yesterday morning, despatches from London to the effect that the British Government have decided to reject the Senate amendments and to make counter propositions. If true, that ends the matter. The Draft expires March 5th and no other arrangement can possibly pass the Senate. Mr. Senator Morgan wrote me a letter yesterday, in a most friendly spirit personally, but giving me solemn notice that he will oppose in the Senate any new arrangement we may propose with England. He has been, on the whole, a loyal friend to me and to the Draft. But he will be an equally loyal enemy henceforth, if the amendments are rejected

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yr. please ask Morgan & Co to give you the amount of the balance against me; or, perhaps it might be better for them to send me word directly through their New York house, and Frith send them a cheque at once. I am considerably overdrawn, I fear.

I have said nothing about what I should be willing to pay to get rid of Dame Caldon's clutches. I think £200. besides the electric lighting fixtures, the new wardrobes & other repairs I have paid for, amounting to say £200 more, ought to satisfy her rapacity. But yr will let me know anything they propose.

Argyll and Bancroft Davis both think Hoar's appointment would be a thoroughly bad one. They say he is very ill-tempered and unrestrained in his petulance and sarcasm.

I have just heard of young Drew's difficulties with his wife — which would somewhat compromise Fildes position in London, if —.

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The trouble in all the cases is that New York and New England have already more than their share. We want a Western man, and get them every objection & every one we can mention.

The work is turning tough — fully as bad as I expected.

If Del is in need of money please let him have it.

I wired you to join the Cuban notice. If they say anything wh[illegible] our keeping it for an Embassy we can say their dealings with me have impressed me so unfavorably that I would hardly be inclined to recommend them as Landlords.

The horses arrived all right — evidently a scratch.

Mrs. Hay & the girls have gone to Cleveland for a few weeks.

Yours ever am keeping. [illegible]

Don't keep this or leave it where you [illegible]

800 SIXTEENTH STREET,
LAFAYETTE SQUARE.

Sept 2. 1898

My dear Adee

I found on arriving here that the President, while kindly saying that I might have any Assistant I desired did not want Rockhill. He said he would like you — I told him you would not take it. He then fell back on Dr. D. J. Hill, and as I had nobody to propose, I asked to have a telegram sent him asking him to [illegible] which I have as yet no reply. Both Adee and Critchfield wanted it; so did Penfield the Solicitor, & Michael the Chief Clerk; so there are many kicking

The President did not talk of the Embassy till today. You can hardly imagine the extent of the humiliation to which Smith has gone. He begged for a place on the peace Commission. When Day's appt was announced, he asked for Day's place. When my appt was announced he begged for ~~that~~ consent with tears in his eyes. He could hardly consent to go to Paris unless the President would keep it for him. The Pres.t promised nothing. It is a perfect mania.

Dodge has been informed he cannot have it. The Senate is too close to throw away a seat. Bush is after it again, with no chance. Robinson was offered it & declined, very sensibly — as it was thought he would. Elkins is a sure thing born for Ellen.

So far the Pres.t has no one in view. He asked me if public interests would suffer by leaving you for a while in charge. I told him not in the least and that, if personal and political considerations could be disregarded, we could not do better than appoint you Ambassador. He made no reply to this. I have never encouraged you to expect anything of the sort and do not now. But if Blair brings forward your name for him to think and inquires, he finds it Sec.y of State and inquires, he finds it Sec.y of State to appoint some one else & may perhaps find it so. I think you can safely go home & can stay a short period. While you encourage me to say to him that you would take it, subject to transfer at his discretion, to some other Embassy? That might make another chance.

White

Read + Return of extract.

DEPARTMENT OF STATE.

WASHINGTON.

November 21, 1898.

My dear White:-

I have your letter of the 8th of November. You can never write too often or too long. Besides the fact that what you write is always interesting, it is always a pleasure to hear from you whether you have anything to say or not.

The next time you see Lord Salisbury I wish you would say to him that Sir Julian and I have had some conversation in regard to the matter of Liberia, and I have sent an instruction to Jackson, a copy of which I enclose for your confidential information. I have said to Jackson that he would do well before presenting it to see the British Ambassador at Berlin and let him know what we are doing. Of course, we do not wish to initiate any joint action with England in this matter, but it is possible that some concurrent and similar inquiry and representation would have an effect in moderating the appetite of Germany in that direction. I fear there is some reason for the apprehension of the coons down there.

