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ARBITRATION

BEFORE

THE HONORABLE EDWARD D. WHITE

CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

OF THE DIFFERENCES BETWEEN

THE REPUBLIC OF PANAMA

AND

THE REPUBLIC OF COSTA RICA

ADDITIONAL DOCUMENTS

SUBMITTED ON BEHALF OF THE REPUBLIC OF PANAMA,

MAY 18, 1914

A15-2646

ARBITRATION

BEFORE

The Honorable Edward D. White
Chief Justice of the Supreme Court of the United States

OF THE DIFFERENCES BETWEEN

The Republic of Panama

AND

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submitted on behalf of the Republic of Panama, May 18, 1914

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EXTRACTS FROM THE MESSAGE OF MR. RAFAEL IGLESIAS, PRESIDENT OF THE REPUBLIC, ADDRESSED TO THE CONSTITUTIONAL CONGRESS, MAY 1, 1901.

With regard to our international relations, I must begin by making a statement concerning an important and transcendental subject, the result of which has been contrary to the hopes entertained by the Government and has re-echoed and made a deep impression throughout the country.

I refer to the Arbitral Award which His Excellency N. Emile Loubet, President of the French Republic, rendered on September 11th of the year 1900, in the litigation about the boundary line between Costa Rica and Colombia.

After long and careful investigations and great monetary sacrifices, Costa Rica succeeded in acquiring comprehensive and valuable documents relating to its territorial rights in dispute, and it was on these proofs and titles that Costa Rica based its defense and its hopes of complete success in the controversy. Unfortunately, and contrary to all expectations the arbitral award which, while in that part of it which relates to the southern portion of the Republic meets to a great extent, our wishes and legitimate claims, inasmuch as it adjudicates to us a goodly portion of the territory which the provisional *statu quo* of the frontier deprived us together with the exclusive sovereignty over the whole coast line of Golfo Dulce, it draws, on the Atlantic side, the boundary line under conditions which are unfavorable to us and which represent an important loss of rights claimed by Costa Rica.

The arbitral award reads as follows :

“ The frontier between the Republics of Colombia and Costa Rica shall be formed by the spur of the range of mountains which start from Punta Mona, on the Atlantic Ocean, and closes on the North the valley of the Tarire or Sixaola River ; thence along the range of mountains dividing the waters between the Atlantic and

the Pacific Oceans up to nearly the ninth degree of latitude ; thence it shall follow the dividing line of the waters between the Chiriqui Viejo and the tributaries of Golfo Dulce, terminating in Punta de Burica, on the Pacific Ocean. With regard to the Islands, groups of Islands, small Islands and shoals lying in the Atlantic Ocean near the coast, to the East and South-east of Punto Mona, these Islands, whatever their number and extent may be, shall belong to and be under the control of Colombia. Those lying to the West and North-west of said Punta, shall belong to the Republic of Costa Rica.

“ Respecting the Islands most distant from the Continent, included between the Costa de Mosquitos and the Isthmus of Panama, called Mangle Chico and Mangle Grandé, Cayós de Albuquerque, San Andres, Santa Catalina, Providencia, Escuso de Veraguas, as well as any other Islands, small barren Islands and shoals dependent of the old Province of Cartagena, under the dominion of the Canton de San Andres, it shall be understood that the territory of these Islands, without any exception whatever, belongs to the United States of Colombia.

“ On the Pacific Ocean, Colombia shall likewise possess, starting from the Islands of Burica, and the latter inclusive, all the Islands lying East of the Punta bearing the same name ; and all those lying to the West of said Punta are adjudicated to Costa Rica.”

It is to be regretted that the said arbitral award has not been accompanied by a geographical chart of the territory in dispute, which chart, serving as an explanation and compliment, will avoid, at the time of making the material demarcation, the possible difficulties incidental to the quite important circumstance that said places and the majority of the terms of the arbitral award give room to the fixing of different locations of the boundary line. In view of which my Government, as soon as it was informed of the arbitral award, gave instructions to our Minister in Europe to inform the high arbitrator of the interpretation given by Costa Rica to the first paragraph of the arbitral award.

Our representative in Paris did so inform the Arbitrator, on September 29th, stating that, in the opinion of this Government, the line was formed by the spur of the range of mountains starting from Cabo Mona, on the Atlantic Ocean, and enclosing on the north the valley of the Tarire or Sixaola river, near the mouth of the latter; that it goes on indicating itself to the southwest in a westerly direction, on the left bank of the river, up to the confluence of the Yurquin or Zhurquin (also called Sixaola, Culebras or Doradas), towards the meridian $82^{\circ} 50'$ west of Greenwich, $85^{\circ} 10'$ west of Paris, and $9^{\circ} 33'$ north latitude. In this place the boundary line will cross the thalweg of the Tarire on the left bank of the Yurquin and shall follow towards the south, the range of mountains dividing the waters between the basins of the Yurquin on the east and of the Uren on the west; thence along the range of mountains dividing the waters between the Atlantic and the Pacific to nearly the ninth degree of latitude; thence it shall follow the dividing line of the waters between the Chiriqui Viejo and the tributaries of the Golfo Dulce, terminating at Punta Burica.

In reply to that statement, His Excellency M. Delcasse, Minister of Foreign Relations of the French Republic, stated that in the absence of precise geographical elements, the arbitrator had only been able to fix the frontier by means of general information which he thought it would be rather difficult to determine with accuracy on the map. But that it was not doubtful, as our Representative remarked that, in accordance with the provisions of Articles 2 and 3 of the Convention of Paris of January, 1886, this boundary line should be drawn within the limits of the territory in litigation, just as they appear from the text of said Articles. That, in accordance with those principles, it would be the duty of the Republics of Colombia and Costa Rica to make the material demarcation of their frontiers, and that in this matter the arbitrator appealed to the spirit of conciliation and good understanding by which both Governments have been guided heretofore.

It is a true copy—taken from the book entitled “Documentos relativos a la Controversia de Limites con la Republica de

Panama", of the Office of the Secretary of Foreign Relations of Costa Rica, pages 18 to 20, National Printing Office, San Jose, Costa Rica ; Official Publication.

BELISARIO PORRAS,

[SEAL.]

E. E. & M. P. of Panama.

Washington, D. C. April 25, 1911.

NOTE OF THE MINISTER OF COLOMBIA IN COSTA RICA, MR. LORENZO MARROQUIN, ADDRESSED TO THE SECRETARY OF FOREIGN RELATIONS OF THE REPUBLIC OF COSTA RICA, DATED FEBRUARY 27, 1901.

SAN JOSE, Feb. 27, 1901.

Legation of Colombia in Mexico and Central America.

MR. MINISTER :

The international arbitral award in the question of the boundary line, which, as I stated in my previous Note, now is an executed judgment and title of property, would authorize the States which appealed to arbitration, to occupy the adjudicated territories in the land from the time they acquired possession of the said title especially whenever the frontier is fixed by limits or natural accidents, such as range of mountains, rivers and the like.

However, international courtesy has established the usage that the interested parties should reach an agreement concerning the material execution of the arbitration ; but it is not essential that such agreement should be specified in international pacts, it being sufficient, in default thereof, that one of the Governments communicate to the other at a time sufficiently in advance, the date in which it proposes to occupy the awarded territories, to deliver those which belong to the other party and the manner as well as the time which it will be required to make the proper demarcation, survey and setting of landmarks of the boundary line, in order that said occupation be carried out justly and fairly, in accordance with the precise provisions of the

arbitral award and without any invasion into alien or contiguous territory.

The long illness of His Excellency the President—deeply to be regretted—and the fact that I had to absent myself from Costa Rica as soon as possible, have prevented us from reaching, concluding and completing, an agreement to which I formally invited Your Excellency in my Note of the 13th of February, for the execution of the arbitral award concerning boundary lines rendered on September 11th, 1900.

The Government of Colombia has not the least desire or intention to compel the Government of Costa Rica to carry out such execution. My Government only desires, concerning this matter, that the consequential facts shall be the worthy sequence of the cordial and friendly relations which preceded them and that they should be animated by the broad and generous spirit that also inspired the arbitral award.

After making this frank and open declaration, I may, without any fear of hurting in the least the feelings of the Government of Costa Rica—which would be contrary not only to the instructions I have received, but also contrary to my real wishes in the matter—inform Your Excellency as to how the demarcation of the frontier may be carried out in the absence of the special agreement, which I should have preferred.