There is nothing new about the New York case, though I should not be surprised to see it come to a head at almost any moment. There is positively nobody working for ~~Smith~~ Reid with the exception of S, Eckendorff while the movement for C, Root grows stronger and more important every day. Most of the men who want him are great friends of yours, and only go for C Root on the ground that his appointment might effect a great and much needed unification of the party in New York.

I cannot tell you any news about Paris, because long before this reaches you I think the crisis will have been reached and passed, and you will

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have read all about it in the papers, but there has been no vacillation, no divided councils from beginning to end. We have stood upon our first propositions and shall stand upon them to the end.

Very sincerely yours

Woodrow Wilson

Henry White, Esquire,

United States Embassy,

London, England.

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White

Confidential

DEPARTMENT OF STATE.

WASHINGTON.

December 3, 1898.

My dear White:-

I have received your telegram in regard to the Eastern Extension Telegraph Company, and have sent a brief answer by cable.

Nothing has yet been done by this Government in regard to concessions in the Philippines, though Scrymser and Baylies are working to secure concessions from Japan to supplement the concessions they have already got from Hawaii. I will consult with my colleagues of the War and Navy, and make Lord Tweedale's wishes known to them.

I hear from no less than three members of our Canadian Commission that by far the worst member of the Commission to deal with is Lord Herschell, who is more cantankerous than any of the Canadians, raises more petty points, and is harder than any of the Canadians to get along with. In fact, he is the principal obstacle to a favorable arrangement. If you could, in any discreet way, in conversation with Balfour or Villiers, or even Lord Salisbury should occasion offer, intimate this state of things, so that they might speak a word which would moderate his excessive lawyer-like zeal to make a case, it would be a good thing. It will have to be done very discreetly, as, of course, I cannot be mentioned in the matter, or make it a case of diplomatic representation.

Always sincerely yours

John Hay

Henry White, Esquire,

United States Embassy,
London.

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White

DEPARTMENT OF STATE.

WASHINGTON.

May 29. 1899

Dear White

I am extremely obliged to you for your kind letter of the 18th. and beg you not to take any more trouble about those Caledon harpies. I have kept no copies of my letters to them and cannot find them. I want to pay out and have nothing more to do with them. Let me know what I owe you, besides a thousand thanks.

We are all delighted to

Of course you do not preserve these indiscreet letters.

I see our ideas are working at the Hague. I am only afraid that that unutterable ass of a Holls has too much influence with White. The President afforded him of White's request and said to me "At least we will get him out of the country for a while." But the Times this morning indicates that he has introduced his Uncle's notion of "international Courts" which I expressly rejected and refused to have with the instructions.

We are in considerable trouble about our negotiations with Zapland and Lacadia. Mr Choate has a great deal of the reality in London was admirable, but the "spoiled child" is too much for us. Reality and sincerity however are standing by our side brothers.

Yours faithfully

Wm Hay

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dear dear Mrs. Hunt is at last really improving. She has had a terrible time of it and we have been very anxious about her. Give her our love and sympathy, and I hope our congratulations will be also in order.

And poor dear Strangeways what a tragic and unfortunate her marriage has been! I have tried to write her a word of sympathy, but what can one say in such circumstances?

Edward's letter has worried me a good deal. He thought at first that Bowser was the man who was trying to blackmail him and sent in a word for him with the Secretary. Afterwards I heard from a sure source that it was Clover, and I spoke to both Cromwell and Lang in Edward's favour, and so that the matter should not be forgotten I wrote a letter to the Secretary the answer to which I sent on. Clover has evidently got in his work — they tell me that Edward's record is irreproachable and also that, and that he has had his turn. I can do no more. The Navy is very jealous of any interference from another Department.