One of the greatest advantages of the arbitral award is that it definitively and forever ended the only question, the only cause of disagreement which has ever existed between Colombia and Costa Rica; but it should be borne in mind that the arbitration will not produce its beneficial effects until the material demarcation or fixing of the frontiers is completed. To delay or postpone that act is equivalent to prolong a vexatious discussion, in which the people are unfortunately and unfruitfully excited, to the detriment of the good friendship and brotherly feelings which should unite them, and to the evident injury of the good understanding of both Governments. Foreseeing said difficulties the signers of the arbitral convention between Costa Rica

and Nicaragua—in the Convention of Arbitration about boundary lines dated December 24th, 1886,—wisely fixed the term of thirty days, after the notification of the arbitral award to the Governments—for the execution of the Award.

If Costa Rica accepted then such precise period of time, it is not unreasonable that the French arbitral award should commence to produce its effects one year after having been rendered.

Besides the Colombian Government deems itself bound to attend to the territories recognized by that award as a portion of its dominions, establishing Custom Houses and Inspection Offices, founding military and agricultural colonies, initiating the mission service, making the necessary provisions for the political and judicial administration, and employing such means as may be necessary for the promotion and development of the natural resources and wealth of the country and the advancement of the regions, the boundaries of which have been fixed.

Therefore, and leaving aside other reasons the enumeration of which would perhaps be tiresome to Your Excellency, the Government of Colombia, about the middle of September of the current year, will send Commissioners to take possession of the territories that have been adjudicated to it in accordance with the arbitral award—and to deliver to Costa Rica those belonging to it. In my opinion, the natural boundaries fixed by the arbitrator rendered this operation easy and practicable.

But inasmuch as there might arise some doubts, and as my Government wishes that the demarcation may be completed without any invasion into Costa Rican territory, and in the most just and fair manner possible, it will send simultaneously with the Commissioners—a Scientific Commission the duties of which I shall mention hereafter, and which Commission will arrive at this Capital (should your Excellency prefer this place for the meeting of same rather than some other place in Colombia) about the 15th of September of the present year. I have deemed proper to mention the advisability of making such arrangements that the occupation and delivery of the territories may coincide with the arrival of the

Scientific Commission ; but if Your Excellency prefers that the occupation, instead of coinciding with the arrival, should be after the same, and wishes, to that effect, to fix a date, I think that the Colombian Government will have no objection to doing so.

It is unnecessary to say that said Scientific Commission shall meet with another of the same character, which I have no doubt the Costa Rican Government will appoint for the date I have mentioned.

In order that both Commissions may have the same personnel, I take pleasure in informing Your Excellency, in advance, that the Colombian Commission will be composed of one Chief Engineer, two Assistant Engineers, a Secretary—who also acted as an Assistant Engineer, an Attorney, a Physician, a Naturalist and a Draughtsman.

This Commission shall be completed by an Engineer whose appointment shall be requested by both interested parties from His Excellency the President of the French Republic, and its duties shall be the following: whenever in carrying out the practical operations, the Commissions of Costa Rica and Colombia should disagree, the point or points shall be submitted to the opinion of the Engineer appointed by His Excellency the President of the French Republic. This Engineer shall have full powers to decide any kind of difficulties that may arise, and, in accordance with his decision, the operations in question shall be unavoidably executed.

Such expenses as may be incurred by virtue of the sending and stay of the French Engineer, as well as the salaries due during all the period of time that the fulfilment of their functions may require, shall be paid equally the two Republics.

The duties of the Mixed Commission shall be the following, if the Government of Your Excellency does not deem necessary to add, omit or change some of them :

1.—To determine at which point the frontier shall or shall not be fixed by means of landmarks, preferring to omit them wherever the boundary line is fixed by natural elements or accidents, as is usually the case.

2.—To fix in such places as may be determined—posts, pilots or other durable signs, so that the boundary line shall be unmistakable and distinguishable at any time—with absolute security.

3—Whenever there should arise doubts or disagreements, the same shall not cause the discontinuance or suspension of the survey or setting of landmarks of the frontier, except in that part with regard to which the disagreement has occurred,

4—Costa Ricans or Colombians who may pass from one jurisdiction to another, shall preserve their nationality, unless they should apply for a new one by means of a sworn declaration before the proper authority, within six months after having resided under the new jurisdiction.

The creation of the Mixed Commission, as well as the duties, shall be those generally established by international practice in similar cases.

I have textually copied from Article 2 of the Convention of March 27th, 1906, entered into between Costa Rica and Nicaragua for the surveying and demarcation of their boundary line, the manner of overcoming such doubts as may arise on account of the compliance with the arbitral award. Therefore, it is a procedure already adopted and practiced by Costa Rica, and it is a wise, rapid, and beneficial one. The Government of Columbia feels quite confident that Costa Rica will not, in the demarcation of its southern frontiers, adopt a different procedure from that it employed in the northern frontiers, and I assure Your Excellency in advance that my Government shall not adopt any other procedure.

Therefore, the Columbian Government shall request that His Excellency the President of the French Republic appoint an engineer arbitrator, and it hopes that the Government of Costa Rica will do likewise, in order that it may complete in due time the Commissions of both countries.

Your Excellency will readily perceive that the spirit of my Government in disregarding the solving of such doubts and ambiguities as the French Award may contain for its proper fulfilment, leaving it to the Mixed Commission and in the last resort to the arbitrator,

is none other than the earnest desire of avoiding any cause of discussion and disagreement with the Government of Costa Rica. Furthermore, this fact will prove to Your Excellency the unflinching purpose of my Government that the Lonbet Award shall be complied with within the strict limits of honesty and justice, it being a natural consequence of the methods adopted by both Governments for the settlement of their disputes about boundary lines.

I take pleasure in renewing to Your Excellency the assurances of my personal esteem and high and distinguished consideration.

(Signed) LORENZO MARROQUIN.

It is a true copy—taken from the book entitled “Documentos relativos á la Controversia de Límites con la Republica de Panama” of the Office of the Secretary of Foreign Relations of Costa Rica, pages 11 to 15,—National Printing Office.—San Jose, Costa Rica, Official Publication.

BELISARIO PORRAS [SEAL]

E. E. & M. P. of Panama.

Washington, D. C., April 25, 1911.

LETTER FROM THE MINISTER OF FOREIGN AFFAIRS OF COSTA RICA,
DATED JULY 27TH, 1901, IN REPLY TO THE COLOMBIAN MINISTER OF
FOREIGN AFFAIRS.

SAN JOSE, July 27, 1901.

Office of the Secretary
of Foreign Relations.

SIR :—

This Office received in due course three notes from His Excellency Dr. Lorenzo Marroquín, Envoy Extraordinary and Minister Plenipotentiary of that Government before this Republic, dated January 26th and February 27th of the current year, to which I have not had the opportunity to answer fully, both because the illness of His Excellency the President of the Republic at the time prevented him from taking cognizance of the important matter

elucidated therein, and because His Excellency Minister Marroquín went away shortly afterwards.

In the first two communications, the distinguished Colombian diplomat proposed the execution of a regulative pact in order to put in practice the arbitral award rendered by His Excellency the President of the French Republic on the 11th day of September of last year on the boundary litigation of Costa Rica and Colombia, and in the latter communication he suggested the idea that it was not essential that the agreement for the fulfillment of international awards should be regarded as a pact, it being sufficient for the purpose that either Government notify the other as to the date and conditions on which it purposed to occupy the lands awarded to it, and surrender those which did not belong to it; and finally he informed my Government that the Government of Your Excellency would, about the middle of September of the present year, send commissioners to take possession of the respective territory and, at the same time send a scientific commission to this capital in order that, together with that appointed by Costa Rica and with an engineer arbitrator whose appointment would be requested of the French Government they proceed to carry out certain operations relating to the demarcation of the boundary line.

It is gratifying to me to inform Your Excellency in reply, that Costa Rica listens with special pleasure to all such propositions directed to put an end to this old dispute and accepts that either through a formal agreement or by means of a simple exchange of notes, the basis be established in accordance with which the setting of landmarks shall be made, provided both parties shall have fixed, beforehand, and in the usual way, their understanding as to a point, the solution of which is an indispensable antecedent to the setting of landmarks.

I refer, Mr. Minister, to the exact direction of the boundary line on the Atlantic side. Upon this subject, my Government as soon as it heard of the arbitral award, gave instructions to our representative in Paris to declare before the arbitrator that Costa

Rica construed the arbitral award just as it appears in the statement submitted to that effect, a copy of which I have the honor to send Your Excellency. The explicit statement of the Costa Rican Minister was answered by the arbitrator in terms of perfect accord, as may be seen in the copy of his reply which Your Excellency will also find enclosed.

In thus acting, my Government was animated by the lofty purpose of expurgating that solemn decision of any blemish or sentiment contrary to the spirit of justice in which it is assuredly based, for, as Your Excellency will readily see, any interpretation different from that which Costa Rica has given it, and that, impairing her undisputed rights, might go beyond the claims of Colombia now in litigation, would weaken the arbitral award.

In view, therefore, of the opinion of Costa Rica which tends to maintain unimpaired the validity of the arbitral award and is, on the other hand, supported by the opinion of the Arbitrator, this Government believes that the Government of Your Excellency will cheerfully accept it. But if, contrary to all expectations, it should not be so accepted, and since it is indispensable to reach an agreement on the matter, inasmuch as in the absence of accurate geographical elements the Arbitrator, as he himself has declared it, could not fix the boundary line, except by means of general information which he found it to be difficult to determine with precision on a map, this Government deems it proper to open negotiations directed to overcome such difficulties in a friendly manner and most in accordance with the good will and perfect understanding to which we are invited by the high authority of the Judge, in order to complete his work.

I avail myself of this opportunity to offer Your Excellency the assurances of my highest consideration.

(Signed) RICARDO PACHECO.

This is a True Copy—taken from the book entitled “ Documentos Relativos a la Controversia de Limites con la Republica de Panama,” of the Office of Foreign Relations of Costa Rica, pages 15

to 17 inclusive. National Printing Office, San Jose, Costa Rica.
Official Publication.

BELISARIO PORRAS. [SEAL]

E. E. & M. P. of Panama.

Washington, D. C., April 25, 1911.

AN ACT SIGNED AT THE CITY OF PANAMA, MARCH 6TH, 1905, BY
THE REPRESENTATIVES OF THE REPUBLICS OF PANAMA AND COSTA RICA,
WHEREBY THEY SOLEMNLY DECLARED ON BEHALF OF THEIR RESPEC-
TIVE COUNTRIES :

(Translation)

The signing Republics solemnly declare that in compliance with the dispositions and provisions of the respective laws and treaties and the Official declarations made by the Parties, the territorial limit dispute kept up for many years by the Republic of Colombia, formerly owner of the territory in litigation, now belonging to the Republic of Panama, and the Republic of Costa Rica, was decided by the Award rendered by His Excellency the President of the French Republic, at Rambouillet, September 11, 1900, on the respective arbitral litigation, and in virtue of which, the frontier being fixed by the High Judge by means of general indications, the material determination of the same was, therefore left to the mutual opinion prompted by the spirits of conciliation and best harmony on which the two interested States have been inspired up to the present time."

In Witness whereof we set our hands and affix our seals on duplicate copies, at the city of Panama, this sixth day of March, 1905.

SANTIAGO DE LA GUARDIA.

LEONIDAS PACHECO.

National Executive Power, Panama, March 6, 1905,

Approved,

M. AMADOR GUERRERO

The Secretary of State and Foreign Affairs.

SANTIAGO DE LA GUARDIA.

NOTE OF THE SECRETARY OF FOREIGN RELATIONS OF THE REPUBLIC OF PANAMA, DATED JANUARY 9, 1909, ADDRESSED TO THE MINISTER OF THE UNITED STATES, MR. HERBERT G. SQUIERS.

Department of Foreign Relations.

N° 8/11

PANAMA, January 9, 1909

MR. MINISTER :

I take pleasure in acknowledging receipt of the kind communication of Your Excellency of the 2nd instant, to which Your Excellency added a copy of a cablegram relating to the controversy about the boundary line between Panama and Costa Rica, addressed by the State Department of the United States of America to Your Excellency—in reply to a previous cablegram from that Legation.

As I have already had the honor of verbally informing Your Excellency, my Government refuses to submit the point to a new decision, and has decided to accredit a Legation in San Jose, Costa Rica, in order that the two Republics may, in a friendly manner, attain a final settlement of this important question. But, if after exhausting all proper means in such negotiations, they should fail to obtain the desired result, my Government will cheerfully accept the good services of Your Excellency, and will, of course, submit with pleasure to the learned award of the Honorable Chief Justice of the Supreme Court of the United States any point or points that might be the cause of disagreement in fixing the boundary line between the two countries—in accordance with the Loubet Arbitral Award.

MESSAGE OF PRESIDENT CLETO GONZALEZ VIQUEZ OF THE REPUBLIC OF COSTA RICA, ADDRESSED TO THE CONSTITUTIONAL CONGRESS OF THAT REPUBLIC ON THE 1ST OF MAY, 1909. AND PUBLISHED IN SPECIAL PAMPHLET IN THE NATIONAL PRINTING OFFICE OF SAID COUNTRY.

The question of boundary with Panama is about to be defined—and just during these last days there has arrived at this Capital

a Legation of that Republic—presided over by the distinguished statesman Doctor Belisario Porras, who will discuss the matter.

The Pacheco-Guardia Treaty having expired, it is proper, if there were not an agreement between both countries indicating the boundary line, to decide as to which of the two different interpretations of the Loubet Arbitral Award is the one which is in accord with the spirit of the decision and with the validity of the procedure, and, for that purpose, to resort to a new arbitration.

At all events, it is necessary to trust in the good will with which both countries treat each other, having been united during a long time by an unbroken and inalterable friendship, and also in the conciliatory disposition shown by both Governments in this respect.

I beg to be allowed to mention at this moment the important services rendered to his country in connection with this matter by our Special Minister in Washington, Licenciado Luis Anderson.

POWERS FROM THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF PANAMA TO DOCTOR PORRAS, MINISTER OF PANAMA TO WASHINGTON—ON A SPECIAL MISSION TO ENTER INTO A BOUNDARY ARBITRAL CONVENTION WITH THE REPUBLIC OF COSTA RICA.

JOSE DOMINGO DE OBALDIA, Constitutional President of the Republic of Panama.

In the name and by authority of the Nation.

WHEREAS, the Government of the Republic of Costa Rica and the Government of the Republic of Panama, have duly taken into consideration and agreed that, in order to determine the topographical location of the boundary line which was finally and geographically fixed between the two neighboring Republics, by virtue of the Loubet Arbitral Award of September 11, 1900, it has been deemed advisable to have an interview which will take place in the Offices of the State Department of the United States of North America in the Capital City of Wasuington, D. C., and to which will attend the Honorable P. C. Knox, Secretary of State of the Government of the United States, His Excellency the Minister of the Republic of Costa Rica, on a Special Mission, and the Representative

of the Republic of Panama, in which interview will be commenced the meetings which will clearly explain everything concerning the drafting of a Protocol which will fix the bases and conventions for the celebration and ratification of territorial limits, of a final and permanent character with the neighboring and friendly Republic ;

WHEREAS, the Government of the Republic of Panama should establish a legal representative and invest him with full powers required for the successful fulfilment of the delicate functions of this high Mission, before the Government of the United States of America and before His Excellency the Minister of the Republic of Costa Rica on a Special Mission, and it being necessary for me to designate the person having the necessary qualifications for that purpose ;

THEREFORE : I have seen fit to elect and appoint, and hereby do elect and appoint his Excellency Dr. B. Porras, the present Minister Plenipotentiary and Envoy Extraordinary of the Republic of Panama before the Government of the Republic of Costa Rica, in order that, invested with the Power of a Plenipotentiary of my Government, on a Special Mission, may represent the Republic of Panama, before the Government of the United States of North America and discuss, contract, settle and sign with such Plenipotentiary as for this same purpose may have been designated by the Government of the Republic of Costa Rica, all such conventions, clauses and stipulations as may be necessary for a proper call which shall serve as a basis for the conclusion, ratification and exchange of a Treaty of Territorial Limits, of a final and permanent character, between the Republic of Costa Rica and the Republic of Panama, which protocol shall be in accord, in the first place and above all, with the principle of strict acknowledgment by both contracting parties of the arbitral award which His Excellency Emile Loubet, President of the French Republic, rendered on September 11, 1900, known in all the Diplomatic Chancelleries and Agencies by the name of the Loubet Arbitral Award ; an arbitral award which the two States of Costa Rica and Panama agree in advance to accept as final decision the compliance of which is obligatory on both parties, and, in the second place, to

limit themselves to the Special Instructions which have been communicated to His Excellency the Minister of Panama on a Special Mission, instructions which His Excellency the Representative may enlarge, restrict, modify, reform, substitute or add to, in conformity with the spirit of justice in which the Government of the Republic of Panama was inspired at the time of issuing them, and whenever, in the learned judgment of His Excellency the Minister Plenipotentiary of the Republic of Panama, on a Special Mission, he may deem that such enlargement, restrictions, modifications, reforms, substitutions or additions, may tend to the complete success of the Mission entrusted to him to the benefit of the interests of the Nation. And everything that His Excellency Dr. B. Porras in his character and capacity as Minister Plenipotentiary and Envoy Extraordinary of the Republic of Panama, before the Government of the Republic of Costa Rica on a Special Mission, and before the Government of the United States of North America may execute in compliance with this Mission, within the special powers which this Plenipotentiary confers on him in order to fix and continue all the preliminary negotiations of the protocol, is hereby accepted and ratified, and shall be observed and complied with, and shall be caused to be observed and complied with the same as if the Nation itself had executed it. And for this purpose I ratify and grant to His Excellency Dr. B. Porras, Minister Plenipotentiary and Envoy Extraordinary, on a Special Mission, the full powers which in the most ample legal form are required.