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We must keep our foot (toes) down in the interest of our Pacific work. But if we could get out of the Philippines and keep Tutuila, I should be very glad. Germany, of course, wants to do it in the nearer most offensive to England. This we have declined to do, and for this reason, I wanted Bülow Choate to sound Lord S. directly as to the way England would regard the proposition before it is actually made. Hill assures me (in which he is probably wrong) that Eliot, after looking into the matter, was much more pleased with Samoa than he expected - found it a noble island with rich soil, fine harbors &c. The fact that the population is sparse should be rather an advantage from some points. There is hardly any population in Tutuila - which suits us exactly. But of course if England refuses, that ends the matter. There can be no compulsion.

We have seen before this our last note to Lord about the Medes.

Most confidential
not for publication.

Newbury N. H.
Sept. 14. 99

DEPARTMENT OF STATE.
WASHINGTON.

Dear White

Your letter of the 13th reached me today. I am very glad to hear that Wildbad was of use to Mrs. White and that Caux will forward her convalescence still more. Our too brief holiday here is ending. Clarence is in despair at leaving his beloved woods and his menagerie. He has Guinea-pigs, Japanese rats, Harty, all sorts of pigeons, foxes and coons. He is a budding friend of Walter Rothschild. The rest of us mourn the fresh air

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solitude and the peace of mind. The hills are now wrapped in color like flame. We have thousands of maples which give the desh of scarlet that makes the picture perfect.

I go back to Washington on Saturday of this week. Then follows a fortnight of storm and terror — the Dewey business at Washington, then a journey to Chicago with the President, two or three days and nights of howling enemi. The President always makes an excellent impression and these journeys do substantial good. But they weary the life out of the participants. I have three fine weeks before me — but he made a point of my going to Chicago + I must.

I am sorry the P.O. take the liaison between Diffs + Sternburg so hard. The story is substantially true. Sternburg did succeed in establishing intimate relations with Diffs from the start, and by agreeing at once to uphold Chambers decision, made everything easy for a unanimous report. But this had nothing to do with our views of partition. I came to the conclusion a good while ago that the Berlin Treaty could not permanently endure. The Disputed business has given nothing but trouble and annoyance to us + to England from the beginning. Cleveland as you know, was most anxious to get out of Samoa altogether. I think that was a great mistake —

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Canada squabbled for very much they could beat DEPARTMENT OF STATE. out of us, of course, but if WASHINGTON. it goes through with my concessions I am sure we have done very well. Kasson, Foster, and Fairbanks, as well as Cox, and of course Dingley, agree with me. We shall be savagely attacked by the Bryanites, among whom Godkin may now be reckoned, for having surrendered to England. But that is all in the day's work. If I am not perfectly sure the thing is settled. Canada may object to my claiming across Porcupine Creek, and she may to my insisting on fair treatment of our citizens who may find themselves on the wrong side of the provisional line. If they do, the more fools. I shall not yield either of these points.

H. C. L.

As soon as I can get a clean copy of my letter to the Ohio Circular I will send it to you. It has had a very wide newspaper circulation & the Democratic organs are printing it as a campaign document. You will see there is nothing in it incompatible with the most friendly relations with England. I simply refute the Democratic platform charge that we have made "a secret alliance with England." This charge was having a serious effect on our Germans and it had to be denied. The fact is a treaty of alliance is impossible. It would never get through the Senate. As long as I stay here no action shall be taken contrary to my conviction that the one indispensable feature of our foreign policy should be a friendly understanding with England. But an alliance must remain in the present state of things, an unattainable dream.

Have you seen Bourke Cockran's foul letter to the President demanding that we should side with the Boers against England? I declined to answer it, except by asking. Cadiz receipt, & then printed it. All the Irish, and many Germans, take the same attitude. But of course we shall do nothing of the kind. I hope, if it comes to blows, that England will make quick work of Uncle Paul. Sooner or later, her influence must be dominant there, and this across the Atlantic.

Write me as often as you can. Your letters are a great comfort. Say many things for me to our friends at the F. O. and to Mr. Balfour - in fact many more things than I have any business to say.

Yours faithfully
J. H.

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Read and destroy. [John Hays]

White

DEPARTMENT OF STATE.

WASHINGTON.

Feb. 10. 1901

Dear White

I return Dodge's letter as you request. It proves anew his selfish treachery. He knew I wished you named for Italy when Rogers Wolcott was chosen, and afterwards when he was pressing Meyer. He pretends the National Committee wanted Meyer. This is not true. Hanna told me Meyer did very little in the campaign and that he had been "extravagantly rewarded."