And in testimony whereof I have caused these presents to be issued, signed under my hand, duly sealed and countersigned by the undersigned my Secretary of State in the Office of Foreign Relations. Given at the National Palace of Panama on the twentieth day of the month of December of the year One thousand nine hundred and nine.

(Signed) J. D. DE OBALDÍA.

(There is a seal)

The Secretary of State in the
Office of Foreign Relations.

(Signed) S. LEWIS.

NOTE OF THE SECRETARY OF FOREIGN AFFAIRS OF THE REPUBLIC OF PANAMA—DATED DECEMBER 21ST 1909, TO DOCTOR PORRAS, MINISTER OF PANAMA TO WASHINGTON—ON SPECIAL MISSION—IN CHARGE OF THE NEGOTIATIONS FOR AN ARBITRAL CONVENTION WITH THE REPUBLIC OF COSTA RICA.

No 924/I.

PANAMA, December 21, 1909.

YOUR EXCELLENCY :

This Note is accompanied by a copy of the correspondence passed between the State Department of the United States and our Legation in Washington, and by it Your Excellency will see that the date of the 15th of January next has been fixed for the holding of an interview between Secretary Knox, the Special Envoy of Costa Rica, and the representative of the Republic of Panama.

I have been directed by His Excellency the President of the Republic to notify Your Excellency of the fact that Your Excellency has been appointed to perform the duties of this Commission. So that, on the aforesaid date, Your Excellency must be in Washington in the capacity of Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama in Costa Rica, on a Special Mission before the Government of the United States of North America, and, for that purpose, enclosed Your Excellency will find the necessary authorization.

When it was decided that the Legation of this Republic in Washington should take charge of these negotiations, the precise instructions enclosed in the communication were prepared, not in order that Your Excellency should exclusively restrict to them, but so that Your Excellency may know the opinion of the Government of this nation, which, being aware of Your Excellency's attainments, intelligence and patriotism, leaves Your Excellency entirely at liberty to end this question in such form as Your Excellency may deem most convenient, only with one exception, namely, that the first condition must be the absolute acknowledgment of the Loubet Arbitral Award, because the Republic of

Panama shall always be consistent with its ideals and opinions, and, therefore, it must show the respect it feels for the principle of arbitration which it has invariably upheld.

I also beg to call the attention of Your Excellency to the advisability that, in the settlement of this matter, Your Excellency should act in accord with Mr. William Nelson Cromwell, Counselor of the Legation of Panama in Washington.

I take pleasure in renewing to Your Excellency the assurance of my highest personal esteem and most distinguished consideration, and remain,

Your obedient servant,
(Signed) S. LEWIS.

Enclosures :

Three copies and note of instructions.

NOTE OF THE HONORABLE PHILANDER C. KNOX, SECRETARY OF STATE OF THE UNITED STATES, DATED FEBRUARY 2, 1910, ADDRESSED TO MINISTER PORRAS ON A SPECIAL MISSION IN WASHINGTON.

FEBRUARY 2, 1910.

SIR :

I have the honor to inform you that, for several reasons, the Department of State deemed it advisable not to delay further the sending of a telegram to our Legation at Panama in reference to the proposed boundary arbitration of your country with Costa Rica. Accordingly, the Department telegraphed yesterday, February 1st, instructing our Chargé d'Affaires at Panama to call the attention of the Government of Panama to the fact that the Department's telegram to him of December 7th and the instruction of December 18th made it clear that there was no intention to limit the boundary issue between Panama and Costa Rica to the mere interpretation of the Loubet Award ; that the United States Government thinks, and has said and now repeats that the crucial matter to be submitted to arbitration is the respective contentions of the two Republics as to the true boundary line ; that by the

foregoing statement of the real issue this Government merely indicates its friendly opinion and disclaims any desire to influence the free agreement of the two Republics or the cause of the proposed arbitration; that the responsibility for the arbitration and for the success or failure of the pending negotiations must rest with the two Republics, but that this Government nevertheless deems it proper to say that in view of all the facts, it has felt some degree of surprise upon learning the tenor of the powers of the Special Minister of Panama, which are not full powers as designated in certain passages thereof, but powers restricted to the negotiation of a protocol founded upon the strict acceptance, first and above all, by both contracting parties of the Loubet Award, and further hampered, it seems, by special instructions which limit his freedom and independence of action. That this Government respectfully but earnestly represents that such are not full powers, are not adequated to the task in hand, and are not equivalent to the unrestricted powers of the Special Minister of Costa Rica, and, therefore, should be amplified by telegraph to secure progress in the negotiations. That this Government further feels that its own attitude, assumed before the Special Minister of Panama was accredited, shows that it believed full powers were needed and were confidently awaited in order to settle the real and broad question as to the true permanent boundary, but that the unavailing negotiations with Costa Rica for nearly ten years last past had made it clear beyond peradventure that this long-standing controversy cannot be settled by insisting on a mere interpretation of the Loubet Award. That during the said period Costa Rica had insisted that the Loubet Award—was void in part at least on the ground of *ultra petita* or impaired or vitiated by ambiguity and uncertainty, and that this contention was not in violation of the original agreement of submission which contemplated an award with the defined limit of the claims and not technically void for uncertainty. That this Government represents further and suggests that, considering these facts, the terminal terminal points of the Loubet Award should now be finally agreed to

as accepted by both parties, namely, Punta Barica and Punta Mona, and that the boundary drawn from one to the other should be submitted and determined without restriction in the light of the Loubet Award as well as in the light of all allegations, contentions, evidence and arguments submitted by both parties. That, admitting as all must do, a moral obligation flowing from the Loubet Award, the question submitted by this Government to the Panama Government is whether, considering the long practical deadlock of this controversy and the past unyielding attitude of both Governments, it is not now most important and indeed necessary to dwell upon and emphasize the moral and practical importance of peace and good neighborhood and the amicable settlement of a historic controversy which has been and this Government feels will evidently continue to be rendered impossible in case the acceptance of the Loubet Award be insisted upon.

That, finally, this Government feels itself entitled to urge the importance of a prompt, practical and final settlement of the matter by reason of the large property interests of its citizens located in the disputed territory, which are unfavorably affected by the ambiguous and unsettled status of the boundary question, and by reason of its guarantee under the treaty of 1903 with Panama of the independence of that Republic, which gives it the right to know as speedily and definitely as may be the true boundaries and the exact extent of the territory the independence of which it has guaranteed.

Accept, Sir, the renewed assurance of my highest consideration.

(Signed) P. C. KNOX.

It is a true copy.—taken from the files of the Panama Legation in Costa Rica—on a Special Mission in Washington, D. C.

BELISARIO PORRAS. [SEAL].

E. E. & M. P. of Panama.

Washington, D. C., April 25, 1911.

NOTE OF THE AMERICAN LEGATION IN PANAMA, DATED FEBRUARY 3, 1910, ADDRESSED TO THE MINISTER OF FOREIGN RELATIONS OF PANAMA, INFORMING HIM OF THE CABLEGRAM FROM SECRETARY KNOX— DATED FEBRUARY 1ST OF THE SAME YEAR.

American Legation, Panama.

No. 262.

FEBRUARY 3, 1910.

EXCELLENCY :

I have the honor to advise Your Excellency of the receipt of a telegraphic instruction from my Government, dated the 1st instant, which I brought informally last evening to the attention of Your Excellency, yesterday being a holiday and the Foreign Office closed, and of which I beg to be permitted to deliver a copy.

It refers to the negotiations now pending in Washington between the Special Ministers of Panama and Costa Rica, respectively, relative to the boundary controversy between these two Republics.

I avail of the opportunity to assure Your Excellency of my highest esteem and most distinguished consideration.

(Signed) GEORGE T. WEITZEL,
American Chargé d'Affaires *ad-interim*.

Accompaniment :

Copy of State Department's telegram of February 1, 1910.

His Excellency SAMUEL LEWIS,
Secretary for Foreign Relations of
the Republic of Panama,
Panama.

[Copy of Cable Dispatch.]

American Legation, Panama.

WASHINGTON, February 1, 1910.

AMERICAN LEGATION,

Panama.