He is equally false about me. He is not unfriendly to me

Add him to the opposition and there is no chance whatever for a new treaty.

Teller said the other day in the Senate that if the amendments are rejected, it will be because I have intrigued secretly against them in England.

The hopeless feature of the case is that a majority of the Senate tell me, and the President, that they are on our side. But the minority are so malignant and so energetic that they keep the majority continually cowed and terrorized.

Willis Eustis is going to be yr. 3d. Secretary. The President promised Mr. Morton the first vacancy, and Edith wisely concluded that London will be the most interesting point in the world this year.

I thank you for what you say about my coming to England. I shall never hold office after I get out of the State Department which will be as soon as I decently can.

We are all delighted to hear of Mrs. White's improved health.

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Choate Papers

Private & confidential
Not for the files.

DEPARTMENT OF STATE,
WASHINGTON.

May 22, 1899.

My dear Mr. Choate:

I have received and read with the greatest possible interest your letter of the 12th of May. I cannot exaggerate the feelings of satisfaction with which I received your despatches of that date. I thought I saw in them the promise of an honorable conclusion of all the petty wrangling of the past year over the settling of the Alaska frontier. My first impulse was to take the responsibility of instantly telegraphing you my acceptance of the terms proposed, but, on second thought, I felt that I had no right to take so important a step without rather full consultation with others. The President was at Hot Springs. I communicated with him immediately and received his sanction of the action I proposed. I then telegraphed for Senator Fairbanks and General Foster of the Commission to come to Washington, and consulted with the most prominent members within reach of the Committees on Foreign Relations of the two Houses. This required several days, but ended in the most satisfactory manner in a complete harmony of opinion of all these various groups. I was preparing a telegram to you announcing our unqualified acceptance of the proposals made in your despatch when Mr. Tower appeared at the Department with a note from Lord Salisbury saying that, after consultation with the

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Private and
confidential

Department of State
Washington

July 18, 1900

My dear Mr. Choate:

I wonder if it would be possible for you, without too much trouble, to substitute for your note to Lord Salisbury of the 5th of July, another, omitting the sentence near the end, beginning "This policy".

The reason for this will, I imagine, at once occur to you. The note of the 3d of July was "identical" in its terms, and, so far as I know, has been so presented to all the Powers. When the correspondence comes to be published, as sooner or later everything gets into print, the note presented by you to England conveys an impression of unity of action with that country differentiating our relations with England from those we hold with other Powers. I think it rather important that such an impression should not obtain currency in this country or elsewhere. When the whole correspondence comes to be printed, I should not like to have the Foreign Offices of other Powers get the idea that our action was taken after separate consultation with England and with no other Power. This would not be in accordance with the facts, and would not be to our advantage. I know this is a rather difficult and delicate task I am imposing upon you, but I am quite sure you will understand the motive which dictates this note.. Of course, the matter should be effected in an absolutely private and unofficial way, leaving no record of the substitution, either in the Embassy or in the Foreign Office.

We are in the midst of frightful difficulties and catastrophes, but we seem to be working out of them in a manner as satisfactory as could be expected.

Yours very sincerely

John Hay

Confidential and Personal

Choate

DEPARTMENT OF STATE,

WASHINGTON.

April 28, 1899.

My dear Mr. Choate:-

I would like to add a word or two, in this private and confidential manner, to the instruction I sent you a few days ago in regard to the present aspect of our negotiations with Canada.

By a memorandum of the 4th of February, 1899, I find that the British Ambassador called upon me that day, and, after discussing several pending matters, talked of the state of the negotiations in the Canadian Commission. He deplored the possibility of a failure of the negotiations, and seemed to think that the most dangerous point of all was the matter of the Alaska boundary, and he suggested that it might be possible to leave that single point to arbitration, on the lines of the arbitration treaty agreed upon between him and Mr. Olney, by a tribunal of jurists, the decision of which would not bind either party unless agreed upon by a large majority. He thought all the other matters might be arranged by the mutual concessions which were then-and still are-in sight. If this were done, the British Government, he said, would have no hesitation in agreeing to the modification of the Clayton-Bulwer treaty, and to the sweeping away of all the objectionable features of the treaty of 1818, which would clear the entire slate of all subjects of discussion.

The draft of the treaty I sent you is founded on the Gen-

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Choate

Private & confidential
Not for the files.

DEPARTMENT OF STATE.

WASHINGTON.

May 22, 1899.

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Confidential. Newbury N. H.
not for files. DEPARTMENT OF STATE.
WASHINGTON.

Aug. 18. 1899

Dear Mr. Choate

I received yesterday, on my return from Plattsburg, your despatch No. 140., Aug 4. and your private letter of the same date. It seems to me your presentation of the Arbitration matter to Lord Salisbury was perfectly done, and we may be content, for the present to let the matter rest upon that statement of the case. Our position in regard to Arbitrate

made to you, with the implied assent of Canada. I shd once laid it before the President and the Cabinet, and they all agreed that if the details cd be satisfactorily arranged, it would be a reasonable solution of the matter. I was tempted to wire you immediately to that effect and to authorize you to begin the negotiation. But I thought it prudent to invite some expression of opinion from the leading members of the Committee on Foreign Relations of the Senate as to the probability of such an arrangement passing the Senate. To my great chagrin I received the inclosed letter from Senator Davis, whose acquaintance with the Senate is accurate,

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is not free from embarrassment. We are absolutely sure of our right. We think that before any high court of law we should have no difficulty in proving our case. But an arbitration is not a court of law. The Arbitrator has an almost universal tendency to compromise. We own the whole of Lyons Canal: the Canadians claim nearly all of it. In that state of things, unless the terms of the Arbitration are so strictly guarded as to make any "splitting of the difference" impossible, any European Arbitrator would almost certainly give the Canadians a foothold on the

Coast — as a measure of Equity and good neighborhood.

And yet it places us in an awkward position to oppose Arbitration. We English frankly say "You forced us to accept Arbitration with Venezuela, and now you deny us the same treatment you compelled us to grant that little power." Of course we can show the difference between the two cases, but the public, on either side, takes little account of these details. We are put in an ungracious attitude.

It was for this reason that I received with much pleasure the suggestion of the lease of a bit of ground and a right of way for a railroad, which Lord Salisbury

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Private and Personal.
Not to be made of record
but to be read & returned
to J.H.

Department of State.
Washington.

December 21, 1900.

My dear Choate:-

I want to say a word or two on the singular situation created by the action of the Senate on the Convention of February 5, 1900. This Convention was prepared wholly by us, without solicitation on the part of Great Britain. It was altogether to our advantage, and was accepted by Lord Salisbury, in a spirit of generous good will, without the change of a word. When I say it was altogether to our advantage, I do not mean it was to the disadvantage of Great Britain or of any other nation. It was in the very nature of things, that although the canal would greatly benefit the people of this country and would supply a great national need, it would also be a benefaction to the world at large; and, therefore, the Convention, which got rid of everything in the Clayton-Bulwer Treaty which prohibited the independent action of the United States in building the canal, would be to the advantage of the whole commerical world.

In negotiating the Convention we did not lose sight of the fact that it would require a two-thirds vote of the Senate for its ratification. I was well aware of the difficulty of securing the vote of the Senate to any proposition which gave an opportunity of discussion. In

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fact I had made up my mind many years ago that no treaty would ever again pass the Senate which afforded such opportunity. But the arrangement in this case was so clearly to our advantage, and every right and interest of the United States had been so carefully guarded, that I could not regard its rejection as possible, and I even hoped it might pass unanimously. I did not lose this hope for several days after the Convention was signed. I heard from every quarter nothing but commendation of it. Several Senators, who have since been foremost in their efforts to mutilate and mangle it, expressed to me their unqualified approval of the Convention. A few days later the New York "Sun" began its attack upon the Convention. For some reason - I do not care to inquire what - that paper has taken me <u>en grippe</u>, and has maliciously abused everything the State Department has done since I took charge. The attack this time was made with such energy, that it had an immediate effect in the Senate. Mr. Davis and Mr. Lodge, while they claimed to be friendly to me and to the Treaty, began to be fearful of its influence in the Presidential canvass. I tried to comfort them by telling them the President had some experience of politics and a greater stake in the election than anybody else, and that if he was not frightened no one else need be. But they continued to be panicky, and finally hit upon the so-called Davis Amendment, which they thought might satisfy the jingoes,

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without too much danger to the Treaty. Having deformed it with this excrescence, they dropped the whole matter, until after the election.