Kindly avail yourself of the first opportunity to make the following discreet but urgent suggestion to the Government of

Panama, namely : That this Government, by its telegram to you, dated December 7th, and by the instructions of December 18th, did clearly express that it had no intention of limiting the discussion on boundaries between Panama and Costa Rica to the mere interpretation of the Loubet Arbitral Award ; that this Government believes, has already stated and now repeats, that the decisive points which must be submitted to arbitration are the respective claims of the two Republics regarding the true boundary line ; that by the foregoing statement of the true object, this Government simply states its friendly opinion and disclaims any desire whatever to exercise influence in the voluntary agreement of the two Republics or in the direction of the proposed arbitration ; that the responsibility for the arbitration and for its happy success or the failure of the pending question should rest with the two Republics. But in spite of that it seems to this Government that it is proper to state that, taking into consideration all the facts, it has felt some surprise upon learning—the tenor of the powers conferred on the Minister of Panama on a Special Mission, which powers are not full as can be seen by some of its passages but are powers limited to the negotiation of a protocol the basis of which shall be the strict acceptance first and above all, by both contracting parties of the Loubet Arbitral Award, and, besides this, with restrictions, as it seems, by special instructions which curtails his liberty and independence of action. This Government very respectfully but with all seriousness remarks that the powers in question are not full powers, are not adequate for the mission undertaken and are not in accord with the unlimited powers of the Minister of Costa Rica on a Special Mission, and, therefore, should be enlarged by cable in order to facilitate the progress of the negotiations. Besides, this Government thinks that its attitude, assumed before the Minister of Panama on a Special Mission was accredited, shows that said Government thought that full powers were necessary and confidently expected them for the purpose of settling the true and important question concerning the actual permanent boundaries, and

that the unsuccessful negotiations with Costa Rica during nearly the last ten years had clearly demonstrated, without the least doubt, that this long controversy cannot come to an end by insisting on a mere interpretation of the Loubet Arbitral Award. During the aforesaid period Costa Rica has insisted that the Loubet Arbitral Award was null, in part at least, by reason of *ultra-petita* or useless or vitiated by its ambiguity or doubt, and that such pretence was not in violation of the original agreement of arbitration, the object of which was to obtain an award within the defined limits of the claims, and not technically void or null owing to doubt. Furthermore, this Government observes and suggests that in view of these facts the final points of the Loubet Arbitral Award should be now definitely adjusted just as they have been accepted by both interested parties, that is to say, in Punta Burica and Punta Mona, and that the boundary line drawn from one to the other be submitted and determined without restriction, bearing in mind both the Loubet Arbitral Award and all the allegations, pretensions, proofs and arguments submitted by both parties.

Admitting, as all must indeed admit, a moral obligation flowing from the Loubet Arbitral Award, the question submitted by this Government to the Government of Panama is, whether considering the long deadlock of this controversy and the inflexible attitude of the two Governments in the past, it is not now of the utmost importance and really necessary to expend and emphasize the practical and moral importance of peace and good neighborhood and the friendly termination of a historical controversy which it has been impossible to settle, and that this Government believes will continue to be impossible to adjust in case the acceptance of the Loubet Arbitral Award is insisted upon.

Finally, this Government considers itself to have the right to recommend the importance of a prompt, practical and final settlement of the matter by reason of the valuable interests of its citizens who are established in the territory in dispute, which interests are unfavorably affected owing to the uncertain and ambiguous state of

the boundary question and by reason of the guarantee, in accordance with the Treaty of 1903 with Panama, of the independence of said Republic, which confers on it the right to know, as speedily and accurately as possible, the real boundary and the exact extent of the territory the independence of which it has guaranteed.

(Signed) KNOX.

Department of Foreign Relations, Panama, April 21, 1911.

CABLEGRAM FROM THE SECRETARY OF FOREIGN RELATIONS OF THE
REPUBLIC OF PANAMA TO THE MINISTER OF PANAMA ON SPECIAL
MISSION IN WASHINGTON.

PANAMA, February 5th, 1910.

PORRAS,

Panama Legation,

Washington, D. C.

American Minister at Panama officially communicated cable received from Secretary of State of the United States urging your powers to be enlarged and the following is the substance of our written reply delivered to-day. President Obaldia has issued in favor of Porras the fullest powers allowed in this matter by Constitution of Republic of Panama—and quoted Article Third. Then explained that proceeded correctly including Loubet Award in its Constitution since said Award has been accepted not only by Republic of Colombia, Republics of Panama and of Costa Rica, but also by United States, and quoted Note of Secretary of State to Governor (Minister) Magoon, No. 32, dated April 16th, 1906, and finished stating that any powers to enter into agreement intended to invalidate Loubet Award was a violation of the Constitution.

LEWIS.

NOTE OF THE SECRETARY OF FOREIGN RELATIONS OF PANAMA,
MR. SAMUEL LEWIS, OF FEBRUARY 6, 1910, TO THE AMERICAN LEGA-
TION IN PANAMA.

No. 570

DEPARTMENT OF FOREIGN RELATIONS

PANAMA, February 6, 1910.

HONORABLE SIR :

Your esteemed note No. 262, dated yesterday, brought me a copy of the cable instructions of your Government relating to the negotiations which are now in progress in Washington, between the Minister of Panama on a Special Mission, and the Minister of Costa Rica, concerning the pending boundary controversy between the two Republics.

My Government expresses its thanks for the declaration therein contained that the Government of the United States limits itself to the giving of its friendly opinion in the matter, and that it emphatically denies all desire to exercise its influence in the voluntary agreement of the two Republics or in the direction of the proposed arbitration, and that the responsibility of the success or failure of the pending negotiations, should concern only the two Republics interested in the litigation.

Nevertheless, in its capacity of friendly mediator, the Government of the United States deems proper to state that, taking into consideration all the facts, it has felt some surprise on learning the tenor of the powers conferred on the Envoy of Panama on a Special Mission, which are not full powers, as is shown by some of its passages, but powers limited to the negotiation of a protocol the basis of which shall be the strict acceptance, first and above all, by both contracting parties of the Loubet Arbitral Award and, besides, with restrictions as it seems, by special instructions which curtail his liberty and independence of action.

I hasten to inform you, in order that you may kindly communicate it to the State Department, in reply to the cable instructions which are the subject matter of your aforesaid note, that the Government of the Republic of Panama has invested his Special Envoy, Dr. Belisario Porras, charged with the settlement in Washington of the old boundary controversy between this Republic and that of Costa Rica, with the fullest powers which the Panaman Executive is able to grant, bearing in mind the Constitution and the national laws, and the respect that the final arbitral award of an arbitrator and the permanent interests of the Nation should inspire to every civilized country.

In fact Article 3 of the Constitution of the Republic of Panama determined the territory of the Nation in the following form :

“ The territory of the Republic is the same which, under the Act of February twenty-seventh, eighteen hundred and fifty-five, additional to the New Granada Constitution of eighteen hundred and fifty-three, formed the State of Panama, and became afterwards, in eighteen hundred and eighty-six, the Department of Panama, with its islands, and the insular territory which was awarded to the Republic of Colombia by the President of the French Republic on September eleventh, nineteen hundred. The territory of the Republic remains subject to the jurisdictional restrictions stipulated or which may be stipulated in public treaties with the United States of America for the construction, maintenance or sanitation of any route of interoceanic transit.

The boundaries with the Republic of Colombia shall be determined by treaty.”

Such determination implied the respect and obedience which the young Republic felt for the equitable and civilized principle of arbitration, and, besides, it was exactly in accord with the facts and circumstances existing from the eleventh of September, 1900, the date on which President Loubet rendered at Rambouillet his arbitral award in the pending controversy between the two Republics, and on February 13, 1904, when the Constitution of Panama was signed, because between Colombia and Costa Rica the Loubet

Arbitral Award had only been discussed with regard to the exact manner in which it should be interpreted. It is so stated in the note of September 29, 1900, addressed to His Excellency M. Delcassé, Minister of Foreign Relations of the French Republic, by His Excellency Mr. Manuel M. De Peralta, Minister of Costa Rica in Paris, and in subsequent communications and documents.

The attitude assumed by the Republic of Panama upon adopting its Constitution was, on that point, entirely correct, inasmuch as M. Delcassé, in the first paragraph of his reply of November 23, 1900, to the note of Minister Peralta, above quoted, said :

“ But it is not doubtful, as you will observe, that, in conformity with the provisions of articles 2 and 3 of the Convention of Paris of January 20, 1886, this boundary line should be drawn within the territory in dispute, as appears from the text of said article.”

This declaration protected forever and in a final manner the said arbitral award, against any semblance of nullity and rendered improper the argument of *ultra petita* alleged by Costa Rica.