Meanwhile, encouraged by the timidity of our own Senators, the Democrats had joined in attacking the Treaty, and when the Republicans declined to defend it, the opposition hastened to make a political issue of it. The Democratic Convention at Kansas City denounced it as a base surrender to England, and Mr. Bryan in his letter of acceptance, and afterwards, added his voluble ingnorance to the discussion. Nevertheless, it cut no figure in the canvass, and did not lose us a vote. With the exception of "The Sun" and a Chicago paper, whose Editor was cross with the President, the entire respectable press of the country was favorable. Everybody told us that as soon as the Senate came together the Convention would be ratified without amendment.

This prophecy turned out to be false. I had never believed in it. From the moment the first opposition developed itself I had no hope of the treaty going through intact. As soon as the Senate assembled it was evident that a combination of two or three groups of recalcitrants could command more than a third of that body. The people opposed to any canal; those whose support had been acquired by Panama; those who wanted to hurt the President sans en avoir l'air; those who wanted me out of the Cabinet; the craven time-servers who think it is always good politics

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to attack England; and a certain number of honest and narrow-minded patriots who know no better - all together numbered enough, in the opinion of our friends to kill the treaty, if they were not squared. Our friends were persistently misled. They were sure that the Davis Amendment would satisfy everybody - but the moment it was adopted, a swarm of new ones came up - from which the Republican leaders adopted two, which they thought relatively innocent. They submitted them to the President, who asked me to meet a committee, consisting of Lodge, Aldrich and Foraker, at the White House. They told their story - that the treaty would be rejected if these additional amendments were not adopted; that with these amendments, they could not only carry the treaty through, but could prevent any hostile legislation pending further negotiations with England. The President said the treaty was right as originally drawn, that it ought to be ratified without amendment; but as this seemed impossible we were willing to do our best to persuade the British Government to accept the Davis Amendment; but that he did not think they would accept the other two. Upon which Lodge said "That puts the onus of rejecting the treaty on England!!" But they all agreed that if the treaty were rejected now, it would be impossible to prevent the violent repudiation of the Clayton-Bulwer Treaty by act of Congress. To this proposition the President made no reply, leaving to the Senate itself the

responsibility of its action. But, to give you an instance of the incapacity of these men to gauge the opinion of their own body, the very next day was beseeching the President to send for Morgan and beg him to refrain from canal legislation pending the settlement of the Treaty matter.

Yesterday the Senate voted. They adopted, as you know, besides the Davis Amendment two others, one inserting the words "which convention is hereby superseded" after "Clayton-Bulwer convention" in the Second Article; and the other striking out Article lll.

I deeply regret the adoption of all these amendments. They deform and disfigure the Treaty; they take much from the grace and value of the concession which Great Britain has made us; but beyond the matter of taste and good manners, I consider them of little moment. They give no additional advantage to us; they demand no sacrifice from Great Britain. The Davis Amendment is a mere brutum fulmen; it leaves intact the provision against the fortification of the Canal;it reserves to us in vague terms a right which can never be exercised. The omission of the llld Article hurts nobody but ourselves. It deprives us of the enormous advantage we should have in a universal guarantee of the neutrality of the Canal, and does not in any way injure Great Britain. The amendment in the Second Article "which is hereby superseded" seems grammatically to refer to the VIIIth Article of the Clayton-Bulwer Convention, and its effect is to substitute the 2d Article

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of the present Convention for the 8th of the former one. The most it can be made to mean is that the Clayton-Bulwer Convention when it conflicts with the present Convention, is superseded to the extent of such conflict.

(P.S. I find Lodge, at the last moment, wrote in the word "Convention" after "which" so as to insure the rejection of the treaty and "put the onus on England.")

As to the attitude of the British Government - it is not to be questioned that they have a perfect right to reject the amended Treaty, if they think best. They generously gave us our release from the Clayton-Bulwer Convention, in the terms we ourselves suggested. We have suffered a rebuff at the hands of the Senate; it is our dignity that has suffered and not that of England. If Great Britain should now reject the Treaty the general opinion of mankind would justify her in it. If our Congress should then go forward and violently abrogate the Clayton-Bulwer Treaty by legislative action - which is to be apprehended - we shall be putting ourselves hopelessly in the wrong, and not, so far as I can see, injuring England, except to the extent that the interruption of friendly relations will injure us both. The President's veto can not prevent this, as both Senate and House show two-thirds against him in this matter.

I cannot help hoping - though I feel we have no right to ask it - that the British Government may conclude that the amendments are not so fatally vicious as to jus-

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tify the wrecking of the Treaty. Why should not Lord Salisbury say to us "You made the Treaty, and your Senate has marred it. It still answers the purpose of relieving you of a prohibition which prevented an undertaking of world-wide interest and value. Ca péche un peu par la forme - but the substance is, after all, unchanged. Take your Treaty, Brother Jonathan, and God send you better manners."

If you can persuade our friends to take this view, you will have done a great work for civilization and righteousness.

Yours faithfully,

JOHN HAY.

His Excellency

Joseph H. Choate,

etc., etc., etc.,

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Choate Papers

Private & Confidential

Hotel des Indes
La Haye.
22 May 99

My dear Mr Choate

Pray accept my best thanks for your letter of the 20th I need not say how distressed & disappointed I am at the failure of our efforts in the matter of the Alaskan Boundary. It only shows how difficult it is to satisfy Politicians whose tenure of office is at stake. It is disheartening, but I do not yet despair. The Canadians must know

This new Version of the Rules treats both Parties Exactly alike & at the same time secures beyond any doubt that Dyea & Skagway, will in any case be confirmed to the U.S. I should be glad to know whether you think that something on those lines would be acceptable to your Govt. If so I would continue my efforts in the same private & unofficial way to arrive at a solution. I will say no more at present, as I am constantly interrupted by Visitors &

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quite well that under the terms of the Rules laid down in the Anglo-Venezuelan Treaty, it is quite certain that Dyyea & Skagway must be & remain American territory; but they dare not put it in the Treaty in so many words as it looks as a Concession granted without an equivalent, for which they would be attacked by their opponents in Parliament & in the Press. You are good enough to invite a suggestion & I venture to offer the following one. The Rules of Article IV of the Anglo-Venezuelan Treaty, which Canada accepts, are in some respects inapplicable to the case of Alaska, which depends on the construction of a Treaty, already defining the boundary, whereas the case of Venezuela mainly depends on prescription & grounds of title other than Treaty right. I would therefore propose to alter the Three Rules as shown in the enclosed draft, which retains all that is necessary of the Rules & at the same time clearly Expresses the intention of the Parties.

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Summonses to meetings. I frequently see my American Colleagues who are all well, Except Captain Mahan who I am sorry to hear is suffering from tooth-ache I am just off to the "House in the Wood". It is still quite cold here & we have fires!

Believe me
Very Sincerely yours
Julian Pauncefote

H. E.
The Hon J. H. Choate

Aug 6th 1899

Dear Girls

Hattie's letter of July 24th with Etta's addition came a few days since — I am sorry to think of Hattie going back to Topeka in August — I wish she could stay till it was cool & pleasant there — I am also sorry to hear that you Etta have not been feeling well for some days — I am in hopes that you would gain much health & strength at the Point — I am hoping that you feel much better now & that both of you will profit a great deal by your summer there — Hattie says her mouth is in fine shape — As I suppose you & Prof James busy working for things for you to eat. I should fancy that Eleven, Jim & myself made a decrease of considerable food, let alone what you girls are able to put away with — I send you a memo of one of our lunches at the Tribunal — Add to that Cocoa without limit & you can understand that feeding is fine for those who can stand it — The boys thanks arbitration a great thing — I can't spare Hattie from the Tribune Hall a few days — Perhaps she should a few more — I would Pound Cake these pleasant Sunday afternoons — Each loaf made in my dish —