After the advent of the Republic of Panama, the Arbitral Award has been discussed by the contracting parties only with regard to its interpretation but never concerning its validity or binding power. This fact is corroborated by the messages of the different Presidents of Costa Rica addressed to the congresses of that nation, as well as in the attempts of settlement proposed by Panama, either in the form of a treaty as is deduced from the Guardia-Pacheco treaty, or in the preliminaries of the arbitration contemplated as is seen in the note by which this Government accepted the good offices of the United States, and that therein in an explicit manner, she refused to submit the point to a new decision, but it simply agreed to submit to the decision of the Honorable Chief Justice of the Supreme Court of the United States any point or points of disagreement upon fixing the boundary line between the two countries, in accordance with the Loubet Arbitral Award ; and, finally, as it appears to be established in the spirit of

the State Department, as is seen in the note of instructions that the Honorable Elihu Root sent to the Honorable Charles E. Magoon by note No. 37 of April 16, 1906, which was officially communicated to Secretary Arango on the 21st of December, 1908, by Minister H. G. Squiers, the fourth paragraph of which textually says :

“ The first of these points was that, in conformity with the Loubet Arbitral Award of 1900, which was accepted as final by Colombia and Costa Rica, the territory included in the McConnell plantation was adjudicated to Colombia (now Panama), and became subject to the jurisdiction of said country.”

And then in the following paragraph, it says :

“ And at the same time, it cannot be denied that the sovereignty *de jure* has been in Colombia and Panama since the Loubet Arbitral Award, it having been accepted by Panama and Costa Rica, so that, either by virtue of said award or by the pending boundary treaty (Guardia-Pacheco) the territory finally will be under the jurisdiction of Panama.”

And in conclusion, in the following paragraph of said instructions, with this declaration :

“ And in accordance with the opinion of the Department, Costa Rica exercises a provisional *de facto* sovereignty over the territory included in the McConnell concession, subject, in accordance with the law, to be dispossessed at any time and at the will of Panama, but continuing in reality until the time the pending boundary treaty is ratified. It exercises the necessary governmental functions for the orderly administration of the District, but shall not use this sovereignty in such manner as to impair the rights of the sovereign *de jure* of the territory. Its governmental functions are limited by its tenancy, which is of a provisional and uncertain character. Its duty is to preserve the property, not to destroy it, and to deliver it to its successor without committing any act tending to impair finally the rights of the proprietor *de jure*.”

The above remarks fully prove that the Loubet Arbitral Award has been recognized as a final decision of the boundary controversy between Panama and Costa Rica, not only by the parties in interest but also by the friendly mediator. Therefore, the Republic of Panama acted correctly upon fixing, as it did fix in its Constitution, its boundary with Costa Rica, in accordance with the Loubet Arbitral Award: Subject only to such interpretation as might be given to said Award, but Panama being convinced that said boundary could never be the subject of new treaties, as has been stated with regard to the boundary line with Colombia in the paragraph of article 3 of the Constitution already quoted.

Therefore, the spirit and letter of the Constitution permit the Panaman-Executive Power to settle the existing difference concerning boundaries with Costa Rica, based always on an interpretation of an award, but in no case is the Executive authorized to enter into a public treaty in which the validity of said arbitral award is questioned. It would imply the flagrant violation all the more evident, inasmuch as the constitutional precept has subsequently been the subject-matter of a most important corroboration in law 6 of 1907, by which the Guardia-Pacheco treaty was approved. Article 2 of said law provides :

“ The Executive Power is hereby authorized in order to, should Costa Rica fail to approve this treaty, during the next regular sessions of its legislature at the latest, suspend the effects of this law and to demand the compliance with the Loubet Arbitral Award.”

Thus, therefore, in the most courteous manner, and having given the most careful attention to the remarks made by the Department of State, I beg to state with all the seriousness which this case deserves, that the powers, without any other limitations, without any other restrictions than the previous acknowledgment of the Loubet Arbitral Award by both interested parties, granted to the Special Envoy, Dr. Porrás, are the fullest that the Panaman Executive can grant.

Nevertheless, it should be made known that the Government of Panama in its earnest and sincere desire to determine this old and vexatious boundary controversy with Costa Rica, is willing to enlarge said powers—should they not be sufficiently ample—in such form as to render it possible to reach an honorable and satisfactory settlement for both parties in interest, always having as a previous and indispensable basis the acknowledgment of the Loubet Arbitral Award; the only circumstance which will render such settlement in accord with our Fundamental Law.

I avail myself of the present opportunity to renew to you, Sir, the assurance of my greatest personal esteem and of the most distinguished consideration with which I have the honor to subscribe myself,

Your most obedient servant,

(Signed) S. LEWIS.

NOTE OF THE MINISTER OF PANAMA ON A SPECIAL MISSION IN WASHINGTON, DR. BELISARIO PORRAS, DATED FEBRUARY 7, 1910, ADDRESSED TO THE SECRETARY OF STATE OF THE UNITED STATES, PHILANDER C. KNOX.

Delivered FEB. 7th, 10-30 A. M.

EXCELLENCY :

I have the honor to acknowledge the receipt of your favor of the 2nd inst respecting which I have awaited the further instruction of my Government in view of the communication through the Chargé d'Affaires at Panama which you advised me you had made on the 1st instant. Since that date my Government has received a communication from the Chargé d'Affaires at Panama—which I presume to be of the tenor of the cablegram you informed me that you sent me on the 1st instant, and to which my Government advised me that it has replied, in effect; that the powers issued to me are the fullest powers allowed in this regard by the third article of the Constitution of the Republic of Panama; and that these powers

properly included the Loubet Award made a part of the Constitution, since that Award has been accepted not only by the Republic of Colombia, the Republic of Panama and the Republic of Costa Rica, but also by the United States, as appears by the letter of the Secretary of State, No. 37, addressed to Minister-Governor Magoon on April 16, 1906; and that any powers to enter into an agreement intended to invalidate the Loubet Award was a violation of the Constitution of Panama.

The discussions which have been had between the Minister of Costa Rica on Special Mission and myself under your distinguished auspices, developed a radical and fundamental difference as to the question to be submitted under the proposed arbitration.

I respectfully submit that there is no reason for uncertainty as to the object of these conferences or as to the subject of the proposed arbitration, for the history of the Award, the official correspondence in respect thereto upon the part of Colombia, Panama, Costa Rica and the United States shows that the Loubet Award was accepted as binding (as by the terms of the submission it was specifically provided), and that the difference between Colombia and Panama on the one part, and Costa Rica on the other, related solely to a small *part* of the line and to the interpretation of the Award with respect to the small part.

At the very initiation of the kindly mediation of your Excellency's Government, when the proposal for the arbitration was made through the American Minister at Panama, the Government of Panama cordially accepted such mediation but under the most explicit declaration of its position in an unofficial reply dated January 9, 1909, in which it was stated :

“As I have already had the honor to verbally apprise your Excellency, my Government declines to submit the point to a new decision and has decided to accredit a Legation at San Jose, Costa Rica, with a view of amicably arriving at a final settlement of this important matter, between the two Republics. But if after having exhausted all means available in such negotiations, the desired result could

not be obtained, my Government shall willingly accept the good offices of Your Excellency and naturally will submit, with the greatest pleasure, to the wise decision of the Honorable the Chief Justice of the United States, any one of the point or points which might be the cause of disagreement on fixing the boundary line between the two countries, in accordance with the Loubet Award."

No definite understanding being reached between the two Governments following my mission to Costa Rica, I attended here to carry out the understanding I have indicated and which the history of the affair discloses. This I respectfully submit, was upon the understanding that the Loubet Award was to be accepted and was only to be interpreted as to that part in disaccord. Many documents of controlling importance show this.

In Your Excellency's Note of November 2nd, 1909, addressed to Don Carlos C. Arosemena, Minister Plenipotentiary of Panama to the United States, the purposes of the present meeting of the Special Envoys of the Republics of Panama and Costa Rica at Washington—is clearly stated as follows :

" This Government has assumed that the two parties were in disaccord as to a part of the Loubet Award and that all that is wanted is for each to submit its interpretation as to that part of the line in disagreement and invite the arbitrator to determine which of these two interpretations is the correct one under the Loubet Award "

This is, in fact, the exact situation. It has never been proposed by either party to disregard the Award of President Loubet, by which both are bound in the most solemn way (Panama as the successor of Colombia) nor to arbitrate anew the question decided by him. It has been, and is, the firm purpose of my Government to abide faithfully by the Award and the attitude of Costa Rica has been equally unequivocal.