Friday & Saturday were simply awful - Hot as hot
could be - The tribunal was not in session - I don't
know whether I could have stood it to sit four
hours & listen to arguments - I kept in my room
all day both days, going out only in the evening -
Last night we had a most magnificent thunder storm -
It commenced about 8 & it flashed for hours - I don't
remember one where the lightning was more prolonged
& few where it was more intense - The roar of the
thunder was grand - The lightning seemed to fill
the room & strike the buildings just across
the street - A fine rain followed & today it is
cool & pleasant - I trust we shall have some
comfortable weather for the sessions this week -
Lord Russell's doctor told him a fortnight ago
that if the hot weather of last June should return
he would take his life in his hands unless he left -
And I hear that there is a talk around of an
adjournment for a fortnight - I hope the
weather will not require it, for I am anxious
to get through & come home -
Bessie seems to keep well & do not think
feels the heat as I do - She will not have for
America all we have to for & does not seem a
bit worried when I talk of having to stay till October.

They have been careless in this hotel about Cards & letters - I hope all we have sent have reached you - Invitations which Sir Richard Webster, who is stopping at this hotel, sent to the Office to be delivered to the ship & mysely were forwarded to Washington & came back to us from that city - A valuable letter belonging to Mrs Buchanan the British Agent has disappeared - As yet I know of none of mine being lost, but I have written some to America which have not been answered & am apprehensive - I hear from Mr Hay once in a while & so get the news from Washington - He also sends me the Post & I am glad to get it - It is so hard to get track of news from the other side of the pond - The papers here give only the barest outline. You can see that from those I send you - And an American paper is not for sale - When I go to the banks I find one or two, but generally do not have a chance to stop & read, can only glance at them - So a newsy letter is a great comfort -

Albert my valet is a great help & comfort - I do not know how I should get along without him - He is the Prince, careful & faithful -

I trust you received the Programme with the pictures of the tribunal — How do you think we all look? This a very companionable & pleasant set of gentlemen & whatever may be the outcome of this arbitration I have made some agreeable acquaintances — These English are great for eating & drinking — They have good stomachs — Don't believe we could [illegible] many dinners a day

If there is anything you think ought to be done at the cottage to preserve it, don't hesitate to have it done — I don't want to let it run down, for a shelter I may be there of summer not I want a nice summer home for my children, one too of pleasant memories — Well, I think this must do for to day —

Good Bye — Love to all the dear ones —

Your affectionate Father

J. Pierpont

Dear Lulu:-

As Augusta has left a little room I will write a few words. How glad I was to receive your letter Hattie, and I trust the handsome chair has reached you by this time. I shall now look for a further letter from you. I do hope you are better now Hattie, do take good care of yourself. Love to all at Liberty Hall and believe me Loving ly Always Your

Venezuela — Martens' deal given us Victory —

Venezuelan Arbitration
The Award given this day.

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AND

J. JOHNSTON,

Of the Central Office.

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MANCHESTER.

November 3rd, 1899.

The Honorable
Fedor de Martens,
Councillor of State,
St. Petersburg, Russia.

Dear Professor de Martens :

I take the liberty of sending you by this mail a copy of the November number of the Review of Reviews, containing an article of mine on the results of the Peace Conference and their relation to the Monroe Doctrine. Although the article is naturally intended for American public opinion, I dare say it may be of interest to you.

I have read your extremely able and interesting article in the North American Review, with the greatest interest, and am, of course, gratified by your kind reference to me, for which please accept my thanks. I also wish to congratulate you upon the successful ending of the Venezuelan Arbitration. The judgment has been very favorably received in this country and you need have no fear of an application for a second hearing.

I look back upon the beautiful days at The Hague with a feeling akin to home-sickness and one of the most pleasant and valuable features of the entire stay was to me the privilege of

association with yourself and I feel particularly grateful for all the help and instruction which I owe to you.

I sincerely hope that before long we shall have the pleasure of welcoming you in this country, where you will be no longer regarded as a stranger.

Hoping that you are very well and with most respectful regards to yourself and Madame de Martens, I remain,

Dear Professor de Martens,

Very faithfully yours,

S/ (Hecks)