In a Note dated July 27th, 1901, to Senor Lorenzo Marroquin,

then Minister of Colombia to Costa Rica, Don Ricardo Pacheco, the Minister of Foreign Affairs of that Republic, says, referring to the very question now under consideration and arguing in support of the position of his Government :

“ In view therefore of the fact that the opinion of Costa Rica tends to preserve unimpaired the force of the Award and on the other hand it is supported by the opinion of the arbitrator, this Government believes that that of Your Excellency will receive it as satisfactory.”

In the message of President Iglesias of Costa Rica to the Congress of that Country, on May 1st, 1901, he says, speaking of the Loubet Award :

“ In view of which my Government as soon as it received knowledge of the arbitral decision, gave instructions to our Minister in Europe to address himself to the Honorable Umpire and inform him what the understanding of Costa Rica was with regard to the first paragraph of the decision.”

On March 6th, 1905, Don Leonidos Pacheco, the Minister Plenipotentiary of Costa Rica to Panama, signed with Don Santiago de la Guardia, then Minister of Foreign Affairs in Panama, a declaration which contains the following statement :

“ The signatory Republics solemnly declare that in accordance with the provisions of the respective laws and treaties and the official statements made by the parties, the boundary dispute maintained for many years by the Republic of Colombia—formerly owner of the territory in dispute, which to-day belongs to that of Panama—and that of Costa Rica, *was settled by the decision* which His Excellency the President of the French Republic was pleased to announce in the respective arbitral tribunal at Rambouillet on the 11th day of September, 1900, and by virtue of which the frontier being determined by the Honorable Judge by means of general indications, the material determination of the same was left to the mutual agreement which the spirit

of conciliation and good feeling which up to the present time has inspired the two nations interested might decide upon (dictaron)."

Finally, President Viquez of Costa Rica in his message to the Congress of that country, on May 1st, 1909, says :

" As the Pacheco-Guardia Treaty has not come to an issue it is necessary, should no agreement fixing the dividing lines be had between both countries, to decide which of the two different interpretations of the Loubet decision is in consonance with the spirit of the decision and to have a new arbitration for that purpose."

It thus appears that Costa Rica is, equally with Panama, committed to the acceptance of the Loubet Award, if any commitment were necessary beyond that contained in the Convention of Arbitration which solemnly stipulated (Article IV.) that :

" The Award of the Arbitrator, no matter what it may be, shall be considered as a perfect and binding treaty between the High Contracting Parties and shall not admit of any appeal. Both parties bind themselves to its faithful fulfilment and they waive any appeal against the decision pledging thereto the national honor."

The only question therefore which exists or which has ever been raised during the more than nine years which have elapsed since the Award, is one of interpretation of that Award as to a part, only, of the boundary,---the greater part of that boundary determined by the Award never having given rise to any dispute or question. This, Your Excellency has clearly seen and has clearly expressed in the Notes of the Department of State of the United States under dates of April 16th, 1906, and of November 2nd, 1909, to which I have already had the honor to refer.

In this connection permit me to refer to your statement that " during the said period (" nearly ten years last past ") Costa Rica has insisted that the Loubet Award was void in part at least, in the ground of *ultra petita* or unimpaired or vitiated by ambiguity and uncertainty,"

and to respectfully advise you that I am informed that throughout the whole history of this affair under Colombia after the Loubet Award, Costa Rica never so much as raised the least question of *ultra petita*, and on the other hand recognized the validity of the Award and itself gave the Award an interpretation which made the present plea of *ultra petita* impossible and is inconsistent with its present contention. Throughout the subsequent period of the history of this affair under Panama, down to 1907, Costa Rica never raised such question but continued such recognition. It is only within the past two years or so that this question has been raised, and, too late, I respectfully submit to receive serious consideration.

My Government is most responsive,—as shown by the history of this negotiation to promote an amicable adjustment of this grave controversy ; but a tremendous and serious result has already been reached which it is not to its national interests to surrender, nor its constitutional power imperil, merely the Award made by President Loubet after years of vegetation to reach that arbitration and years of labor in reaching the Award. In this connection I may state that my Government has not the documentary proofs and records to re-argue the questions which were submitted to President Loubet. The records of great antiquity and profundity, running by centuries, were possessed by Colombia and upon this Colombia won her cause after all that could be presented and argued by Costa Rica during the four or five years of the arbitration ; but these archives are possessed by Colombia and not accessible to Panama which would be powerless to present its cause *de novo*.

I am, Mr. Secretary, so solicitous to find some solution which will receive favor with you as well as Costa Rica and so reluctant am I to consider my mission as fruitless that I am conferring with my Government by cable to evolve, if possible, a further proposal as to the question to be submitted to arbitration.

As soon, therefore, as further advised upon this point, I will crave audience with Your Excellency.

Accept, Mr. Secretary, the renewed assurance of my highest esteem and consideration, and believe me,

Yours very respectfully,

(Signed) BELISARIO PORRAS

E. E. & M. P. of Panama.

MEMORANDUM OF THE STATE DEPARTMENT, DATED MARCH 1, 1910, ADDRESSED ONE IDENTICAL COPY TO EACH OF THE REPRESENTATIVES OF COSTA RICA AND PANAMA.

IDENTIC MEMORANDUM HANDED TO DR. BELISARIO PORRAS, ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY OF PANAMA, ON SPECIAL MISSION, AND SENOR DON LUIS ANDERSON, ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY OF COSTA RICA, ON SPECIAL MISSION, AT THE CONFERENCE HELD AT THE DEPARTMENT OF STATE ON MARCH 1, 1910, AT 3 P. M.

The Secretary of State has given the most studious attention to the respective attitudes of the Governments of Panama and Costa Rica as revealed by the long correspondence and as finally crystallized in the specific proposals, received respectively on February 25th and February 2nd, supplemented by the very important statements made orally at the conferences of the 25th and 26th ultimo.

The Secretary of State is well aware of the desire of Costa Rica that the proposed arbitration shall be as broad as possible. He is equally sensible of the considerations which impel the Government of Panama to insist upon the Loubet Award as a basis for the definitive termination of the boundary. It was a source of great satisfaction to take note of the fact that both parties are in practical agreement as to the boundary line from the Pacific Ocean to a point beyond Cerro Pando on the Central Cordillera. The fact that the difficulties to overcome are thus confined to the determination of the line thence to the Atlantic, caused the Secretary of State to entertain the gratifying hope that, in view of the conciliatory

and candid spirit animating the two Governments it would surely be a matter of no great difficulty to reach a satisfactory solution.

Animated by this hope and in response to the desire of both Governments that the United States should lend its good offices in connection with the proposed arbitration, the Secretary of State has arrived at a theory which, in his judgment, should form a basis substantially satisfactory and entirely considerate of the respective contentions.

The Secretary of State, therefore, suggests that the *compromis* stipulate the acceptance of the line to the extent above mentioned as free from doubt and, continuing, state the question to be arbitrated as the following: "What is the boundary between the Republics of Panama and Costa Rica under and most in accordance with the true interpretation and correct intention of the Loubet Award in the light of all the historical, geographical, topographical and other facts and circumstances surrounding it as well as under the established principles of international law?"

The Secretary of State also deems it important, in the interest of justice and for the avoidance of future disputes, that the Arbitration Convention contain some such stipulation as the following: "All valid titles to land or other valid rights of property in the disputed territory granted or created by either Republic, or by the Republic of Colombia either before or after the rendition of the Loubet Award, shall be recognized and protected in case the results of this arbitration shall be to transfer the *locus* of such titles and rights and the sovereignty over the same from the Republic granting or creating the same to the other Republic."

As to the very interesting and able suggestion of the Panama Government that the question should be solved by a joint surveying and arbitrating commission, which should refer to the actual arbitrator all questions of difference between them or between their respective Governments, the Secretary of State has given to this proposal the sympathetic analysis which its importance made appropriate, bearing in mind, however, the fact that the arbitrator would naturally call for a survey in all cases when he found a nec-

essity for more precise topographical information, the Secretary of State has deemed more practical that the arbitrator should proceed and himself call for all data which he might find relevant to the question before him, and that, anticipating this possibility, the protocol should instead contain a provision whereby the two Governments would agree to share the expense of a surveying commission appointed by the arbitrator, if the latter should require such survey at any stage of his consideration of the question.

Department of State, Washington, March 1, 1910.

2491/123 J

It is a True Copy—taken from the archives of the Legation of Panama in Costa Rica in Special Mission in Washington, D. C.

BELISARIO PORRAS [SEAL]

E. E. & M. P. of Panama.

Washington, D. C., April 25, 1911.

AMERICAN LEGATION,

PANAMA.

JANUARY 2, 1909.

YOUR EXCELLENCY :

I have the honor to communicate to Your Excellency the text of a cable, (copy enclosed) which I have just received from the Department of State, respecting the Panama-Costa Rican boundary controversy, and in reply to my cable of December 24, of which Your Excellency has a copy.

I have requested in a formal note a conference with you, at which I desire to discuss the question set forth in the enclosed cable.

I avail myself of the occasion to wish Your Excellency's Government and people during the coming New Year, every happiness, success and prosperity.

I avail myself of the opportunity to assure Your Excellency of my highest esteem and most distinguished consideration.

H. G. SQUIERS.

TO HIS EXCELLENCY JOSE AUGUSTIN ARANGO,
Secretary of State,
Panama,
Republic of Panama.

[ENCLOSURE.]

Your telegram December 24, Costa Rican special envoy, while believing it advisable submit whole boundary question to a decision to be given in clearer and more definite terms than Loubet award, in deference to Panama suggests following points be submitted to a new arbitration (quote) first : whether the Loubet award is free from defects that according to principles of International law impair its legal force (period) Second : if considering that the award is not thus defective, to determine what its meaning is, and through what points the frontier line shall be drawn. (end quote).

SECSTATE :

Referring to Department's cable of December 31, regarding the Costa Rica-Panama boundary dispute Minister for Foreign Affairs advises me his Government declines to submit first point to arbitration, as they consider that Loubet award is free from defects that according to principles of International Law impair its legal force.

Considering the award is not thus defective they agree by arbitration to determine what its meaning is and through what points the frontier line shall be drawn.

STATE DEPARTMENT.

No. 14.

NOVEMBER 2, 1909.

SIR :

I have the honor to acknowledge the receipt of your note of the 20th ultimo, relative to the suggested submission to Chief Justice FULLER, as arbitrator, of the boundary controversy between your Government and that of Costa Rica.

The purpose of this Government has been to bring the Governments of Costa Rica and Panama together in the path of arbitration and as this appears to be hopefully in the way to be accomplished, through the direct negotiations of the empowered representatives of the two Governments, it does not appear necessary for this Government to take any part in the formulation of the terms of submission of the question to the arbitrator.

This Government has assumed that the two parties were in disaccord as to a part of the Loubet award, and that all that is wanted is for each to submit its interpretation as to that part of the line in disagreement and invite the arbitrator to determine which of those two interpretations is the correct one under the Loubet Award. In this assumption, we limit ourselves to taking note of that portion of your communication which appears to define the contention of Panama in this regard.

As to the finality and binding character of the award, whichever it may be, this Government cannot doubt the good faith of the parties to the arbitration, and while not asking for a formal engagement on the part of either or both, would have

pleasure in receiving assurance, from Panama as well as from Costa Rica, that the award shall be accepted as final.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) P. C. KNOX.

MR. C. C. AROSEMENA,
Minister of Panama,
Washington, D. C.

LEGACION DE PANAMA.

MARCH 10, 1910.

EXCELLENCY:

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama on Special Mission, has given the most careful consideration to the identic memorandum handed to him and to the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Costa Rica on Special Mission, by the Secretary of State at the conference held at the Department of State on March 1, 1910.

It is with great satisfaction that the undersigned notes the recognition by the Secretary of State of the force and validity of the reasons which require the Government of Panama to insist upon a strict adherence to the Loubet Award as a necessary prerequisite to any arbitration to which that Government can constitutionally be a party.

It is the understanding of the undersigned, from the memorandum to which reference is made, that this attitude is accepted as the necessary basis for any further proceeding, and with this in view, the undersigned begs to submit the following additional views and considerations upon the subject of the memorandum.

Since the acceptance of the Loubet Award must form the basis of the arbitration, the convention of arbitration, it is respectfully submitted, should, in the first place, stipulate that acceptance by both parties, and should state that the object of the arbitration is confined to the interpretation and application of the Loubet Award: It being understood as a part of that award, as expressed in the letter of M. Delcassé to Señor de Peralta, Minister of Costa Rica at Paris, November 23, 1900, "that, in conformity with the terms of Articles II and III of the Conven-

tion of Paris of January 20, 1886, this boundary line must be drawn within the confines of the territory in dispute as they are determined by the text of said articles."

The undersigned will consent, with pleasure, to a further stipulation that no doubt exists as to the interpretation of that award with respect to the boundary line from Punta Burica on the Pacific Ocean to a point beyond Cerro Pando on the Central Cordillera, which he understands to be the suggestion of the Secretary of State, and, with that understanding, is glad to accept for his Government.

With respect to the question to be arbitrated, the undersigned believes that that question would be accurately stated as follows: "What is the boundary between the Republics of Panama and Costa Rica under and in accordance with the correct interpretation and true intention of the Loubet Award"?

The arbitrator will, undoubtedly, in the course of his examination of this question, take into account all the circumstances and facts which may, in his view, properly have a bearing upon his decision, but the undersigned submits that the enumeration suggested of the considerations which the arbitrator shall take into account would extend the scope of the arbitration beyond the determination of the question of fact, to-wit, the exact location of the line as fixed by the award, which is all that has been proposed; and might lead to a departure from or modification of the Loubet Award, which the undersigned does not understand to be within the scope of the proposed arbitration, and to which it would be beyond the power of the undersigned or his Government to agree, for the reasons heretofore given.

With respect to the title to lands within the disputed territory and rights of occupancy of such lands under grant made by either Republic prior to January 1, 1910, the undersigned (all other provisions of the convention being agreed upon) will accept the suggestion of the Secretary of State that such titles shall be respected, and this acceptance also involves titles arising under the grants of the Republic of Colombia made before November 3, 1903, the date of the independence of the Republic of Panama. After that date the Republic of Colombia can have had no right in the territory, nor to make grants to land therein, and there can be no reason for respecting such grants, if any have been made. The undersigned understands that his acceptance as stated above meets the views of the Secretary of State. The undersigned has no objection to the phrase "other valid titles of property" used in the memorandum of the Secretary of State, if it be defined

in such a way as to exclude any collateral privileges, exemptions or concessions running with the land involved or expressed in any grants.

With respect to the question of a survey of the line by a joint commission, as proposed in the letter of the undersigned to the Secretary of State, on February 25, 1910, the undersigned desires to urge again the importance of such course.

The inadequacy and untrustworthiness of any existing maps of the territory through which the line runs is well known and must be conceded. Nothing material can be added to what was submitted to President Loubet which would enable the new arbitrator to fix the line as described in the Loubet Award any more precisely than the award itself fixes it. These facts, the undersigned again most earnestly urges, would render the projected arbitration necessarily fruitless, and would leave the question eventually where it now stands, unless a survey be made.

Moreover, for the reasons given, there would be great danger that the arbitrator, if he attempted from the data existing to define the line as fixed by the Loubet Award with more precision, would unintentionally and inadvertently depart, in fact, from the award, and, without being aware that he was so doing, modify rather than interpret it. Such a danger is one which the undersigned is not authorized to incur and which it is without doubt the desire of the Secretary, himself, to avoid, but it cannot be avoided without a survey.

Furthermore, and as already suggested in the letter of the undersigned of February 25, 1910, to the Secretary of State, whenever a line is finally agreed upon as being the line of the Loubet Award, a commission of delimitation to mark the line will ultimately be necessary, and undoubtedly, as usually happens in such cases, differences will arise as to the details in the course of such delimitation. By the plan proposed by the Republic of Panama, the ascertainment and delimitation of the exact line under the Loubet Award would proceed simultaneously and the whole question would be finally settled, once and for all, in an equitable, proper and permanent way, without the necessity for any further action whatever on the part of either Government.

While convinced that the plan proposed in his letter of February 25, 1910, has many and great advantages, the undersigned is, nevertheless, prepared to accept the modification thereof as suggested in the memorandum of the Secretary of State with two stipulations additional to those therein mentioned: First, that such survey or

surveys shall be directed by the arbitrator whenever either party shall think it important to its interests and shall so request; Second, that the Commission to be appointed shall consist of four members, one of whom shall be appointed upon the nomination of each party to the arbitration.

It is the sincere desire of the undersigned and of his Government to obtain a settlement of this entire question at the earliest possible moment, and to cooperate in any means to that end within their constitutional powers. It is with this purpose that this memorandum is submitted.

The Government of the undersigned is sincerely grateful for the interest and intervention of the Government of the United States as a friendly mediator upon this question, and its only desire is that the convention to be made and the proceedings to be had thereunder should be such as will lead to a final settlement and will not make the intervention of the United States fruitless or ineffective.

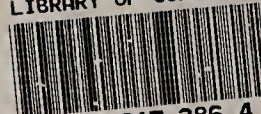
With renewed assurances of my highest consideration I beg to remain,

Yours very respectfully,

BELISARIO PORRAS.

HON. P. C. KNOX,
etc., etc., etc.,
Washington,
D. C.

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